



Hazardous Materials Information
Review Commission

Conseil de contrôle des renseignements
relatifs aux matières dangereuses

Report on Plans and Priorities 2004–2005

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Minister of Health

Canada

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I President's Message and Management Representations Statement

President's Message

This *Report on Plans and Priorities* outlines the strategic direction of the Hazardous Materials Information Review Commission during 2004–2005, focusing on the most significant priorities in order to deliver the benefits that this organization provides to Canadians.

As a vital independent agency committed to workplace safety, the Commission plays a pivotal role in providing a mechanism whereby trade secret formulations can be maintained by industry while ensuring that full hazard disclosure can be afforded to workers in the workplace. To achieve the Commission's mandate, our adjudicative efforts must result in a fair balance between the right of suppliers and employers to protect *bona fide* trade secret information and the right of workers to be informed about the hazards of the chemicals to which they are exposed. Success in this dual role framework requires that we balance the tension inherent in being a strategic partner with industry on the one hand, and an advocate for worker health and safety on the other.

The Commission is unique in deriving its mandate and program accountability from federal, provincial and territorial legislation. It was created in 1987 as a model of consultation, consensus and co-operation among industry, labour and the federal, provincial and territorial governments—an approach that has passed the test of time. This approach was particularly effective when the Commission, through its renewal efforts, was successful in strengthening relationships with its federal, provincial, territorial and private partners and developing others.

To improve accountability and transparency, the Commission consolidated its planned long-term results into a single strategic outcome, with four clear priorities for 2004–2005—safeguarding trade secrets and workers, enhancing workload management, monitoring Canadian and international policy development, and improving outreach activities. It is my view that this straightforward structure will make it easier for parliamentarians and Canadians to track the Commission's performance from year to year, and to better understand our work and accomplishments.

I am proud of our highly qualified staff, and I am confident that their dedication, professionalism and enterprising spirit will continue to yield benefits for Canadian companies and workers.

Weldon Newton
President and Chief Executive Officer

Management Representation Statement

I submit, for tabling in Parliament, the 2004–2005 *Report on Plans and Priorities* for the Hazardous Materials Information Review Commission.

We have prepared this document based on the reporting principles and disclosure requirements contained in the 2004–2005 *Departmental Report on Plans and Priorities: Preparation Guide*:

- ▶ it accurately portrays the organization's plans and priorities
- ▶ the planned spending information is consistent with the directions provided in the Minister of Finance's Budget and by the Treasury Board of Canada Secretariat
- ▶ it is comprehensive and accurate, and
- ▶ it is based on sound underlying agency information and management systems.

The reporting structure on which this document is based has been approved by Treasury Board Ministers and is the basis for accountability for the results achieved with the resources and authorities provided.

Weldon Newton
President and CEO

July 22, 2004
Date

II Raison d'être

The Hazardous Materials Information Review Commission provides Canadians with a fair, transparent and cost-efficient administrative law process, including procedures for dispute prevention and resolution, that balances:

- ▶ the right of chemical suppliers and employers to protect confidential business information related to hazardous controlled products, and
- ▶ the right of workers to health and safety information that will allow them to use, handle and store those products in the workplace without undue risk to their well-being.

Agency context

In Canada, the handling and storage of hazardous chemicals in the workplace is controlled by the Workplace Hazardous Materials Information System (WHMIS), a wide array of legislation, regulations and procedures at various levels of jurisdiction that binds suppliers and employers alike. Through a consensus of labour, industry and government, the system was established in 1987 to reduce illnesses and injuries resulting from the presence of hazardous materials in the workplace.

WHMIS requires suppliers—including manufacturers, importers and distributors—to provide information on the hazards of chemicals produced or used in Canadian workplaces. As a condition of sale and importation, it prescribes cautionary labelling for containers of controlled products (as defined in the *Controlled Products Regulations*), and requires suppliers of those products to provide material safety data sheets.

