WHMIS

# WHMIS - Confidential Business Information (CBI)

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## What is confidential business information (CBI) within WHMIS?

The Workplace Hazardous Materials Information System (WHMIS) requires that suppliers of hazardous products provide employers, through safety data sheets (SDS) and labels, the necessary information to make it possible to safely use hazardous products in Canadian workplaces.

If suppliers want to protect certain information that is required to be disclosed on SDS and label, they can protect it as confidential business information (CBI) by filing a claim under the Hazardous Materials Information Review Act (HMIRA).

Health Canada is the government body responsible for the protection of confidential business information (CBI) and WHMIS-related laws.

Please refer to the following OSH Answers documents for more information about WHMIS:

- WHMIS – General
- WHMIS – Pictograms
- WHMIS – Labels
- WHMIS – Hazard Classes and Categories
- WHMIS – Safety Data Sheets (SDSs)
- WHMIS – Education and Training

- WHMIS – WHMIS Program
- WHMIS – Glossary
- WHMIS – Variances
- WHMIS – Laboratories

## What is Protection of CBI?

The protection of CBI is a process that allows certain information, such as the chemical identity of one or more hazardous ingredients in a WHMIS-regulated product, to not be disclosed on the safety data sheet (SDS) or label for the hazardous product. A supplier or employer who wants to protect CBI must file a claim for exemption with Health Canada. The CBI process includes a Health Canada review of the SDS or label to verify that the hazard and safe use information complies with WHMIS requirements.

This mechanism balances workers' right-to-know with industry's need to protect trade secrets.

## What information can be claimed for CBI protection?

The following information can be claimed for exemption by suppliers or employers:

- chemical identity of an ingredient, substance or material (including impurities and stabilizing solvents)
- concentration or concentration range of an ingredient, substance or material
- the name of any toxicological study that identifies the ingredient, substance or material

Employers may also claim:

- product identifier (chemical name, trade name or other means of identification information)
- information that could be used to identify the supplier

If a claim has been filed to protect the chemical identity or true concentration (or true concentration range) of an ingredient, this information must be replaced in the SDS, and if applicable, on the label by a reference to the HMIRA claim for exemption information (e.g., an asterisk linking to the HMIRA Registry Number (RN)). The chemical name of the trade secret ingredient must be replaced with code name or code number (e.g., a generic chemical name). For example, methanol can be replaced by 'alcohol'. Additionally, the Chemical Abstracts Service (CAS) No. and true concentration or concentration range may be replaced with a word such as "Proprietary", "CBI" or "Trade Secret".

| Substance | CAS No. | % (w/w) |
|---|---|---|
| Alcohol * | Proprietary * | Proprietary* (10-30%) |
| Trichloroisocyanuric Acid | 87-90-1 | 0.1% |

* HMIRA RN: 3333 – Decision Granted Date January 1, 2021

If the concentration or concentration range is claimed as a trade secret, suppliers are encouraged to provide a replacement concentration range that includes the true concentration or true concentration range.

Note that suppliers can protect the actual concentration or concentration range of an ingredient without submitting a CBI claim by providing one or a combination of two adjacent concentration ranges prescribed in the Hazardous Products Regulations. If suppliers use the prescribed concentration ranges to protect the trade secret, they must include on SDS, immediately following the concentration range, a statement indicating that the actual concentration is withheld as a trade secret.

| Substance | CAS No. | % (w/w) |
|---|---|---|
| Methanol | 67-56-1 | 10-30%* |
| Trichloroisocyanuric Acid | 87-90-1 | 0.1% |

*The actual concentration range has been withheld as trade secret.

## How do I know if a CBI claim is valid?

The supplier or employer that is claiming a trade secret must replace the CBI with the HMIRA RN and the date of filing or the date the claim was granted, on the product SDS and, if applicable, on the label.

Health Canada provides a list of Active Claims for Exemptions that shows:

- Claimant Name
- Registry Number (RN or Reg #)
- Product Name
- Notice of Filing (NoF) Date
- Notice of Decision (NoD) Date or a Decision Pending notation
- Expiry Date for the CBI claim

There are links to the official publication notice regarding the filing of the claim and the decision made on the claim. The notice of decision date also links to any additional information about the CBI claim validity. To verify that the SDS or label has an active CBI claim, the HMIRA registry number and date shown on the SDS/label should match the information on this web page, and the link to the notice of decision will provide confirmation that the claim was determined to be valid.

## What is required in a complete application package?

When applying for CBI, certain items and information must be provided, including:

| Table 1 – Complete CBI Application Package Checklist* | |
|---|---|
| | Copy of SDS,  label, or both. |
| | 100% composition of product, including all CAS numbers, chemical identities and actual concentrations and/or concentration ranges. |
| | Payment information (credit card) or cheque/money order. |
| | French translation of generic chemical name(s). |
| | All mandatory information on forms. |
| | Declaration of confidentiality signed by the individual with signing authority for the claimant. |

*Note: Using the Health Canada Application form is not a mandatory requirement of the HMIRA; however, the information communicated regarding a claim for exemption must clearly and consistently convey what is being claimed as CBI and address the HMIRA (subsections 11(3)(4)) and the *Hazardous Materials Information Review Regulations* (HMIRR) (sections 3, 4, 5, 6, 7 and 8 of the HMIRR) requirements.

The information provided must be consistent across all the documents submitted:

- All ingredients disclosed on the SDS are also disclosed on the product's 100% composition document.
- The product identifier and generic chemical names are the same on the application form and the SDS, label, or both.
- The subject of the claim for exemption is the same throughout the forms and the SDS.

## What are the steps in the CBI process?

1. The claimant applies for the HMIRA Claim for Exemption – which involves completing an application package and providing all the information specified to Health Canada.
2. Health Canada does a preliminary review of the claim package. If the package is incomplete, the claimant is notified and the claim is put on hold until the missing information is provided.
3. If the package is complete, Health Canada issues a HMIRA RN (registry number) and a date of filing to the claimant. The claimant can then sell, import, or use the product in Canada. The HMIRA RN and the Date of Filing must be cited on the SDS and, if applicable, on the label in place of the CBI. Other requirements of the *Hazardous Products Regulations* (HPR) section 5.7 must also be met.
4. Health Canada proceeds with a full assessment of the claim to check:
    a. for the validity of the trade secret claim, and
    b. whether the SDS or label are fully compliant, verifying the classification and that WHMIS regulatory requirements are met.
5. Health Canada may provide a Consultation Document to the claimant that outlines findings on claim validity and SDS and/or label compliance.
6. The claimant may respond to the Consultation Document with amendments to the claim and/or comments on findings of non-compliances, if appropriate.
7. Health Canada reviews any claim amendments (if applicable) and issues a decision to the claimant. If the claim is found not to be fully valid, Health Canada may issue orders for corrective measures relating to the validity of the claim. See additional steps below for non-compliant SDS or label.
8. Non-compliant SDS or label – Resolution:
    a. If Health Canada finds the SDS or label to be non-compliant, a Statement of Decisions will detail the corrective measures.
    b. Claimants receiving a statement of decisions must resolve issues and submit a revised SDS or label with a signed compliance undertaking declaration.
    c. Health Canada reviews the response and, if compliant, will issue a confirmation of compliance undertaking letter to the claimant.
    d. If voluntary compliance is not achieved within the allowed timeframe, Health Canada will issue orders under the HMIRA.
9. Health Canada publishes a notice of decision.

For additional information, please contact Health Canada.

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