

Proposed Amendments to Occupational Health and Safety Act and WHMIS Regulation

The Ministry of Labour (MOL) proposes to amend the *Occupational Health and Safety Act* (OHSA) and the Workplace Hazardous Materials Information System Regulation as set out below to implement the Globally Harmonized System of Classification and Labelling of Chemicals (GHS). MOL's proposals are based on amendments to the federal *Hazardous Products Act*, which received Royal Assent in June 2014, and on the new, proposed Hazardous Products Regulations under that Act. MOL's proposed amendments are subject to change to reflect the final Hazardous Products Regulations. Consistent with the approach of the federal government, Ontario proposes to provide for a lengthy transition period – until June 2017 – for full implementation of the GHS.

Proposed Amendments to OHSA and Rationale

1. Sections 37, 38, 40(1)(a) and (b), 57 and 70

Replace the term “material safety data sheet” with the term “safety data sheet” wherever it appears in the OHSA. (*Note: This amendment was made in 2010 but has not yet been proclaimed into force.*)

For consistency with changes to the federal *Hazardous Products Act* (HPA) and proposed Hazardous Products Regulations (HPR), which use the GHS term “safety data sheet”.

2. Subsection 37(5)

Repeal this provision. Currently, ss37(5) provides that a material safety data sheet expires three years after it is published.

MOL is proposing to repeal this provision because the federal government intends to repeal the requirement for a supplier to update a safety data sheet every three years. New federal provisions will require suppliers to update their safety data sheets within 90 days of new hazard information becoming available.

3. Section 38

Add a requirement to ensure that the joint health and safety committee or worker health and safety representative is consulted on how best to make safety data sheets available in the workplace. Update terminology respecting safety data sheets that are available electronically.

To ensure all ways to make safety data sheets accessible to workers are considered.

4. Sections 40 and 40.1

Update all references related to provisions of the federal *Hazardous Materials Information Review Act* (HMIRA) and to the Hazardous Materials Information Review Commission (HMIRC).

These proposed updates are needed in order to reflect recent amendments to the HMIRA and the replacement of the HMIRC with a new mechanism to review claims, from suppliers or employers, for exemption from requirements to disclose certain information on a label or safety data sheet on the grounds that it is confidential business information.

Proposed Amendments to WHMIS Regulation and Rationale

1. Section 1, Definitions

Update and/or delete selected definitions and add new ones.

For consistency with GHS terms incorporated into federal *Hazardous Products Act* (HPA) and proposed Hazardous Products Regulations (HPR).

2. Various sections including 1, 4, 5, 7, 13-18, 20, 22, 23 and 25

Replace the term “material safety data sheet” with the term “safety data sheet” wherever it appears in the regulation.

For consistency with changes to the federal HPA and proposed HPR, which use the GHS term “safety data sheet”.

3. Various sections including 1, 3, 8, 14 and 17

Replace the terms “controlled product” and “Controlled Products Regulations” with “hazardous product” and “Hazardous Products Regulations” wherever they appear in the regulation.

The federal government proposes to repeal the Controlled Products Regulations and replace it with the Hazardous Products Regulations.

4. Section 8 – New Subsection

Add a new duty on the employer to update labels or container information as soon as a supplier provides significant new data to the employer.

To complement a new supplier duty in the proposed HPR to update a label within 180 days of becoming aware of significant new data that would affect label content. For products sold during the 180-day grace period, without an updated supplier label, the supplier must provide the buyer with the significant new data in writing.

5. *Subsection 8(4)*

Repeal the employer's duty with respect to labelling individual containers in a multi-container shipment.

To complement proposed changes to HPR: to remove the supplier's exemption from the requirement to label inner containers in a multi-container shipment; and, to permit suppliers to provide an alternate label on an outer container in which at least two different hazardous products are packaged.

6. *Subsection 8(5)*

Amend to permit an employer who imports a hazardous product for use in its own workplace, to attach a supplier label that does not include the initial supplier identifier if contact information for the foreign supplier is retained on the label.