Information that must be shown on a product's material safety data sheet includes all hazardous ingredients in the product, its toxicological properties, any safety precautions workers need to take when using the product, and first aid treatment in case of exposure. Employers must make this information available to employees and put in place worker training and education programs.

The Hazardous Materials Information Review Commission was created as an independent administrative law agency in 1987 by proclamation of the *Hazardous Materials Information Review Act*. The Commission is accountable to Parliament through the Minister of Health. It is a small but important public sector institution charged with providing the trade secret mechanism within the WHMIS.

The Commission is charged with carrying out a multi-faceted multi-jurisdictional mandate:

- ▶ to formally register claims for trade secret exemptions, and issue registry numbers
- ▶ to issue decisions on the validity of claims for exemption, using prescribed regulatory criteria

- ▶ to make decisions on the compliance of material safety data sheets and labels within the WHMIS requirements as set out in the *Hazardous Products Act*, the *Controlled Products Regulations*, and various provincial and territorial occupational health and safety acts, and
- ▶ to convene independent, tripartite boards to hear appeals from claimants or affected parties on decisions and orders issued by the Commission.

In order for Canadians to realize the benefits of the Commission's work, claims for exemption that have been filed by chemical companies need to be registered and processed in a timely fashion. The right of a chemical supplier to withhold confidential business information about a hazardous chemical product that a worker would ordinarily be entitled to under the WHMIS program must be validated by a screening officer. At the same time, and to ensure that withholding such information is balanced with the right of a worker to know about the hazards of the chemical, the screening officer must decide if the material safety data sheet for the product discloses all of the necessary health and safety information. Where it is determined that the material safety data sheet does not comply with the WHMIS requirements, a formal order is issued and the company must carry out the necessary corrections.

III Planning Overview

As a quasi-judicial administrative agency reporting to Parliament through the Minister of Health, the Hazardous Materials Information Review Commission is funded by an annual appropriation. Registration fees paid by claimants are credited to the Consolidated Revenue Fund.

Trends and issues

In 1992 the United Nations Conference on Environment and Development—the Earth Summit—adopted an international mandate to develop a globally harmonized system for hazard classification and labelling, which Canada has supported. The United Nations (through a committee of experts and the International Labour Organisation), the European Union and the Organisation for Economic Co-operation and Development are all moving toward implementing a globally harmonized system, which was endorsed by the World Summit on Sustainable Development in 2002. Eventual implementation of the system will affect the Commission because of changes that will be necessary in existing hazard classification and communication systems, such as WHMIS.

Risks and challenges

For Canadians to realize the benefits of our work, we must register and process claims to protect trade secrets that have been filed by chemical companies in a timely way. An important factor affecting the timeliness of our work is the variability in the accuracy and completeness of the information on material safety data sheets supplied by companies with their claims—a variability over which we have no control. We examine all material safety data sheets for instances of non-compliance with the requirements of WHMIS. Over the decade from 1992–1993 to 2002–2003, the average annual number of violations that we identified in the material safety data sheets has ranged from 6.3 to 11.9 per claim. During the past three years, the most frequently occurring violations involved toxicological properties and hazardous ingredients. Although it is difficult to extrapolate this finding to the level of the health and safety risks faced by the workers exposed to the products, it is clear that the non-compliance of material safety data sheets is contrary to the objectives of WHMIS.

A second factor is the volume of claims that we receive, which is unpredictable from year to year. This unpredictability can and does have direct effects on our planning, staff workloads and the timeliness of our service. In 1999–2000, the number of claims we received unexpectedly jumped to 394—113% higher than the average of 185 claims we received annually for the previous five years. We experienced further high levels of claims during the next two years, which contributed to a backlog of 951 claims by the end of 2001–2002. Since then, our primary challenge has been to process claims at a rate that exceeds the number of new filings in a given period, so that we can continue to manage our workload.

