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### *Regulations*

**15. (1) Subject to section 19, the Governor in Council may make regulations**

**(a) specifying, for each class listed in Schedule II, products, materials and substances to be included in that class;**

**(b) establishing, for any class listed in Schedule II, divisions or subdivisions of that class and specifying, for each controlled product included in that class, the division or subdivision into which it falls;**

**(c) prescribing information to be disclosed on a material safety data sheet or label; [1999, c. 31, s. 129]**

**(d) prescribing the form and manner in which information shall be disclosed on a label and the manner in which a label shall be applied to a controlled product or container in which a controlled product is packaged;**

**(e) prescribing hazard symbols and the manner in which hazard symbols shall be displayed on a controlled product or container in which a controlled product is packaged;**

**(f) exempting from the application of this Part and the regulations or any provision thereof, on such terms and conditions as may be specified in the regulations, the sale or importation of controlled products in such quantities or concentrations, in such circumstances, at such places, premises or facilities, for such purposes or in such containers as are specified in the regulation;**

**(g) prescribing the manner of determining any quantities or concentrations of controlled products exempted pursuant to any regulation made under paragraph (f);**

**(h) prescribing circumstances in which for the purposes of paragraphs 13(a) and 14(a), a material safety data sheet may disclose, in lieu of the concentration of an ingredient of a controlled product, a range of concentration within which the concentration falls and prescribing the range of concentration that shall be disclosed on the material safety data sheet in such circumstances;**

**(i) defining the expressions "bulk shipment", "hazardous waste" and "work place" for the purposes of this Part;**

**(j) requiring any supplier who sells or imports a controlled product intended for use in a work**



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place in Canada to provide, as soon as is practicable in the circumstances, any information referred to in paragraph 13(a) that is in the possession of the supplier to any physician or other medical professional specified in the regulations who requests that information for the purpose of making a medical diagnosis of, or rendering medical treatment to, a person in an emergency;

(k) requiring any physician or medical professional to whom information is provided by a supplier pursuant to any regulation made under paragraph (j) to keep confidential any information specified by the supplier as being confidential except for the purpose for which it is provided;

(l) subject to the *Hazardous Material Information Review Act*, requiring any supplier who sells or imports a controlled product intended for use in a work place in Canada to identify, as soon as is practicable in the circumstances, on request of any person within a class of persons specified in the regulations, the source of information for any toxicological data used in the preparation of any material safety data sheet that has been transmitted by the supplier to any person pursuant to paragraph 13(a) or has been obtained or prepared by the supplier pursuant to paragraph 14(a);

(m) prescribing any other matter or thing that by this Part is to be or may be prescribed; and

(n) generally for carrying out the purposes and provisions of this Part.

(2) For greater certainty, a regulation made pursuant to paragraph (1)(a) may describe a product, material or substance specified thereby to be included in a class listed in Schedule II by reference to any properties or characteristics of the product, material or substance or by reference to any other criteria and any product, material or substance that has those properties or characteristics or meets those criteria shall, for the purposes of this Act, be deemed to have been included in that class by the regulation.

(3) A regulation made pursuant to subsection (1) incorporating a law, standard or specification by reference may incorporate that law, standard or specification as amended from time to time.

### **INTERPRETATION / DISCUSSION of SECTION 15**

This section constitutes the legislative authority under which the *Controlled Products Regulations* have been established.

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**16. Where, pursuant to the *Hazardous Materials Information Review Act*, a supplier is exempt from disclosing on a material safety data sheet or label the chemical identity of a controlled product or the chemical identity of any ingredient of a controlled product, the supplier shall disclose on the material safety data sheet or label the generic chemical identity of the controlled product or ingredient with as much precision as is consistent with the exemption.**

### INTERPRETATION / DISCUSSION of SECTION 16

***Precision of Generic Chemical Identity:*** If a supplier has applied for or has been granted an exemption from disclosing the chemical identity of a controlled product or the chemical identity of any ingredient of a controlled product, the supplier is still required to disclose the generic chemical identity as precisely as reasonably possible while still protecting the trade secret.

If, for example, there was a double bond somewhere in a molecule, the chemical identity of a very complex high molecular weight organic molecule could be described as a "substituted ethylene". In such a case, however, "substituted ethylene" would not be considered to meet the intent of the original consensus on this issue. This is reflected in the WHMIS Steering Committee Report which refers to "a generic name as precise as reasonably possible...". WHMIS stakeholders reaffirmed that the quoted phrase be used as a guideline for use by the Hazardous Materials Information Review Commission (HMIRC) and inspectors in the interpretation of both section 16 of the *HPA* and subparagraph 16(b)(ii) of the *CPR*; {ref.: PIS No.3}.

