



PART II

CONTROLLED PRODUCTS

Interpretation

11. (1) In this Part,

“bulk shipment” has the meaning assigned by regulation:

“container” includes a bag, barrel, bottle, box, can, cylinder, drum or similar package or receptacle but does not include a storage tank:

“hazard symbol” includes any design, mark, pictogram, sign, letter, word, number, abbreviation or any combination thereof that is to be displayed on a controlled product or container in which a controlled product is packaged in order to show the nature of the hazard of the controlled product;

“hazardous waste” has the meaning assigned by regulation;

“Ingredient Disclosure List” means the Ingredient Disclosure List established by the Governor in Council pursuant to subsection 17(1);

“label” includes any mark, sign, device, stamp, seal, sticker, ticket, tag or wrapper;

“manufactured article” means any article that is formed to a specific shape or design during manufacture, the intended use of which when in that form is dependent in whole or in part on its shape or design, and that, under normal conditions of use, will not release or otherwise cause a person to be exposed to a controlled product;

“material safety data sheet” means a document on which words, figures or symbols disclosing the information referred to in subparagraphs 13(a)(i) to (v) may be written, printed or otherwise expressed;

“prescribed” means prescribed by regulation;

“regulation” means a regulation made pursuant to subsection 15(1);

“supplier” means a person who is a manufacturer, processor or packager of a controlled product or a person who, in the course of business, imports or sells controlled products;



“transmit” means to send or convey by any physical, electronic, optical or other means; [1999, c. 31, s. 127(E)]

“work place” has the meaning assigned by regulation;

(2) For the purposes of this Part, a label is applied to a controlled product or container in which a controlled product is packaged if the label is attached to, imprinted on, stencilled on or embossed on the controlled product or container or, in the case of a bulk shipment of a controlled product, is included with or caused to accompany the bulk shipment in the manner prescribed.

INTERPRETATION / DISCUSSION of SECTION 11

These definitions apply only to the provisions of the *Hazardous Product Act (HPA)* contained in Part II of this Act pertaining to (WHMIS) “controlled products”. The term “controlled product” is defined in section 2 of the *HPA*. The criteria which define a “controlled product” are set out in Part IV of the *Controlled Products Regulations (CPR)*.

bulk shipment: This term is defined in subsection 2(2) of the *CPR*. The definition is consistent with the definition of the same concept of shipment “in bulk” in the *Transportation of Dangerous Goods Regulations*. Label exemptions for bulk shipments are outlined in sections 15 and 18 of the *CPR*.

hazard symbol: Hazard symbols prescribed by Part II (the WHMIS portion) of the *HPA* are illustrated in Schedule II to the *CPR*. This Schedule depicts the eight symbols that correspond to the WHMIS classes and divisions of controlled products. Subject to certain exemptions, these symbols must be displayed on the product label in accordance with paragraph 19(d) of the *CPR*.

hazardous waste: This term is defined in subsection 2(2) of the *CPR* as “a controlled product that is intended for disposal or is sold for recycling or recovery”. The term itself is found only in section 12 of the *HPA*.

Ingredient Disclosure List: Background information and a description of the ingredients included on this list is provided in the interpretation of sub paragraph 13(a)(ii) and section 17 of the *HPA*.

manufactured article: In this definition “exposure” means in a sufficient quantity to pose a hazard and does not include minute or trace amounts that do not pose a physical or health risk to workers. “Normal condition of use” does include installation; {ref.: PIS No. 1, amended December, 2007}.

regulation: The regulations “made pursuant to subsection 15(1)” of the *HPA* are the *Controlled Products Regulations*.

transmit: It is the supplier’s responsibility to ensure that the person to whom the controlled product is sold can receive the information in a useable form regardless of the means by which the information is transmitted.



Health Canada Santé Canada

Reference Manual for the WHMIS
Requirements of the
*Hazardous Products Act and
Controlled Products Regulations*

Page:

11-3

Amendment No.:

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Act, section, title/subject:

HPA Section 11 - Interpretation

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2007/12/01

work place: This term is defined in subsection 2(2) of the *CPR* as “a place where a person works for remuneration”. A supplier is required to comply with the requirements of the Act and the *CPR* if he imports or sells a controlled product “intended for use in a work place”. “Work place” includes a place where a self-employed person works such as a farming operation; {ref.: PIS No. 18}.



Application

12. This Part does not apply in respect of the sale or importation of any

- (a) explosive within the meaning of the *Explosives Act*;**
- (b) cosmetic, device, drug or food within the meaning of the *Food and Drugs Act*;**
- (c) control product within the meaning of the *Pest Control Products Act*;**
- (d) nuclear substance, within the meaning of the *Nuclear Safety and Control Act*, that is radioactive; [1997, c. 9, s. 105]**
- (e) hazardous waste;**
- (f) product, material or substance included in Part II of Schedule I and packaged as a consumer product;**
- (g) wood or product made of wood;**
- (h) tobacco or a tobacco product as defined in section 2 of the *Tobacco Act*; or [1997, c. 13, s. 62]**
- (i) manufactured article.**

INTERPRETATION / DISCUSSION of SECTION 12

Part I of the *HPA*, which deals with *restricted products* and *prohibited products*, does not apply to the products, materials and substances referred to in paragraphs 12(a) through (d). Refer to the discussion under section 3 of the *HPA* for information on the items included in paragraphs (a) through (d).

