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Environmental Protection Act

ONTARIO REGULATION 241/19

GREENHOUSE GAS EMISSIONS PERFORMANCE STANDARDS

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PART I
INTERPRETATION

Interpretation

1. (1) In this Regulation,

“account representative” means, when used in respect of a facility, an individual who has been identified in respect of the facility in accordance with section 7; (“représentant de comptes”)

“annual emissions intensity” means, when used in respect of an EPS facility, the amount of greenhouse gas emitted from the facility in a year divided by the amount of a product produced at the facility during the year; (“intensité annuelle des émissions”)

“compliance instrument” means an emissions performance unit or excess emissions unit; (“instrument de conformité”)

“compliance obligation” means an obligation described in paragraph 1 of subsection 13 (1); (“obligation en matière de conformité”)

“compliance obligation shortfall” means the portion of a compliance obligation that is not satisfied as of the applicable date specified in paragraph 1 of subsection 13 (1); (“déficit relatif à l’obligation en matière de conformité”)

“compliance period” means the first compliance period and every subsequent year within a registration period; (“période de conformité”)

“CO₂e” has the same meaning as in the Reporting Regulation; (“éq. CO₂”)

“date of first production” means, when used in respect of an EPS facility, the earlier of,

- (a) the date on which, as a result of engaging in an industrial activity, the facility first produces the product whose production is projected to make the greatest contribution to the facility’s revenue, and
- (b) the date on which, as a result of engaging in an industrial activity, the facility first produces the product whose production is projected to result in the highest proportion of greenhouse gas emissions from the facility; (“date de première production”)

“Director” means the Director appointed under section 5 of the Act in respect of the section of this Regulation in which the reference appears; (“directeur”)

“eligible modification” means a change described in subsection (4) that is made to an EPS facility; (“modification admissible”)

“facility” or “EPS facility” means an emissions performance standards (EPS) facility within the meaning of section 1.1; (“installation”, “installation NRE”)

“first compliance period” means the year determined in accordance with subsections (7) and (8); (“première période de conformité”)

“industrial activity” means an activity set out in Schedule 2; (“activité industrielle”)

“licensed engineering practitioner” means a person who holds a licence, limited licence or temporary licence under the *Professional Engineers Act*; (“praticien de l’ingénierie titulaire d’un permis”)

“Methodology” means the document entitled “GHG Emissions Performance Standards and Methodology for the Determination of the Total Annual Emissions Limit”, published by the Ministry and available on a website of the Government of Ontario, as amended from time to time; (“guide de méthodologie”)

“NAICS” means the North American Industry Classification System maintained for Canada by Statistics Canada, as amended or revised from time to time; (“SCIAN”)

“natural gas transmission” means the movement of natural gas in a natural gas pipeline system upstream of gate station inlet valves where pressure reduction or measuring occurs for the delivery of natural gas to consumers; (“transport de gaz naturel”)

“Ontario Regulation 143/16” means Ontario Regulation 143/16 (Quantification, Reporting and Verification of Greenhouse Gas Emissions) made under the *Climate Change Mitigation and Low-carbon Economy Act, 2016*; (“Règlement de l’Ontario 143/16”)

“Ontario Regulation 452/09” means Ontario Regulation 452/09 (Greenhouse Gas Emissions Reporting) made under the Act; (“Règlement de l’Ontario 452/09”)

“production parameter” has the same meaning as in the Reporting Regulation; (“paramètre de production”)

“registration period” means a group of consecutive years in respect of a registration for a facility, beginning in the year in which the facility is registered or required to be registered, whichever is earlier, and ending in the year in which the registration is cancelled; (“période d’enregistrement”)

“Reporting Regulation” means Ontario Regulation 390/18 (Greenhouse Gas Emissions: Quantification, Reporting and Verification) made under the Act; (“règlement sur la déclaration”)

“revised report” means a report in respect of a facility that is given to the Director under section 15 or 23.1 of the Reporting Regulation; (“rapport révisé”)

“revised report obligation” means an obligation described in paragraph 2 of subsection 13 (1); (“obligation découlant du rapport révisé”)

“revised report obligation shortfall” means the portion of a revised report obligation that is not satisfied as of the applicable date specified in paragraph 2 of subsection 13 (1); (“déficit relatif à l’obligation découlant du rapport révisé”)

“total annual emissions limit” means the total annual emissions limit determined under section 12; (“limite des émissions annuelles totales”)

“verification amount” has the same meaning as in the Reporting Regulation, except where otherwise specified; (“quantité de vérification”)

“verification statement” means, when used in reference to a report, the verification statement submitted in respect of the report by an accredited verification body under the Reporting Regulation; (“déclaration de vérification”)

“verified” means verified by an accredited verification body under the Reporting Regulation; (“vérifié”)

“year” means a calendar year. (“année”) O. Reg. 241/19, s. 1 (1); O. Reg. 729/21, s. 1 (1-6); O. Reg. 562/22, s. 2, 3 (1-7).

(2) REVOKED: O. Reg. 729/21, s. 1 (7).

(3) In this Regulation, unless otherwise specified, a reference to Ontario Regulation 452/09 or Ontario Regulation 143/16 is a reference to the regulation as it read at any time before it was revoked. O. Reg. 241/19, s. 1 (3).

