

PLAN FOR THE BAN: CANADA'S DRAFT NOTICE FOR FEDERAL PLASTICS REGISTRY PROVIDES ADDITIONAL INSIGHTS ON REPORTING REQUIREMENTS

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On December 30, 2023, Canada's federal government published a [notice of intent](#)^[1] (the "**Notice of Intent**") to issue a notice under Section 46(1) of the [Canadian Environmental Protection Act, 1999](#) ("**CEPA**") for the Federal Plastics Registry with respect to plastic products manufactured, imported and sold in Canada. Through the Notice of Intent, the Minister of Environment and Climate Change Canada ("**ECCC**") is seeking feedback from interested parties regarding the intended Section 46 notice. The Notice of Intent follows two rounds of consultation on Canada's [Technical paper on the Federal Plastics Registry](#) (the "**Technical Report**"), which we discussed in further detail in an earlier Plan for the Ban bulletin [here](#). Consultation on the Notice of Intent is open for comment to all interested and impacted parties until February 13, 2024. The federal government plans to publish the Section 46 notice before the end of 2024.

The Federal Plastics Registry as proposed will require "plastics producers" (see discussion below on who is covered by this term) to register and report on plastics supplied in Canada. The reported information is intended to inform Canada's extended producer responsibility ("**EPR**") policy, which aims to improve waste reduction and recycling activities by extending a producer's physical and financial responsibility for a product to the post-consumer stage of its lifecycle (e.g., the end of the product's useful life when it becomes waste). This initiative is part of Canada's broader strategy to reduce plastic pollution and promote a circular economy, ensuring that plastic remains within the economy and is kept out of the environment.

Authority to issue the Notice of Intent arises from Section 46 of CEPA which grants the Minister of ECCC the broad ability, for the purpose of conducting research, to solicit information in a person's possession or to which the person may reasonably be expected to have access, relating to matters impacting the environment and which are within the regulatory scope of CEPA ("persons" include corporate entities).^[2] These solicitation powers are not limited to plastics. For example, ECCC has compelled Canadian manufacturers and operators to report their pollutant emissions on an annual basis under the National Pollutant Release Inventory since the early 1990s pursuant to their authority granted under Section 46 of CEPA. In the present circumstances, the intent of the Section 46 notice would be to collect information to facilitate the creation of an inventory of

plastics-related data which would be published in the Canada Gazette, Part I. Producers of plastic products would be required to provide the Minister of ECCC with information about the lifecycle of plastics in Canada.

Compliance with a Section 46 notice is mandatory and anyone who does not comply contravenes Section 272(1) of CEPA, which, upon conviction, can lead to imprisonment or a fine, or both. Moreover, anyone who provides false or misleading information, data, or documents in connection with a Section 46 notice contravenes section 274(1) of CEPA, which also carries possible sentences of imprisonment, a fine or both.

This is the latest bulletin in our “Plan for the Ban” series regarding prohibitions and increased regulation of single-use plastics across Canada.^[3] This bulletin discusses who and what will be required to be reported under the Federal Plastics Registry based on the Notice of Intent.

What categories of products will be subject to the Federal Plastics Registry?

Since the publication of the Technical Report, the categories of products that will be subject to the reporting requirements has expanded to include tires, fishing and aquaculture equipment and supplies and a catch-all provision for single-use or disposable plastic products not covered in other categories.^[4]

The ten proposed categories and corresponding subcategories are as follows:^[5]

	Category	Subcategories
1.	Packaging, including primary, secondary and tertiary packaging	(1) Reusable packaging: (a) rigid – beverage container, (b) rigid – food contact, (c) rigid – other, (d) flexible, (e) flexible – food contact, (f) flexible – other. (2) Single use packaging: (a) rigid – beverage container, (b) rigid – food contact, (c) rigid – other, (d) flexible, (e) flexible – food contact, (f) flexible – other.
2.	Single-use or disposable plastic products not covered by the other categories to Schedule 1 of the Notice of Intent	N/A