An information bulletin, originally published as issue No. 4, October, 1992, issued by the Hazardous Materials Information Review Commission, provides guidance on the use of generic chemical identities; [www.hmirc-ccrmd.gc.ca](http://www.hmirc-ccrmd.gc.ca)

***Generic chemical identity used to describe more than one ingredient:*** Where a supplier is exempt from disclosing more than one ingredient identity in the same controlled product and more than one of those ingredients can be described by the same generic chemical identity, the supplier may replace those ingredient identities on an MSDS by a single pluralized generic chemical identity. The single generic chemical identity must be capable of describing each of the ingredients it replaces with as "much precision as is consistent with the exemption" under the *Hazardous Materials Information Review Act (HMIRA)*. Where, for example, a supplier is exempt under the *HMIRA* from disclosing the identity of heptane, octane and nonane in a controlled product, the supplier may disclose, in place of three generic chemical identities, the identifier "saturated aliphatic hydrocarbons" to meet the requirement of this section of the *HPA*, {ref.: PIS No.35}.



## Interim Orders

**16.1 (1) The Minister may make an interim order that contains any provision that may be contained in a regulation made under this Part if the Minister believes that immediate action is required to deal with a significant risk, direct or indirect, to health or safety.**

**(2) The Minister may make an interim order in which any power referred to in sections 17 and 18 is deemed to be exercised, if the Minister believes that immediate action is required to deal with a significant risk, direct or indirect, to health or safety.**

**(3) An interim order has effect from the time that it is made but ceases to have effect on the earliest of**

**(a) 14 days after it is made, unless it is approved by the Governor in Council,**

**(b) the day on which it is repealed,**

**(c) in the case of an interim order made under subsection (1), the day on which a regulation made under this Part that has the same effect as the interim order comes into force and, in the case of an interim order made under subsection (2), the day on which an order made by the Governor in Council under this Part that has the same effect as the interim order comes into force, and**

**(d) one year after the interim order is made or any shorter period that may be specified in the interim order.**

**(4) No person shall be convicted of an offence consisting of a contravention of an interim order that, at the time of the alleged contravention, had not been published in the Canada Gazette unless it is proved that, at the time of the alleged contravention, the person had been notified of the interim order or reasonable steps had been taken to bring the purport of the interim order to the notice of those persons likely to be affected by it.**

**(5) An interim order**

**(a) is exempt from the application of sections 3, 5 and 11 of the Statutory Instruments Act; and**

**(b) shall be published in the Canada Gazette within 23 days after it is made.**

**(6) For the purpose of any provision of this Part other than this section and section 19, any reference to regulations made under this Act is deemed to include interim orders, and any reference to a regulation made under a specified provision of this Act is deemed to include a reference to the portion of an interim order containing any provision that may be contained in a regulation made under the specified provision.**



**(7) A copy of each interim order must be tabled in each House of Parliament within 15 days after it is made.**

**(8) In order to comply with subsection (7), the interim order may be sent to the Clerk of the House if the House is not sitting.**

**[2004, c. 15, s. 68.]**

### DISCUSSION of SECTION 16.1

The *Public Safety Act, 2002* (PSA), received Royal Assent on May 6, 2004. The PSA amends several existing statutes to provide a power permitting the responsible Minister to make an interim order if the Minister believes that immediate action is required to deal with a significant risk, direct or indirect, to human life, health, safety, security, or the environment, and where existing regulation-making authority is available. These interim order provisions can also be found in section 5.1 of Part I of the HPA.

An interim order covers matters for which regulations would normally be made except that the immediacy of the threat requires an immediate response.

**What is an Interim Order?** An interim order is a regulation that is issued by the Minister in the case of a situation that presents a significant risk, direct or indirect, to human health, public safety, security, or the environment.

**Under what conditions can an Interim Order be used?** An interim order is to be used when there is an immediate threat or imminent risk of a significant proportion to human health, public safety, security, or the environment, which requires immediate action, with no time to resolve the issue through the standard regulatory process, and/or where the current regulatory authorities are insufficient, or where those regulatory processes or standards are an impediment to carrying out an immediate response to an emergency situation. An interim order can be used if all the following questions can be answered in the affirmative:

- Can the outcome only be achieved through ensuring compliance with new regulatory requirements or by removing unnecessary existing statutory or regulatory impediments?
- Can the change to the rules be performed under the existing regulation-making authorities available in a statute containing an interim order provision?
- Would the federal regulatory process not be timely enough, even when expedited, to mitigate the risk within an acceptable period?