Part II of the *HPA*, (sections 11 to 20), which deals with WHMIS *controlled products*, does not apply to the products, materials nor substances included in paragraphs 12 (a) to (i). To prevent a delay in implementing the WHMIS program, these products were initially exempt from WHMIS because, in many cases, these product categories were already subject to existing federal legislation. The federal legislation which established the WHMIS requirements of the *HPA*, however, required that these exemptions be reviewed by a Committee of Parliament with respect to the need for their continuance (see section 57 of Bill C-70). At the time of publication of this manual, no final decision has been made regarding the status, including the continuation, of any of the exempted products.



Health Canada Santé Canada

Reference Manual for the WHMIS
Requirements of the
*Hazardous Products Act and
Controlled Products Regulations*

Page:

12-2

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Paragraph 12(b):

The *Food and Drugs Act (FDA)* is concerned with the protection of living persons and animals against injury from the use or administration of drugs, food, cosmetics and therapeutic devices. In particular, sections 16 to 18 of the *FDA*, which create offenses relating to the sale, manufacture and packaging, etc. of cosmetics, all deal with protecting the health of the user. For example, embalming fluids and adhesives used for reconstruction of a corpse after autopsies are not considered to be “cosmetics within the meaning of the *Food and Drugs Act, (FDA)*” and are, therefore, subject to the WHMIS supplier label and MSDS requirements of the *HPA*.

“Drug”, as defined in the *FDA*, includes a raw material that is itself a drug and used to manufacture a drug in dosage form. The term “drug” is not limited to a drug in dosage form. Therefore, raw materials that are drugs are excluded from WHMIS *HPA* requirements by virtue of paragraph 12(b). The pharmaceutical industry has indicated that the majority of such raw materials are currently in compliance with WHMIS. Therefore, as an interim policy, until such time as legislative/regulatory measures are taken on the *FDA* exclusion, raw materials that are drugs as defined in the *FDA* and are used to manufacture drugs in their dosage form should, on a voluntary basis, be brought into compliance with WHMIS. This was agreed to by the multistakeholder Food and Drugs Act Sectoral Committee which reviewed the exclusion for drugs, {ref.: PIS No. 69}.

Carbon dioxide intended for use in carbonated beverages, even if it falls within any of the criteria in section 34 of the *CPR*, is exempt from the WHMIS supplier label and MSDS requirements of the *HPA* when sold for this purpose, {ref.: PIS No. 52}.

Paragraph 12(d):

(See also the discussion of paragraph 3(d) of the *HPA*). The *Nuclear Safety and Control Act*, S.C. 1997, c.9, which came into force on May 31, 2000, and replaced the *Atomic Energy Control Act*, redefines “nuclear substance” (formally defined as “prescribed substance”) to include only the radioactive components of radioactive nuclide mixtures. As a result, non radioactive controlled product carrier materials in radioactive nuclide mixtures are now subject to the WHMIS requirements of the *HPA* even though the exclusion for nuclear substances pursuant to paragraph 12(d) of the *HPA* remains.

The WHMIS supplier label for non-radioactive carrier materials for radioactive nuclides is in addition to, and separate from, the labelling requirements for radioactive nuclides under the *Nuclear Safety and Control Act*.

The addition of subsection 19(6) to the *CPR* (SOR/2001-254, July 12, 2001) provides certain labelling exemptions for a controlled product that is a mixture of one or more radioactive nuclides and one or more non-radioactive carrier materials. Conditional MSDS and label exemptions for small quantities of such mixtures are provided by sections 10.1(a) and 17.1(a), respectively, of the *CPR*. Other exemptions are provided by paragraphs 10.1(b)(c), 14(2)(a)(iii) and 17.1(b)(c) of the *CPR*.



Health Canada Santé Canada

Reference Manual for the WHMIS
Requirements of the
*Hazardous Products Act and
Controlled Products Regulations*

Page:

12-3

Amendment No.:

Effective:

Act, section, title/subject:

HPA Section 12 - Application

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2007/12/01

Paragraph 12(e):

By virtue of paragraph 12(e) of the *HPA*, hazardous waste is exempt from the WHMIS supplier labelling and MSDS requirements of the *HPA*. *CPR* 2(2) defines hazardous waste as "...a controlled product that is intended for disposal or is sold for recycling or recovery." The terms "disposal", "recycling" and "recovery" are not defined in the *HPA/CPR*.

Questions have been raised as to whether certain operations would fall within the concept of disposal, recycling and recovery such as, for example, the use of used motor oil for spraying gravel roads for dust control, (a practice which may be prohibited under laws administered by provincial/ territorial ministries of the environment), as an additive to fuels such as "Bunker C" fuel oil (which is currently produced by blending the oil remaining after the refining process with lighter oil), or as a fuel by itself.