Compounding the effect of unpredictable claim volumes is a labour-market shortage of potential employees with the appropriate scientific and toxicological qualifications. From 1999 to 2003 the Public Service Commission identified the National Capital and Eastern Ontario Region as a shortage area for biologists with toxicological specializations—precisely the candidate pool from which we need to draw. For a small agency such as the Commission, even a single unfilled position affects our workflow substantially.

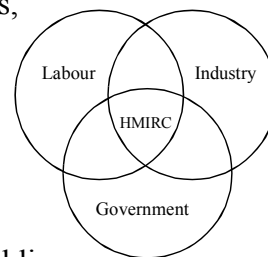
A related factor is the length of time it can take to train a new Commission employee so that he or she is qualified to screen, assess and evaluate claims—more than a year. Our employees' decisions can have important commercial and health-and-safety implications, and hence our in-house familiarization and training efforts must be as comprehensive as possible.

☞ This symbol of a computer mouse indicates that more detailed information is available on our Web site (<http://www.hmirc-ccrmd.gc.ca>) or on another relevant Web site.

- ☞ For more information on the Workplace Hazardous Materials Information System, see <http://www.hc-sc.gc.ca/hecs-sesc/whmis/>. Statistics on material safety data sheet deficiencies and claims volumes appear in our Annual Report at <http://www.hmirc-ccrmd.gc.ca/english/publication/annual.shtml>. Information on the globally harmonized system appears at <http://www.hc-sc.gc.ca/hecs-sesc/whmis/harmonization.htm>.

Strategic relationships

The Commission's tripartite Council of Governors is our most significant channel of information and contacts among our major stakeholders. The Council consists of up to 18 members: two representing workers, one representing suppliers, one representing employers, one representing the federal government, and from four to 13 representing the governments of the 10 provinces and three territories. Governors are in contact with the federal Minister of Health, provincial Ministers of Labour or Occupational Safety and Health, the presidents of major labour organizations and producers, manufacturers and exporters associations, senior public servants and other interested parties.



IV Plans and Priorities by Strategic Outcome

Summary

Strategic outcome	Priorities	Associated resources 2004–2005	Type of priority
To provide chemical companies with protection of valid confidential business information concerning their hazardous products and with a system that resolves disputes in a fair, efficient and cost-effective manner, while ensuring that Canadian workers are knowledgeable about the health and safety hazards of exposure to chemicals found in products associated with claims for non-disclosure	1. to safeguard both trade secrets in Canada's chemical industry and workers	\$2,547,000	ongoing
	2. to enhance workload management	\$749,000	ongoing
	3. to monitor Canadian and international policy development	\$90,000	ongoing
	4. to improve the focus of outreach activities	\$179,000	ongoing

Changes from previous reports on plans and priorities

The three strategic outcomes in our previous reports on plans and priorities were based on the three business lines that we introduced in 2000–2001: material safety data sheet compliance, client services and dispute resolution. While this approach reflects our internal organization, our experience has suggested that we can report more meaningfully to Parliament and Canadians with a single strategic outcome.

Beginning with this *Report on Plans and Priorities*, we have substantially reduced the number of reportable projects and tasks that we previously called priorities, but which were actually lower-level activities. By focusing on our four main priorities, this report gives Canadians a clearer picture of what the Commission seeks to achieve.

☞ For our previous reports to Parliament, see <http://www.hmirc-ccrmd.gc.ca/english/publication/estimates.shtml>.

Modern comptrollership

Following our five-year renewal program (1997–2002), the Commission is continuing to focus on results, responsible spending and accountability as part of modern comptrollership. As a small agency, we must carefully select the areas that will best improve our management practices and hence support our business. During 2004–2005 we will concentrate on strengthening our leadership, risk management and human resources development by:

- ▶ clarifying the roles and responsibilities of our senior management committees and reviewing key functions such as financial services
- ▶ revising our risk profile and preparing a risk management framework and a risk-based internal audit plan, and
- ▶ preparing a human resources plan to support recruitment and retention of staff, and developing learning plans for all employees.