(4) Each of the following changes constitutes an eligible modification to an EPS facility:

1. A change that would increase the facility’s annual production in respect of a product associated with an industrial activity.
2. A change that would result in an industrial activity that was not engaged in at the facility before the change being engaged in at the facility.

3. A change that would result in a product from an industrial activity that was not produced at the facility before the change being produced at the facility. O. Reg. 562/22, s. 3 (8).

(5) Despite subsection (4), a change does not constitute an eligible modification if the primary change that constitutes the modification is the maintenance, repair or replacement of existing equipment at the facility. O. Reg. 562/22, s. 3 (8).

(6) Despite subsection (4), if the only change being made to the facility is a change described in paragraph 1 of that subsection, the change does not constitute an eligible modification unless the following criteria are met:

1. The annual emissions intensity after the change is substantially complete in respect of at least one of the following products is less than or equal to the annual emissions intensity in respect of that product before the change:

i. A product whose production,

A. has made the greatest contribution to the facility's revenue in a year prior to the year in which the change is substantially complete, or

B. is projected to make the greatest contribution to the facility's revenue in any year during the 10-year period commencing with the year in which the change is substantially complete.

ii. A product whose production,

A. has resulted in the highest proportion of greenhouse gas emissions from the facility in a year prior to the year in which the change is substantially complete, or

B. is projected to result in the highest proportion of greenhouse gas emissions from the facility in any year during the 10-year period commencing with the year in which the change is substantially complete.

2. The product mentioned in paragraph 1,

i. was produced at the facility before the change, and

ii. will continue to be produced at the facility after the change is substantially complete. O. Reg. 562/22, s. 3 (8).

(7) The first compliance period in respect of a registration for a facility is determined as follows:

1. If the facility was registered or required to be registered under this Regulation on or before December 31, 2021, the first compliance period is 2022.

2. If a notice of registration of a person as a registered emitter is issued under subsection 64 (2) of the *Greenhouse Gas Pollution Pricing Act (Canada)* by the Minister of National Revenue and the effective date set out in the notice is a date in the year following registration under this Regulation, the first compliance period is the year following registration under this Regulation.

3. If the facility is registered under paragraph 3 of subsection 4 (1), the first compliance period is the third year after the end of the first year in which the facility produces a product from an industrial activity. However, this paragraph does not apply if the primary activity engaged in at the facility is an activity set out in item 38 (Generating electricity using fossil fuels) of Schedule 2.

4. In all other cases, the first compliance period is the year in which the facility is registered or is required to be registered, whichever is earlier. O. Reg. 562/22, s. 3 (8).

(8) If a registration is continued under section 6, the first compliance period in respect of the continued registration is the first compliance period determined under subsection (7) of this section in respect of the initial registration. O. Reg. 562/22, s. 3 (8).

(9) A reference in this Regulation to a person who registered a facility includes,

- (a) a person who applied to register a facility and received written confirmation of the registration under section 5; and
- (b) a person who received written confirmation that a registration was continued under subsection 6 (5). O. Reg. 562/22, s. 3 (8).

EPS facility

1.1 (1) Subject to subsections (2), (3) and (4), for the purposes of the definition of “EPS facility” in subsection 1 (1), any of the following constitutes an emissions performance standards (EPS) facility:

1. The following, if they are operated in an integrated manner to carry out an industrial activity and have at least one common owner or operator:
 - i. Sites at which the industrial activity is carried out and the buildings, equipment and other structures and stationary items located on those sites.
 - ii. Any other sites used in conjunction with the industrial activity, including a quarry, tailings pond, wastewater lagoon or pond and landfill.
 2. The portion of a natural gas pipeline system within Ontario that is used in natural gas transmission, including associated installations and equipment owned by the same owner or operator and operated in an integrated manner. O. Reg. 729/21, s. 2; O. Reg. 562/22, s. 2, 4 (1).
- (2) Any part of a public road or of a railway track that is bordered on both sides by a facility and used to carry out the facility’s industrial activities is considered to be part of the facility. O. Reg. 729/21, s. 2.
- (3) For greater certainty, buildings that are used for legal, administrative or management purposes and that are not located where an industrial activity is carried out do not form part of a facility. O. Reg. 729/21, s. 2.
- (4) For the purposes of this Regulation, separate sites are operated in an integrated manner if any of the following occurs between them:
1. Transfer of intermediate products, final products, by-products, by-product fuels or other material for processing, packaging or shipping.
 2. Transfer of energy, including steam, cooling media or electricity, generated at one of them and used at another, other than the transfer of common fuels directly from one to another. O. Reg. 729/21, s. 2.
- (5) Despite subsection (1), a registered EPS facility at which all industrial activities have ceased continues to be an EPS facility and, during the period of cessation, is constituted of the sites that formed the facility immediately before the activities ceased which continue to have at least one common owner or operator. O. Reg. 562/22, s. 4 (2).
- (6) For greater certainty,
- (a) subsection (5) does not apply if the registration mentioned in that subsection is cancelled; and
 - (b) when a facility mentioned in subsection (5) resumes engaging in an industrial activity, subsections (1) to (4) apply with respect to the facility. O. Reg. 562/22, s. 4 (2).