Some controlled products are recovered and then either re-used in the workplace or sold as a recycled product. Other controlled products may be recycled and re-used in the workplace without further processing. As per *CPR* 2(2), only hazardous waste that is "intended for disposal" or is "sold for recycling or recovery" falls within the definition of hazardous waste and is thereby exempt from the WHMIS requirements of the *HPA*. Paragraph 12(e) of the *HPA* does not establish an exemption for controlled products that are re-used in the workplace or that are recycled and then sold to another workplace.

The *Transport of Dangerous Goods Regulations (TDGR)* define "recyclable material" as follows:

means the dangerous goods that are waste and that are identified as hazardous waste for recycling in the *Export and Import of Hazardous Wastes Regulations* and the *Canadian Environmental Protection Act*; (*matière recyclable*)

(note: a definition for "recyclable material" has not been included in the revised *TDGR*, SOR/2001-286.)

Subsection 2(1) of the *Export and Import of Hazardous Wastes Regulations (EIHWR)* under the *Canadian Environmental Protection Act (CEPA)* provides the following definitions:

"authorized facility" means a facility in respect of which a licence, permit, certificate or other written authorization has been issued by the competent governmental authority to dispose of or to recycle, as the case may be, in the manner set out in the notice, the type of hazardous waste that is being exported or imported; (*installation agréée*)

"disposal" means any operation set out in column I of an item of Part I of Schedule I and includes storage pending that operation; (*élimination*)

"disposer" means any person to whom a hazardous waste is shipped and who carries out the disposal of that waste; (*éliminateur*)

"recycler" means a person to whom a hazardous waste is shipped and who carries out the recycling of that waste; (*recycleur*)



Act, section, title/subject:

HPA Section 12 - Application

Manual updated:

2007/12/01

“recycling” means any operation set out in column I of an item of Part II of Schedule I. (recyclage)

Section 2(2) of the EIHWR states:

For the purposes of these Regulations, where only part of a hazardous waste is destined for recycling, the hazardous waste shall be considered to be destined for recycling.

Item 1 of Part II of Schedule I to the EIHWR includes the “Use as a fuel in an energy recovery system” as a recycling operation and Item 9 includes “Re-refining or re-use, other than the operation set out in item 1, of used oil”.

Controlled products fall within the scope of the HPA 12(e) exemption only if encompassed by the definition of hazardous waste in CPR 2(2); i.e., are intended for disposal or sold for recycling or recovery. For the purposes of the HPA exemption for hazardous waste as defined in the CPR {IWCC Policy Document No. 5):

- (a) “disposal” includes any operation set out in Part I of Schedule I to the Export and Import of Hazardous Wastes Regulations (EIHWR) and includes storage pending that operation; and
- (b) “recycling” and “recovery” include any operation set out in Part II of Schedule I to the EIHWR, except item 9 with respect to re-use and item 14 with respect to use or re-use. For example, drilling fluids recovered and sold for re-use as drilling fluids would not be exempt.

[CEPA] Export and Import of Hazardous Wastes Regulations

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SCHEDULE I - PART I
DISPOSAL
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- 1. Release into or onto land, other than by any operation set out in items 3 to 5 and 12
- 2. Land treatment, such as biodegradation of liquids or sludges in soil
- 3. Deep injection, such as the injection of pumpable discards into wells, salt domes or naturally occurring repositories
- 4. Surface impoundment, such as placing liquids or sludges into pits, ponds or lagoons
- 5. Specially engineered landfilling, such as placement into separate lined cells that are capped and isolated from each other and the environment
- 6. Release into water, other than a sea or ocean, other than by the operation set out in item 4
- 7. Release into a sea or ocean, including sea-bed insertion, other than by the operation set out in item 4
- 8. Biological treatment, not otherwise set out in this Schedule
- 9. Physical or chemical treatment, not otherwise referred to in this Schedule, such as evaporation, drying, calcination, neutralisation or precipitation
- 10. Incineration on land
- 11. Incineration at sea



Health Canada Santé Canada

Reference Manual for the WHMIS
Requirements of the
*Hazardous Products Act and
Controlled Products Regulations*

Page:

12-5

Amendment No.:

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Act, section, title/subject:

HPA Section 12 - Application

Manual updated:

2007/12/01

12. Permanent storage, such as emplacement of containers in a mine
13. Blending or mixing prior to disposal by any operation set out in items 1 to 12
14. Repackaging prior to disposal by any operation set out in items 1 to 13
15. Release or treatment, other than by any operation set out in items 1 to 12
16. Testing of a new technology to dispose of a hazardous waste

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SCHEDULE I - PART II

RECYCLING

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1. Use as a fuel in an energy recovery system
2. Recovery or regeneration of substances that have been used as solvents
3. Recovery of organic substances that have not been used as solvents
4. Recovery of metals and metal compounds
5. Recovery of inorganic materials other than metals or metal compounds
6. Regeneration of acids or bases
7. Recovery of components used for pollution abatement
8. Recovery of components from catalysts
9. Re-refining or re-use, other than the operation set out in item 1, of used oil
10. Land treatment that results in agricultural or ecological improvement
11. Use of residual materials obtained by any operation set out in items 1 to 10 and 14
12. Exchange of a hazardous waste for another waste prior to recycling of the hazardous waste by any operation set out in items 1 to 11 and 14
13. Accumulation prior to recycling by any operation set out in items 1 to 11 and 14
14. Recovery or regeneration of a substance or use or re-use of a hazardous waste, other than by any operation set out in items 1 to 10
15. Testing of a new technology to recycle a hazardous waste

