

Government of Canada announces proposed regulations for single-use plastics

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On October 7, 2020, the Canadian government announced details of its proposed approach to the regulation of plastics. The government's announcement, detailed in [Discussion Paper: A Proposed Integrated Management Approach to Plastic Products to Prevent Waste and Pollution](#) [PDF] (the Discussion Paper), proposes significant changes to the regulation of plastic products in Canada, including:

- banning or restricting certain single-use plastics by as early as 2021;
- establishing recycled-content requirements for plastic products and packaging; and
- developing consistent national targets, standards and regulations in concert with provincial and territorial governments to mandate extended producer responsibility for plastic products.

In order to implement the proposed measures, the federal government announced that it will add "plastic manufactured items" to the list of toxic substances under the [Canadian Environmental Protection Act, 1999](#) ("CEPA"). This will be done by way of government Order, expected to be issued on October 10, 2020, and is a necessary prerequisite to taking the regulatory measures noted above.

This Update provides a high-level overview of the proposed measures being contemplated in the Discussion Paper, and outlines next steps for stakeholders that may be impacted by those proposed measures. Specifically, the federal government's Discussion Paper sets out 13 specific questions on which it is seeking feedback by December 9, 2020.

Single-use plastics ban

Among the most anticipated aspects of its announcement, the federal government announced that its analysis identified the following six single-use plastic items that warranted a ban or restriction:

- plastic checkout bags;
- plastic stir sticks;
- plastic six pack rings;
- plastic cutlery;
- plastic straws; and
- food packaging and service ware (for example, takeout containers and lids, plates, bowls and cups) made from "problematic plastics", including: foamed plastics, black plastics,

polyvinyl chloride, oxo-degradable plastic, or multiple (composite) materials.

The government plans to finalize regulations restricting or banning these products before the end of 2021. The precise details of the regulatory measures will be the subject of discussions with the provinces, territories, industry and other stakeholders in the coming months. The government has advised that how measures are chosen, designed and implemented will take into account factors including the potential for voluntary agreements and other industry-led actions, as well as the criteria set out in Environment Canada's *Instrument Choice Framework for Risk Management under the CEPA*. The federal government is seeking immediate feedback (by December 9, 2020) on a variety of issues associated with managing single-use plastics, including any additional data that could help inform the development of regulatory measures, whether banning or restricting these six single-use plastics would impact the health or safety of any segments of Canadian society, and whether innovative or non-conventional plastics (e.g., compostable or biodegradable plastics) should be exempted from any regulatory measure.

Recycled-content requirements

In addition to banning or restricting single-use plastics, the federal government also announced its intention to propose regulations requiring recycled content in plastic products and packaging. These proposed regulatory measures will establish:

- a minimum percentage of recycled content as an outcome-based requirement that producers would need to meet;
- measuring and reporting rules aimed at evaluating a product's conformity with any recycled content claims made by producers; and
- technical guidelines and related tools to help companies meet their requirements, such as standards and specifications.

The Discussion Paper makes it clear that the approach for requiring recycled content, and the approach for measuring and reporting on recycled content, are both under development. The federal government is seeking immediate feedback (by December 9, 2020) on several issues associated with its recycled-content proposals, including the minimum percentage of recycled content that would make a meaningful impact on secondary (recycled resin) markets, which products and/or sectors are best-placed to increase the use of recycled plastic, which products might not be amenable to recycled-content requirements (due to health, safety, technical or other concerns), possible methods to verify compliance with recycled-content requirements, and other actions the government could take to incentivize the use of recycled-content in plastic products.

Extended producer responsibility (EPR)

The Discussion Paper also notes the federal government's intention to work with provinces and territories to develop comprehensive national targets and standards that would establish EPR in respect of plastics (i.e., require companies that manufacture plastic products or sell items with plastic packaging to be responsible for the collection and recycling of such products or packaging).

As a first step, the federal government is working with provincial and territorial governments to develop a national guidance document that will include:

- common material categories and product definitions;
- performance standards to guide reuse and recycling programs;

- options to encourage innovation and reduce costs; and
- standard monitoring and verification approaches

Of the three proposals announced by the government, the development of a national EPR strategy is likely to take the longest to develop and implement. While many provinces, including Ontario, have EPR requirements in respect of products such as electronics, batteries, hazardous waste, and tires, the majority do not have EPR regimes in respect of plastics. The federal government is seeking stakeholder feedback by December 9, 2020 on how it can best support the provinces and territories in making EPR policies consistent, comprehensive and transparent.

Conclusions

The federal government's proposed measures to regulate plastics are significant, and would have broad implications across many sectors of the Canadian economy, particularly for retailers, the food services sector, consumer product manufacturers, and the petrochemical and plastics industry. While the Discussion Paper provides detailed insight on the government's plans, there will be significant consultation and stakeholder engagement in the short- to medium-term before final regulatory measures are put in place.

As noted above, the federal government has expressed interest in engaging with industry in respect of its proposal, and has invited parties wishing to comment on any aspect of the government's proposed measures to provide written comments by December 9, 2020.