**PART II
REGISTRATION OF EPS FACILITY**

Required registration

- 2.** (1) The owner or operator of an EPS facility that meets the criteria set out in subsection (2) shall,
- (a) if the facility has never been registered under this Regulation, register the facility with the Director in the first year in which the criteria are met; or

(b) if the facility has previously been registered under this Regulation but its most recent registration has been cancelled, register the facility with the Director in the first year in which the criteria are met after the year of that cancellation as specified in the confirmation of cancellation given under clause 8.1 (7) (a). O. Reg. 562/22, s. 5.

(2) The following are the criteria mentioned in subsection (1):

1. The primary activity engaged in at the facility is an industrial activity listed in paragraphs 1 to 38 of Schedule 2.
2. As a result of greenhouse gas emissions related to the facility in 2014 or any subsequent year, the owner or operator of the facility was required, or a previous owner or operator of the facility was required, to report under a regulation set out in Column 1 of the Table to this subsection and the amount described opposite the regulation in Column 2 of the Table that was set out in the report in respect of the facility was at least 50,000 tonnes of CO₂e.

TABLE

Item	Column 1 Regulation	Column 2 Amount
1.	The Reporting Regulation	The reporting amount within the meaning of the Reporting Regulation.
2.	Ontario Regulation 452/09	The result of the calculation under clause 7.3 (1) (c) of Ontario Regulation 452/09 as it read on July 31, 2018.
3.	Ontario Regulation 452/09	The amount required to be set out in a report under paragraph 9 of section 6 of Ontario Regulation 452/09 as it read on December 9, 2015.
4.	Ontario Regulation 143/16	The reporting amount within the meaning of Ontario Regulation 143/16.

O. Reg. 562/22, s. 5.

(3) For greater certainty, a requirement mentioned in paragraph 2 of subsection (2) includes a requirement to report in respect of any site that,

- (a) forms part of the facility that is the subject of the registration; and
- (b) was a facility under any previous definition of "facility". O. Reg. 562/22, s. 5.

(4) Despite clause (1) (b), if a facility's most recent registration has been cancelled following an application made under paragraph 2 of subsection 8.1 (3), the requirement to register the facility does not apply during the period that commences on the date that the registration is cancelled and ends on the first day of the cessation period specified in the application. O. Reg. 562/22, s. 5.

Procedure for required registration

3. (1) For the purposes of registering an EPS facility under section 2, the owner or operator of the EPS facility shall take the following steps:

1. Give written notice to the Director of the intention to register the EPS facility.
2. Upon receiving a request from the Director, as described in subsection (2), comply with the request in writing.
3. Complete the registration form approved by the Director and give the completed form to the Director. O. Reg. 562/22, s. 5.

(2) Upon receipt of a notice under paragraph 1 of subsection (1) from an owner or operator, the Director shall, by written notice to the owner or operator, request that the owner or operator confirm that the information set out in Schedule 1 that is held by the Director in respect of the registration is accurate and may also request, as part of the notice, that the owner or operator provide any information set out in Schedule 1 that the Director does not already have. O. Reg. 562/22, s. 5.

(3) If the Director is satisfied that the EPS facility meets the criteria set out in section 2 and that the steps set out in subsection (1) of this section have been taken, the Director shall,

- (a) establish a facility account and assign it a unique number; and
- (b) give the person who registered the EPS facility written confirmation that the EPS facility is registered. O. Reg. 562/22, s. 5.

Optional registration

4. (1) The owner or operator of an EPS facility that meets any of the following criteria may apply to register the facility with the Director:

1. An industrial activity is engaged in at the EPS facility and as a result of greenhouse gas emissions related to the facility in 2014 or any subsequent year, the owner or operator of the facility, or a previous owner or operator, submitted a report under a regulation set out in Column 1 of the Table to subsection 2 (2) and the amount described opposite the regulation in Column 2 of the Table that was set out in the report in respect of the facility was at least 10,000 tonnes of CO₂e.
 2. Paragraph 1 does not apply but the following criteria are met:
 - i. An industrial activity is engaged in at the EPS facility.
 - ii. An eligible modification in respect of the facility is complete or substantially complete.
 - iii. The owner or operator has a report prepared and signed by a licensed engineering practitioner that demonstrates that greenhouse gas emissions in respect of the EPS facility are likely to be at least 10,000 tonnes of CO₂e in at least one of the three years following the year in which the eligible modification was substantially completed.
 3. The owner or operator of the facility,
 - i. did not engage in an industrial activity at the facility before the date of first production and the industrial activity that is to be engaged in at the facility is not one that the owner or operator or a previous owner or operator engaged in at the facility, and
 - ii. has a report prepared and signed by a licensed engineering practitioner that demonstrates that greenhouse gas emissions in respect of the EPS facility are likely to be at least 10,000 tonnes of CO₂e in at least one of the three years following the year in which the date of first production occurs. O. Reg. 562/22, s. 5.
- (2) For greater certainty, a report mentioned in paragraph 1 of subsection (1) includes a report submitted in respect of any site that,
- (a) forms part of the facility that is the subject of the registration; and
 - (b) was a facility under any previous definition of "facility". O. Reg. 562/22, s. 5.
- (3) The owner or operator of an EPS facility at which an industrial activity is engaged in may also apply to register under paragraph 1 of subsection (1) if the EPS facility is composed of multiple sites in respect of which a report or reports mentioned in that paragraph have been submitted and the sum of the amounts mentioned in that paragraph for the same reporting period for all of the sites was at least 10,000 tonnes of CO₂e. O. Reg. 562/22, s. 5.
- (4) Despite subsections (1) and (3), no application may be made under those subsections in respect of an EPS facility by a person who has made an application under subsection 8.1 (3) if the facility's registration was cancelled as a result of that application. O. Reg. 562/22, s. 5.
- (5) An application for registration under paragraph 2 of subsection (1) must,
- (a) be made on or after the date that the EPS facility's eligible modification is substantially complete and no later than the end of the third year after that date; and
 - (b) include a copy of the report described in subparagraph 2 iii of subsection (1) and the information required under Schedule 1. O. Reg. 562/22, s. 5.
- (6) An application for registration under paragraph 3 of subsection (1) must,
- (a) be made on or after the EPS facility's date of first production and no later than the end of the third year after that date; and
 - (b) include a copy of the report described in subparagraph 3 ii of subsection (1) and the information required under Schedule 1. O. Reg. 562/22, s. 5.