Paragraph 12(f):

The *HPA* does not place any legal obligation on a supplier/importer to provide a MSDS for nor apply a WHMIS supplier label to a “product, material or substance included in Part II of Schedule I [to the *HPA*] and packaged as a consumer product”. A product, material or substance included in Part II of Schedule I to the *HPA* is a “restricted product” and cannot be sold unless it meets the requirements of the applicable Regulations. In the case of chemical products, the applicable regulations are the *Consumer Chemicals and Containers Regulations (CCCR)*. A product included in Part II of Schedule I “packaged as a consumer product” means the product is sold or imported in a container size that is also available at retail outlets to consumers and is labelled and packaged in accordance with the *CCCR* and any other labelling and packaging requirements for consumer products. The proportion of sales of the product to consumers versus industrial customers is irrelevant. For a product to be exempt from the WHMIS supplier labelling and MSDS requirements of the *HPA/CPR*, it must meet the following conditions:



Health Canada Santé Canada

Reference Manual for the WHMIS
Requirements of the
*Hazardous Products Act and
Controlled Products Regulations*

Page:

12-6

Amendment No.:

Effective:

Act, section, title/subject:

HPA Section 12 - Application

Manual updated:

2007/12/01

- it must be included in Part II of Schedule I to the *HPA*;
- it must be packaged as a consumer product; and
- it must be available to the general public through a retail outlet.

For some chemicals included in Part II of Schedule I of the *HPA*, the *CCCR* did not require any labelling. This was the result of concentration cut-offs specified in the *CCCR*. For example, with the exception of naphtha, gasoline, petroleum ether or combination thereof, a consumer product containing less than 10% w/w petroleum distillate does not require labelling under the *CCCR*. However, as such products “are included in Part II of Schedule I”, if they are “packaged as a consumer product”, by virtue of paragraph 12(f), they are exempt from the WHMIS requirements of the *HPA*. Labelling under the *CCCR* is **not** a condition for this exemption. The intent of this exemption was, in part, to avoid a requirement for two separate labels for a single product. The *CCCR* has been amended to replace the current list-based approach with WHMIS-type hazard criteria. The criteria approach used in the *CCCR-2001* will likely address such anomalies.

The following questions and answers may provide additional guidance on this exemption:

- Q1** If a supplier intends to sell a product to both consumer and workplaces, does the supplier have the option of using the labelling specified in the *CCCR* versus that specified in the WHMIS *Controlled Products Regulations (CPR)* or vice versa?
- A1** If a product, material or substance is included in Part II of Schedule I to the *HPA* and it is **available** to consumers, it cannot be sold unless it meets the requirements of the *CCCR*
- Q2** What are a supplier’s obligations in respect of the sale of a product included in Part II of Schedule I to the *HPA* if the supplier sells 100 ml containers of this product to consumers but one litre containers of the very same product to his/her commercial customers?
- A2** For the purposes of the *HPA*, the fact that the one litre container is not available to consumers through retail outlets renders these different products. If the one litre product is not available to consumers through retail outlets, despite the fact that it is “included in Part II of the Schedule” to the *HPA*, it is not considered to be a consumer product. In such cases, the supplier would have to respect the *CCCR* for the 100ml container and the WHMIS *CPR* for the one litre containers; i.e., the exemption set out in 12(f) of the *HPA* does not apply to the one litre container.

If, however, both the 100ml and one litre containers were available to consumers, then the labeling specified in the *CCCR* must be applied to both containers and the *HPA* would place no legal obligation on the supplier to provide a WHMIS supplier label and MSDS even if 99% of the one litre product was being sold directly to commercial customers and only 1% to consumers.



Health Canada Santé Canada

Reference Manual for the WHMIS
Requirements of the
*Hazardous Products Act and
Controlled Products Regulations*

Page:

12-7

Amendment No.:

Effective:

Act, section, title/subject:

HPA Section 12 - Application

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2007/12/01

- Q3** What are a supplier's obligations to commercial customers who request a WHMIS supplier label and MSDS for a product included in Part II of Schedule I to the *HPA*, available in one size and if this single product is sold directly to both consumers and commercial customers?
- A3** The requirements of the *CCCR* must be met before this product can be sold to consumers. The *HPA* does not place any obligation on a supplier to adopt WHMIS supplier labelling and MSDSs for commercial sales even if commercial sales constitute the vast majority of total sales. In such a case, a supplier does have the option of using WHMIS labelling and providing MSDSs in respect of commercial sales for products intended for workplace use.
- Q4** What are a supplier's obligations in respect of the sale of a product which is **not** included in Part II of Schedule I to the *HPA* if the supplier sells 100 ml containers of this product to consumers but one litre containers of the same product to his/her commercial customers?
- A4** If the product is not included in Part II of Schedule I, then it is not exempt from WHMIS supplier label and MSDS requirements. If, however, the supplier does not intend that the 100 ml product be sold for workplace use and markets the product through retail outlets only, the *HPA* WHMIS supplier label and MSDS requirements would apply only to the one litre container even if the retail outlet offers discount prices of the 100 ml product to commercial customers; i.e., the 100 ml product would not be subject to labeling under the *CCCR* nor *CPR*. (Note: It is anticipated that the criteria-based system proposed for the *CCCR* will significantly reduce the number of products for which no labeling would be required.) Despite the exemption, suppliers may still wish to accommodate their commercial customers who wish to purchase 100 ml containers and who request WHMIS labeling and MSDSs.