To complement proposed provisions in the HPR permitting an importer who imports a hazardous product for use in its own workplace to use a supplier label that does not include the initial supplier identifier if the contact information for the foreign supplier is retained on the label.

7. *Subsection 8(6)(b)*

Where an employer has received a controlled product as a bulk shipment, without a supplier label, the employer would be required to attach a label containing the information required on a supplier label. The existing requirement permits a workplace label.

Proposed amendments to the HPR require labelling information to be provided on the supplier safety data sheet. This would ensure that an employer would be able to create a supplier label for a bulk shipment, using information in the data sheet.

8. *Section 9 – new subsection*

Add a new duty on the employer to update workplace labels for employer-produced products as soon as significant new data are available.

Consistent with employer's existing duty in subsection 18.(4)(a) of the WHMIS Regulation to update an employer safety data sheet as soon as is practical but within 90 days of new hazard information being available to the employer.

9. *Sections 13 to 16*

Revise existing exemptions respecting labels for laboratory samples and controlled products from laboratory supply houses.

To reflect provisions in proposed HPR.

10. Subsection 17(1)

Clarify that an employer's duty to obtain a supplier safety data sheet applies when a controlled product is used, handled or stored. The current provision only refers to "use" of a controlled product at a workplace.

Consistent with terminology in the amended HPA.

11. Subsection 17(3)

Amend to refer to a current safety data sheet rather than an "unexpired" safety data sheet. Maintain employer's duty to obtain, if possible, a current safety data sheet from the supplier for any controlled product still in the workplace after three years.

To be consistent with proposed HPR, which does not include a requirement for a supplier to update a safety sheet every three years; and, consistent with proposed repeal of ss37(5) of the OHSA.

12. Subsection 17(4)

Amend to require an employer who is unable to obtain a current safety data sheet from the supplier, as required in ss17(3), to add any significant new data that the employer is aware of, or ought reasonably to be aware of, to the supplier safety data sheet. (Current provision requires employer to add information to the supplier safety data sheet on the basis of the ingredients disclosed in it.)

Would maintain an employer duty where the employer ought reasonably to be aware of new information about a hazardous product in the workplace.

13. Subsection 18(4)(b)

Repeal the employer's duty to update an employer's material safety data sheet at least every three years.

To be consistent with approach in federal legislation. (Employer currently required to update safety data sheet as soon as practical and no later than 90 days after new hazard information becomes available.)

14. Sections 19 to 23

Update all references related to provisions of the federal *Hazardous Materials Information Review Act* (HMIRA) and to the Hazardous Materials Information Review Commission (HMIRC). Expand the types of information for which an employer may file a claim for exemption from the requirement to disclose information on a label or safety data sheet.

The proposed amendments are consequential and reflect the terminology and structure of the proposed Hazardous Products Regulations as well as recent amendments to the HMIRA and the replacement of the HMIRC with a new mechanism to review claims

from suppliers or employers, for exemption from requirements to disclose certain information on a label or safety data sheet on the grounds that it is confidential business information.

Despite the proposed consequential amendments, the mechanism to protect confidential business information would continue to function as it does currently.

Notice to Consultation Participants

Submissions provided to the Ministry of Labour ("Ministry") in the context of this consultation are intended to facilitate the Ministry's development of the proposed amendments to the OHS and WHMIS Regulation. This process may involve the Ministry publishing your submissions or summaries of submissions (in hard copy and on the internet). In addition, the Ministry may disclose your submissions to third parties as part of the consultation process or where required by law.

If you identify yourself or other individuals in the body of the submission, this identifying information may be published or otherwise disclosed to the public. Any name and contact information provided outside of the body of the submission will not be disclosed by the Ministry unless required by law. Any individual who provides a submission and indicates an affiliation with an organization will be considered a representative of that organization and his or her name and other identifying information may be published or otherwise disclosed.

The collection of personal information in the context of this consultation complies with subsection 38 (2) of the Freedom of Information and Protection of Privacy Act.

If you have any questions regarding privacy matters, you may contact the Ministry's Freedom of Information and Privacy Office at 416-326-7786.