(7) A report described in subparagraphs 2 iii and 3 ii of subsection (1) must contain the following information:

1. The licensed engineering practitioner's estimates of the following projected emissions:
 - i. The annual emissions of each greenhouse gas from all specified GHG activities, expressed in tonnes.
 - ii. The annual greenhouse gas emissions, excluding CO₂ from combustion of biomass, from all specified GHG activities, expressed in tonnes of CO₂e.
 - iii. The annual emissions of each greenhouse gas associated with each industrial activity engaged in at the facility, expressed in tonnes.
 - iv. The annual greenhouse gas emissions associated with each industrial activity engaged in at the facility, expressed in tonnes of CO₂e.
2. If the report is in respect of paragraph 2 of subsection (1),
 - i. confirmation that the primary change constituting the eligible modification is not a change described in subsection 1 (5), and
 - ii. if the change meets the criteria in subsection 1 (6), the licensed engineering practitioner's estimates of the annual emissions intensity in respect of at least one of the products described in paragraph 1 of that subsection before the eligible modification and the projected annual emissions intensity in respect of the same product after the eligible modification.
3. A list of all units, processes, activities and operations that were taken into account in quantifying or estimating greenhouse gas emissions.
4. The details of the calculations, assumptions, material usage, level of production, energy usage and processes that informed the estimates of emissions and emissions intensities.
5. Such other information as the Director may specify in respect of the estimates. O. Reg. 562/22, s. 5.

(8) The estimates described in subsection (7) must be prepared in accordance with the following:

1. The estimates of greenhouse gas emissions must be made for each greenhouse gas set out in Schedule 1 to the Reporting Regulation, and the amount of CO₂e, if applicable, must be determined by applying the global warming potential for each gas set out in Column 5 of that Schedule.
2. The expected annual production amount of each product in respect of each industrial activity engaged in at the facility must be obtained from the owner or operator of the facility.
3. All emissions estimates and expected values must be based on calculations that are consistent with one or more of the following:
 - i. The document published by the Ministry and available from the Ministry, entitled "Guideline for Quantification, Reporting and Verification of Greenhouse Gas Emissions", as amended from time to time.
 - ii. The document published by the Government of Canada and available from the Government of Canada, entitled "Canada's Greenhouse Gas Quantification Requirements", as amended from time to time.
 - iii. The document published by the Government of the United States Environmental Protection Agency and available from that agency, entitled "U.S. EPA 40 CFR Part 98, Mandatory Greenhouse Gas Reporting", as amended from time to time.
4. The same method must be used to quantify the information for each estimate for each year covered by the report.
5. All information must, if feasible, be provided using the International System of Units (SI units). O. Reg. 562/22, s. 5.

(9) In this section,

“specified GHG activity” has the same meaning as in the Reporting Regulation. O. Reg. 562/22, s. 5.

4.1 REVOKED: O. Reg. 562/22, s. 5.

Procedure for applying to register an EPS facility under s. 4

5. (1) For the purposes of applying to register an EPS facility under section 4, the owner or operator of the facility shall take the following steps:

1. Give written notice to the Director of the intention to apply to register the EPS facility.
2. Upon receiving a request from the Director, as described in subsection (2), comply with the request in writing.
3. Complete the application form approved by the Director and give the completed form to the Director. O. Reg. 729/21, s. 7; O. Reg. 562/22, s. 2, 6 (1).

(2) Upon receipt of a notice under paragraph 1 of subsection (1) from an owner or operator, the Director shall, by written notice to the owner or operator, request that the owner or operator confirm that the information set out in Schedule 1 that is held by the Director in respect of the application is accurate and may also request that the owner or operator provide any information set out in Schedule 1 that is not already held by the Director. O. Reg. 729/21, s. 7.

