

**Delivering against the Government’s Regulatory Reform Agenda**  
**Legislative Amendment to the *Hazardous Products Act* via the *Budget Implementation Act***  
**CCSPA Submission to the Standing Committee on National Finance –**  
**May 16, 2019**

***What is the ask?***

CCSPA is requesting the removal of a costly, unique-to-Canada provision in the *Hazardous Products Act* (HPA). The provision is for suppliers to keep a “true copy” (i.e., photos) of labels for workplace chemicals on a server housed in Canada for 6 years. The requirement is under section 14.3(1)(a).

***Why is this provision included in the legislation?***

It is unclear as to why this unique-to-Canada provision was included in the Omnibus budget legislation in 2014. The HPA required amending to allow for the modernization of the *Hazardous Products Regulations* (HPR), aligning Canada with the United States for the chemical classifications and labelling in the workplace. The regulations were finalized in 2015. This was an excellent outcome of the Regulatory Cooperation Council’s work plan.

As the provision for true copy was included in the legislation, it did not have to go through any costing to the companies. In the development of the regulations, it also avoided regulatory oversight for costing as it was considered compliance and outside the scope of the One-for-One Rule. Now, adding to the initial complication of the unnecessary

regulatory burden, unclear parameters for the “compliance” for true copy have come forward in the last year from Health Canada.

### ***What are the costs?***

- \$4.2M for initial investment over one year to cover: 1) IT system development and programming, 2) corresponding regulatory data entry effort, and 3) process implementation adjustments (procedure changes for our distribution centers).
- \$17M ongoing investment each year to pay for human resources at each site to track, record, and audit the labels of the inputs that we acquire (imported items used in our manufacturing process where we become the supplier upon import to Canada).
- Up to \$10M per company for costs associated with a “Canadian server”.

These costs are for our members. We know that other sectors have been seeking input on the costs and those have also been submitted to the Committee.

### ***How does our ask deliver against the reform agenda?***

#### **Barton Report:**

As per the 3<sup>rd</sup> Barton Report, “investing in a resilient Canadian economy”, the first recommendation reads:

***An agile regulatory system that acts as a catalyst for investment and innovation. The regulatory approach of the Government of Canada (hereafter “the government”) needs to evolve to better fit an economy where innovation and***

*change are the norm. Regulation has to be agile and adaptive enough to address the ways that innovative companies will continuously rewrite the rules of competition, ensuring sufficient oversight to protect the public interest without posing obstacles to innovation. Ideally, Canada's regulatory environment should act as a catalyst for new products and business models, especially in promising industries such as life sciences, financial technology (fintech), and agri-food. Regulation also must be predictable, efficient, and consistent, so it is not a barrier to business investment, innovation, and ultimately, economic growth.*

### **Treasury Board Agenda:**

Since Budget 2018, Treasury Board has been working to develop issues needing legislative and/or regulatory resolution to ensure they can deliver against this goal. One of the key areas to review to find regulatory burden was health. CCSPA has provided a submission to Treasury Board and our updated costing, plus briefed officials on our ask. We also provided submissions to the subsequent new Ministers this Spring.

### **Fall Economic Statement:**

Minister Morneau in the Fall Economic Statement (FES), underscored the need for regulatory reform.

*In this effort, the Government will continue to ensure Canada's regulatory system protects first and foremost the health and safety of Canadians. The Government intends to review legislation to assess whether opportunities for legislative changes exist to further solidify that regulatory efficiency and economic growth is an integral part of*

*regulators' mandates. This would encourage implicated departments and agencies to simplify regulatory proposals, and better address other considerations when designing and implementing regulations, while continuing to prioritize health and safety and environmental responsibilities.*

### **Manufacturing Sector Table:**

Minister Bain's Economic Strategy Tables, specifically the Advanced Manufacturing Table, addressed regulatory reform in their report of September 2018.

