Closing the gaps: Canada's proposed recycled content, labelling rules and registry for plastics

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On Apr. 18, 2023, the Government of Canada published two long-awaited regulatory framework papers on new proposed measures to achieve its strategy of zero plastic waste by 2030. These measures include proposed requirements for minimum recycled content and mandatory labelling rules for certain plastic products. They also include the establishment of a Federal Plastics Registry.

The proposed measures form part of Canada's overall strategy to address plastic waste. On June 22, 2022, Canada proceeded with its single-use plastic ban by publishing the *Single-Use Plastics Prohibition Regulations* (the SUPR) under the *Canadian Environmental Protection and Enhancement Act, 1999* (CEPA). The SUPR prohibit in phases the manufacture, import, export and sale of certain single-use plastics (SUPs) by the end of 2025.

This bulletin updates our previous bulletin on Canada's strategy on plastics and provides an overview of Canada's new proposed measures to tackle the problem of plastic pollution.

Recycled content and labelling for plastic products regulations

With respect to its plan on recycled content and labelling rules, Canada proposes to publish *Recycled Content and Labelling for Plastic Products Regulations* (the Regulations) by the end of 2023. The Regulations would be enacted under CEPA and are expected to have three key elements:

- Recycled content requirements that mandate minimum levels of recycled post-consumer plastics in packaging, reaching 50 per cent recycled content by 2030.
- Recyclability labelling rules requiring accurate information be communicated to Canadians on whether packaging or SUPs are recyclable; and
- Compostability labelling rules prohibiting the terms "biodegradable" or "degradable" on plastic packaging and SUPs and limiting the use of the term "compostable" to plastics that meet applicable standards and labelling requirements.

The following sections provide further details on the government's proposed measures.

Recycled content requirements

Recycling content obligations under the Regulations will be set out by plastic categories. The Regulations divide plastic packaging into two broad categories: rigid and flexible. In the rigid category, packaging made from more than 50 per cent PET or HDPE by weight is proposed to be targeted as are beverage bottles and other rigid packaging. In the flexible category, items such as waste bags are proposed to be targeted. The government, however, proposes to exclude certain packaging including, notably, packaging that comes into contact with food or packaging for products regulated under other acts, such as the *Cannabis Act* or the *Hazardous Products Act*.

Companies subject to the Regulations will be required to include a specified minimum amount of recycled content within each broad packaging category. The amount required depends on the amount of plastic used in, and percentage targets for, each product category, calculated annually pursuant to a specific formula.

Companies would be required to report annually on the amount of total plastic and recycled content used in each packaging and product category for the previous calendar year and annual reports will be subject to attestation. Companies will also need to keep records. The government is proposing a phased implementation to require a third-party certification scheme for recycled content.

Notably, the Regulation exempts smaller players, defined as having in the previous calendar year:

- had gross revenues of under $5,000,000; or
- placed less than 10 tonnes of plastic packaging on the Canadian market.

Labelling requirements

As currently proposed, recyclability and compostability labelling rules would apply to consumer-facing primary and secondary plastic packaging, as well as SUPs and would be based on measurable requirements.

Measuring recyclability

The government is proposing an outcomes-based and data-driven approach for measuring recyclability that would use data derived from provincial and territorial extended producer responsibility (EPR) programs. The proposed approach considers that the willingness of end markets to purchase certain materials is not a reliable indicator of whether those materials are in fact recycled. Instead, data from EPR programs across Canada would reveal the actual recyclability of plastics.

Before placing an item on the market, regulated parties would be required to assess the recyclability of an item in each province or territory where it is sold. Three criteria are suggested for assessing the recyclability of an item before it is placed on the market:

1. Collection:Is the item accepted in a collection system (*e.g*., blue box programs) accessible to at least 80 per cent of the population in a province or territory?
2. Sorting:Can the item be sorted into a bale with a sorting yield of at least 80 per cent going to North American re-processors?
3. Re-processing: Does the bale have a re-processing rate for North American re-processors of at least 80per cent? This ensures that the item can be successfully re-processed into feedstock for new plastic products and packaging.

Recyclability labelling rules

Once a regulated party assesses each item it intends to place on the market for recyclability, the item would need to be labelled as either:

- **Recyclable**: meeting all three criteria of collected, sorted and re-processed;
- **Non recyclable**: items that do not meet all three criteria of collected, sorted and re-processed; or
- **Collected**: for items that are collected for recycling but may not be recycled. Note, however, that by 2030, the “Collected” mark will no longer be allowed and items would need to either be labelled recyclable or non recyclable.