(3) If the Director is satisfied that the facility meets the criteria set out in section 4 and that the steps set out in subsection (1) have been taken, the Director shall,

- (a) establish a facility account and assign it a unique number; and
- (b) give the person who applied for the registration written confirmation that the EPS facility is registered. O. Reg. 729/21, s. 7; O. Reg. 562/22, s. 2, 6 (1-3).

(4) If the Director proposes to refuse an application for registration, the Director shall give written notice to the applicant, setting out the following:

1. The reasons for the proposed refusal.
2. A statement that the applicant may, no later than five days following the day on which the notice was given, submit comments in writing to the Director in respect of the proposed refusal. O. Reg. 729/21, s. 7.

(5) After considering any comments received from the applicant within the time period specified in the notice under subsection (4), the Director shall,

- (a) give the applicant written confirmation that the EPS facility is registered; or
- (b) give the applicant written notice of the Director's refusal to register the EPS facility. O. Reg. 729/21, s. 7; O. Reg. 562/22, s. 2, 6 (4).

Change in ownership of entire facility, continuation of registration etc.

6. (1) If the person who received the most recent confirmation of registration in respect of an EPS facility ceases to own or operate the facility during a registration period, the person shall notify the Director within 30 days after ceasing to be the owner or operator of the facility. O. Reg. 562/22, s. 7.

(2) A person who becomes the new owner or operator of a facility mentioned in subsection (1) shall continue the registration mentioned in that subsection with the Director in the manner set out in subsection (4) within 30 days after the person mentioned in subsection (1) ceased to be the owner or operator of the facility if,

- (a) an industrial activity continues to be engaged in at the facility; and
- (b) the new owner or operator is not required under section 8, as a result of acquiring the facility, to inform the Director of a change to the composition of sites that constitute another facility. O. Reg. 562/22, s. 7.

(3) For greater certainty, subsections (1) and (2) do not apply if the person mentioned in subsection (1) continues to own or operate part of the facility. O. Reg. 562/22, s. 7.

(4) The person mentioned in subsection (2) shall submit to the Director a form approved by the Director and shall provide all information set out in Schedule 1 in respect of the facility of which the person is the new owner or operator. O. Reg. 562/22, s. 7.

(5) Upon receipt of the form and information required under subsection (4), if the Director is satisfied that an industrial activity continues to be engaged in at the facility, the Director shall continue the registration mentioned in subsection (1) in respect of the new owner or operator of the facility by,

(a) establishing a new facility account and assigning it a unique number; and

(b) giving written confirmation to the person who submitted the form and information that the registration is continued. O. Reg. 562/22, s. 7.

(6) If a registration is continued, the person mentioned in subsection (1) who ceased to be the owner or operator of the facility shall be referred to, for the purposes of this Regulation, as the previous owner or operator of the facility. O. Reg. 562/22, s. 7.

(7) If a notice is given under subsection (1) but the registration in respect of the facility is not continued under subsection (5), the registration shall be cancelled in accordance with section 8.1. O. Reg. 562/22, s. 7.

(8) For greater certainty, in accordance with subsection 1 (8), a continuation of a registration under this section does not commence a new registration period in respect of the facility. O. Reg. 562/22, s. 7.

(9) Sections 7 and 8 apply, with necessary modifications, in respect of a continuation of a registration under this section. O. Reg. 562/22, s. 7.

Account representatives

7. (1) A person registering or applying to register a facility shall identify at least two and no more than five account representatives who are authorized by the person to act on their behalf in respect of the facility for the purposes of this Regulation. O. Reg. 241/19, s. 7 (1).

(2) The person registering the facility or applying to register the facility shall not identify an individual as an account representative and an identified individual shall not act as an account representative unless the individual meets the following criteria:

1. The individual has not been found guilty of an offence under the Act.

2. The individual has not been found guilty of an offence under the *Commodity Futures Act* or the *Securities Act*. O. Reg. 241/19, s. 7 (2).

(3) Subject to subsection (4), the person who registered a facility may, at any time after the registration is confirmed and before the facility account established as a result of the registration is closed, remove an identified account representative or identify a new account representative who meets the criteria set out in subsection (2) by giving notice to the Director of the change and providing any updates to information set out in Schedule 1 in respect of any new account representative. O. Reg. 562/22, s. 8 (1).

(4) The person who registered a facility shall ensure that at all times before the facility account in respect of that registration is closed, a minimum of two and a maximum of five account representatives are identified in respect of the facility account. O. Reg. 562/22, s. 8 (1).

(5) The same account representative may be identified in respect of more than one facility or more than one facility account. O. Reg. 241/19, s. 7 (5); O. Reg. 562/22, s. 8 (2).

(6) If a notice identifying a new account representative in respect of a facility account is given to the Director under subsection (3), the new account representative shall not act as an account representative in respect of the facility account until such time as the Director provides to the person who registered the facility written confirmation that the notice has been received by the Director. O. Reg. 241/19, s. 7 (6); O. Reg. 562/22, s. 8 (3).

Duty to update information

8. (1) A person who registered an EPS facility or has applied to register an EPS facility, if that application is pending, shall inform the Director of any change to the information required under Schedule 1 within 30 days of the change. O. Reg. 562/22, s. 9.

