Health Canada Santé Canada

Canada

WHMIS 2015 UPDATE

Workplace Hazardous Materials Bureau
Consumer Product Safety Directorate
Healthy Environments and Consumer Safety Branch
Health Canada

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Presentation to the Society of Chemical Hazard Communication (SCHC)

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YOUR HEALTH AND SAFETY... OUR PRIORITY.

Presentation Outline

- Transition to WHMIS 2015 Update
- Compliance & Enforcement
  - Inspection Project
  - Review of Labels and Safety Data Sheets
- Regulatory Initiatives
  - Prescribed Concentration Ranges
  - CMRRs and Consumer Products
  - Further GHS alignment
- Confidential Business Claims Statistics

TRANSITION TO WHMIS 2015 UPDATE

Transition to WHMIS 2015

Background

On February 11, 2015, the amended *Hazardous Products Act* (HPA) and the new *Hazardous Products Regulations* (HPR) came into force, implementing the Globally Harmonised System of Classification and Labelling of Chemicals (GHS) in Canada.

- The system is now referred to as “WHMIS 2015”.
- The *Controlled Products Regulations* and *Ingredient Disclosure List* have been repealed.
- It is now possible to meet Canadian and U.S. requirements using **a single label and safety data sheet.**

Transition to WHMIS 2015

Purpose of Transition

- To allow time for stakeholders to adjust to the new system

- To move old labels and safety data sheets out of the supply chain and workplaces in a predictable and consistent manner across Canada

Transition to WHMIS 2015

Timeline Extension

- The transition includes three-stages that are synchronized nationally across federal, provincial and territorial jurisdictions
- Orders in Council have recently been approved to defer two of the milestones for transition.
- The target final date for full implementation of WHMIS 2015 remains unchanged

Transition to WHMIS 2015

Phases	Timing	Manufacturers and Importers	Distributors	Employers
Phase 1	February 11, 2015 to May 31, 2018 (February 11, 2015 to May 31, 2017)*	WHMIS 1988 or WHMIS 2015	WHMIS 1988 or WHMIS 2015	WHMIS 1988 or WHMIS 2015*
Phase 2	June 1, 2018 to August 31, 2018 (June 1, 2017 to May 31, 2018)*	WHMIS 2015	WHMIS 1988 or WHMIS 2015	WHMIS 1988 or WHMIS 2015*
Phase 3	From September 1, 2018 to November 30, 2018 (June 1, 2018 to November 30, 2018)*	WHMIS 2015	WHMIS 2015	WHMIS 1988 or WHMIS 2015*
Completion	December 1, 2018	WHMIS 2015	WHMIS 2015	WHMIS 2015*

*Former dates are in red

*Consult the appropriate jurisdiction for requirements and transition timelines

Transition to WHMIS 2015

Impact on You:

- Target deadline for full transition remains unchanged
- Distributors and Employers will need to be proactive in preparing for transition
- Find more information on transition at: www.whmis.gc.ca

COMPLIANCE AND ENFORCEMENT

Compliance and Enforcement (C&E)
Overview of program

Health Canada, in collaboration with federal, provincial and territorial (FPT) jurisdictions across Canada, is launching a national HPA and HPR compliance and enforcement program.

Definitions:

- **Compliance** – the state of conformity of a regulated supplier or of a regulated hazardous product with legislative and regulatory requirements.
- **Enforcement** – inducing or compelling compliance with a legislative requirement.

Compliance and Enforcement (C&E) Overview of program

Guiding Principles:

- Primacy of occupational health and safety
- Fairness, equity and consistency
- Transparency and accountability
- Collaboration and harmonisation
- Graduated approach to compliance and enforcement

Compliance and Enforcement Roles and Responsibilities

Health Canada will:

- Lead the delivery of C&E activities of the HPA and HPR on a national level;
- Collaborate with FPT jurisdictions across Canada to designate HPA Inspectors;
- Provide regulatory expertise, as required; and,
- Write and review Ministerial Orders

FPT Jurisdictions will:

- Administer an inspection program by overseeing education and compliance promotion, conducting inspections and following up on non-compliances.

HPA Inspectors:

- Are designated under section 21 of the HPA.
- As per sections 22, 22.2, 22.4 and 24 of the HPA, HPA Inspectors are provided with a list of specific powers to conduct C&E activities under the HPA.