3.	Electronic and Electrical Equipment	(1) Information technology equipment, (2) Telecommunications equipment, (3) Audio-visual equipment, (4) Power tools, (5) Lighting equipment, parts, bulbs, and signs, (6) Sports equipment, (7) Toys, (8) Art, hobby and craft equipment and decorations, (9) Automatic dispensers, (10) Measuring, monitoring, navigation and control instruments, (11) Medical devices, (12) Accessories, (13) Vaping devices.
4.	Tires	(1) Tires for motor vehicles, (2) Tires for trucks and trailers, (3) Tires for construction/mining vehicles, (4) Tires for farm vehicles, (5) Tires for bicycles, (6) Tires for mobility aids, (7) Tires for muscular-powered equipment.
5.	Transportation (formerly called Automotive)	(1) Automobiles, (2) Motorcycles, (3) Trailers, (4) Trucks, (5) Construction/mining vehicles, (6) Farm vehicles, (7) Buses, (8) Snowmobiles and restricted-use vehicles, (9) Mobility aids, (10) Bicycles, bicycle trailers and motor-assisted bicycles, (11) Muscular-powered equipment.
6.	Construction	(1) Windows and doors, (2) Interior finishes (including flooring), (3) Construction film and sheeting, (4) Insulation materials, (5) Paints and coatings, (6) Piping, including pipe fittings, (7) Roofing materials, (8) Siding and cladding.
7.	White Goods	(1) Devices for refrigeration or freezing, (2) Devices for temperature or humidity control, (3) Devices for air or water purification, (4) Devices for cooking or preparing food, (5) Devices for washing or drying dishes or textiles, (6) Devices for use of suction, pressure or water to clean surfaces or materials.

8.	Agriculture and horticulture	(1) Agricultural containers, (2) Animal health product containers, (3) Agricultural totes and drums, (4) Agricultural bags and large tote bags, (5) Twine, clips, supports, hooks, (6) Bale wrap, bags or tubes, (7) Grain bags, (8) Agricultural and horticultural film and sheeting (silage, mulch, flooring, plant protection), (9) Net wrap, (10) Non-powered tools, (11) Structural plastic for greenhouses, (12) CO2 tubing for greenhouses, (13) Propagation trays and growing pots, (14) Irrigation equipment, (15) Maple syrup tubing and taps.
9.	Fishing and aquaculture	(1) Longlines, (2) Nets (e.g. seines), (3) Traps and pots, (4) Trawl nets, (5) Trolls (6) Vertical lines, (7) Anchors, (8) Fishing gear markers, (9) Buoys, (10) Flotation for raft structures for aquaculture, (11) Ropes, bags and netting for aquaculture, (12) Trays for aquaculture.
10.	Textiles and apparel	(1) Apparel, (2) Interior textiles, (3) Industrial textiles, (4) Carpet and other floor coverings, (5) Footwear, (6) Yarn, thread, twine, cordage, ropes, cables, woven and knitted or crocheted fabric, (7) Luggage.

Who will have to report?

Under the proposed Section 46 notice, the following persons (including corporate entities) have to submit annual reports to ECCC:[\[6\]](#)

1. A person who is the producer of a plastic product. A “producer” is defined as a brand owner or intellectual property holder who resides in Canada. If the brand owner is not a resident of Canada, then the first resident person to manufacture or import a plastic product in Canada is defined as the producer. If there is no resident manufacturer or importer, then the first resident person to distribute a plastic product in Canada is defined as the producer. If there is no resident importer or distributor, then the first resident person who supplied the plastic product to the consumer in Canada is defined as the producer.
2. A person who is a service provider for managing plastics or plastic products after collection for diversion. Examples of such service providers include: (a) recycling; (b) composting; (c) processing into chemicals; (d) using for energy recovery; (e) processing for final disposal or incineration without energy recovery; (f) arranging direct reuse; (g) refurbishing; (h) remanufacturing; or (i) repair.

When will reporting obligations go into effect?

The proposed Section 46 notice would apply to the calendar years 2024, 2025, and 2026.

The Federal Plastics Registry as proposed will be phased in by category of plastic products between 2025 and 2027 for the 2024 to 2026 calendar years (e.g., the 2024 calendar year report would need to be submitted by September 29, 2025; the 2025 calendar year report would need to be submitted by September 29, 2026; and the 2026 calendar year report would need to be submitted by September 29, 2027).^[7] The reporting obligations come into effect for each category as follows:

- 2024 Calendar Year: Reporting only required for the following categories: (a) packaging; (b) single-use or disposable plastic products; and (c) electronic and electrical equipment.
- 2025 and 2026 Calendar Years: Reporting required for all remaining categories.

What information is required in the annual reports?

