

# Summary of proposed changes to Nova Scotia's Workplace Hazardous Materials Information System (WHMIS) regulations

Nova Scotia's *WHMIS Regulations* have been in force under the *Occupational Health and Safety Act* since 1988. These regulations are part of an interlocking national system.

- The federal government regulates classification, labelling and information requirements for hazardous products sold in Canada.
- Provinces and territories regulate the use of labels and safety data sheets in the workplace, and requirements for WHMIS education and training for employees.

In February 2015, the federal government proclaimed a revised *Hazardous Products Act* and replaced the *Controlled Products Regulation* with a new *Hazardous Products Regulation*. The federal changes incorporated the internationally agreed *Globally Harmonized System for Classification and Labeling of Chemicals*. Reflecting these changes, an updated WHMIS system known as "WHMIS 2015" was introduced across the country.

In order to fully implement the changes to labels, safety data sheets, and education and training of employees in the new WHMIS 2015 system, regulators from across Canada prepared a "model" regulation that provinces and territories could use as a basis for updating their regulations in a consistent way.

Nova Scotia is planning to update its regulations to be aligned with other provinces within the national WHMIS system. Details of the proposed changes are presented on the following pages.

**HAZARDOUS PRODUCTS** are classified according to regulations under the federal *Hazardous Products Act*, including the *Hazardous Products Regulations*. The *Hazardous Products Regulations* replaced the federal *Controlled Products Regulations* in 2015.

The *Hazardous Products Regulations* incorporate the Globally Harmonized System of Classification and Labelling of Chemicals (GHS) that was developed by the United Nations. The GHS includes:

- harmonized criteria for classifying substances and mixtures according to their health, environmental and physical hazards;
- harmonized hazard communication elements, including requirements for labelling and safety data sheets.

Specifically, the *Hazardous Products Regulations* currently reflect the Fifth Revised Edition of the GHS, which was adopted by both Canada and the US. The federal intent is that there will be a process for updating the adopted version as further revisions are made to the GHS. (The GHS itself is now in its ninth revised edition).

The new system of interlocking federal and provincial rules is known as WHMIS 2015. It replaced the former system that is now referred to as WHMIS 1988.

<p><b>New provincial regulations refer to the new federal regulations</b></p>	<p><b>Federal law and regulations govern the supply and sale of hazardous products</b> that are intended for use, handling or storage in Canadian workplaces. These rules include requirements for the classification of substances that inform the labelling and safety data sheets that must be provided by suppliers and maintained by employers.</p> <p><b>Provinces and territories are responsible for the occupational health and safety laws and regulations</b> that apply in most workplaces (with the exception of federal workplaces that fall under the <i>Canada Labour Code</i>). <b>These govern the responsibilities of employers, employees and other workplace parties in relation to hazardous products used, stored, handled, or disposed at a workplace.</b></p> <p>To promote consistency, provinces and territories have followed a common model (with minor variations) when updating their own regulations to align with the WHMIS 2015 system.</p>
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	In addition to other updates to language and terminology, references to the former federal <i>Controlled Products Regulations</i> have been replaced by references to the new federal <i>Hazardous Products Regulations</i> .
<b>“HAZARDOUS PRODUCT” defined</b>	<b>“Hazardous product”</b> means any product, mixture, material or substance that is classified in accordance with the regulations made under subsection 15(1) of the <i>Hazardous Products Act (Canada)</i> in a category or subcategory of a hazard class listed in Schedule 2 of those regulations.

**TERMS and DEFINITIONS:** Some key terms used in the regulations will be changed, and a few new definitions will be added.

Some terms will have their definitions clarified, while minor changes will be made to the wording of other definitions to align with language used in updated Government of Canada legislation and regulations (including the *Hazardous Products Regulations*).