Compliance and Enforcement
Roles and Responsibilities

Suppliers must:

- Keep a true copy of the label and SDS of a hazardous product;
- Keep specific purchasing information;
- Keep specific sales information;
- Keep the above mentioned documents for a period of six years after the end of the year to which they relate;
- Provide the above mentioned documents to the Minister or HPA Inspector upon request; and,
- Shall not obstruct or provide false or misleading information to an HPA Inspector.

Compliance and Enforcement Activities

Current Status

- Compliance promotion activities and inspections are being conducted this year.

3 main steps

- Compliance promotion
- Inspections and enforcement
- Analysis of results

Compliance and Enforcement Activities

Compliance Promotion

- Encourage compliance through education.
- A compliance promotion package was developed and is being disseminated to various establishments across Canada that conduct activities regulated under the HPA or the HPR.
- The package will help suppliers and distributors make well-informed decisions towards compliance.
- The compliance promotion package consists of a letter with an appendix. The letter provides basic information on WHMIS 2015, roles and responsibilities of suppliers, employers and workers, transition to WHMIS 2015 and a notification of inspections taking place across Canada.

Compliance and Enforcement Activities

Inspections and Enforcement

- Inspections of supplier and employer locations where hazardous products are located are conducted to verify compliance and/or prevent non-compliance with the HPA and/or the HPR.
- Compliance may be assessed through the review of documents that a supplier is required to keep and maintain (i.e. labels, SDSs, specific sales and purchasing information).
- Announced or unannounced inspections.
- Enforcement actions will be taken if found to be required

Compliance and Enforcement Activities

Analysis of results

- Health Canada will work together with FPT jurisdictions to analyze the inspection results gathered to determine if there are any:
  - Areas of regulation where increased education is required
  - Industry sectors that have higher rates of non-compliance
  - Groupings/types of hazardous products that have higher rates of non-compliance
- This may prompt tailored compliance promotion and/or targeted inspections.

Compliance and Enforcement Response to Non-Compliance

- When a regulated party becomes aware that they are not in compliance with the HPA and/or HPR, it is their responsibility to take timely and appropriate action to comply.
- Voluntary actions to address non-compliances may avoid further enforcement actions by HPA Inspectors and/or Health Canada.
- Generally, the response to non-compliances will take a graduated approach, starting with voluntary compliance measures.
    - However, in cases where there is a high risk to the health and safety of workers, HPA Inspectors and/or Health Canada may proceed directly to mandatory enforcement actions.
- Health Canada may also collaborate with the Canada Border Services Agency (CBSA) to assess compliance at the border.

Compliance and Enforcement
Response to Non-Compliance

Voluntary	Mandatory
• Correction of SDS and/or label	• HPA Inspector orders
• Update record-keeping	• Ministerial Orders
• Consent to destruction of non-compliant thing	• Seizure
• Forfeiture of seized thing to the Crown	
• Voluntary stop/restrict movement	

Compliance and Enforcement
Response to Non-Compliance

Criminal Charges

- The HPA is a criminal statute and contains provisions to lay charges when an offence is committed under the Act or its regulations.

- Health Canada may consider recommending charges be laid depending on the severity and type of non-compliance.

Compliance and Enforcement
Compliance Review Project

- Heath Canada is conducting a project, based on publically available information available on the internet, to:
  - Compile a list of Canadian suppliers as defined in the HPA; and
  - Assess compliance with the HPA and HPR of their publically available SDSs and labels of hazardous products in Canadian workplaces.
- The goal of this project is to:
  - Obtain information on the status of compliance of SDSs and labels of hazardous products in the workplace in Canada; and
  - Identify trends of non-compliance.
- The results of this project will assist Health Canada in the future to determine if additional education or compliance promotion, on various sections of the HPA and/or HPR, would be required.

REGULATORY INITIATIVES

Regulatory initiatives

- Prescribed concentration ranges (HPR)
- Consumer Products and CMRRs
- Further GHS alignment

Regulatory Initiatives
Prescribed Concentration Ranges

History:

- Confidential Business Information (CBI), such as the identity and/or concentrations of ingredients in workplace hazardous products, can be protected in Canada by filing an application with Health Canada under the *Hazardous Material Information Review Act* (HMIRA) and paying the associated fee.
- This has always been the case in Canada, including under the old *Controlled Product Regulations* (CPR).
- However, Health Canada officials learned that under the old CPR some companies used the CPR prescribed concentration ranges to protect their CBI. These ranges were intended for use when the concentration of an ingredient varied from batch to batch during manufacturing.
- The CPR prescribed concentration ranges were not retained in the HPR, and as a result, the HPR requires the true concentrations or concentration ranges of ingredients to be disclosed.