If an item’s components fall under different recyclability categories, multiple labels may need to be used indicating the recyclability of each component. Where the item has no separable components, or where all components fall under the same recyclability category, a simplified recyclability label can be used. In addition, regulated parties would need to include a QR code to provide consumers information on the recyclability of an item.

Compostability labelling rules

Consumers are increasingly faced with claims that plastics items are “compostable”, “biodegradable”, or “degradable”, without any clarity under what conditions the items thus labelled will biodegrade. The terms “biodegradable” and “degradable” are particularly vague and misleading as plastic products will eventually biodegrade in nature, whether they take 20 years or 500 years to do so. The term “degradable” also encompasses a category of products that are degraded by fragmentation such as oxo-degradable plastics and that lead to the proliferation of microplastics in the environment.

While the use of the term “compostable” will be allowed under certain conditions in the Regulations, use of the terms “biodegradable”, or “degradable” will be prohibited. Instead, parties will need to use the mark “non recyclable” for all non-compostable and non-recyclable items.

Items labelled “compostable” would need to be certified by an accredited third party using the standards deemed acceptable under the Regulations. The Regulations currently reference American Society for Testing and Materials (ASTM) and International Organization for Standardization (ISO) standards. In addition, regulated parties would need to demonstrate other things including that items labelled “compostable” have undergone an in-field test at a composting facility in Canada.

It would be also prohibited to use green-coloured labelling to help distinguish between compostable and non-compostable plastic items. Additionally, all plastic produce

stickers would be required to be compostable but would be exempt from the wording/colouring requirements in the Regulation.

The government is proposing a phased implementation approach for its labelling requirements, with full implementation of the proposed measures occurring in 2030.

Federal Plastics Registry

The government has released technical details and reporting requirements applicable certain categories of plastic products and packaging, being considered for the Federal Plastics Registry (the Registry). The Registry will aim to improve knowledge of plastic waste, value recovery, and pollution across Canada including by making such data accessible to all Canadians. A draft notice is expected for publication in the Canada Gazette before the end of 2023 for further consultation before a final notice is published.

Reporting requirements to the Registry will apply to “producers” of certain categories of plastics. To align with existing provincial regulations, in a jurisdiction where “producer” is defined in provincial recycling legislation, that definition will apply. In the absence of a provincial definition, however, the government is proposing a generic definition of “producer” to determine regulated entities. Additionally, small businesses that are exempted under provincial and territorial EPR policies would be subject to special rules that would minimize their administrative burden under the Registry.

All producers would be required to submit annual reports to the Registry. As the data submitted to the Registry is intended to be accessible to all Canadians, producers will be able to request confidentiality on each individual data point on the online reporting platform along with a rationale for the claim. Certain information claimed as confidential may still be disclosed, however, following a review under s. 53 of CEPA if disclosure is in the best interest of Canadians.

The data sought from producers of plastic products include the resin types that are used in the plastic products they place on the market, as well as the total amount of plastic waste sent to final disposal. While several methods can be used to calculate plastics data, the Registry would require reporting based on weight only, which would allow the flow of material to be tracked at each stage in its lifecycle, from the point that it is placed on the market to its end of life.

Conclusion

The government’s proposed measures on recycled content and labelling rules and the establishment of the Registry all drive forward an integrated management approach to addressing the problem of plastics pollution in Canada. The proposed measures create rules at key stages of the plastics lifecycle to reduce the use and reliance on virgin fossil fuels feedstocks and reduce the consumption of plastics that are not recyclable or compostable. These proposed measures are all subject to public comments until May 18, 2023.

While the federal government takes further steps to regulate plastics under the authority of CEPA, the government’s listing of “plastic manufactured items” as a toxic substance at CEPA’s Schedule 1 is under scrutiny in a recent case heard by the Federal Court in

March of this year. If the industry's challenge is successful, the federal government's strategy to regulate plastics under CEPA or some other statute, and to take a leadership role in the regulation of plastic products in Canada more generally, might be in jeopardy.

For practical advice on how the recyclable content rules, labelling rules, and the federal plastics registry may impact your business, please reach out to one of the key contacts listed below.

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