Paragraph 12(g):

"Wood or product made of wood" is meant to refer to a structured item; it does not, therefore, include products such as turpentine, paper, wood pulp and other products *derived* from wood. Wood "dust" is not considered to fall within this exemption.

Paragraph 12(h):

"Tobacco or a tobacco product" was not meant to include a chemical *derived* from tobacco such as nicotine.

Paragraph 12(i):

Refer to section 11 of the *HPA* for the definition of "manufactured article". The following items reflect recommendations made by WHMIS stakeholders, {ref.: PIS No. 33, amended December 2007}:



Health Canada Santé Canada

Reference Manual for the WHMIS
Requirements of the
*Hazardous Products Act and
Controlled Products Regulations*

Page:

12-8

Amendment No.:

Effective:

Act, section, title/subject:

HPA Section 12 - Application

Manual updated:

2007/12/01

1. The exemption for “manufactured articles” is not meant to bring more products into the WHMIS system; i.e. if a product does not contain a controlled product when it is sold or imported, it is not subject to the federal aspects of WHMIS under the HPA, even if a controlled product is formed and released when the article is used.
2. If a product is a controlled product, it will be exempted under the “manufactured article” exemption if it meets all three conditions stated in the definition found in subsection 11(1) of the *HPA*.
3. The third condition under the manufactured article definition refers to releases of or exposure to a controlled product “under normal conditions of use”. “Normal conditions of use” should exclude releases of a controlled product that may occur during maintenance or that occur if the article is abused. “Normal condition of use” does include installation.
4. Trace releases of controlled products that would not pose a health risk to workers under normal conditions of use from manufactured articles will not preclude these items from being exempt under the “manufactured article” exemption.
5. If a controlled product is an article but is not exempt under the manufactured article exemption because it releases, under normal conditions of use, a controlled product, the supplier is required to provide hazard information and ingredient identity and concentration only in relation to those ingredients that are controlled products **and** that are released under normal conditions.

In addition, hazardous decomposition products and hazardous combustion products of which the supplier is aware or ought reasonably to be aware that are released during normal use of articles which are controlled products must be identified on the MSDS. The supplier is not expected to give toxicological data on probable releases that are not ingredients of the product.

6. If a controlled product under normal conditions of use (e.g. the product is intended to be cut, melted or heated) releases hazardous chemicals of which the supplier is not certain, he must provide general warnings about possible toxic releases (subsection 12(11) requires on an MSDS any other hazard information with respect to the controlled product of which the supplier is aware or ought reasonably to be aware).
7. The “controlled product” referred to in the third condition of the manufactured article definition is that which is present in the manufactured article that is sold and does not include controlled products that are released as a result of thermal or chemical degradation. Where a controlled product that is present in the manufactured article is released during normal use but in an altered form that is also a controlled product (e.g., an oxide), the manufactured article exemption cannot be used.



Health Canada Santé Canada

Reference Manual for the WHMIS
Requirements of the
*Hazardous Products Act and
Controlled Products Regulations*

Page:

12-9

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HPA Section 12 - Application

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2007/12/01

Steel products and the manufactured article exemption: With respect to steel rod, “I” beams and sheets, it was agreed that manufacturers and other suppliers who are uncertain about the end use of steel products should provide labels and MSDS as a condition of sale. A supplier to the end users can either:

- (i) provide labels and MSDS for all their sales, or
- (ii) determine the end use of the product and provide the label and MSDS as necessary; {ref.: PIS No. 50}.

This policy is consistent with requirements under the OSHA Hazard Communication Standard which refers to “solid metal (such as steel beam or a metal casting) that is not exempted as an article due to its downstream use...”.



Prohibitions

13. Subject to the *Hazardous Materials Information Review Act*, no supplier shall sell to any person a controlled product intended for use in a work place in Canada unless

(a) on the sale of the controlled product, the supplier transmits to that person a material safety data sheet with respect to the controlled product that discloses the following information, namely,

(i) where the controlled product is a pure substance, the chemical identity of the controlled product and, where the controlled product is not a pure substance, the chemical identity of any ingredient thereof that is a controlled product and the concentration of that ingredient,

(ii) where the controlled product contains an ingredient that is included in the Ingredient Disclosure List and the ingredient is in a concentration that is equal to or greater than the concentration specified in the Ingredient Disclosure List for that ingredient, the chemical identity and concentration of that ingredient,

(iii) the chemical identity of any ingredient thereof that the supplier has reasonable grounds to believe may be harmful to any person and the concentration of that ingredient,

(iv) the chemical identity of any ingredient thereof the toxicological properties of which are not known to the supplier and the concentration of that ingredient, and

(v) such other information with respect to the controlled product as may be prescribed; and

(b) the controlled product or container in which the controlled product is packaged has applied to it a label that discloses prescribed information and has displayed on it all applicable prescribed hazard symbols.