<p><b>Key terms that are changed:</b></p>	<ul style="list-style-type: none"> <li>• <a href="#">“hazardous product”</a> REPLACES “controlled product”</li> <li>• <a href="#">“safety data sheet (SDS)”</a> REPLACES “material safety data sheet (MSDS)”</li> </ul>
<p><b>New/newly defined terms:</b></p>	<ul style="list-style-type: none"> <li>• <a href="#">“education”</a></li> <li>• <a href="#">“training”</a></li> <li>• <a href="#">“readily available”</a></li> <li>• <a href="#">“significant new data”</a></li> <li>• <a href="#">“CAS Registry Number”</a></li> <li>• <a href="#">“health professional”</a></li> <li>• <a href="#">“confidential business information”</a></li> </ul>
<p><b>Significantly updated or clarified definitions:</b></p>	<ul style="list-style-type: none"> <li>• <a href="#">“fugitive emission”</a></li> <li>• <a href="#">“hazard information”</a></li> <li>• <a href="#">“hazardous waste”</a></li> <li>• <a href="#">“label”</a></li> <li>• <a href="#">“laboratory sample”</a></li> <li>• <a href="#">“supplier label”</a></li> </ul>
<p><b>Minor wording changes to align with updated federal language:</b></p>	<ul style="list-style-type: none"> <li>• “bulk shipment”</li> <li>• “container”</li> <li>• “manufactured article”</li> <li>• “product identifier”</li> <li>• “workplace label”</li> </ul>
<p><b>Deleted terms and definitions (now obsolete)</b></p>	<ul style="list-style-type: none"> <li>• “Commission”</li> <li>• “risk phrase”</li> </ul>
<p><b>References to Govt. of Canada regulations</b></p>	<ul style="list-style-type: none"> <li>• References to <i>Hazardous Products Regulations</i> REPLACE previous references to <i>Controlled Products Regulations</i></li> </ul>

**EDUCATION and TRAINING:** The new regulations will clarify the distinction between the delivery of general information to employees (for example, through an online WHMIS course), and the delivery of worksite and job-specific information to employees.

Employers are required to ensure that employees who work with hazardous products or who may be exposed to a hazardous product in the course of their work are provided with both types of WHMIS information. [Back to top](#)

<b>EDUCATION defined:</b>	“ <b>Education</b> ” refers to the delivery of general or portable information to employees.
<b>TRAINING defined:</b>	“ <b>Training</b> ” means the delivery of worksite and job-specific information to employees.
<b>Who must be provided with education and training</b>	The new regulations will be focused on employees at risk of exposure. They will require that an employee who works with, or may be exposed to, a hazardous product in the course of their work activities must be provided with education and training. This represents a clarification from the current requirement that instruction must be provided to any employee who “works with or in proximity” to such a product.
<b>Required education elements</b>	<p>Basic elements unchanged: employees must be <b>educated</b> in:</p> <ul style="list-style-type: none"> <li>• content required on a <b>supplier label</b> and <b>workplace label</b>, and the purpose and significance of that information.</li> <li>• content required on a <b>safety data sheet</b>, and the purpose and significance of that information.</li> </ul> <p>Federal requirements governing content of supplier labels and safety data sheets were updated to the “WHMIS 2015” system over the course of a transition period that was completed in 2018. Thus, WHMIS education content is now based on WHMIS 2015, rather than the old WHMIS 1988 system.</p>
<b>Required training elements</b>	<p>Employees must be <b>trained</b> on:</p> <ul style="list-style-type: none"> <li>• procedures for safe use, storage, handling and disposal of a hazardous product.</li> <li>• procedures to be followed where fugitive emissions are present where employees may be exposed.</li> <li>• procedures to be followed in case of an emergency involving a hazardous product.</li> </ul> <p>These elements have been required in the current <i>WHMIS Regulations</i> as elements of employee “education/instruction.”</p>

	<p><i>New requirement:</i> How to locate a <b>safety data sheet</b> at the workplace and the format in which it may be found.</p>
<p><b>Periodic review and evaluation of employee education and training program</b></p>	<p>As required under the current regulations, employers must periodically review education and training requirements at least annually, or more frequently if made necessary by a change in work conditions or available hazard information.</p> <ul style="list-style-type: none"> <li>• This <u>does not</u> imply annual employee education or training.</li> </ul> <p><i>New provision:</i> If the periodic review results in a change to education or training, any affected employee must be provided with additional education or training about the change.</p>

