



# INFORMATION BULLETIN

ISSUE NO. 3

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

- Expiration of the three-year trade-secret exemption
- Reapplication for a trade secret which is now outdated

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**);
- responses to frequently-asked questions about claim withdrawals, and change in product ownership and its impact on claims for exemption (**Issue No. 2**); and
- background information, security measures, procedures for filing claims, and common questions and answers (**Issue No. 4**)

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

## COMMON QUESTIONS AND ANSWERS

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

**A1:** No. When a 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 was filed with respect to a determination on the validity of the claim—on the date of resolution of the appeal. After this three-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 HMIRA or occupational health and safety acts. However, it is the administrative policy of HMIRC 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 HMIRC.

**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:

- disclose the CBI, replacing the generic chemical identity (GCI) with the true chemical identity and concentration, if previously claimed, and remove the HMIRC Registry Number and date of decision from the material safety data sheet (MSDS); or
- withdraw the product from the Canadian market and/or your own workplace.

**Q5:** When should I reapply? May 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 HMIRC 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:** The steps required to make a reapplication are the same as for an original application. The latest product MSDS must accompany your claim, along with the required fee. Please note that revised regulations came into effect October 1, 2008. The new *Claim for Exemption Form* has been developed to incorporate these changes. To help HMIRC readily identify your claim reapplication (refiling), it would be appreciated if you could also complete the *Claim Reapplication Cover Sheet*, which is 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. Although 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:** The fees applicable to refiled claims are:

- \$1,440 for each refiled claim up to 15 refiled claims in one submission (1-15);
- \$320 for each of the next 10 refiled claims in one submission (16-25);
- \$160 for each refiled claim submitted above 25 refiled claims in one submission.

A 50% reduction for a small business which meets certain criteria is available. Please consult the regulations to obtain more information.

**Q9:** If the information in support of a claim which I am refiling has not changed, must I provide it again?

**A9:** Only if your claim is subject to a request to provide the substantiation. At the time of filing you need only to provide the information required by the *Claim for Exemption Form*.

With respect to toxicological studies and upstream supplier MSDSs, on which your MSDS has been based; those previously supplied to HMIRC, and which are still applicable, need not be submitted again, provided there is a clear and precise reference to the relevant documents. This will help reduce the risk of confusion when the time comes for the MSDS to be reviewed.

**For further information about this issue or other topics,  
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