

PLAN FOR THE BAN: B.C. BOLDLY TARGETS SINGLE-USE PRODUCTS (PLASTIC OR NOT) IN NEW REGULATION

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On July 14, 2023, British Columbia (“**B.C.**”) introduced the [Single-Use and Plastic Waste Prevention Regulation](#) (the “**Regulation**”) under the [Environmental Management Act](#) (the “**Act**”). The Regulation prohibits the distribution and sale of single-use items within B.C. with a particular focus on products used in the food service industry. While the Regulation specifically targets compostable, biodegradable and oxo-biodegradable plastic products, the prohibitions capture many non-plastic single-use products as well.

The prohibitions in the Regulation apply in addition to those in the federal [Single-Use Plastics Prohibition Regulations](#) (“**SUPPR**”), meaning that even if a product is not banned under the SUPPR, it can still be prohibited from sale and distribution in B.C. under the Regulation. For more information on the federal regulation, please read our bulletin on the topic, which can be accessed [here](#).

This bulletin provides an overview of the Regulation and highlights what kinds of products and businesses it will impact when it comes into effect on December 20, 2023. If your business manufactures, distributes, sells or in any way relies on single-use shopping bags, food service accessories (beverage cup lids/sleeves, condiments/garnish, straws, napkins, utensils, wet wipes) or food service ware (bowls, boxes/cartons, cups, hinged/lidded containers, plates, platters, trays, film wrap, splash plugs) in B.C. or intended for customers in B.C., this Regulation may apply to your operations and should be given careful consideration in advance of the effective date.

This is our latest bulletin in our “Plan for the Ban” series regarding prohibitions and increased regulation of single-use plastics relevant to Canadian businesses and companies doing business in Canada.

Who does the Regulation apply to?

The prohibitions in the Regulation target the operations and products of “business operators” and “food service providers.” Business operators are defined as companies or individuals who sell a commodity or product, whether by wholesale or retail, in the ordinary course of their business. Many businesses will be captured by the breadth of this definition and should look closely at whether any of the products they manufacture, sell, distribute or rely on in their operations are subject to the Regulation.

Food service providers are defined as companies or individuals who prepare and serve food or beverages to individuals in their ordinary course of business. Examples of food service providers includes restaurants, grocery stores and food takeout businesses.

It should be noted that some business operators are also food service providers under the Regulation and the Regulation will therefore apply to them in both contexts. In addition, a business operator who is not a food service provider may still be impacted by the Regulation targeting food service providers where a business operator's customers or suppliers are food service providers.

What types of products are impacted by the Regulation?

There are four main categories of prohibited products in the Regulation: oxo-degradable single-use products, shopping bags, food service accessories and food service ware. A summary of the requirements and exemptions for these products under the Regulation is provided below. Note that multiple provisions (and prohibitions) may apply to a single product and an exemption in one section of the Regulation does not relieve the product of meeting the requirements for sale and distribution in B.C. in the other sections of the Regulation.

1. Oxo-Degradable Packaging and Single-Use Products: The Regulation prohibits business operators from distributing or selling packaging and single-use products wholly or partly made of oxo-degradable plastic within B.C. There are no exemptions to this prohibition. "Oxo-degradable plastic" is defined as "a plastic that contains an additive that, through its oxidation, leads to chemical decomposition or to the fragmentation of the plastic material into microfragments." Examples of oxo-degradable plastic may include products such as: polypropylene, polyethylene, and polystyrene plastic.
2. Shopping Bags: The Regulation prohibits business operators from distributing or selling shopping bags made of any material in B.C. unless certain requirements are met including that the bags are made of reusable or recycled paper and the customer is charged a fixed fee. There are several additional exemptions to this prohibition, which depend on the material that the bag is made out of, the dimensions of the bag, what product the bag is being sold to transport and if the product is supplied by a food service provider or a pharmacy.

There are also record-keeping requirements in the Regulation for large business operators (i.e., companies employing 500 or more employees in B.C.) on their sales of recycled paper and reusable bags.

3. Food Service Accessories: The Regulation prohibits food service providers from selling or distributing any of the following:
 - a. single-use plastic utensils made wholly or partly of biodegradable plastic or compostable plastic

(whether it is in fact made of this type of plastic or just advertised as such);

- b. bundles of food service accessories (such as a package of a fork, knife, spoon and napkin bundled together) are also prohibited from distribution and sale, unless they are distributed to sold at a care facility to a person receiving such care; and
- c. food service accessories regardless of their material unless:
 - i. a customer requests the food service accessory or accepts an offer of the food service accessory (including if this is done electronically);
 - ii. the food service accessory is made available in a self-service manner;
 - iii. for beverage cup lids only: the lid is distributed with a beverage that is purchased for delivery or is purchased through a service window at a drive-through business operation; or
 - iv. the food service accessory is distributed or sold at a care facility.

There are also record-keeping requirements for food delivery platforms and exemptions for food service accessories sold in quantities of 20 or more. Note that all of the requirements apply in an overlapping manner. For example, if a utensil meets an exemption in item 3.c. above but it is made of a compostable plastic, it will still be prohibited.

4. **Food Service Ware:** Business operators are prohibited from selling or distributing food service ware that is wholly or partly composed of biodegradable plastic, polystyrene foam, polyvinyl chloride, and polyvinylidene chloride. They are also prohibited from distributing or selling food or beverages themselves, if the food or beverages are contained in food service ware that is wholly or partly composed of those materials as well as compostable plastic, unless it is made of paper or plant fiber and only lined with compostable plastic. There are exemptions for this prohibition for polystyrene foam trays used for raw meats, however, these exemptions are set to be repealed on July 1, 2030.

Planning Ahead for Businesses

The Regulation will apply across B.C. when it comes into effect. The application of the Regulation is very specific to the products of each business, including the material they are composed of, how they are sold and distributed and to whom. Any companies in the food service business, whether as a restaurant, grocery store, supplier or retailer of food service accessories or wares will likely be impacted by this legislation and should carefully consider its implications.

In addition, companies that provide any kind of shopping bags to customers should also consider whether their policies, procedures or bags themselves align with the specific requirements in the Regulation. Any necessary changes to ensure compliance should be implemented prior to the coming into force of the

Regulation to allow consumers and businesses to prepare for and adjust to the change of operations.

McMillan can assist in assessing products and their role in your business to determine how the Regulation may impact your operations and identify opportunities to use alternative products or to consider whether your business and operations may meet any of the exemptions to the prohibitions.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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