



INFORMATION BULLETIN

Issue No. 2

This series of Information Bulletins are designed to assist in understanding the *Hazardous Materials Information Review Act* and *Regulations*, and the procedures followed by the Hazardous Materials Information Review Commission. Other information bulletins are available on the following topics:

- > approaches to developing a generic chemical identity for a Confidential Business Information (CBI) controlled product or ingredient (**Issue No. 1**);
- > expiration of a 3-year trade secret exemption and reapplying for a trade secret exemption (**Issue No. 3**);
- > background information, security measures, procedures for filing claims, and common questions and answers (**Issue No. 4**).

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- > **Security Measures**
- > **Procedures for Filing Claims**
- > **Approaches to Developing a Generic Chemical Identity**
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This Bulletin is meant to answer some of the questions frequently asked. As always, Commission personnel are available to assist potential claimants at any stage of filing a claim for exemption or to provide general information on the Commission's work.

COMMON QUESTIONS AND ANSWERS

The following answers to commonly asked questions will assist you in the preparation and filing of a complete and accurate "Form 1 - Claim for Exemption".

Q1: What is the nature of the bibliography required by paragraph 8(5)(b) of the *Hazardous Materials Information Review Regulations*?



A1: The required bibliography refers to the sources of information the claimant has consulted in writing the material safety data sheet (MSDS). Examples would include reports of in-house testing, other upstream MSDSs, reference books and journal articles. If the claimant obtained information from a particular reference, then that reference, as well as the primary source of information, belongs in the bibliography. Once the review process of the MSDS has started, the claimant must send to the Commission copies of, at least, summaries of the inhouse studies and upstream MSDSs used in preparing the MSDS. Although not specifically mentioned in the "Guide to Completing a Claim for Exemption", the bibliography must also accompany the claim for exemption at the time of its submission. It may be provided as a separate list.

Q2: We have disclosed the trade secret ingredient in the formulation of our product. Can our company withdraw its claim and receive a refund of our fees?

A2: Yes. Your claim for exemption may be withdrawn at any time. The Commission must, however, be notified in writing of your intention indicating, if possible, the reasons for the withdrawal.

The appropriate fee refund will be determined in accordance with the Commission's refund policy.

A notice of the withdrawal of the claim will then be published in the *Canada Gazette* only if a "Notice of Filing" has already been published.

Q3: I would like to import product "A" into Canada for resale. However, the product contains a hazardous ingredient which is considered a trade secret by my supplier. What steps should I take in order to be able to sell this product in Canada?

A3: Product "A" cannot be sold in Canada unless a "Form 1- Claim for Exemption" has been filed for that product. In this case, your upstream supplier would have to file a claim since only they know the chemical identity of the confidential business information (CBI) ingredient. Once your supplier has filed, you, as the secondary (or downstream) supplier, may use the Registry Number for product "A" on your MSDS, thereby allowing your company to sell the product in Canada.

The upstream supplier however may, as an alternative, disclose the CBI in confidence to your company. You would then be in a position to file a claim directly with the Commission.

Q4: We filed a claim for exemption with the Commission about a year ago; however, we have changed the formulation of the product since then. Do we need to file a new claim?

A4: The Commission must be informed in writing of any change in the formulation of a product for which a claim has been filed.

You do not have to file a new claim if the change is in the concentration of a hazardous ingredient that stays within the same regulated concentration range stated in the original claim.

On the other hand, a new claim must be filed if the change in formulation involves new hazardous ingredients, or a concentration change falling outside the concentration range stated in the original claim. This change would result in the creation of a new controlled product within the meaning of the *Hazardous Products Act* even though the product identifier may not have changed. The new claim may be grouped with other remaining claims, if appropriate, and filed as a subsequent claim. Your original claim may be withdrawn if the product with the previous formulation is no longer being sold.

Should the change involve non-hazardous ingredients, you only need to provide the Commission with a copy of the MSDS if the change of formulation results in its revision. There is no need to file a new claim in this case.

Q5: We have bought Company ABC along with its name and all its assets. A claim for exemption was filed by the previous owner with respect to controlled product "D". Does the change in ownership of the controlled product affect the status of this claim at the Commission?

A5: A change in the ownership of the controlled product means a change in the owner or claimant. In this case, as the new owner, you are obliged to comply with the *Hazardous Products Act*, and you must therefore seek an exemption from the disclosure obligations under the *Hazardous Materials Information Review Act* in order to ensure the protection of the CBI, if you so wish. The information in support of the claim will probably change as a result of this transaction. The Commission requires written notification as to the change in ownership from either yourself as the new claimant or the previous owner. Upon receipt of such notification, the existing claim (which is no longer valid) will be canceled. An appropriate fee refund will be determined in accordance with the Commission's refund policy.

However, there is no need to file a new claim when:

- > a corporation simply changes its name and there is no change in the legal title to the controlled product; or
- > there is a sale of corporate shares, or property in the shares is transferred but the corporate property remains unaffected.

Written notification of the change in the name of the corporation is however required.

Q6: Can I use the same generic chemical identity (GCI) for more than one confidential hazardous ingredient listed in Part VII of the "Form 1- Claim for Exemption"?

A6: Yes. If the chemical identity is claimed to be CBI, you must provide the real chemical identity on Form 1, Part VII of the claim under Confidential Business Information. Should you have two or more CBI ingredients with the same GCI, you have a couple of options from which to choose. You can either number the GCI such as alkylamine 1, alkylamine 2, etc. if one or more of the ingredients with the same GCI are referred to on the MSDS in the discussion of hazards or toxicity. Or, if there is no specific reference on the MSDS to any particular ingredient which shares the same GCI, then you may pluralize the GCI; for example, alkylamines (3), indicating that there are three alkylamines in the product.

Q7: I filed a claim for exemption over 3 years ago. Has the exemption period expired? If so, do I need to file a new claim?

A7: No. Once you have filed a claim and obtained a Registry Number, you are entitled to withhold the claimed information until such time as the proceedings on the claim are completed.

Where the claim is determined to be valid, you have an exemption for 3 years beginning on the date the decision was rendered or, if an appeal is filed, the date of resolution of the appeal in the claimant's favor. After this 3-year period, you must file a new claim for exemption.

**For further information about these issues or other topics,
please call or write to the:**

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