<p><b>LABELS:</b> WHMIS requirements govern <b>supplier labels</b> and <b>workplace labels</b> (as well as other means of identifying hazardous products, such as colour coding and placards). <a href="#">Back to top</a></p>	
<p><b>“LABEL” defined</b></p>	<p>New definition: <b>“label”</b> means a group of written, printed or graphic information elements that relate to a hazardous product, which group is designed to be affixed to, printed on, or attached to a hazardous product or the container in which a hazardous product is packaged.</p>
<p><b>Supplier labels</b></p>	<p><b>“SUPPLIER LABEL”</b> means a label provided by a supplier that contains information elements as required by the <i>Hazardous Products Regulations (Canada)</i>.</p> <p>Employers must ensure that a hazardous product received at a workplace is labelled in accordance with <i>Hazardous Products Regulations (Canada)</i>.</p> <ul style="list-style-type: none"> <li>• Current regulatory provisions only require the employer to “ensure that the controlled product” (or its container) “has affixed to it a supplier label.”</li> </ul> <p>Requirements that a supplier label must not be removed, defaced, modified or altered (as long as any amount of hazardous product remains in a container) are unchanged, except for the following <i>new provisions</i>:</p> <ul style="list-style-type: none"> <li>• A label may be removed under normal conditions of use of a hazardous product, in a container that has a capacity of 3 mL or less, where the label interferes with normal use of the product.</li> <li>• An employer must update a label as soon as <b>significant new data</b> is provided to the employer from the supplier.</li> <li>• <b>“SIGNIFICANT NEW DATA”</b> means new data regarding the hazard presented by a hazardous product that does any of the following: <ul style="list-style-type: none"> <li>○ changes the hazardous product’s classification in a category or subcategory of a hazard class,</li> <li>○ results in the hazardous product’s classification in another hazard class,</li> <li>○ changes the ways to protect against the hazard presented by the hazardous product.</li> </ul> </li> </ul>

	Where suppliers have received labelling exemptions for multi-containers under the <i>Hazardous Products Regulations</i> , employers will no longer be required to affix labels to an inner or outer container to which the supplier has not attached a label.
<b>Workplace labels for employer-produced products</b>	<p><b>“WORKPLACE LABEL”</b> means a label which discloses all of the following:</p> <ul style="list-style-type: none"> <li>• a product identifier which is identical to that found on the safety data sheet of the corresponding hazardous product,</li> <li>• information for the safe handling of the hazardous product which is conveyed in a manner appropriate to the workplace,</li> <li>• that a safety data sheet, if supplied or produced, is available.</li> </ul> <p>As required under current regulations, where an employer produces a hazardous product in a workplace, a workplace label must be applied to it.</p> <ul style="list-style-type: none"> <li>• <i>New provision:</i> The employer must update a workplace label as soon as <b>significant new data</b> are available to the employer.</li> </ul>
<b>Workplace labels for decanted products</b>	No substantial change in requirements, <i>except</i> that if a hazardous product is decanted from a labelled container into a portable container for use within a single working shift, the content of the portable container must be clearly identified. (The current requirement is that an employer <i>must instruct the employee who has control</i> of the portable container to ensure that the content is clearly identified.)
<b>Identification of a hazardous product in piping systems and vessels</b>	No significant change in requirements.
<b>Placard identifiers</b>	No significant change to provisions respecting use of placards.
<b>Laboratory labels (certain exemptions discontinued)</b>	Certain labelling and SDS exemptions that were formerly available to laboratory supply houses under the federal <i>Controlled Products Regulations</i> were not retained in the <i>Hazardous Products Regulations</i> . As a result, a corresponding provision in the current NS <i>WHMIS Regulations</i> [subsection 11(1)] will not be included in the new regulations.
<b>Laboratory labels (new exemptions for hazardous laboratory samples)</b>	<i>New provisions:</i> Subsections 5(5) and 5(6) of the <i>Hazardous Products Regulations</i> provide specific exemptions and alternative requirements for label content for <b>laboratory samples</b> classified as “Biohazardous Infectious Materials – Category 1,” where possession is transferred without transfer of ownership. New

	provisions in Nova Scotia's regulations will be aligned with these federal provisions.
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<p><b>SAFETY DATA SHEETS (SDS):</b> WHMIS requirements govern the form and content of <b>safety data sheets</b> that must be provided for hazardous products.</p> <p><a href="#">Back to top</a></p>	
<p><b>SAFETY DATA SHEET (SDS) defined:</b></p>	<p>“<b>Safety data sheet</b>” means a document that contains, under the headings that, by virtue of the regulations made under subsection 15(1) of the <i>Hazardous Products Act (Canada)</i>, are required to appear in the document, information about a hazardous product, including information related to the hazards associated with any use, handling or storage of the hazardous product in a workplace.</p> <ul style="list-style-type: none"> <li>• This replaces the term “material safety data sheet” (MSDS) as used in the current NS <i>WHMIS Regulations</i>.</li> <li>• Suppliers have been required to comply with the new SDS requirements under the <i>Hazardous Products Regulations</i> since December 2018.</li> <li>• In WHMIS 2015, information on an SDS is organized under 16 mandatory section headings.</li> </ul>
<p><b>Supplier SDS</b></p>	<p>Employers acquiring a hazardous product for use, handling or storage at a workplace must obtain an SDS.</p> <ul style="list-style-type: none"> <li>• <i>New language</i> stipulates that the SDS must comply with requirements of the <i>Hazardous Products Regulations (Canada)</i>.</li> </ul> <p>Where a hazardous product used in a workplace is 3 years old or older, an employer shall if possible obtain an up-to-date SDS from the supplier.</p> <ul style="list-style-type: none"> <li>• <i>New language</i> provides that this requirement does not apply if the supplier advises that the new SDS no longer applies to the original product.</li> <li>• The employer must retain records of their efforts to update SDS information.</li> </ul> <p>If an employer is unable to obtain a new SDS, the employer must add any <b>significant new data</b> about the hazardous product that the employer is aware of to the existing SDS.</p>
<p><b>Employer SDS</b></p>	<p>Current provisions relating to “generic material safety data sheets” (in Section 13 of the <i>WHMIS Regulations</i>) will be deleted as they are no longer required.</p> <p>Current requirement that an employer (M)SDS be updated at least every 3 years will be deleted.</p>