Regulatory Initiatives
Prescribed Concentration Ranges

Current Situation:

- Under the HPR, companies must now use the CBI protection mechanism provided by the HMIRA to protect CBI ingredient concentrations.
- Regulated parties have proposed that they should have a means to protect the concentrations or concentration ranges of ingredients (as opposed to the identity of the ingredient) without having the burden and cost of the HMIRA application process.
- The proposal has been discussed by the WHMIS Current Issues Committee and Health Canada now intends to open the discussion to the general Canadian public by way of publication in the *Canada Gazette*, Part I

Regulatory Initiatives
Prescribed Concentration Ranges

The proposal:

- The following concentration ranges have been proposed and discussed by the WHMIS CIC:

a. from 0.1 to 1 %;
b. from 0.5 to 1.5 %;
c. from 1 to 5 %;
d. from 3 to 7 %;
e. from 5 to 10 %;
f. from 7 to 13 %;
g. from 10 to 30 %;
h. from 15 to 40 %;
i. from 30 to 60 %;
j. from 45 to 70 %;
k. from 60 to 80 %;
l. from 65 to 85 %; and
m. from 80 to 100 %.

- any supplier who uses a prescribed concentration range would have to provide a statement to the effect that the actual concentration or concentration range is withheld as a trade secret, immediately following the prescribed range.

Regulatory Initiatives
CMRRs/Consumer Products

Overview

- During discussions regarding prescribed concentrations, labour stakeholders raised additional issues they feel need to be addressed to protect worker health and safety. These include:
    - the issue of carcinogens, mutagens, reproductive toxicants and respiratory sensitizers (CMRRs) being claimed as CBI; and
    - the continued exclusion of consumer products from the HPA.
- Health Canada is currently investigating the policy and regulatory options it has available to address the highlighted concerns related to consumer products and CMRRs. To address the issues, the following mechanisms would be required:
    - CMRRs: a legislative amendment to the HMIRA requiring a full Cabinet submission
    - Consumer Products: a regulatory amendment to Schedule 1 of the HPA

Regulatory Initiatives
CMRRs

CMRRs

- CMRRs are a class of chemicals that are currently eligible to be claimed as Confidential Business Information (CBI) under the HMIRA
    - As such, their chemical names, CAS registry numbers, unique identifiers and/or concentrations can be protected under an appropriate CBI claim.
- The request is to prevent the protection of names and concentrations of CMRRs on labelling and SDSs as CBI, in an effort to make available the appropriate information to workers.

Regulatory Initiatives
Consumer Products

Consumer Products

- A consumer product is defined under the *Canadian Consumer Product Safety Act* (CCPSA), as “a product, including its components, parts or accessories, that may reasonably be expected to be obtained by an individual to be used for non-commercial purposes, including for domestic, recreational and sports purposes, and includes its packaging”

- Under WHMIS 2015, consumer products are exempt from the requirements for labels and SDSs as per the HPR

- There is concern about worker exposure to consumer products used in a manner which is different than intended for the consumer but for which appropriate hazard information is not available in the way it would be for a workplace product

- Currently, the FPT OHS agencies require employers to provide their workers with education and training on how to safely use, handle and store products, including consumer products, in the workplace.