**Provisions to ensure control over the actions of Ministers:** Several provisions ensure a significant degree of control over the actions of Ministers in an emergency situation and include the following:

- the period within which the Minister is required to obtain approval from the Governor-in-Council is



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14 days after the interim order is made;

- a copy of the interim order must be tabled in each house of Parliament within 15 days from the time it is issued, notwithstanding whether Parliament is in session;
- the Governor-in-Council approved interim order will be valid only for a period of up to one year;
- the interim order will be published in the Canada Gazette within 23 days from the time it is made;
- no person can be convicted of contravening the interim order, unless at the time of the contravention the interim order had been published in the Canada Gazette, the person had been notified, or reasonable steps had been taken to inform the person;
- the interim order can be repealed at any time; and
- interim orders are referred to the Standing Joint Committee on the Scrutiny of Regulations.

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### *Ingredient Disclosure List*

**17.(1) Subject to section 19, the Governor in Council may, by order,**

**(a) establish a list, to be known as the Ingredient Disclosure List, of products materials and substances, any of which may be an ingredient of a controlled product; and**

**(b) specify, for the purposes of paragraphs 13(a) and 14(a), a concentration for each product, material or substance included on the list.**

**(2) Subject to section 19, the Governor in Council may, by order, amend the Ingredient Disclosure List**

**(a) by adding thereto any product, material or substance:**

**(b) by specifying, for the purposes of paragraphs 13(a) and 14(a), a concentration for each product, material or substance added thereto pursuant to paragraph (a); and**

**(c) by substituting a concentration for a concentration specified for any product material or substance included thereon.**

**(3) Subject to section 19, the Governor in Council may, by order, amend the Ingredient Disclosure List by deleting therefrom any product, material or substance, and the concentration specified for that product, material or substance, if the Governor in Council is satisfied that the inclusion of the product, material or substance on the Ingredient Disclosure List is no longer necessary.**

**(4) The Governor in Council shall, in making any order pursuant to subsection (1),(2) or (3), be guided by the health and safety criteria for ingredient disclosure established by the Minister after consultation by the Minister with the government of each province and with such organizations representative of workers, organization representative of employers and organizations representative of suppliers as the Minister deems appropriate.**

### **INTERPRETATION / DISCUSSION of SECTION 17**

The *Ingredient Disclosure List (IDL)* was published in the Canada Gazette, Part II, SOR\88-64 on January 20, 1988. As of September, 2000, the *IDL* has not been amended and as of that date, no



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amendments had been projected.

The *IDL* is a list of chemicals identified in alphabetical order by their common name. The corresponding Chemical Abstracts Service (CAS) registry number is provided where available. Each chemical has a corresponding concentration "cut-off" of either 0.1% or 1.0% (weight/weight). Ingredients included in the *IDL* are one of the four categories of ingredients whose identity and concentration must be disclosed on an MSDS if found in a controlled product above the concentration cut-off; (see subparagraph 13(a)(ii) of the *HPA*).

The criteria used to determine whether to include an ingredient in the *IDL* were broader than the criteria used for defining what is a WHMIS controlled product. Substances that are not considered hazardous enough to be controlled products in themselves but are considered health hazards have been included in the *IDL* in addition to substances that do meet the criteria in the *Controlled Products Regulations (CPR)*. Therefore, although a chemical included in the *IDL* which is not itself a controlled product is not subject to the *HPA* label nor MSDS requirements, when included in a controlled product above its cut-off concentration, its identity and concentration must be disclosed on the MSDS.

In addition to the potential to cause adverse health effects, the extent to which the ingredients were or are being put to commercial use was also a determining factor affecting inclusion in the *IDL*. The *IDL*, however, is far from exhaustive in listing ingredients that meet the criteria in the *CPR*.

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### *Amendments to Schedule II*

**18.(1) Subject to section 19, the Governor in Council may, by order, amend Schedule II.**

**(2) The Minister shall cause a copy of each order made pursuant to subsection (1) to be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the day the order is made.**

**(3) If both Houses of Parliament resolve that an order or any part of an order made pursuant to subsection (1) should be revoked, the order or that part thereof is thereupon revoked.**

### **INTERPRETATION / DISCUSSION of SECTION 18**

Please refer to the information provided under sections 5 and 6 of the *HPA* regarding the Governor in Council and the regulatory process.