*Canada not only has to match other jurisdictions with respect to regulatory and policy competitiveness, but it must surpass them and become a global leader.*

### ***Does this ask still provide protection for workers?***

Industry is obligated to provide Safety Data Sheets for all chemicals used in the workplace. Employers are obligated to train workers on the Safety Data Sheets to ensure their workers are protected when they use those products. This does not change. The Safety Data Sheet, which contains all of the important information for how to use that product, is the document used to train workers.

**The obligation for suppliers to generate the data, update data as needed, and retain all that data in a server in Canada plus keep all records for 6 years is the issue.**

An analogy for the intense resources involved in this task would be if the average person were to walk into a large retailer (e.g., a big box store)

and attempt to photograph each label with a ruler beside it. Then you would store it on a server. As new product comes into the store, you will photograph that label; and as more of an existing product is received (if the label appears different), you would photo that label to keep the database up to date. Such a setting (big box store, etc.) is analogous to an industrial distribution warehouse and the pace of shipping and receiving within. This is an extremely resource- intense project. Another example is the Canadian manufacturer, who would be obligated to do the same, each and every time they import a raw material to be used in their process that meets the hazardous product definition.

### ***What is the Hazardous Products Act (HPA)?***

The *Hazardous Products Act* (HPA) requires suppliers of hazardous products to communicate the hazards associated with their products via product labels and Safety Data Sheets (SDSs) as a condition of sale and importation for workplace use. It was modernized in 2014 to allow the HPR to be modernized and harmonized with the US.

### ***Who has to comply with the HPA?***

Suppliers, employers and workers.

### ***What is a true copy of a label? What has been the “guidance” from Health Canada in the past year?***

Industry has requested guidance from Health Canada on what is a “true copy” for labels. We have received feedback from Health Canada that guidance cannot be provided as the expression “true copy” is an “established legal term with significant pedigree and jurisprudence”.

Industry associations and companies were told to seek legal advice to see what “true copy” means to their business establishments. To date, Health Canada has not provided any guidance other than “colour, legible, clear and representative of the true size of the label” or to peel off a label or keep an empty container of the product.

### ***What is a Safety Data Sheet (SDS)?***

Safety Data Sheets (SDSs) are summary documents that provide information about the hazards of a product and advice about safety precautions. SDSs are usually written by the manufacturer or supplier of the product. In some circumstances, an employer may be required to prepare an SDS (e.g., when the product is produced and used exclusively in that workplace).

SDSs provide more detailed hazard information about the product than the label. They are an important resource for workplaces and workers to help them learn more about the product(s) used. The information contained on an SDS is used to identify the hazards of the products workplaces use and to protect users from those hazards, including safe handling and emergency measures.

SDSs tell users what the hazards of the product are, how to use the product safely, what to expect if the recommendations are not followed, how to recognize symptoms of exposure, and what to do if emergencies occur.

### ***Does Health Canada declare that costs were not included?***

In the RIAS for the HPR, the only costs to industry assessed in the cost benefit analysis were changes to labels, safety data sheets, and additional printing costs.

In the RIAS, it states, “

*The proposal does not contain provisions that require industry to demonstrate compliance with the regulations, such as collecting, processing, reporting and retaining information, or completing forms or other paperwork, which are considered “administrative costs” by the Treasury Board Secretariat. The “One-for-One” Rule relates only to “administrative costs”; therefore, it does not apply to this regulatory proposal. Moreover, the adoption of this proposal would coincide with the repeal of existing outdated regulations, so there would be a reduction in the number of regulations to which industry is subject.”*

### ***Does the requirement move from suppliers to other organizations?***

As we move forward in the implementation, we are seeing that the costs are not just borne by the manufacturer, but by the supplier plus everyone along the supply chain. Everyone will have to collect and retain the information if they become a supplier of the product. A distributor (and every distributor thereafter), for example, who imports or sells a hazardous product, would need to keep a true copy of the label in addition to the label the manufacturer/importer would have already prepared. The redundancy of collecting this information at multiple points in the supply chain is an unnecessary burden. The cost burden includes the resources to collect, retain and keep current this information for seven years.