14. Subject to the *Hazardous Materials Information Review Act*, no supplier shall import a controlled product intended for use in a work place in Canada unless

(a) the supplier obtains or prepares, on the importation of the controlled product, a material safety data sheet with respect to the controlled product that discloses the information referred to in subparagraphs 13(a)(i) to (v) and keeps the material safety data sheet available for such purposes as may be prescribed; and

(b) the controlled product or container in which the controlled product is packaged has applied to



it a label that discloses prescribed information and has displayed on it all applicable prescribed hazard symbols.

INTERPRETATION / DISCUSSION of SECTIONS 13 and 14

Controlled Product: Whether a product, material or substance is or is not a controlled product is determined by assessing the product against the criteria specified in Part IV of the *Controlled Products Regulations (CPR)*. Part IV of the *CPR* describes products, materials or substances that are included in the classes set out in Schedule II of the *HPA*. If a product, material or substance meets any of the criteria in Part IV, it is a controlled product within the terms of the *HPA* and, subject to exemptions, cannot be sold in or imported into Canada unless the supplier meets the requirements for MSDSs, labels and information disclosure.

Intended Use (of the Controlled Product): "Intended for use in a work place" refers to the intention of the supplier. A supplier who sells a controlled product to a retail outlet for use by consumers is not subject to the WHMIS supplier MSDS and label requirements of Part II of the *HPA* even if an employer, in turn, buys the product from the retail outlet for use in the employer's work place. If, however, a controlled product is sold to a work place for the purpose of being packaged or repackaged for subsequent sale including sale to consumers, this operation does constitute intended use. Use includes any situation where a worker may potentially be exposed to a substance in a work place and includes a repackaging operation, {ref.: PIS No.2}.

Employer obligations: WHMIS employer requirements place a general duty on the employer to train "a worker who works with a controlled product or in proximity to a controlled product." The general policy document of the WHMIS employer requirements makes a distinction between storage, handling, use and disposal. This policy document states the following:

- a) a worker who works with a controlled product is any worker who stores, handles, uses or disposes of a controlled product, or who supervises another worker performing these activities;
- b) "in proximity" is the area in which worker health and safety could be at risk during:
 - storage, handling use or disposal of the product;
 - maintenance operations; or
 - emergencies, such as an accidental leak or spill.

Charging Fees for Provision of MSDSs: As Section 13 of the *HPA* requires that a supplier provide a MSDS as a condition of sale of a controlled product, the supplier cannot charge a separate fee, above or beyond the price of the product itself, in connection with the provision of the MSDS. The withholding of a MSDS by a supplier because of non-payment of a MSDS fee by the purchaser of the controlled product would constitute a serious violation of the *HPA*. A request for payment for MSDSs in respect of non controlled products, or requests from individuals wishing to acquire a supplier's MSDS who have not purchased the supplier's product, is outside of the scope of the *HPA*.

Internet, use of to transmit MSDSs in respect of sale: As section 13 of the *HPA* requires a positive action by the transmitter to convey the transmitted document to the recipient, making a MSDS available on



Health Canada Santé Canada

Reference Manual for the WHMIS
Requirements of the
*Hazardous Products Act and
Controlled Products Regulations*

Page:

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the Internet without ensuring that the purchaser is able to access this information does not absolve a supplier of the legal requirement to transmit a MSDS as a condition of sale.

The use of the Internet to transmit an MSDS would be acceptable (PIS No. 80) if the supplier is able to demonstrate the following:

- a) the purchaser has downloaded the complete and correct MSDS, i.e., one that contains all of the required information;
- b) the downloading is done “at the time of the sale of the controlled product” as required under section 24 of the *CPR*; and
- c) the downloaded file is readable

Satisfaction, on the part of the supplier, may be provided through written confirmation, provided to the supplier from the purchaser, specifying that the above conditions have been met.

A more passive approach to the section 13 obligation, i.e., where the supplier would simply post an MSDS on its Web site, would need to be reflected in the legislation.

With the consent of both parties, transmission of a MSDS by e-mail by a supplier to a customer via the Internet is an acceptable means of transmitting a MSDS.

