

Federal Government Requires Companies to Submit PFAS Reports by End of January



Tough new federal rules require businesses to report the presence of certain chemicals called Polyfluoroalkyl Substances (PFAS) in their supply chains by January 29, 2025. Companies that fail to comply face fines of up to \$25,000 for an individual, including corporate officers and directors, and \$500,000 for a corporation. These maximum fines double for second or subsequent offences. Here's a briefing on the PFAS reporting rules and how to comply with them.

PFAS

PFAS are a group of human-made substances that are incredibly stable and take a very long time to break down—hence their nickname “forever chemicals.” These properties make PFAS ideal for food packaging, clothing, cosmetics, non-stick cookware, and many other consumer use products, as well as for industrial and specialized applications such as lubricants, oil/water repellents, and foams used for firefighting. The most common PFAS are perfluorooctane sulfonate (PFOS) and perfluorooctanoic acid (PFOA). The Canadian Government estimates that there are currently over 4,700 kinds of PFAS with more rolling out of the developmental pipeline every day.

The bad news about PFAS is that the same stability and everlasting properties that make them attractive for consumer

and industrial uses also pose a potential threat to the environment. Thus, PFAS have a way of turning up at solid waste landfills, drinking water, fish, wildlife, and people. The latter is an especially bad thing because the buildup of PFAS in humans can cause cancer, liver damage, decreased fertility, and increased risk of asthma and thyroid disease, according to the US Centers for Disease Control and Prevention (CDC).

Federal Regulation of PFAS

On July 27, 2024, Environment and Climate Change Canada (ECCC) and Health Canada (HC) published a Notice concluding that PFAS are a “toxic substance” that should be regulated as a class of toxic chemicals under the *Canadian Environmental Protection Act* (CEPA). Under Section 64 of the CEPA, a substance is toxic if it enters or may enter the environment “in a quantity or concentration or under conditions that: “(a) have or may have an immediate or long-term harmful effect on the environment or its biological diversity. . . or (c) constitute or may constitute a danger in Canada to human life or health.”

While it’s not itself a regulation, the Notice signals and sets the stage for regulation by ordering certain companies to report on their uses of 312 PFAS listed in Schedule 1 contained in the Notice. The federal government will then use the data to create specific CEPA regulations for PFAS.

Which Companies Do & Don’t Have to Report on PFAS

Companies must report on PFAS if during calendar year 2023 they:

- Manufactured more than 1,000 g of a substance listed in Schedule 1;
- Imported more than 10 g of a substance listed in Part 1

of Schedule 1;

- Imported more than 100 kg of a substance listed in Part 2 or Part 3 of Schedule 1, either alone or in a product, mixture, or one of 12 listed manufactured item categories at a concentration of at least 1 ppm; or
- Used more than 10 g of a substance in Schedule 1, either alone or at a concentration of 1 ppm or more in a product.

Which PFAS Products Are Subject to the Reporting Requirements?

The Notice and Guidance Manual lists 12 categories of products or manufactured items that may be affected by the PFAS reporting requirements, including:

1. Products for use by children under age 14;
2. Products intended to come into contact with the mucosa, such as orthodontic equipment;
3. Products that may be inhaled or come into dermal or oral contact with an individual, such as cellphone cases;
4. Cookware or serving utensils intended to come into contact with heated food or beverages;
5. Food packaging material;
6. Reusable food or beverage containers;
7. Food processing equipment that come into contact with food before packaging and distribution, such as conveyor belts and trays;
8. Clothing or footwear and safety apparel;
9. Bedding, sleeping bags, or towels;
10. Furniture, mattresses, or cushions where the substance is contained in foam, leather, textile fiber, or fabric;
11. Carpet, vinyl, or laminate flooring, or foam underlay for flooring; and
12. Products that release the PFAS from the manufactured item, such as air freshener diffusers or writing instruments.

The reporting requirement also applies to successors and

assigns. **Result:** Companies that were involved in either an acquisition or sale of a business that's required to report must comply with the Notice requirements.

By contrast, the reporting requirements don't apply to entities that only exported covered substances or goods in 2023. The Notice also expressly excludes "micro businesses", that is, entities with under C\$30,000 in gross revenue and fewer than 5 employees. Nor do the reporting requirements apply to a listed PFAS or a good containing PFAS that:

- Is only in transit through Canada;
- Is for personal use, that is, use by an individual for non-commercial purposes;
- Is for use in a non-industrial laboratory for analysis in scientific research or as a laboratory standard;
- Is or is part of hazardous waste or hazardous recyclable material that's exported or imported with a permit issued under the *Cross-border Movement of Hazardous Waste and Hazardous Recyclable Material Regulations*; or
- Is registered under specific pest control, fertilizer, or agricultural legislation.

What the PFAS Reporting Rules Require

Reports must be accompanied by a declaration that the information provided is accurate and complete and list the following information:

- **Identifying information**, including the reporting entity's name, address, business number, and the contact information of an authorized representative;
- **Facility information**, including the name and address of each facility owned in Canada that manufactures or uses a listed PFAS, whether any known releases of a listed PFAS occurred at the facility, and a description of any

policy or procedure in place to manage or mitigate such releases;

- **Information about the PFAS**, including the quantity of each listed PFAS manufactured, imported, exported, and/or used;
- **Information about goods** containing a reportable substance manufactured in or imported into Canada, including the PFAS' function and concentration in each good, as well as the use of the good; and
- **Additional technical data for fluoropolymers** listed in Part 2 of Schedule 1, including molecular weight distribution, structural formulas, expected transformation, or degradation products and information about its constituent monomers.

If you have more than one facility, you must provide a single company-wide report that amalgamates all of the required information from all company facilities and locations.

The Reasonably Accessible Information Standard

According to ECCC and HC, companies must provide only information that's "reasonably accessible." They don't have to perform testing to generate data for the report. But they do have to provide any test results, reports, and other information they currently possess, including information in possession of their subsidiaries and international branches. They also must make reasonable efforts to obtain information from their suppliers, customers, sector associations, and other supply chain principles. They expect that reporting entities will make reasonable efforts to contact relevant parts of their supply chain, including customers, foreign suppliers, and sector associations including reports, test results, or information available from their supplier.

Protection of Confidential Information

Reporting companies can request that some or all of the requested information be treated as confidential. The government will grant the request if the information is a trade secret, or if its disclosure would compromise the company's competitive position or contractual obligations or negotiations. Companies will need documentation to support their confidentiality declaration. ECCC and HC have also made it clear that they consider the following information **not** to be confidential:

- Trade names;
- General information on uses;
- Safe handling precautions for the manufacturing, storage, transport, and use of the substance;
- Recommended methods of disposal and elimination;
- Safety measures to be taken in case of an accident;
- Physical and chemical information other than information revealing the identity of a substance; and
- Summaries of health, safety, and environmental data, including figures and interpretations.

Takeaway: What to Do to Comply

If you meet one of the criteria listed above for reporting, you must submit a response to the Notice by January 29, 2025, unless you request and get an extension from the ECCC and HC. No extensions will be granted after the deadline. Reports must be submitted using the [Excel Reporting File](#) on the ECCC's Single Window online reporting system.

Even if you're not required to report, you can do so voluntarily by submitting a Declaration of Stakeholder Interest form.

Companies who don't meet the Notice reporting requirements and have no interest in the PFAS are encouraged to submit a Declaration of Non-Engagement (DNE) by email to the [Substances Management Information Line](#) containing the subject line "PFAS DNE" and listing the company's name and contact information.