Manufacturer/Importer  
Distributer C, etc.                      —Distributor A      →      Distributor B

Label Copy#1                      +      Label Copy#2      +      Label Copy#3  
+      Label Copy#4, etc.

***Summary:***

CCSPA has been, and remains committed to, working with this Government on supporting an efficient and effective regulatory climate for businesses; so they can be competitive at home and abroad. We believe the issues, as outlined, supports our collective goal of meaningful regulatory change as per the Governments Regulatory Reform Agenda.

For companies who wish to be competitive in the North American marketplace, this unusual paper burden, unique to Canada, is a disincentive to innovation. We respectfully ask the Finance Committee to remove this burden and deliver against the Regulatory Reform Agenda.

**Delivering against the Government’s Regulatory Reform Agenda – Comments and Recommendations to the *Hazardous Materials Information Review Act* via the *Budget Implementation Act***  
**CCSPA Submission to the Standing Committee on Finance & Standing Senate Committee on National Finance – May 21, 2019**

***What is the request?***

CCSPA is requesting the Government not move forward on two proposed amendments in C-97, Division 9, subdivision H within the *Budget Implementation Act*. They are as follows:

- *Statutory Instruments Act*  
48.1 The *Statutory Instruments Act* does not apply to an order made under section 14 or 18.
  
- 16(1) The Minister may review a safety data sheet or label that accompanies a claim for exemption filed in accordance with section 11, or any portion of the safety data sheet or label, in order to determine whether the safety data sheet or label, or the portion of it, complies with provisions of the *Hazardous Products Act*, provisions of the *Canada Labour Code* or provisions of the Accord Act.

***Why are these provisions included in the legislation?***

It is unclear as to why amendments to this unique-to-Canada legislation were included in C-97. There is no policy intent that has been shared with industry as to why these amendments are required.

CCSPA is concerned with the removal of the formal *Canada Gazette* process being the mechanism to inform Canadians about the filing process. We are also concerned that the Government has provided officials the opportunity to review in full or part the Safety Data Sheet. Given that industry pays for a predictable review process, this new legislative oversight does not provide that to business.

***The reform agenda and the misapplication of adding HMIRA to Part 9 of C-97:***

CCSPA supports the Regulatory Reform Agenda of this Government. The commitments are across government:

**Barton Report:**

As per the 3<sup>rd</sup> Barton Report, “investing in a resilient Canadian economy”, the first recommendation reads:

***An agile regulatory system that acts as a catalyst for investment and innovation.***

*The regulatory approach of the Government of Canada (hereafter “the government”) needs to evolve to better fit an economy where innovation and change are the norm. Regulation has to be agile and adaptive enough to address the ways that innovative companies will continuously rewrite the rules of competition, ensuring sufficient oversight to protect the public interest without posing obstacles to innovation. Ideally, Canada’s regulatory environment should act as a catalyst for new products and business models, especially in promising industries such as life sciences, financial technology (fintech), and agri-food. Regulation also must be predictable, efficient, and consistent, so it is not a barrier to business investment, innovation, and ultimately, economic growth.*

**Treasury Board Agenda:**

Since Budget 2018, Treasury Board has been working to develop issues needing legislative and/or regulatory resolution to ensure they can deliver against this goal. One of the key areas to review to find regulatory burden was health.