We will complete each plan by March 2005.

Monitoring

We use a variety of methodologies for monitoring and reporting results of our continuing day-to-day work to senior management, Parliament and the public:

- ▶ information and assistance: manually tracking enquiries against service standards
- ▶ registering claims: electronically tracking applications against service standards
- ▶ processing claims: electronically tracking registered claims
- ▶ cost recovery: automated monitoring of financial information from fees received
- ▶ evaluation of client services: mail-out survey of a sample of clients
- ▶ violations in material safety data sheets: monitoring the absolute and average number of violations, and the kinds of violations, and
- ▶ staff efficiency: electronically tracking staff time spent on various elements of processing claims.

Priority 1: Safeguard trade secrets and workers

Priority	Allocation of resources		
	2004–2005	2005–2006	2006–2007
Continue our work in safeguarding both trade secrets in Canada's chemical industry and workers	\$2,547,000	\$2,393,000	\$2,393,000

In addition to our normal work of assessing and evaluating claims for exemption and preventing disputes, in 2004–2005 we will continue to improve our service to our clients and stakeholders through four related activities. Together with our continuing work, these improvements will contribute to Canadians' occupational health and safety services and protection from preventable risks by helping Canadian employees to know about the safe handling of hazardous chemical products they encounter in the workplace. At the same time we will contribute to the competitiveness of companies in Canada by allowing them to protect trade secrets associated with those products.

Providing more direction to claimants

The Commission's Web site provides claimants with extensive information on how to file a claim or how to file an appeal, which includes downloadable forms in different formats. It also provides links to the WHMIS site, to the laws and regulations that form the regulatory framework within which the Commission carries out its mission, and to its federal, provincial and territorial partners. Despite our efforts to respond to inquiries from claimants, the number of errors in submissions has not diminished significantly. We will provide more extensive guidance and direction to claimants, especially individuals and companies new to Canada's regulatory requirements and the WHMIS framework. We will monitor the extent to which this activity results in fewer errors and hence faster processing of claims.

Improved staff training

Much of our training activity is continuous, as developments in toxicology emerge. For new evaluation and screening staff, we will institute a more extensive mentoring system and training exercises to give them an earlier and more complete understanding of the regulatory requirements. We will also revise the screening manual and the guidelines for reviewing material safety data sheets that support efficient and consistent decision making. Well trained staff can communicate better with claimants' scientific experts, saving time and reducing the possibility of potentially damaging misinformation appearing on material safety data sheets. Monitoring staff feedback will indicate whether the training is producing the planned results.

Increased workers' awareness

The Commission also ensures balance between the right of suppliers and employers to protect their *bona fide* trade secret information and the right of workers to be informed about the hazards of the chemicals to which they are exposed in the workplace. Success in this dual-role framework requires that the Commission balance the tension inherent in providing a service of commercial value to industry on the one hand, and acting as an advocate for worker health and safety on the other. We will provide information sessions on the WHMIS trade secret mechanism and related information requirements on MSDS at fora such as organized labour occupational safety and health conferences. This activity will support increased workers' awareness of the role of HMIRC in ensuring compliance of MSDSs that claim trade secrecy and in doing so, contributing to the health and safety of workers.

Streamlined processes

With the unanimous support of the Commission's Council of Governors, we will initiate efforts to seek amendments to the *Hazardous Materials Information Review Act* and its Regulations which will streamline our processes and accelerate decision making. Our proposals will reflect the needs of claimants better while ensuring workplace safety. We will pursue, initially, the legislative process, with a view to establishing indicators to measure the impact on decision making.