### *Consultation*

**19. A regulation under subsection 15(1) or an order under section 17 or 18 may be made by the Governor in Council only on the recommendation of the Minister made after consultation by the Minister with the government of each province and with such organizations representative of workers, organizations representative of employers and organizations representative of suppliers as the Minister deems appropriate.**

### **INTERPRETATION / DISCUSSION of SECTION 19**

The Minister of Health Canada respects the legislative requirement to consult with affected parties through the WHMIS Current Issues Committee (CIC). The following are the terms of reference for the CIC:

1. The Current Issues Committee will serve as the forum for consultation on matters concerning the interpretation or modification of the Workplace Hazardous Materials Information System (WHMIS).
2. The Current Issues Committee has no formal powers; its role is to make recommendations to departments and agencies responsible for WHMIS legislation including recommendations for modifications to WHMIS or changes in its scope.
3. Membership of the Committee will be limited to persons sponsored by one of the member groups, i.e., employers, suppliers, labour and the WHMIS regulatory agencies and will consist of the Chairperson and representatives from:
  - a) organized labour;
  - b) employers;
  - c) suppliers;
  - d) provincial and territorial Occupational Safety and Health agencies;
  - e) the Hazardous Materials Information Review Commission;
  - f) Human Resources and Skills Development Canada, Labour Program; and
  - g) Health Canada (WHMIS Division).
4. Members will represent their caucuses and are expected to consult with their caucuses prior to a meeting with the objective of developing a uniform position on an issue. There must be at least one member or delegate from each caucus who is prepared to discuss or to speak on a scheduled agenda item.
5. Members may delegate their membership status to one or more stakeholders to explain their caucus decision (or lack thereof) on a specific issue. (It is recognized that having more than one delegate speak to a decision will be an exception). If a person who has been delegated to speak to an issue cannot be present at a meeting that the issue is to be discussed, then a replacement delegate must be appointed by the caucus.



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6. For the purpose of providing critical information to the Committee on an issue, observer status at a meeting may be granted to representatives who have a special interest in a particular issue and who are sponsored by a member.
7. The Committee will be chaired by the WHMIS Division of Health Canada.
8. The Committee will strive to function on a consensus basis. Consensus means unanimous concurrence among the industry, labour, federal and provincial caucuses.

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### *Disclosure*

**20.(1) Where the Minister has reason to believe that a product, material or substance is a product, material or substance that may be included in a class listed in Schedule II by a regulation made pursuant to paragraph 15(1)(a), the Minister may, by registered mail, send a written notice to any person who is engaged in the business of manufacturing, processing, importing, packaging or selling the product, material or substance requesting the disclosure of information relating to the formula, composition, chemical ingredients or hazardous properties of the product, material or substance and such other information as the Minister deems necessary for the purpose of determining whether the product, material or substance is or may be a danger to the health or safety of any person who may handle it in a work place or be exposed to it in a work place.**

**(2) Every person to whom a notice referred to in subsection (1) is sent shall disclose to the Minister, in the manner and within the period specified by the Minister in the notice, any information described in subsection (1) that is requested in the notice and is in the possession of the person.**

**(3) Subject to subsection (4), information received by the Minister from a person pursuant to subsection (1) is privileged and notwithstanding the *Access to Information Act* or any other Act or law, shall not be disclosed to any other person except as may be necessary for the administration or enforcement of this section or for the purposes of section 15.**

**(4) The Minister shall not, when consulting with the government of a province or an organization of workers, organization of employers or organization of suppliers pursuant to section 19, for the purposes of section 15, disclose the name of any person from whom the Minister has received information pursuant to subsection (1) or any of such information that is specified, in writing, by the person as being confidential.**

### **INTERPRETATION / DISCUSSION of SECTION 20**

Information under this section will be requested solely for the purpose of determining whether Schedule II needs to be amended. Information will not be requested to enforce existing Regulations.

The requirement to provide information includes only that information which is in the possession of the person to whom the request is sent.

The use or disclosure of any information received pursuant to this section, except for the purpose of administering or enforcing this section or for the purpose of making regulations, is an offence under section 28 of the *HPA* and punishable by fine or imprisonment.



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The *Access to Information Act* came into force on July 1, 1983. It provides a right of access by the public to information in records under the control of a government institution.

However, under paragraph 20(1)(b) of the *Access to Information Act*, records are exempt from scrutiny where they contain financial, commercial, scientific or technical information that is confidential information supplied by a third party and is treated consistently in a confidential manner by the third party.

This exemption is intended to protect information of a confidential nature provided by a business or other commercial interest to the government, regardless whether the information was provided pursuant to a statutory obligation or on a voluntary basis.