Regulatory Initiatives
Further GHS Alignment

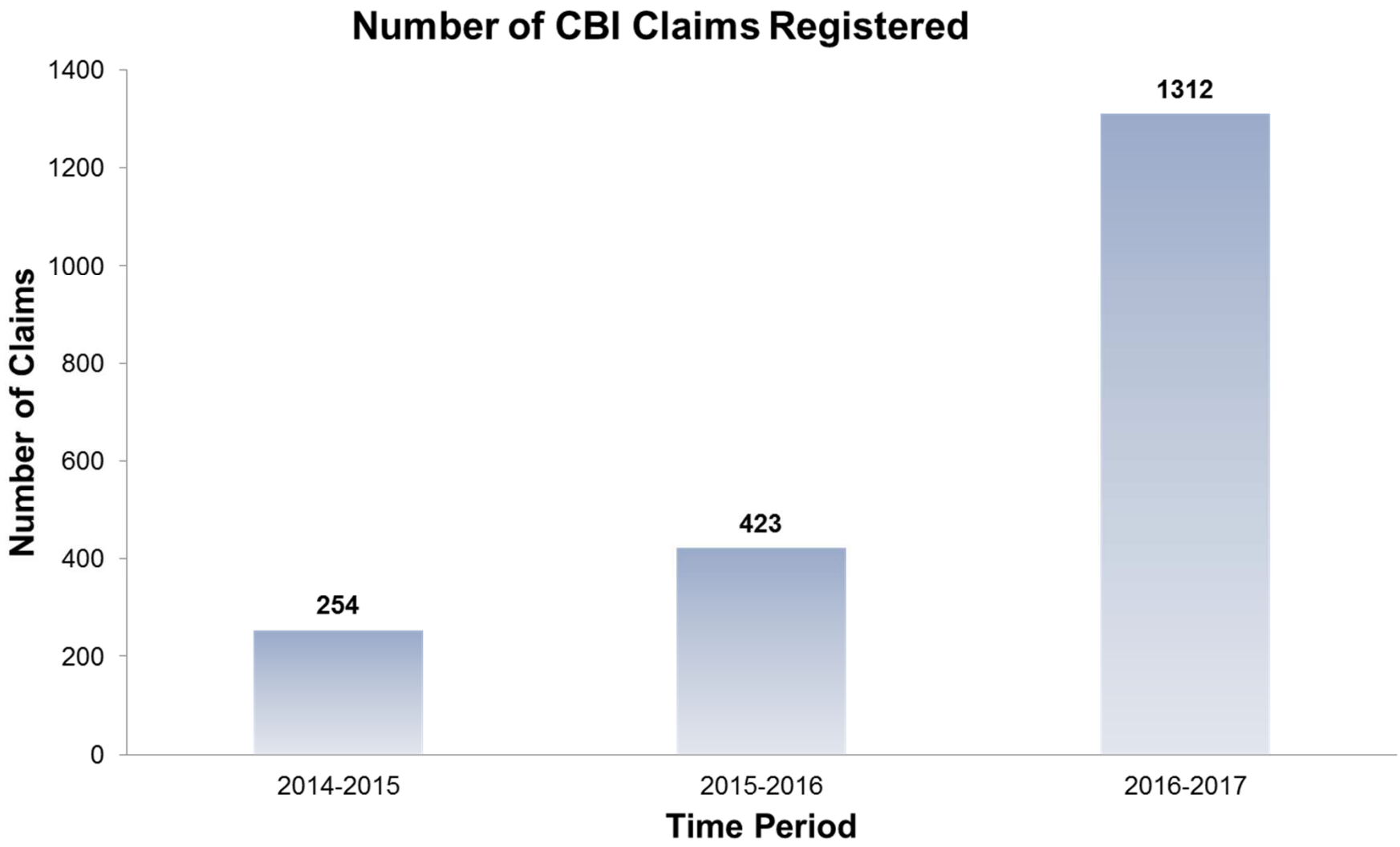
Objectives:

- Maintain alignment with the GHS Purple Book (Rev. 7 was published in 2017)
- Address issues identified by industry during transition
- Improve alignment between Canada and the U.S. where practicable, without reducing the level of protection for workers

Progress:

- Joint Canada-US webinar this summer
- Discussed by WHMIS CIC; requested it be returned to the CIC for a second discussion