The types of information required to be reported for each of the plastics categories is also intended to be phased-in between 2025 and 2027, beginning with the 2024 calendar year reporting period:^[8]

- 2024 Calendar Year:
 - The identity of all the resins used to make plastic products placed on the Canadian market;
 - The source of the resin used to make plastic products placed on the Canadian market;
 - The category and subcategory of plastic products placed on the Canadian market;
 - The total quantity in tonnes of plastic in products placed on the Canadian market; and
 - The method used to determine the quantities (in tonnes) of the following data points: (1) plastics placed on the market, (2) plastics collected for diversion, (3) plastics successfully reused, (4) plastics successfully repaired, remanufactured or refurbished, (5) plastics successfully recycled, (6) plastics incinerated for energy recovery, (7) plastics imported, exported (collectively herein referred to as the “**data points**”). See this [Plan for the Ban](#) bulletin for a description of these respective data points.
- 2025 Calendar Year:
 - The quantum, in tonnes, of the data points must also be reported for the following categories: (a) packaging, (b) single-use or disposable plastic products; and (c) agriculture and horticulture; and
 - The quantum, in tonnes, of plastic collected for diversion must be reported for the following categories: (a) electronic and electrical equipment; and (b) white goods. No other data points, aside from plastics placed on the market, are required to be reported for these categories for this year.
- 2026 Calendar Year:
 - All remaining data points for the following categories: (a) electronic and electrical equipment; and (b) white goods.

In addition, a person who is required to submit information under a Section 46 notice is also required to keep copies of the information sought by the notice, together with any underlying calculations, measurements and data, for a period of no less than three years from the required submission date.^[9]

What reported information will become public?

Persons subject to the proposed Section 46 notice would be required to submit the information discussed above using the Federal Plastics Registry online portal. Of the information collected, ECCC intends to publish, in part, information on resins and plastic products.

While any person who provides information in response to a Section 46 notice is able to submit a written request that the submitted information be treated as confidential based on certain reasons provided for in CEPA,^[10] ECCC may nonetheless decide to disclose the information publicly if certain justifications are met.^[11] In such circumstances, the person can seek a Federal Court review of the ECCC's rejected confidentiality request.^[12]

Planning Ahead for Business

With the publication of the Notice of Intent, the federal government is moving forward with plans to study and reduce the amount of plastic waste generated within its borders. Businesses that manufacture, sell, supply or import plastic products in Canada should remain alert to ongoing developments as Canada takes concrete steps towards its objective of zero plastic waste by 2030.

Producers of the identified categories of plastic products in the Federal Plastics Registry and targeted services providers should begin gathering information on the data points identified in the Notice of Intent for the 2024 calendar year and dedicate resources to compiling and reporting this information when the final Section 46 notice comes into effect (anticipated to be published before the end of 2024).

We will continue to monitor these proposed measures and provide updates in our "Plan for the Ban" series.

In addition, companies potentially impacted by these measures should consider making submissions to ECCC by February 13, 2024 to ensure their comments are heard on the proposed Section 46 notice and the collection of plastics data. The authors to this bulletin would be pleased to discuss any proposed submissions.

[1] [Notice of intent to issue a notice under section 46 of the Act with respect to reporting of certain plastic products for 2024, 2025 and 2026](#), (2023) C Gaz I, 4141 (Canadian Environmental Protection Act, 1999).

[2] *Canadian Environmental Protection Act*, SC 1999, c 33, s.46.

[3] Talia Gordner, Julia Loney and Khaleed Mawji, "[Plan for the Ban: New Consultation Launched for Plastics Labelling Framework and Federal Plastics Registry](#)" (April 2023); Talia Gordner, Julia Loney and Ralph Cuervo-

Lorens, [“Plan for the Ban: Canada Proposes Plastic Labelling Rules and Federal Plastics Registry”](#) (September 2022); Talia Gordner and Cody Foggin, [“Plan for the Ban: Single-Use Plastic Bans are Rolling Out Across Canada – Are You Ready?”](#) (September 2020); Talia Gordner and Cody Foggin, [“Plan for the Ban: Canada Announces Plan to Tackle Single-Use Plastics”](#) (October 2020); Talia Gordner, Julia Loney and Tess Dimroci, [“Plan for the Ban: Our New Year’s Update of Single-Use Plastics Bans Across Canada”](#) (January 2021); Talia Gordner, Julia Loney and Ralph Cuervo-Lorens, [“Plan for the Ban: Plastics Classified as “Toxic Substance” Under Canadian Environmental Protection Act”](#) (July 2021); Talia Gordner and Julia Loney, [“Plan for the Ban: Canada Announces Timeline for Single-Use Plastics Prohibition”](#) (June 2022).

[4] Notice of intent, *supra* note 1 at 4144-4146.

[5] *Ibid.*

[6] Notice of intent, *supra* note 1 at 4163.

[7] Information pertaining to the 2025 calendar year would be required to be provided no later than September 29, 2026. Information pertaining to the 2026 calendar year would be required to be provided no later than September 29, 2027. See Notice of intent, *supra* note 1 at 4141.

[8] Notice of intent, *supra* note 1 at 4167-4168.

[9] CEPA, s. 46(8).

[10] CEPA, s. 52.

[11] CEPA, s. 53(3).

[12] CEPA, s. 53(5).

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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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