(2) Subsection (1) does not apply to a person who registered an EPS facility if the facility account established as a result of the registration has been closed. O. Reg. 562/22, s. 9.

(3) If the Director is informed of a change in respect of the composition of sites that constitute an EPS facility or of a change to the description of any site, the Director shall give written notice of the effective date of the change to the owner or operator of the facility for the purposes of the determination required under section 12. O. Reg. 562/22, s. 9.

(4) A reference to an owner or operator of an EPS facility in Schedule 1 includes a person who is not an owner or operator of an EPS facility but who is required to inform the Director of a change under this section. O. Reg. 562/22, s. 9.

Cancellation of registration

8.1 (1) The Director shall cancel a facility's registration in accordance with this section if any of the following circumstances exist:

1. The facility is registered under section 4 and the Director is of the opinion that any of the criteria set out in subsection 4 (1) were not met at the time of registration.
2. The registration is based on the criteria set out in paragraph 2 of subsection 4 (1) and for each year in the three-year period following the year in which the eligible modification is substantially complete,
 - i. the reporting amount in respect of the facility for the year was less than 10,000 tonnes of CO₂e,
 - ii. no report in respect of the facility was given to the Director under section 6 of the Reporting Regulation for the year, or
 - iii. if a report in respect of the facility was given to the Director for the year under section 6 of the Reporting Regulation, no reporting amount was included in the report.
3. The registration is based on the criteria set out in paragraph 3 of subsection 4 (1) and for each year in the three-year period following the year in which the date of first production occurs,
 - i. the reporting amount in respect of the facility for the year was less than 10,000 tonnes of CO₂e,
 - ii. no report in respect of the facility was given to the Director under section 6 of the Reporting Regulation for the year, or
 - iii. if a report in respect of the facility was given to the Director for the year under section 6 of the Reporting Regulation, no reporting amount was included in the report.
4. The verified total annual emissions limit in respect of the facility is zero for two consecutive compliance periods.
5. No form has been submitted under subsection 6 (4) in respect of a facility during the period that ends 60 days after a notice is given in respect of the facility under subsection 6 (1).
6. A form has been submitted under subsection 6 (4) to continue a registration in respect of a facility but the registration was not continued under subsection 6 (5). O. Reg. 562/22, s. 9.

(2) The Director may cancel a facility's registration in accordance with this section if an application has been made under subsection (3). O. Reg. 562/22, s. 9.

(3) The owner or operator of an EPS facility may apply to the Director to cancel the facility's registration if any of the following circumstances exist:

1. All industrial activities engaged in at the facility have permanently ceased.
2. The owner or operator has informed the Director that all industrial activities engaged in at the facility will cease for a period that is anticipated to last for at least one year and the application is made in the same year that the cessation begins or in the year immediately before or immediately after that year.
3. In respect of each of the three compliance periods before the year in which the application is made, the reporting amount in respect of the facility was less than 10,000 tonnes of CO₂e.
4. In respect of each of the five compliance periods before the year in which the application is made, each production parameter in respect of the facility was zero. O. Reg. 562/22, s. 9.

(4) An application for cancellation must include an indication of which circumstance described in subsection (3) forms the basis for the application. O. Reg. 562/22, s. 9.

(5) If the Director proposes to refuse an application for cancellation of registration, the Director shall give written notice to the applicant, setting out the following:

1. The reasons for the proposed refusal.
2. A statement that the applicant may, no later than 30 days following the day on which the notice was given, submit comments in writing to the Director in respect of the proposed refusal. O. Reg. 562/22, s. 9.

(6) Before cancelling a facility's registration under subsection (1), the Director shall give written notice to the person who most recently registered the facility, setting out the following:

1. The reasons for the proposed cancellation.
2. A statement that the person may, no later than 30 days following the day on which the notice was given, submit comments in writing to the Director in respect of the proposed cancellation. O. Reg. 562/22, s. 9.

(7) After considering any comments received within the time period specified in the notice under subsection (5) or (6), as applicable, the Director shall,

- (a) if the Director has decided to cancel the registration, give the person written confirmation of the cancellation of the facility's registration and of the cancellation date; or
- (b) if the Director has decided not to cancel the registration, give the person written notice of the Director's decision. O. Reg. 562/22, s. 9.

(8) In this section,

"reporting amount" has the same meaning as in the Reporting Regulation. O. Reg. 562/22, s. 9.

Closure of accounts

8.2 (1) No earlier than seven years after the date on which a facility's registration is cancelled, the Director may, by written notice, propose to close an account that was established for the registration if the Director is of the opinion that all compliance requirements under this Regulation have been met in respect of the registration. O. Reg. 562/22, s. 9.

(2) In the case of a registration continued under subsection 6 (5), the Director may, by written notice, propose to close a facility account that was established for the registration in respect of the previous owner or operator of the facility if no compliance instruments are in the account. O. Reg. 562/22, s. 9.

(3) The Director shall use best efforts to give the person for whom the facility account was established a copy of the notice under subsection (1) or (2) and an opportunity to make written submissions to the Director. O. Reg. 562/22, s. 9.

(4) If the Director has not received a written request that the account be continued within 60 days after the notice is given under subsection (3), the Director shall close the account and remove and retire any instruments in the account. O. Reg. 562/22, s. 9.