Priority 2: Enhance workload management

Priority	Allocation of resources		
	2004–2005	2005–2006	2006–2007
Enhance workload management	\$749,000	\$704,000	\$704,000

Our *Report on Plans and Priorities* for 2002–2003 established the reduction of our large backlog of claims for exemption as our highest priority. With some additional funding received in 2001 and 2003, we expect to reduce the backlog to about 470 claims by 2007–2008, from its high point of 951 in March 2002. This projection is based on our estimates of new claims, refiling of claims and withdrawn claims, and on our ability to render 400 decisions annually by 2005–2006. Our ability to meet these targets will be influenced by the actual number of new and refiled claims received and the number of claims withdrawn.

With careful workload management, we can estimate the amount of work we can accomplish in a given year reasonably accurately; nevertheless it is very difficult to know in advance how many claims are going to be filed by North American chemical companies. We are attempting to find ways of predicting future workload volumes better, so that we can forecast any increases in the backlog more rapidly.

We are continuing our efforts to find ways of increasing our processing capacities above the rate of 400 claims annually. In addition to the continuing potential for internal processing efficiency gains, we are looking at the possibility of contracting out certain tasks that will not compromise the company-related confidentiality provisions of the *Hazardous Materials Information Review Act*.

In 2004–2005, we will introduce a voluntary compliance program to increase our efficiency in processing material safety data sheets. By identifying any obvious technical violations in a claim before we begin the formal review, and allowing the claimant to improve the material safety data sheet voluntarily, we will speed up the screening process and reduce the number of orders that we issue (although we first included our plans for the program in our *Report on Plans and Priorities* for 2000–2001, we have not had the resources to introduce it until now). By receiving information back from us as soon as possible, claimants will also be able to improve the quality of the material safety data sheets earlier and hence benefit the workers who use them. Initially we will monitor claimants' responses to see whether they incorporate suggested changes; we will then review the program after a year.

Priority 3: Monitor Canadian and international policy development

Priority	Allocation of resources		
	2004–2005	2005–2006	2006–2007
Monitor and contribute to Canada's support for a globally harmonized system for hazard classification and labelling	\$90,000	\$90,000	\$90,000

After several years of negotiations among many countries, including Canada, a globally harmonized standard for hazard communications was issued in 2002, with a tentative voluntary implementation date of 2008. Should other countries (especially those with underdeveloped economies) wish to adopt Canada's approach to exempting trade secrets, we will make the Commission's experience and expertise available to them. The Commission is a member of the WHMIS Current Issues Committee, which will coordinate the workplace hazard communication aspects of implementing the standard. During 2004–2005 we will continue to keep a close watch on Canadian policy development and international activities.

Priority 4: Improve the focus of outreach activities

Priority	Allocation of resources		
	2004–2005	2005–2006	2006–2007
Improve the focus of our outreach activities to the chemical industry, labour, and the provinces and territories	\$179,000	\$179,000	\$179,000

To increase awareness of the Commission both within Canada and internationally requires careful targeting of our existing stakeholders and potential clients, given our very limited communications resources. Our Web site has become a primary source of information for claimants, and we will make several improvements to the site during 2004–2005. Similarly we will continue to staff a HMIRC booth at trade shows and conferences as a cost effective way of reaching chemical manufacturers, distributors, employers, workers and other service providers. We will also embark on a modest advertising program in labour and industry publications, and submit brief articles on the benefits of full compliance with WHMIS. Our regular survey of a sample of claimants includes an opportunity to comment on our communications generally. We currently use automated tracking of our Web site to identify visits (not just hits) and downloads, and we manually monitor requests for information at trade shows and conferences. We will undertake media monitoring and analysis to determine the effectiveness of our planned advertising and journalism.

V Organization

Relationship between strategic outcome and business lines

Business lines	2004–2005 planned spending	Full-time equivalents	Strategic outcome
MSDS Compliance	\$2,599,000	21	To provide chemical companies with protection of valid confidential business information concerning their hazardous products and with a system that resolves disputes in a fair, efficient and cost effective manner, while ensuring that Canadian workers are knowledgeable about the health and safety hazards of exposure to chemicals found in products associated with claims for non-disclosure.
Client Services	\$602,000	12	
Dispute Resolution	\$381,000	2	

With this *Report on Plans and Priorities* we are collapsing our previously reported three strategic outcomes into one. The above-noted chart provides a crosswalk to our business lines as the basis for our accountability reporting, to match our single strategic outcome. We found that trying to utilize three strategic outcomes instead of one proved unnecessarily complex for an agency as small as ours, and did not reflect the interdependency of our day-to-day work.

