Mandatory PFAS reporting in Canada: What manufacturers, importers and users need to know

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In March 2024, we wrote on anticipated reporting requirements coming for the import and use of per- and polyfluoroalkyl substances (PFAS) as the next step in Canada's efforts to regulate these "forever chemicals." On July 27, 2024, the Ministers for both Environment and Climate Change and Health Canada made good on this promise, issuing a joint notice mandating that companies report information on the manufacture, import, and use of 312 types of PFAS by Jan. 29, 2025 (the PFAS Notice).

This gives companies **only six months to comply** by gathering and reporting the requested information, or risk non-compliance and sanction. Unsure how the notice affects you, or where to start? This article aims to provide a helpful starting point. Navigating and responding to section 71 notices can be both cumbersome and complicated. The authors or key contacts listed at the end would be happy to answer your questions.

BLG has extensive experience assisting clients with assessing and responding to section 71 notices made under the *Canadian Environmental Protection Act, 1999* (CEPA). Our work in this area has included successfully assisting clients with preparing responses, disputing the application of prior notices (or showing that the information is not readily available), and ensuring the protection of confidential information and trade secrets.

Overview of the PFAS Notice and Canada's new reporting requirements

The stated purpose of the PFAS Notice is to collect information to assess the nature of PFAS in Canada, and to inform future decisions regarding their regulation.

The PFAS Notice was made pursuant to section 71(1)(b) of CEPA. Section 71(1) of CEPA empowers the minister to issue mandatory information gathering notices to provide the prescribed information for the purpose of (i) assessing whether a substance is toxic or is capable of becoming toxic, or (ii) assessing whether to control (or the manner in which to control), a substance, including a substance specified on the List of Toxic Substances in Schedule 1.

Compliance with the PFAS Notice is mandatory. A failure to report is a contravention of CEPA and could result in fines of up to $500,000 for a first offence, and $1,000,000 for second or subsequent offences by a corporation.

Who does the PFAS Notice apply to?

- **The PFAS Notice applies broadly** to any person who, during the 2023 calendar year, manufactured, imported, or used prescribed quantities of listed types of PFAS in Canada. This includes PFAS contained in manufactured items, or in the manufacture of a mixture, product, or manufactured item.
    - **"Manufacture"** means the intentional or incidental (unintended) creation of production of one or more of the reportable substances.
    - **"Import"** means the movement of the reportable substance into Canada from another country, whether alone or in a mixture, product, or manufactured item.
    - **"Use in the manufacture of a good"** means using a reportable substance, either alone, in mixture or product, to commercially create or make another mixture, product, or manufactured item (*i.e.*, a good).

- **The PFAS notice affects more companies than just those located in Canada.** While foreign suppliers who export PFAS to Canada are not required to make a report, the receiver (who imports to Canada) must respond. Given the possible information gap that this creates, foreign suppliers are encouraged to inform their Canadian customers that they import a reportable substance, while Canadian companies are encouraged to make appropriate enquiries up the supply chain to gather the required PFAS information.

Are there any exemptions?

- **The PFAS Notice does not apply** where the PFAS is:
    - only in transit through Canada;
    - used solely for personal purposes (*i.e.*, not for commercial gain, sale or offer for sale;
    - intended for use in a laboratory for analysis, in scientific research or as a laboratory standard;
    - classified as a hazardous waste or hazardous recyclable material and import / export is in compliance with the *Cross-border Movement of Hazardous Waste and Hazardous Recyclable Material Regulations*; or
    - registered under the *Pest Control Products Act, Fertilizers Act, Feeds Act* or *Seeds Act*.

- **Microbusinesses** , defined as organizations or companies with fewer than five employees or less than $30,000 in annual gross revenue, are exempt from the reporting requirements.

What information must be reported?

- **The reporting requirements can be made complicated by a number of factors,** including the substance itself, its state (whether in a mixture, product, or manufactured item), if the information is available to you, and how the substance is classified in the notice.

- **Any person to whom the PFAS Notice applies must provide** their business details as well as, among other things, the following for each substance:
    - A description and the common or generic name for each manufactured item containing the substance;
    - The quantity of substance manufactured, imported, used, or exported;
    - The concentration of the substance in the goods; and
    - Technical information, such as the molecular weight distribution of the substance, the structural formula of the substance, and more.

- **The PFAS Notice employs a tiered reporting system** for imported manufactured items, with the specific reporting requirements varying based on the type of manufactured items and whether certain threshold levels of PFAS are exceeded.

Is there a specific format of response?

The federal government is requiring respondents to use a prescribed Excel reporting file for their responses, which must be submitted through Environment and Climate Change Canada's online reporting system.

What if I do not have access to the information?

The federal government expects companies to provide information that their companies possess or that they may reasonably be expected to have access (such as information that may be in the possession of the company's employees or agents).

Respondents must also provide a declaration that the information provided is accurate and complete. As noted above, a failure to report or providing false or misleading information could result in prosecution and significant fines.

Can I submit information if I am not captured by the PFAS Notice?

Companies who are not captured by the PFAS Notice but have an interest in any of the reportable substances, or wish to provide information to the federal government to consider in its review of the collected data and approach to the regulation of PFAS more generally, can submit what is known as a declaration of stakeholder interest. Doing so could guard against the government making assumptions in the risk assessment based

on incomplete information that might lead to an overly conservative and protective approach to the measures they implement.

Although not required, the federal government encourages persons who do not meet the requirements and have no interest in the PFAS substances under investigation to submit a declaration of non-engagement.

Conclusion

Information gathering is only a preliminary step towards Canada's stated intent to regulate the manufacture, import, and use of PFAS. The publication of this notice follows from the federal government's recent publication on July 12, 2024, of an updated Draft State of PFAS Report and a revised Risk Management Scope for PFAS report, which summarizes the various risk management and regulatory measures being considered for implementation.

Contact us

If you have any questions about the PFAS Notice or the regulation of PFAS generally, please reach out to any of the authors or key contacts listed below.

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