GUIDANCE
Document Retention Requirements for Suppliers of Hazardous Products

(December 20, 2016)

1.0 Purpose

The purpose of this document is to provide suppliers of hazardous products with guidance on document retention requirements as specified under subsection 14.3 of the *Hazardous Products Act* (HPA).

2.0 Background

The Workplace Hazardous Materials Information System (WHMIS) is a national information system designed to protect Canadian workers by providing safety and health information about hazardous workplace materials. The key elements of the system are hazard classification, hazard communication through cautionary labelling of containers and the provision of safety data sheets (SDSs), and worker education and training programs.

On February 11, 2015, the Government of Canada published in the *Canada Gazette*, Part II, the *Hazardous Products Regulations* (HPR) which, in addition to the amendments made to the HPA, modified WHMIS to incorporate the United Nations Globally Harmonized System of Classification and Labelling of Chemicals (GHS) for work place chemicals. The *Controlled Products Regulations* (CPR) and the *Ingredient Disclosure List* of the original WHMIS 1988 were repealed and replaced by the HPR. The WHMIS requirements of the amended HPA and the HPR are referred to as WHMIS 2015.

A key amendment to the HPA includes the document retention requirements for suppliers of hazardous products. Every supplier who sells or imports a hazardous product that is intended for use, handling or storage in a work place in Canada needs to be aware of their obligation to prepare and maintain documents, including copies of labels and SDSs, as well as sales and purchasing information, and their obligation to provide these documents to the Minister or an inspector on request.

3.0 Obligation to Prepare and Maintain Documents

Section 14.3 of the HPA requires suppliers of hazardous products to prepare and maintain documents, including true copies of labels and SDSs as well as sales and purchasing information. These documents must be provided to the Minister of Health or an inspector upon written request and must be stored in Canada and retained for a specified period of time.

3.1 Preparation and Maintenance of Documents

Subsection 14.3(1) of the HPA requires that suppliers prepare and maintain the following documents:

- a true copy of a label in both official languages, unless the label is not required as a result of an exemption under the HPR (e.g., sale or importation of a bulk shipment or a hazardous product without packaging of any sort); and,
- a true copy of an SDS in both official languages.

As required by subsection 6.2 of the HPR, information elements to be provided on labels and SDSs must be in both official languages (i.e., English and French) in accordance with the *Official Languages Act*.

If the supplier has obtained the hazardous product from another person, the supplier must prepare and maintain a document containing the following information:

- the name and address of the person from whom the supplier obtained the hazardous product;
- the quantity of the hazardous product obtained; and,
- the month and year in which the supplier obtained it.

For the sale of a hazardous product that results in a transfer of ownership or possession, the following additional information is required:

- a document indicating the locations at which sales took place (i.e., address of the supplier's place of business); and,
- the period during which sales took place (e.g., from June 1, 2015 to May 23, 2016), and, for each month in that period, the quantity sold during the month (e.g., June 2016 = 60 units; July 2016 = 234 tons; August 2016 = 6234 L).

The specific information concerning the names and addresses of customers who purchased the hazardous product is not required to be maintained under subsection 14.3(1). However, if available, this information may be obtained by an inspector using powers granted under subsection 22(1) of the HPA.

3.1.1 Additional information

Document

Under section 2 of the HPA, a **document** means anything on which information that is recorded or marked can be understood by a person or can be read by a machine such as letters, numbers, and images (symbols) on paper or on microfilm as well as in electronic means such as an emails, Word, Excel, or PDF documents. Electronic documents could be provided on storage devices such as compact discs, USB flash drives, or portable hard drives. It must be noted that under the HPA a SDS is, by definition, a document.

Documents that must be prepared and maintained may be similar to those that businesses already retain as part of their normal bookkeeping practices.

True Copy

Under the HPA, a **true copy** of a label or safety data sheet must accurately reflect the original document in shape, size, and colour. A true copy does not have to include batch numbers. A true copy could, for example, be a color picture of the label, if the resolution is sufficiently high to ensure that all elements remain legible.

Official Languages

The Minister of Health or an inspector could require the true copy of the English or French portion of the label and/or SDS, or the true copy of the bilingual SDS or label. Paragraphs 14.3(1) (a) and (b) of the HPA and subsection 6.2(1) of the HPR require that a true copy of a label and SDS be maintained in both official languages (i.e., English and French).

With regard to the documents maintained under paragraphs 14.3(1)(c) and (d) of the HPA, the supplier can provide the document written in English or French.

3.2 Duration

Subsection 14.3(2) of the HPA requires that all of the required documents be maintained for six years after the end of the year to which they relate, unless regulations specify another time period. This time period aligns with existing document retention requirements that suppliers may already be required to meet, such as those under the federal *Income Tax Act.*

For example, if a supplier ceased sale of a hazardous product on February 15th, 2020, the supplier would have to maintain a true copy of the last label and SDS he used for that product until December 31st, 2027 since the period of six years begins only on January 1st 2021.

As another example, if a supplier updated the label and SDS on December 1, 2020, the supplier would have to maintain a true copy of the pre-updated label and SDS (i.e. the copy used on November 30, 2020) until December 31, 2027. He would also have to maintain a true copy of the current label and SDS (i.e. the one used as of December 1, 2020). The end date for the period of time during which the supplier will have to maintain the true copy of the current label and SDS cannot be determined until the supplier ceases to make use of that version.

3.2 Location

Documents can be maintained in paper or electronic format, but, pursuant to subsection 14.3(3) they must be kept at a supplier's place of business in Canada. Suppliers may determine the business location of those records at their discretion; however they must be accessible upon request from the Minister of Health or an inspector.

3.3 Exemptions

Subsection 14.3(4) of the HPA allows the Minister of Health to grant to a supplier an exemption from the requirement to keep the documents in Canada, if the Minister of Health considers that keeping documents in Canada is unnecessary or impractical.

It is important to note that a foreign manufacturer or distributor who sells directly to Canadian importers cannot file a request for an exemption under subsection 14.3(4) since the requirements of the Act do not apply to them, but rather, apply to the Canadian importers of their products.

Supplier requests for an exemption from this requirement will be reviewed on a case-by-case basis and should be submitted in writing to Health Canada at the following address:

Health Canada, Healthy Environments and Consumer Safety Branch
Workplace Hazardous Materials Bureau
269 Laurier Avenue West, 8th Floor (4908B)
Ottawa, Ontario K1A 0K9
Canada

3.4 Request for Documents by the Minister of Health or an Inspector

Pursuant to subsection 14.3(3) of the HPA, the Minister of Health or an inspector may request, in writing, access to documents that are required to be maintained. The documents to be provided must be submitted within the time and format (e.g., printed on paper or in an electronic format) specified in the request.

4.0 For More Information

For more information on WHMIS, please see WHMIS.org.

For general enquiries please contact whmis_simdut@hc-sc.gc.ca or 1-855-407-2665.