Accountability

The President and CEO is appointed by the Governor in Council, and as CEO, has the authority and responsibility to supervise and direct the organization's work on a day-to-day basis. The President is accountable to Parliament through the Minister of Health.

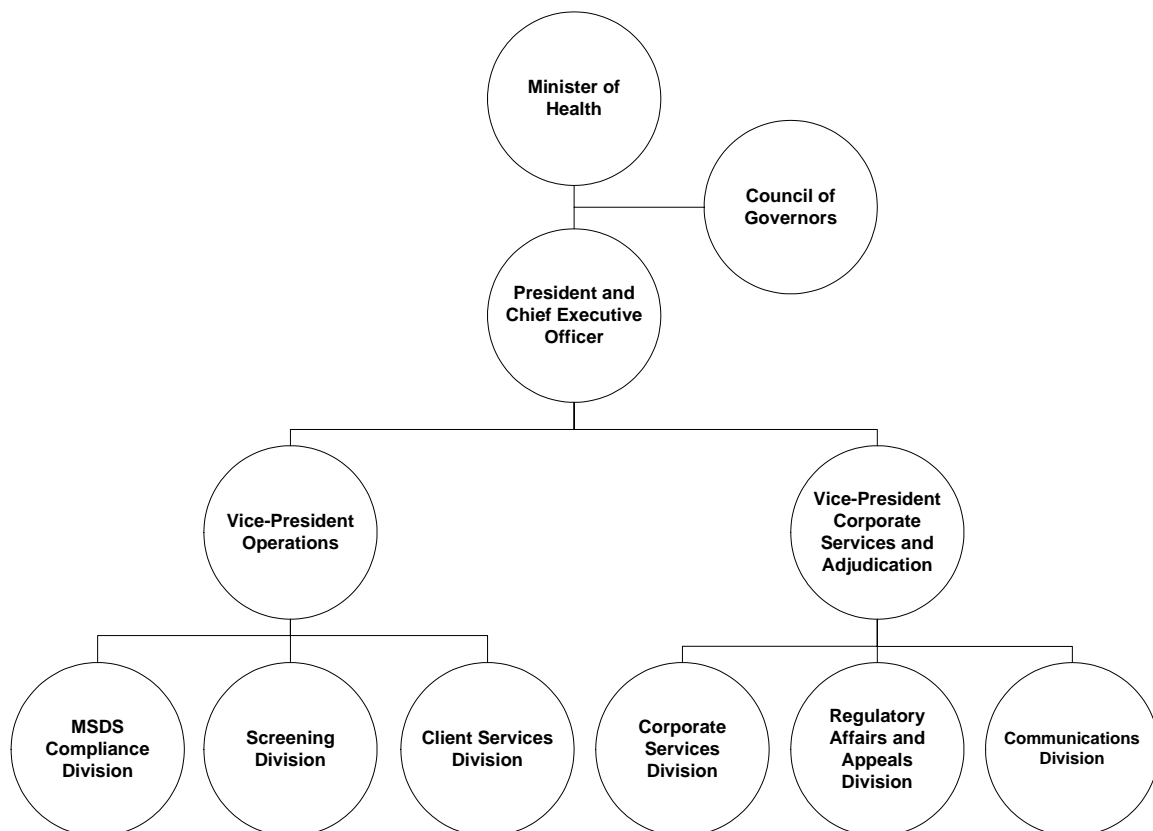
The Council of Governors constitutes the key element of the Commission's governance structure, acts as an advisory body and provides strategic advice and guidance to the Commission. The Council consists of 18 members: two representing workers, one representing suppliers and one representing employers, one representing the federal government, and not fewer than four and not more than 13 governors to represent the governments of the 10 provinces, the Government of the Yukon Territory, the Government of the Northwest Territories and the Government of Nunavut as specified in subsection 28(2) of the *Hazardous Materials Information Review Act*. Each governor is appointed by the Governor in Council to hold office for up to a three-year term. The