CONFIDENTIAL BUSINESS CLAIMS STATISTICS


Number of CBI Claims Registered
1400
1200
1000
800
600
400
200
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Number of Claims
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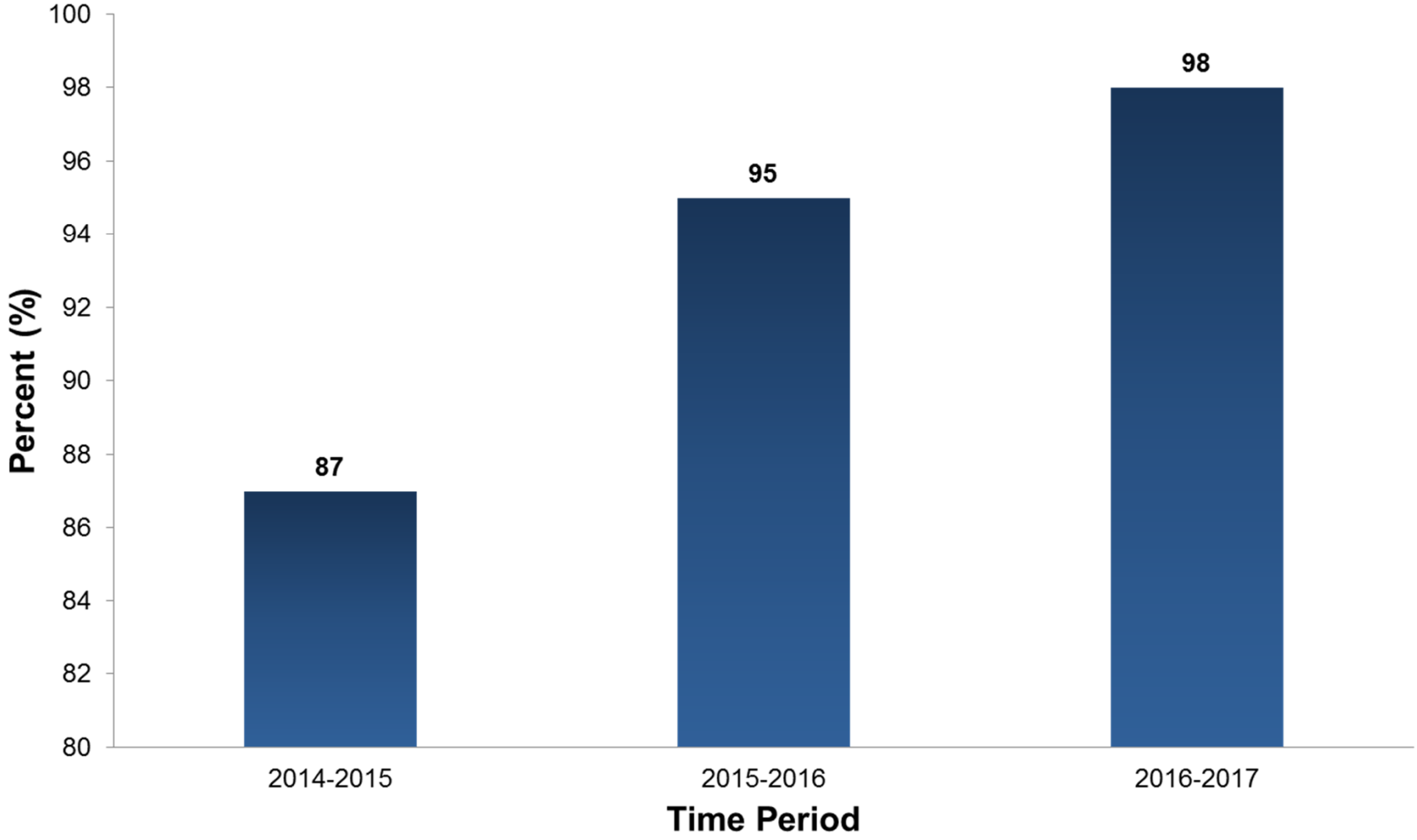