PART III COMPLIANCE

Interpretation

9. (1) For the purposes of this Part, a reference to compliance instruments that have been transferred into a facility account includes compliance instruments that have been distributed by the Director into the account under sections 11.1 and 16 and compliance instruments that have been transferred by the Director into the account under section 19. O. Reg. 562/22, s. 11.

(2) In this Part a reference to a statement or report given to the Director is a reference to a statement or report given to the Director under the Reporting Regulation. O. Reg. 562/22, s. 11.

(3) For the purposes of determining the date on which a verification statement for a revised report is given to the Director, the following rules apply:

1. If the statement is given to the Director during the period beginning on October 16 in the year following the compliance period to which the revised report relates or any subsequent year and ending on December 1 in the year, the statement is deemed to have been given to the Director on December 2 in the year.
2. If the statement is given to the Director during the period beginning on August 16 in the year two years after the compliance period to which the revised report relates or any subsequent year and ending on October 15 in the year, the statement is deemed to have been given to the Director on October 16 in the year.
3. In all other cases, the date is the date on which the statement is given to the Director. O. Reg. 562/22, s. 11.

Application

9.1 (1) Subject to subsections (3) and (4), this Part applies to an owner or operator of a facility for each compliance period in a registration period if the person was an owner or operator of the facility during that registration period. O. Reg. 562/22, s. 11.

(2) For greater certainty, subsection (1) applies to a person who has ceased to own or operate a facility until the person's registration in respect of the facility is cancelled and the facility account is closed. O. Reg. 562/22, s. 11.

(3) If an owner or operator of a facility ceases to be the owner or operator of the facility during a compliance period and a new owner or operator continues the registration under section 6,

- (a) this Part, other than section 19, ceases to apply to the previous owner or operator in respect of the compliance period and all future compliance periods in the registration period; and
- (b) this Part applies to the new owner or operator as if the new owner or operator had been the owner or operator of the facility during the entire compliance period. O. Reg. 562/22, s. 11.

(4) If the previous owner or operator of the facility was required to satisfy any of the following obligations in respect of a previous compliance period in the registration period during which a person becomes the new owner or operator of the facility, the obligation applies to the new owner or operator:

1. The compliance obligation shortfall.
2. The obligation under paragraph 3 of subsection 13 (1).
3. The revised report obligation shortfall.
4. The obligation under paragraph 4 of subsection 13 (1). O. Reg. 562/22, s. 11.

Prohibition

10. No person shall sell, trade, transfer or otherwise deal with compliance instruments, other than a person who is authorized to do so under this Regulation and who is doing so in accordance with this Regulation. O. Reg. 241/19, s. 10; O. Reg. 562/22, s. 12.

Emissions performance units, distribution

11. When distributing an emissions performance unit under section 16, the Director shall,

- (a) record the compliance period in respect of which it is distributed; and
- (b) assign it an expiry date, which shall be December 15 in the year that is five years after the compliance period in respect of which it is distributed. O. Reg. 562/22, s. 13.

Excess emissions units, distribution

11.1 (1) A person who registered a facility may, in respect of a registration for the facility, request that the Director distribute excess emissions units into the facility account established as a result of the registration. O. Reg. 562/22, s. 13.

(2) The request shall be made in the form approved by the Director and shall include the following:

1. The proposed date that the excess emissions units are to be distributed, which must be one of the following dates:

- i. December 15 in any year.
- ii. February 15 in any year.
- iii. A deadline by which a revised report obligation in respect of the facility is to be satisfied.
- iv. A deadline by which an obligation under paragraph 4 of subsection 13 (1) in respect of the facility is to be satisfied.

2. Confirmation that payment of the amount determined in accordance with the following formula has been made to the Minister of Finance, in a form and manner specified by a notice of the Director:

$$A \times B$$

in which,

“A” is the number of excess emissions units to be distributed, and

“B” is the cost set out in Column 2 of the Table to this subsection opposite the year in which the distribution is proposed to be made set out in Column 1.

TABLE

Item	Column 1 Year	Column 2 Cost of excess emissions units
1.	2023	\$50
2.	2024	\$65
3.	2025	\$80
4.	2026	\$95
5.	2027	\$110
6.	2028	\$125
7.	2029	\$140
8.	2030	\$155
9.	2031	\$170

O. Reg. 562/22, s. 13.

(3) A request for distribution of excess emissions units under subsection (1) must be made,

- (a) if the proposed distribution date is December 15 in a year, no later than December 1 of that year;
- (b) if the proposed distribution date is February 15 in a year, no later than February 1 of that year; or
- (c) in all other cases, no later than 15 days before the proposed distribution date. O. Reg. 562/22, s. 13.

(4) If a request has been made in accordance with subsections (2) and (3) and payment has been made in accordance with paragraph 2 of subsection (2), the Director shall distribute the units into the facility account no later than the distribution date specified in the request and shall record the year in which each excess emissions unit is distributed. O. Reg. 562/22, s. 13.

(5) Despite subsection (4), if a registration in respect of a facility has been continued under section 6, the Director shall not distribute excess emissions units into a facility account established for a previous owner or operator of the facility in respect of the registration. O. Reg. 562/22, s. 13.