**TRADE SECRETS and CONFIDENTIAL BUSINESS INFORMATION:** Information that is considered a “trade secret” can be withheld from disclosure under Section 61 of the *NS Occupational Health and Safety (OHS) Act*. “Confidential business information” (“CBI”) has a specific meaning in relation to exemptions claimed under the *Hazardous Materials Information Review Act (Canada)*.

The specific identity of a chemical may be withheld from disclosure on a label and SDS based on either Section 61 of the *OHS Act* or the federal CBI exemption process. However, in either case, hazard information must be provided on a label and SDS. In the event of a medical emergency, the specific identity of a hazardous chemical must be disclosed to a treating doctor or nurse on request, regardless of its trade secret or confidential status.

Both approaches to exemption (Section 61 and CBI) are addressed in the current WHMIS regulations and in the proposed new regulations. It is proposed that the current *Disclosure of Information Regulations* (which relate only to Section 61 exemptions) will be repealed, and references to those regulations will be removed. The new regulations will also be updated to reflect changes that have been made to the federal legislation and regulations that govern CBI exemption. [Back to top](#)

**“Confidential business information”**

With respect to claims for exemption under the *Hazardous Materials Information Review Act (Canada)*, “**confidential business information**” includes any of the following types of information for which an employer may claim an exemption from disclosure on a label or SDS if the employer considers it to be confidential business information:

(a) in the case of a material or substance that is a hazardous product:

(i) the chemical name of the material or substance,

(ii) the CAS registry number, or any other unique identifier, of the material or substance, and

(iii) the chemical name of any impurity, stabilizing solvent or stabilizing additive that is present in the material or substance, that is classified in a category or subcategory of a health hazard class under the *Hazardous Products Act (Canada)* and that contributes to the classification of the material or substance in the health hazard class under that Act;

(b) in the case of an ingredient that is in a mixture that is a hazardous product:

(i) the chemical name of the ingredient,

(ii) the CAS registry number, or any other unique identifier, of the ingredient, and

(iii) the concentration or concentration range of the ingredient;

(c) in the case of a material, substance or mixture that is a hazardous product, the name of any toxicological study that identifies the material or substance or any ingredient in the mixture;

	<p>(d) the product identifier of a hazardous product, being its chemical name, common name, generic name, trade-name or brand name;</p> <p>(e) information about a hazardous product, other than the product identifier, that constitutes a means of identification;</p> <p>(f) information that could be used to identify a supplier of a hazardous product.</p>
<p><b>Claims for exemption from disclosure</b></p>	<p>As is the case under current regulations, under the proposed new regulations, claims for exemption from disclosure of confidential business information must be made under the <i>Hazardous Materials Information Review Act (Canada)</i> and must be filed in accordance with the procedure established under that Act and the regulations made under that Act, unless the information is considered a trade secret for which an exemption is being claimed under Section 61 of the <i>OHS Act</i>.</p> <ul style="list-style-type: none"> <li>• With respect to claims filed under the <i>Hazardous Materials Information Review Act</i>, powers and functions in relation to review of claims and appeals of claim decisions are conferred and assigned to the federal Minister of Health. (The “Review Commission” that is referred to in the current <i>WHMIS Regulations</i> no longer exists.)</li> </ul>
<p><b>Disclosure of information in medical emergencies</b></p>	<p>Under the proposed new regulations, <b>an employer must provide any information in their possession about a hazardous product, including confidential business information</b>, to a health professional who requests such information for rendering medical treatment to a person in an emergency.</p> <p>Any information received by a health professional that is not required to be provided on an SDS must be kept confidential, except for the purpose of diagnosis or treatment for which it was provided, if the health professional has been informed by the employer that the information is to be kept confidential.</p> <p>Where confidential business information is disclosed in a medical emergency the employer may require a written statement of need, a written confidentiality agreement, or both (as permitted under Section 61 of the <i>OHS Act</i>). A confidentiality agreement may provide for appropriate legal remedies in the event of breach.</p> <ul style="list-style-type: none"> <li>• Disclosure in medical emergencies is currently governed by the <i>Disclosure of Information Regulations</i> and Section 61 of the <i>OHS Act</i>. It is proposed that the new regulations will address emergency disclosure, and the <i>Disclosure of Information Regulations</i> will be repealed.</li> </ul>

