Hazardous Materials Information Review Commission
Conseil de contrôle des renseignements relatifs aux matières dangereuses

INFORMATION BULLETIN

Issue No. 3

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);**
- responses to frequently-asked questions, including claim withdrawals, change in product ownership and its impact on claims for exemption, and the nature of the bibliography required by Paragraph 8(5)(b) of the Regulations **(Issue No. 2).**
- background information, security measures, procedures for filing claims, and common questions and answers **(Issue No. 4)**

IN THIS ISSUE

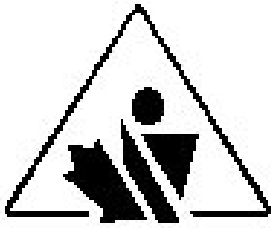
- **Expiration of The 3 Year Trade Secret Exemption**
- **Reapplications For a Trade Secret Which Are Now Outdated**

This issue addresses questions respecting the legislative requirements for maintaining the protection of CBI upon the expiration of the 3-year exemption period for a valid claim for exemption. It also provides information which will assist claimants with their reapplications to the Commission.

COMMON QUESTIONS AND ANSWERS

Q1: My claim for exemption was found valid. Is this a permanent exemption?

A1: No. Where the claim was determined to be valid, you have an exemption for 3 years beginning on the date the decision was rendered or, if an appeal was filed, the date of resolution of the appeal. After this 3-year period, you must file again.



Q2: How will I know that the exemption period is about to expire? What must I do to maintain the protection of my CBI?

A2: You have the primary responsibility to manage your exemptions to disclosure requirements granted under the *Hazardous Materials Information Review Act* or occupational health and safety acts. Yet, it is the administrative policy of the Commission to advise claimants in writing, in advance, when the exemption period respecting their active claims is due to lapse so that claimants may take the necessary action to reapply. To maintain the protection of your CBI, you are required to file a new claim for exemption with the Commission.

Q3: Is it necessary that I receive such a notice before acting on a reapplication?

A3: No. The notice is only a reminder. It is incumbent upon the claimant to ensure compliance with WHMIS requirements.

Q4: What happens should I decide not to reapply?

A4: Upon expiry of the exemption period, the Registry Number associated with your product claim is no longer valid. Should you decide not to file, you have two options:

(a) disclose the CBI, replacing the generic chemical identity with the true chemical identity, the CAS Registry Number, and concentration, if previously claimed, and remove the HMIRC Registry Number and date of decision from the material safety data sheet (MSDS); or

(b) withdraw the product from the Canadian market and/or your own workplace.

Q5: When should I reapply? Can I file after the expiration of my exemption period?

A5: To maintain the protection of your CBI, it is in your best interest to file your claim for exemption prior to the expiry of the current claim. Once the exemption period has lapsed, and if you have not filed with the Commission but are still selling the product without having disclosed your CBI, then you are in non-compliance with WHMIS requirements.

Q6: What is involved in making a reapplication?

A6: You must complete the *Form 1 - Claim for Exemption*, including Part VII. The Commission's *Guide to Completing a Claim for Exemption Form* and Part IV Worksheet will help you in this task. The latest product MSDS must accompany your claim, along with the required fee. To help the Commission readily identify your claim reapplication, it would be appreciated if you could also complete the *Claim Reapplication Cover Sheet* which was sent to you along with the advisory notice informing you of the expiry of your exemption.

Q7: Will I be able to use the same Registry Number?

A7: No. The Registry Number assigned to your claim was provided specifically for that particular product claim filing. Though the reapplication may be for the same

product, with an identical product formulation, it requires the filing of a new claim. Consequently, there will be a new Registry Number issued for the new claim filing.

Q8: What is the required fee for a reapplication?

A8: There is no distinction made with respect to fees between a filing of a new product claim, and a filing for purposes of a product reapplication. The required fees are those currently set out in the Regulations for purposes of filing a claim for exemption. Claims may be grouped for fee purposes. Note that fees were amended in 1991.

Q9: If the information in support of my claim has not changed, must I provide it again?

A9: The Commission must receive Form 1 [HMIRC-08(1-91)] completed, signed and dated. For your convenience, any unchanged information may simply be appended to your application, by way of a photocopy of what was submitted previously. Ensure that such appendices have been properly referenced in the appropriate section of the reapplication Form 1. With respect to toxicological studies and upstream supplier MSDSs, etc. on which your MSDS has been based, those previously provided to the Commission, which are still applicable, need not be submitted again, as long as there is a clear and precise reference to the relevant document to ensure that there is no confusion when the time comes for the MSDS to be reviewed with respect to what you wish to be considered. <u>The Commission now also requires that you provide the total formulation of your product at the time of reapplication.</u>

Q10: May I group a claim which is a reapplication, with an original claim for a new product, and file them both at the same time at the reduced fee?

A10: Yes, as long as they meet the grouping requirements.

Q11: May I reapply utilizing the subsequent claim provisions set out in Subsection 4.1 of the Regulations?

A11: No. A"subsequent claim" fee is applicable only to those situations where the controlled product **has been newly developed or acquired** by the claimant. However, a re-filing may be grouped for fee purposes with any other claim being filed at the same time, if the criteria for one of the grouping scenarios found in section 4 of the HMIRR are met.

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