Council is headed by a Chairperson chosen by the governors for a term of one year. The Council is responsible for making various recommendations to the Minister of Health, including changes to the regulations respecting the Commission's fee structure, the procedures for reviewing claims for exemption and the appeal procedures.

Most Council members concurrently represent other occupational and safety organizations, and thus are part of the existing multi-jurisdictional occupational health and safety network.

The Vice-President of Operations directs the work of the Material Safety Data Sheet Compliance, Screening and Client Services divisions.

The Vice-President of Corporate Services and Adjudication directs the work of the Corporate Services, Regulatory Affairs and Appeals, and Communications divisions.



Agency planned spending

(\$ thousands)	Forecast spending 2003–2004	Planned spending 2004–2005	Planned spending 2005–2006	Planned spending 2006–2007
Material Safety Data Sheet Compliance	–	2,599	–	–
Client Services	–	602	–	–
Dispute Resolution	–	381	–	–
Budgetary Main Estimates (gross)	2,978	3,582	3,366	3,366
Non-budgetary Main Estimates (gross)	–	–	–	–
<i>Less:</i> Respendable revenue	–	–	–	–
Total Main Estimates	2,978	3,582	3,366	3,366
<i>Adjustments</i>				
Refund fees collected in prior years for claims withdrawn ¹	131	–	–	–
Modern Comptrollership	64	–	–	–
Collective agreement adjustments	57	–	–	–
Budget carry forward from 2002–2003	9	–	–	–
Workload pressure funding ^{2*}	738	–	–	–
<i>Total adjustments</i>	999	–	–	–
Net planned spending	3,977	3,582	3,366	3,366
<i>Less:</i> Non-respendable revenue	570	570	570	570
<i>Plus:</i> Cost of services received	120	120	120	120
Net cost of the program	3,527	3,132	2,916	2,916
Full-time equivalents (FTEs)	35	35	35	35

¹ Additional funding to refund fees collected in prior years for claims that have now been withdrawn

² Additional funding to manage and reduce the backlog of exemption claims from employers and suppliers to protect confidential business information pursuant to the *Hazardous Materials Information Review Act*

- * The Workload Pressure Funding represents a 25% increase in our allotment level.
- *Net planned spending* for 2003–2004 reflects our best forecast to the end of the fiscal year.
- *Full-time equivalents (FTEs)*: staff requirements are measured in terms of full-time equivalents. The FTE is based on the length of time that an employee works during each week of the year, calculated from the number of assigned hours actually worked divided by the scheduled hours of work.

Annex: Financial Information

Sources of non-respendable revenue

(\$ thousands)	Forecast revenue 2003–2004	Planned revenue 2004–2005	Planned revenue 2005–2006	Planned revenue 2006–2007
Hazardous Materials Information Review Commission: claim registration fees	570	570	570	570
Total non-respendable revenue	570	570	570	570

Net cost of the program for 2004–2005

(\$ thousands)	Total
Net planned spending (gross budgetary and non-budgetary Main Estimates plus adjustments)	3,065
<i>Plus:</i> Services received without charge	120
Accommodation provided by Public Works and Government Services Canada	694
Contributions covering employees' share of employees' insurance premiums and expenditures paid by the Treasury Board Secretariat	517
Workers' compensation coverage provided by Human Resources Development Canada	0
Salary and associated expenditures of legal services provided by Justice Canada	0
<i>Less:</i> Non-respendable revenue	570
2004–2005 net cost of the program	3,826

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