Quotes from Treasury Board officials during the FINA testimony on May 6, 2019:

*“The first bill will be presenting changes to 12 acts across a variety of sectors. In a moment my colleagues will start to outline some of those sectors. **These changes will help to cut costs to both regulated parties and to regulators in a bid to make regulation more efficient. Many of the changes will respond to longstanding irritants that have been raised by business to regulators and many of the changes will also support a more innovative, flexible and agile regulatory framework.** This is one of multiple initiatives the Treasury Board Secretariat is pursuing on behalf of the government to support a regulatory competitiveness and innovation agenda”.*

*I should say that a fundamental pillar of the Government of Canada's regulatory modernization agenda **is greater transparency and greater engagement with stakeholders”.***

**Were stakeholders consulted on these plans?**

In the last 7 months, officials within Health Canada reached out to stakeholders to review their HMIRA proposals with little to no detail – just themes. CCSPA repeatedly asked for a summary of the current legislative framework and day-to-day practices and a comparison to the new legislative proposals and plans for changes to this review process. This has yet to be provided.

We also underscored, during the limited consultations, that these proposals did not provide any benefit to industry. CCSPA supports all cost savings for both industry and Government. However, these changes do not fully support the goal of the Fall Economic Statement (FES).

An ongoing challenge has been the concern of CCSPA and others related to the release of confidential business information, as outlined in Section 28. Officials are changing the very construct of the Act that protects CBI. There is no policy intent as to why this needs to be changed.

### **Fall Economic Statement:**

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### **Manufacturing Sector Table:**

Minister Bain's Economic Strategy Tables, specifically the Advanced Manufacturing Table, addressed regulatory reform in their report of September 2018.

*Canada not only has to match other jurisdictions with respect to regulatory and policy competitiveness, but it must surpass them and become a global leader.*

### ***What is the Hazardous Materials Information Review Act (HMIRA)?***

When a supplier or employer wants to be exempt from having to disclose confidential business information (CBI), such as the chemical identity of one or more trade-secret hazardous ingredients, they must file a claim for exemption with Health Canada. This process is unique to Canada. Less than 300 exemptions per year are filed with Health Canada.

### ***Who uses this process?***

Importers and suppliers of hazardous workplace materials for which there is a desire to protect confidential business information such as chemical identity, precise concentrations or the sources of toxicology information.

### ***What is a Safety Data Sheet (SDS)? How does HMIRA work with SDSs?***

Safety Data Sheets (SDSs) are summary documents that provide information about the hazards of a product and advice about safety precautions. SDSs are usually written by the manufacturer

or supplier of the product. In some circumstances, an employer may be required to prepare an SDS (e.g., when the product is produced and used exclusively in that workplace).

SDSs provide more detailed hazard information about the product than the label. They are an important resource for workplaces and workers to help them learn more about the product(s) used. The information contained on an SDS is used to identify the hazards of the products workplaces use and to protect users from those hazards, including safe handling and emergency measures.

SDSs tell users what the hazards of the product are, how to use the product safely, what to expect if the recommendations are not followed, how to recognize symptoms of exposure, and what to do if emergencies occur.

This unique review process allows for the review of confidential business information and also ensures the SDS meets the needs of workers. This is the rationale for removing the partial review from Section 16 (1).

### **Recommendations & Summary:**

CCSPA has been, and remains committed to, working with this Government on supporting an efficient and effective regulatory climate for businesses; so they can be competitive at home and abroad. We believe the issues, as outlined, support our collective goal of meaningful regulatory change as per the Government's Regulatory Reform Agenda. CCSPA supports the goals of Treasury Board as outlined in their testimony. However, consultation is key to the success of regulatory reform. Issues cannot be raised in isolation by Departments, without consultation with key stakeholders. New mechanisms within departments and at Treasury Board need to ensure that issues are vetted and include saving money and resources not just for the Government, but for business.

We would ask the Committees to review carefully the removal of publication consultation via *Canada Gazette* and the partial review of the SDS.

We would also like to note that there has not been any consultation on the release provisions for cbi nor the following sections: 12(2), 16(2), 21(b), 21(c), 23(1) and 23(2). We believe there will be the potential for significant market disruption due to these changes. It is unfortunate that Health Canada did not undertake a proper consultation on all the proposed amendments with industry prior to C-97 being tabled. We hope to pursue discussions with Health Canada on a predictable process moving forward.