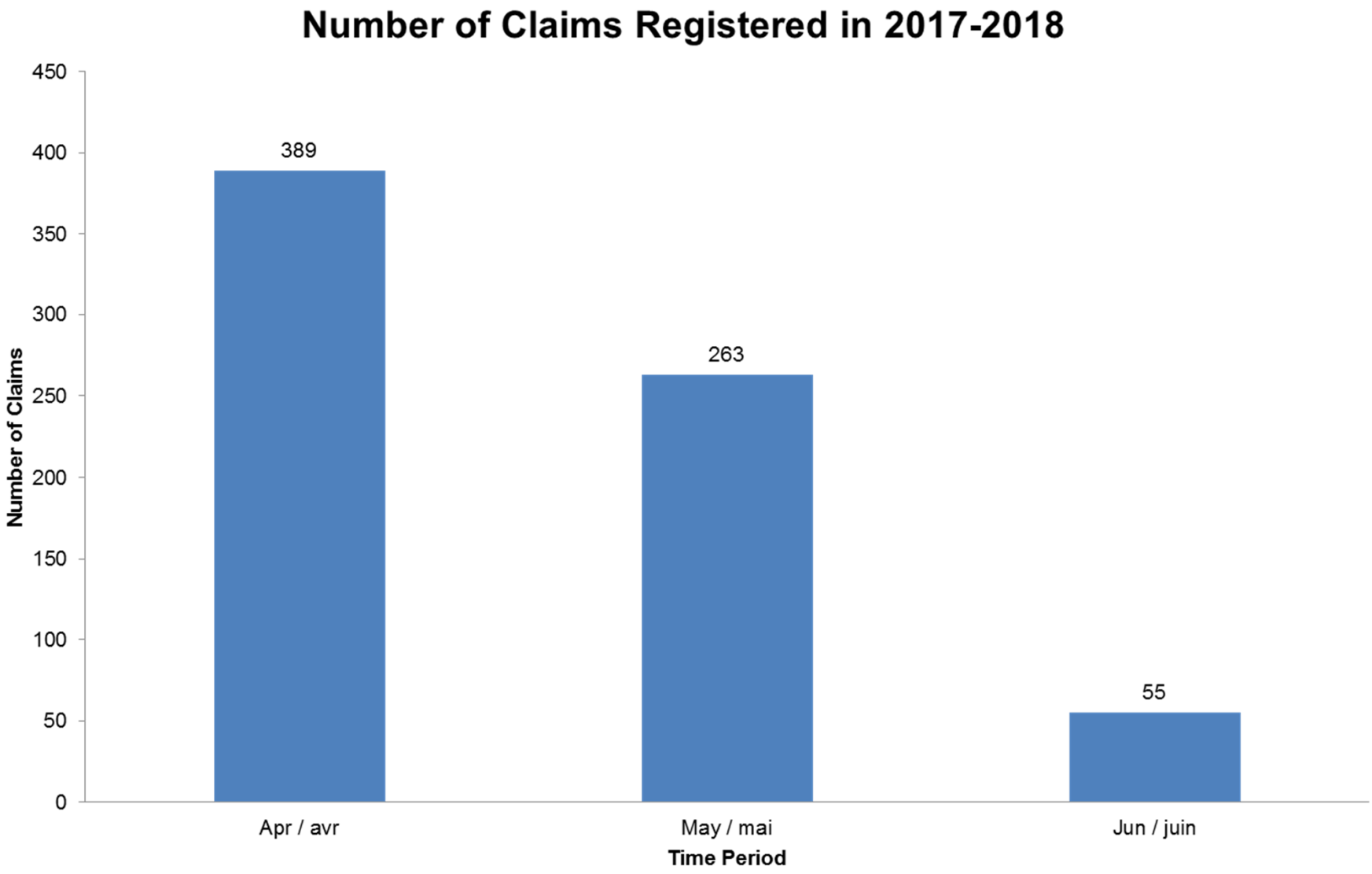
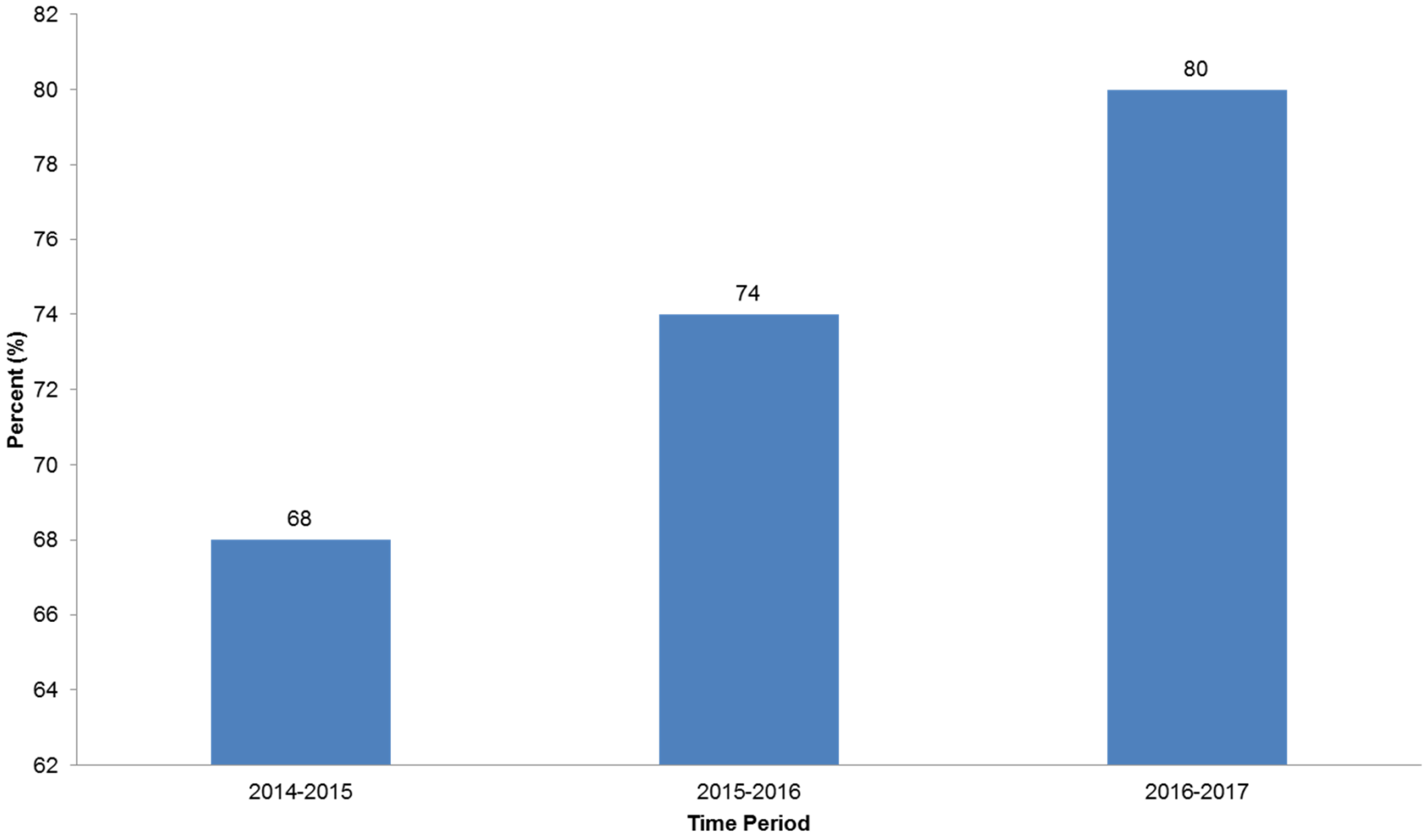
423
1312
2014-2015
2015-2016
2016-2017
Time Period