The United States Occupational Safety and Health Administration has also communicated the conditions for the acceptability of the use of the Internet to provide MSDSs:

1. OSHA Standards Interpretation and Compliance Letters; “Manufacturers’ use of the Internet for distribution of MSDSs to downstream users”; February 20, 1997 letter from Stephen Mallinger, Acting Director Office of Health Compliance Assistance to Kevin Johnson, CIH, CSP Corporate EH&S Manager, Chiron Diagnostics Corporation;

http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPR ETATIONS&p_id=22353&p_text_version=FALSE

2. OSHA Standards Interpretation and Compliance Letters; “Internet use for posting MSDSs”; June 16, 1997 letter from Greg Watchman Acting Assistant Secretary to Honorable Jay W. Johnson U.S. House of Representative;

http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPR ETATIONS&p_id=22427&p_text_version=FALSE

Internet, use of to “obtain” or “prepare” a MSDS in respect of importation: Section 14 of the *HPA* places a legal requirement on the Canadian importer of a controlled product to obtain or prepare a MSDS as a condition of importation. Regulatory agencies have agreed to accept the use of the Internet to fulfill the requirement to “obtain” a MSDS on the condition that the Canadian importer is able to generate and provide a hard copy of the MSDS disclosing the prescribed information to an inspector if requested to do so.



Health Canada
Santé Canada

Reference Manual for the WHMIS
Requirements of the
*Hazardous Products Act and
Controlled Products Regulations*

Page:

13, 14-4

Amendment No.:

Effective:

Act, section, title/subject:

HPA Sections 13 and 14 - Prohibitions

Manual updated:

2002/10/25

Legibility of MSDSs: As required by paragraph 13(a), the supplier must "transmit a MSDS...". The term "transmit" is defined in section 11 of the *HPA* and includes transmittal by electronic and optical means. Sometimes, as a result of electronic or optical transmittal, the quality of the print may vary. In contrast to the explicit requirement that labels be "easily legible" (see section 21 of the *CPR*), there is no analogous requirement regarding the legibility of MSDSs. MSDSs which are not legible, however, are not considered to be in compliance with the *HPA* requirement to transmit a MSDS.

Transmission of MSDSs: The term "transmit" is defined in section 11 of the *HPA* (English version only). The MSDS must accompany, or be provided before, the sale of the controlled product. As provided for by section 6 of the *CPR*, a supplier need not send a MSDS in respect of subsequent sales of the same product if the MSDS provided with the original sale is not more than three years old. Refer to Section 29 of the *CPR* for requirements regarding updating MSDSs.

Gasoline and Propane, Sale of ~: Retail sales of gasoline or propane from a service station are exempted from WHMIS requirements as the sale of the product is intended for consumer use. Consideration will be given to amending the *CPR* to exclude the requirements for an MSDS on non-retail sales of gasoline, propane, etc., into a vehicle storage tank directly connected to an internal combustion engine or gas turbine engine. Until such time, it is the administrative policy to treat such non-retail sales as exempt. However, where fuel is being sold and delivered to a workplace (e.g., schools, businesses, industrial plants etc.), the WHMIS obligations arise because the product is being sold for use in a workplace. Since the product is transported in bulk, the MSDS and label information may be transmitted to the purchaser on or before the delivery of the product (such as at the time the contract is established); {ref.: PIS No. 37}.

"Unknown" Ingredients: When the chemical identity of an ingredient of a controlled product is "unknown" but the precursor constituents of the ingredient are known, a question arises as to what should be disclosed on the MSDS. In this case, the MSDS for a controlled product that contains an unknown "reaction product" for which the chemical identity is required to be disclosed should indicate:

- ▶ the best available chemical characterization of the reaction product, and only if that does not adequately describe the nature of the product;
- ▶ the chemical identity of precursor constituents that react to produce the product .

There are situations in which two or more known chemicals ("precursor constituents") react to produce an unknown ingredient ("reaction product"). The chemical identity of this "reaction product" will be required to be disclosed on the MSDS of a controlled product if it meets any of the three categories of ingredients required to be disclosed under paragraphs 13(a)(i), (iii) or (iv) of the *HPA*; {ref.: PIS No. 70}.



Testing: A supplier is not required to undertake "state-of-the art" testing to determine ingredients. Testing, however, would normally be necessary to determine ingredients where they are unknown, {ref.: PIS No.17}. If foreign suppliers of ingredients refuse to give ingredient disclosure information, a number of products will be excluded from use by Canadian industries. A controlled product cannot be sold or imported into Canada unless the ingredient disclosure requirements of the *HPA* are met. The importer retains the legal responsibility for ingredient disclosure or lack thereof in respect of the importation of a controlled product; {ref.: PIS No. 27}; i.e., it is incumbent on the Canadian supplier / Canadian importer to undertake whatever testing is necessary to meet the ingredient disclosure requirements of the *HPA*.

Biohazardous Infectious Materials - chemical identity of ~: In the case of a biologically infectious material (Division 3 of Class D - Poisonous and Infectious Materials), "chemical identity" refers to the infectious organism itself and not its chemical makeup; a {ref.: PIS No. 23}.

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Section 13:

Section 13 of the *HPA* sets out the ingredients which, subject to trade secret provisions and specified conditions such as the cut-offs established in section 4 of the *CPR*, must be disclosed on the MSDS. It is not appropriate to use qualifiers such as "may contain" in relation to MSDS ingredient disclosure. Subparagraphs 13(a)(i) to (iv) describe the four categories of ingredients of a controlled product whose chemical identity and concentration must be disclosed on an MSDS. (Where ingredients present below their cut-off may have an additive or synergistic effect, suppliers are encouraged to disclose the identity and concentration of those ingredients):

Subparagraph 13(a)(i):

Where the controlled product is a pure substance, disclosure of the concentration of the pure substance is not required.