<p><b>Incorporation into <i>Workplace Health and Safety Regulations</i>:</b> The new regulations will be included as Part 3 of the <i>Workplace Health and Safety Regulations (WHSRs)</i>. The current, standalone <i>WHMIS Regulations</i> will be repealed.</p> <p>As a consequence of this change, certain general provisions of the <i>Workplace Health and Safety Regulations</i> that are not included in the current <i>WHMIS Regulations</i> will be applicable. <a href="#">Back to top</a></p>	
<p><b>Duties of Parties</b></p>	<p>Duties of employers with respect to WHMIS will also apply to other workplace parties to the extent of their authority and ability to discharge the duties. Notably, this will include self-employed persons. [<i>WHSR</i> Sec 1.4]</p>
<p><b>Compliance with and communication of policies, procedures, plans and codes of practice (COPs)</b></p>	<p><i>WHSR</i> Sections 1.7 and 1.8 require that: Any written policies, procedures, plans and COPS must be:</p> <ul style="list-style-type: none"> <li>• adequate and implemented;</li> <li>• complied with, if they are established for purposes of the Act and regulations;</li> <li>• made available at the work area at all times;</li> <li>• reviewed with affected persons before work is undertaken;</li> <li>• updated when conditions affecting work change.</li> </ul> <p>Persons required to perform particular functions must be trained in relation to those particular requirements and on the relevant policy, procedure, plan, or COP generally.</p> <p>Information, instruction, training, supervision, facilities and equipment necessary for implementing policies, procedures, plans and COPS must be provided before work is undertaken.</p>
<p><b>Consultation with joint occupational health and safety committee or representative</b></p>	<p><i>WHSR</i> Sec. 1.9 requires that:</p> <ul style="list-style-type: none"> <li>• An employer establishing or reviewing a written policy, procedure, plan or COP for purposes of the Act or regulations must do so in consultation with the JOHSC or representative, if any.</li> </ul>
<p><b>Record keeping</b></p>	<p><i>WHSR</i> Sec. 1.15 requires that:</p> <ul style="list-style-type: none"> <li>• Records referred to in the regulations must be kept for at least 5 years after being made, unless otherwise specified in the regulations (for example, written procedures, plans and COPS must be kept for 2 years after the date on which they are cancelled or replaced.)</li> </ul>

It is proposed that **definitions for the following terms** (not discussed elsewhere in this document) will be updated in the new regulations:

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**"CAS Registry Number"** means the identification number assigned to a chemical by the Chemical Abstracts Service, a division of the American Chemical Society;

**"fugitive emission"** means a gas, liquid, solid, vapour, fume, mist, fog or dust that escapes from any of the following:

- (i) process equipment,
- (ii) emission control equipment,
- (iii) a product where employees may be readily exposed.

**"hazard information"** means information on the proper and safe use, storage and handling of a hazardous product and includes information relating to its health and physical hazards.

**"hazardous waste"** means a hazardous product that meets at least one of the following requirements:

- (i) it is generated as a by-product of a process and then recycled or recovered;
- (ii) it is acquired for recycling or recovery,
- (iii) it is intended for disposal.

**"health professional"** means at least one of the following:

- (i) a physician who is registered and entitled under the laws of a province to practice medicine and who is practicing medicine under those laws in that province;
- (ii) a nurse who is registered or licensed under the laws of a province to practice nursing and who is practicing nursing under those laws in that province;

**"laboratory sample"** means a sample of a hazardous product that is packaged in a container that contains less than 10 kg of the hazardous product and that is intended solely to be tested in a laboratory, but does not include a sample that is to be used for any of the following purposes:

- (i) by the laboratory for testing other products, mixtures, materials or substances,
- (ii) for educational or demonstration purposes.

**"readily available"** means information present in an appropriate place that is accessible to an employee at all times and in at least one of the following forms:

- (i) a physical copy that can be handled,
- (ii) an electronic copy that has a backed up version available, if required.