Government of Canada publishes NOI on labelling criteria for toxic substances under the CEPA

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Environment and Climate Change Canada and Health Canada published a Notice of Intent regarding their proposal to require the labelling of consumer products containing certain toxic substances currently listed in Schedule 1 of the *Canadian Environmental Protection Act, 1999* (CEPA, or the Act). Schedule 1 includes many commonly used products, such as acetone, certain pigments, plastic microbeads, and propane. The Government is inviting the public's comments on this Notice of Intent until January 12, 2023.

Labelling criteria for toxic substances under the CEPA

Under the Canadian Government's proposal, it would require certain cosmetics, cleaning products, and flame retardants used in upholstered furniture to be labelled if they contain substances listed in Schedule 1 of CEPA, and the following conditions are met:

- "The substance could be associated with potential concerns to the environment or human health at any stage of its life cycle;
- Labelling can help in achieving the risk management objective;
- The substance is subject to a phase-down and will continue to be found in products for a period of time before being fully restricted or eliminated;
- There are substance concentration limits for products; and
- There is a need to provide disposal guidance that relates to the presence of the substance".

The Canadian Government's proposal notes that a substance listed under Schedule 1 of the Act would not be subject to new labelling requirements in the following circumstances:

- "When a toxic substance is entirely prohibited in products under federal regulations;
- When another federal act is best placed to manage the risks identified for a toxic substance; or

- When a substance is considered toxic under the act but would not pose environmental or human health risks when contained in a certain product or when the product is disposed of (*e.g.* carbon dioxide in soda and other beverages)".

In making its decision of whether to adopt new labelling requirements, and which labelling requirements to adopt, the Government will consider labelling groups or classes of substances that share similar characteristics of concern. Given the increasingly digital nature of the Canadian economy and society, the Government also intends to consider digital means of providing information on toxic substances in products, in addition to traditional physical labels.

What does this mean for labelling requirements?

This proposal signals that Canada now seeks to make labelling requirements for products that contain toxic substances substantially stricter. The changes would bring Canadian warning and labelling requirements closer to those in jurisdictions like California, where mandatory warning requirements for products containing toxic substances must be strictly adhered to by industry.

If you have any questions about the Notice of Intent or the labelling of consumer products containing toxic substances currently listed under CEPA, please reach out to any of the authors or key contacts listed below.

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