Subparagraph 13(a)(ii):

The chemical identity and concentration of an ingredient of a controlled product found in a concentration equal to or greater than the concentration specified in the *Ingredient Disclosure List (IDL)* must be disclosed on the MSDS. The *IDL* does not play a part in determining whether a product is a controlled product under the *HPA*.

Ingredients included on the *IDL* are one of the four categories of ingredients whose identity and concentration must be disclosed on the MSDS if present in a controlled product. An ingredient may be listed on the *IDL* and yet may not fall within **any** of the prescribed hazard criteria of the *CPR*. Also, the *IDL* is **not** a complete listing of ingredients that fall within the prescribed hazard criteria of the *CPR*. Therefore, the *IDL* cannot be used as a basis to determine whether a product is a controlled product. The *IDL* **can** be used to determine whether an ingredient contained in a controlled product must be disclosed on the MSDS. Where an ingredient does not appear on the *IDL*, disclosure of the chemical identity of that ingredient may still be required by subparagraphs 13(a)(i), (iii) or (iv).



Where the concentration cut off for an ingredient in a mixture established under paragraph 4(a) of the *CPR* is lower than the cut off established in the *IDL*, the lower cut off takes precedence, {ref.: PIS No. 59} (Refer to the interpretation of section 17 of the *HPA* for additional information on the *IDL*).

Subparagraph 13(a)(iii):

This paragraph requires the disclosure of ingredients that "...may be harmful to any person...". This is meant to include all ingredients that the supplier has reasonable grounds to believe may have an adverse effect on workers. As a working definition, adverse effect may be taken to mean:

- ▶ injury to humans which is primarily caused by occupational exposure and which results in any reversible or irreversible material impairment to health or irreversible diminished functional capacity, or
- ▶ injury to mammals when validly tested in accordance with established scientific principles which results in any reversible or irreversible material impairment to health or irreversible diminished functional capacity.

This includes ingredients which, in a published article referred to in public scientific sources, indicate an adverse effect on man or mammals as well as through *in vitro* tests. Therefore, any ingredients in a controlled product which meet this criterion must be disclosed on the MSDS.

Subparagraph 13(a)(iv):

Subparagraph 13(a)(iv) is meant to refer to ingredients for which the supplier has **no** information about any of its toxicological properties. It was agreed that "the result of any one short-term bioassay or a repetition of that bioassay (e.g. a single Ames Test, positive or negative) shall not be considered in deciding whether anything is known about the toxicological properties of the material".¹

Subparagraph 13(a)(v):

Section 12 of the *CPR* prescribes the additional information that must be disclosed on a MSDS. Refer to all of Part I, sections 4 to 13, of the *CPR* for complete information on the material safety data sheet.

Paragraph 13(b):

Section 19 of the *CPR* prescribes the information that must be disclosed on the label of a controlled product or container in which the controlled product is packaged. Paragraph 19(1)(d) prescribes the hazard symbols that must be displayed on the label. Section 22 of the *CPR* provides information on the reproduction of the hazard symbols which are depicted in Schedule II of the *CPR*. Refer to all of Part II, sections 14 to 22, of the *CPR* for complete labelling requirements.

Section 14:

Section 2 of the *HPA* defines the term "import" as to "import into Canada". Based on the definitions

¹ This quotation is from recommendation 33(2) of the original WHMIS Steering Committee Report and was reiterated in PIS No. 22.



Health Canada
Santé Canada

Reference Manual for the WHMIS
Requirements of the
*Hazardous Products Act and
Controlled Products Regulations*

Page:

13, 14-7

Amendment No.:

Effective:

Act, section, title/subject:

HPA Sections 13 and 14 - Prohibitions

Manual updated:

2002/10/25

provided in general dictionaries, importing into Canada means bringing goods from anywhere outside of Canada into Canada. In 1983, J. Dickson of the Supreme Court of Canada, in the matter of *Bell vs. the Queen*, (1983) 8 CCC (#d) 97, speaking for the majority, stated that "to actually commit" importing, an accused must bring in, or cause to be brought in, to Canada, goods from a foreign country. As such, any person who brings in, or causes to be brought in, to Canada, goods from a foreign country, can be considered an importer. Consequently, retailers and distributors can be said to be importers within the meaning of the *HPA*.

Moreover, when a sales representative takes an order and arranges the delivery of products from a foreign country or a customs bonded warehouse to a client in Canada, he/she is causing goods from a foreign country to be brought into Canada. Therefore, according to the Supreme Court of Canada's definition of importing, sales representatives "import" within the meaning of the *HPA*, even if the products imported never come into their possession.

According to paragraph 17(1)(b) of the *Customs Bonded Warehouses Regulations*:

"17(1) Goods shall not be manipulated, altered or combined with other goods while in a bonded warehouse except for the purpose of or in the course of...

(b) complying with any applicable law of Canada or of a province."

Consequently, the *HPA* does apply to products contained in warehouses located in Canada even in cases where the operator of the warehouse is not Canadian.