



# INFORMATION BULLETIN

ISSUE NO. 2

This series of Information Bulletins is designed to assist in understanding the *Hazardous Materials Information Review Act* (HMIRA), the *Hazardous Materials Information Review Regulations* (HMIRR) and the procedures followed by The Hazardous Materials Information Review Commission (HMIRC).

## IN THIS ISSUE

- Common questions and answers

Additional Information Bulletin Issues include:

- approaches to developing a generic chemical identity (GCI) for a confidential business information (CBI) controlled product or ingredient (**Issue No. 1**);
- expiration of a three-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**).

This Issue is meant to answer some of the most frequently asked questions. HMIRC personnel are also available to assist potential claimants at any stage of filing a claim for exemption or to provide general information on HMIRC's work.

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## COMMON QUESTIONS AND ANSWERS

The following answers to commonly asked questions will assist you in the preparation and submission of a *Claim for Exemption Form*.

**Q1:** 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?

**A1:** Product “A” cannot be sold in Canada unless a *Claim for Exemption Form* has been completed and submitted for that product. In this case, your upstream supplier would have to file a claim because only they know the chemical identity of the confidential business information (CBI) ingredient. After your supplier has filed, you—as the secondary (or downstream) supplier—are permitted to sell the product in Canada. If you prepare your own MSDS in respect of any sales of the product, you must include the registry number and the date of filing given to your supplier, along with the words “other

supplier”, where the identity of the hazardous ingredient would otherwise have to be disclosed. You must also include a copy of the upstream supplier’s MSDS with your own MSDS, on all sales.

The upstream supplier 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 HMIRC. In that case, there would be no need to include a copy of the upstream supplier’s MSDS with your own, on a sale.

**Q2:** We filed a claim for exemption with HMIRC about a year ago. However, we have changed the formulation of the product since then. Do we need to file a new claim?

**A2:** HMIRC 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 which falls 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* (HPA), even though the product identifier may not have changed. 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 need to provide HMIRC with a copy of the MSDS only if the change of formulation results in its revision.

There is no need to file a new claim in this case.

**Q3:** 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 HMIRC?

**A3:** 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 HPA, and you must therefore seek an exemption from the disclosure obligations under the HMIRA, in order to ensure the protection of the CBI. The information in support of the claim will probably change as a result of this change in ownership. HMIRC requires written notification of the change in ownership from either you, as the new claimant, or from the previous owner. Upon receipt of such notification, the existing claim (which is no longer valid) will be cancelled.

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.

In other words, if Company ABC filed the original claim and stays in existence as a subsidiary of your firm, there may be no need to file a new claim. Contact HMIRC for advice, if you are in doubt about whether you may continue to use the existing claim.

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

**Q4:** May I use the same GCI for more than one confidential hazardous ingredient listed in Part VII of the *Claim for Exemption Form*?

**A4:** Yes. If the chemical identity is claimed to be CBI, you must provide the real chemical identity on the form; Part VII of the form is designed to accommodate this CBI. Should you have two or more CBI ingredients with the same GCI, you have a choice of options:

- You may 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 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.

**Q5:** I filed a claim for exemption over three years ago. Has the exemption period expired? If so, do I need to file a new claim?

**A5:** 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 three years, beginning on the date the decision was rendered or, if an appeal is filed, with respect to a determination on the validity of the claim, the date of the resolution. After this three-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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