Percent of Claims Registered Within Service Standard




Number of Claims Registered in 2017-2018
450
400
350
300
250
200
150
100
50
0
Number of Claims
389
263
55
Apr / avr
May / mai
Jun / juin
Time Period

Percent of Claims Requiring Follow Up Prior to Registration



Common Issues and/or Missing Information in a HMIRA Claim for exemption application

- CBI disclosed on the SDS*
- Missing payment*
- 100% composition incomplete *
    - missing CAS RN and/or full chemical name
    - ingredients disclosed on SDS but not on composition

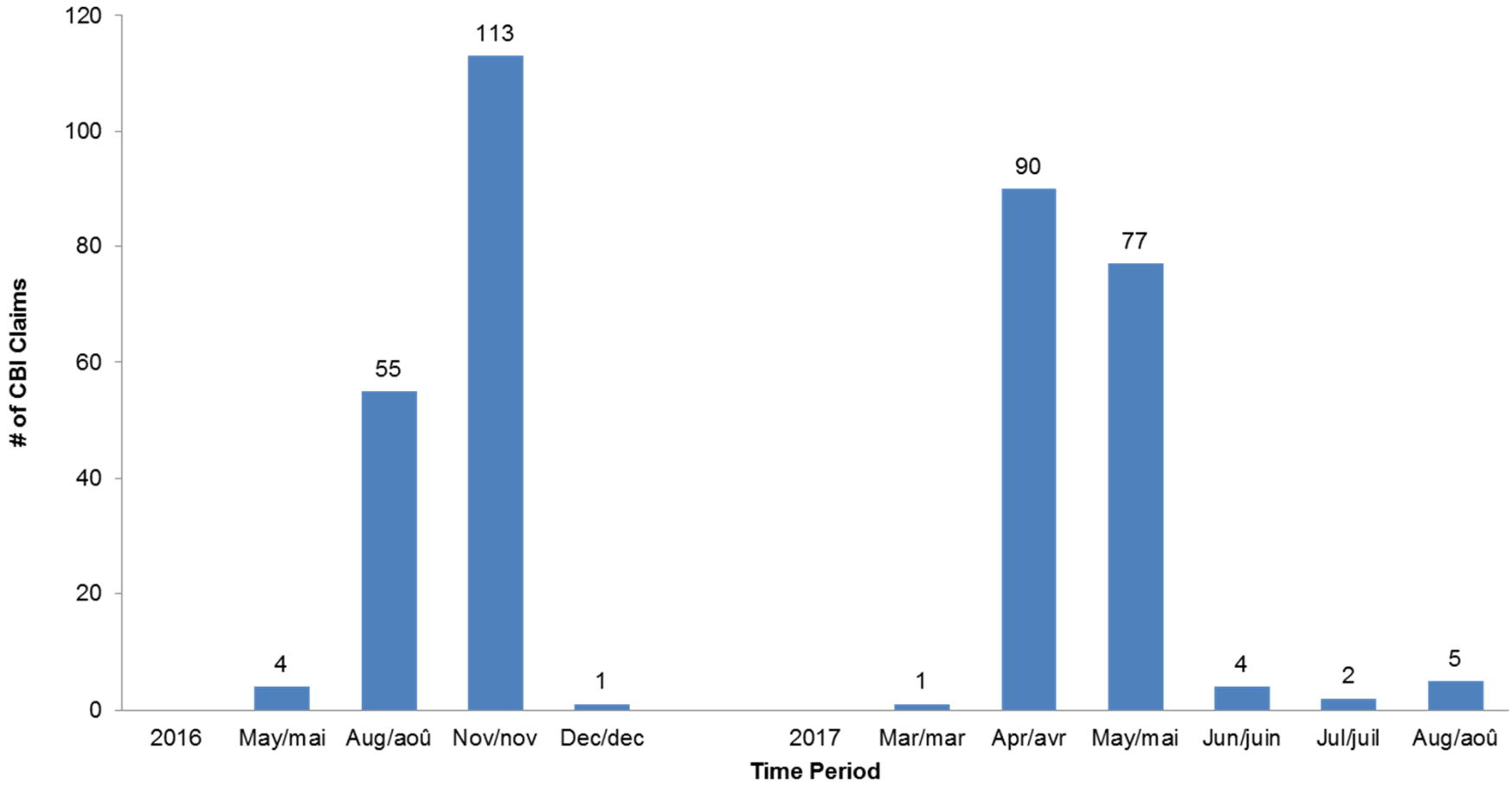
*Items marked are required prior to receiving a HMIRA RN and are some of the required components of a complete application package

Common Issues and/or Missing Information in a HMIRA Claim for exemption application

- Claim codes in Part III ≠ CBI indicated in Part VII ≠ CBI as disclosed on SDS*
- Generic Chemical Name on application ≠ Generic Chemical Name on SDS*
- Missing French translation of the Generic Chemical Name*
- Clarification on components of a complex mixture

*Items marked are required prior to receiving a HMIRA RN and are some of the required components of a complete application package

Unregistered CBI Claims as of August 21,2017



New Policy on Management of Unregistered CBI Claims

- A new policy is currently under development. Claimants will be notified once the policy is approved.
- The policy will establish the procedures to manage CBI claims filed under the HMIRA that cannot be issued an HMIRA RN due to missing information. This renders the application incomplete.
- If the missing information is not submitted within a specified time, incomplete CBI claim applications will be considered withdrawn.
- If a claimant wishes to re-submit a CBI claim for exemption application, the application will be processed as a new application and all associated documents must be submitted with the new application.
    - All relevant documents and data submitted to support the former application will be destroyed and will not be returned to the claimant or used in the review of the new application.

Thank You!

For further information:

- **Health Canada Website:**
  - **www.canada.ca/en/health-canada**
- **General enquiry:**
  - **whmis_simdut@hc-sc.gc.ca**
  - 1-855-407-2665