Compliance instruments, eligibility

11.2 For the purposes of this Part, a compliance instrument described in Column 2 or 3 of the Table to this section that has been transferred into a facility account is eligible for use to meet the obligation set out opposite the instrument in Column 1.

TABLE

Item	Column 1 Obligation	Column 2 Eligible excess emissions units	Column 3 Eligible emissions performance units
1.	Portion of compliance obligation in respect of a compliance period satisfied by December 15 in the year following a compliance period	An excess emissions unit distributed in any year after the compliance period	An emissions performance unit for which the expiry date is not earlier than December 15 in the year following the compliance period
2.	Compliance obligation shortfall in respect of a compliance period	An excess emissions unit distributed in the year that is two years after the compliance period or in any subsequent year	An emissions performance unit for which the expiry date is not earlier than December 15 in the year in which it would be used to satisfy the compliance obligation shortfall
3.	Obligation under paragraph 3 of subsection 13 (1) in respect of a compliance period	An excess emissions unit distributed in the year that is two years after the compliance period or in any subsequent year	An emissions performance unit for which the expiry date is not earlier than December 15 in the year in which it would be used to satisfy the obligation under paragraph 3 of subsection 13 (1).
4.	Portion of revised report obligation satisfied by the deadline for that revised report obligation	An excess emissions unit distributed in the year of the deadline for the revised report obligation or in any subsequent year	An emissions performance unit for which the expiry date is not earlier than the deadline for compliance with the revised report obligation.
5.	Revised report obligation shortfall	An excess emissions unit distributed in the year in which the deadline for the obligation under paragraph 4 of subsection 13 (1) falls or in any subsequent year	An emissions performance unit for which the expiry date is not earlier than December 15 in the year in which it would be used to satisfy the revised report obligation shortfall.
6.	Obligation under paragraph 4 of subsection 13 (1)	An excess emissions unit distributed in the year in which the deadline for the obligation under paragraph 4 of subsection 13 (1) falls or in any subsequent year	An emissions performance unit for which the expiry date is not earlier than December 15 in the year in which it would be used to satisfy the obligation under paragraph 4 of subsection 13 (1).

O. Reg. 562/22, s. 13.

Determination of total annual emissions limit

12. For the purposes of the Reporting Regulation and this Regulation, the owner or operator of an EPS facility shall determine the total annual emissions limit in respect of the EPS facility for each compliance period in accordance with the Methodology. O. Reg. 562/22, s. 14.

Obligations

13. (1) The owner or operator of a facility shall ensure that the following steps are taken in respect of the facility for a compliance period:

1. No later than December 15 in the year following the compliance period, ensure that the facility account includes a number of compliance instruments that is equal to or greater than the amount determined under subsection (3).
2. If a verification statement for a revised report in respect of the compliance period is given to the Director after October 15 in the year following the compliance period, ensure that, no later than 60 days after the date on which the verification statement is given or is deemed to have been given to the Director, the facility account includes a number of compliance instruments that is equal to or greater than the amount determined under subsection (6).
3. If an obligation mentioned in paragraph 1 is not satisfied by December 15 in the year following the compliance period, ensure that, no later than February 15 in the year that is two years after the compliance period, additional compliance instruments are in the facility account in an amount equal to three times the amount of the compliance obligation shortfall.
4. If an obligation mentioned in paragraph 2 is not satisfied by the date specified in that paragraph, ensure that, no later than 120 days after the date on which the verification statement is given or is deemed to have been given to the Director, additional compliance instruments are in the facility account in an amount equal to three times the amount of the revised report obligation shortfall. O. Reg. 562/22, s. 14.

(2) A compliance instrument shall not be used for the purpose of an obligation set out in subsection (1) unless it satisfies the eligibility rules set out in section 11.2 in respect of the obligation. O. Reg. 562/22, s. 14.

(3) The amount of the compliance obligation mentioned in paragraph 1 of subsection (1) is the amount determined in accordance with the following formula:

$$VVA - VTAEL$$

in which,

“VVA” is, subject to section 14, the verified verification amount from the verification statement for the report in respect of the facility for the compliance period, and

“VTAEL” is, subject to section 15, the verified total annual emissions limit from the verification statement for the report in respect of the facility for the compliance period. O. Reg. 562/22, s. 14.

(4) If one or more verification statements for revised reports in respect of a compliance period are given to the Director on or before October 15 in the year following the compliance period, the most recent of those verification statements shall be used for the purposes of subsection (3) in respect of the compliance period. O. Reg. 562/22, s. 14.

(5) Paragraph 1 of subsection (1) does not apply if the amount determined under subsection (3) is zero or a negative number. O. Reg. 562/22, s. 14.

(6) The revised report obligation amount mentioned in paragraph 2 of subsection (1) is the amount determined in accordance with the following formula:

$$VVA_R - VTAEL_R - CO - RRO + EPU$$

in which,

“VVA_R” is, subject to section 14, the verified verification amount, as set out in the verification statement for the revised report in respect of the facility for the compliance period,

“VTAEL_R” is, subject to section 15, the verified total annual emissions limit, as set out in the verification statement for the revised report in respect of the facility for the compliance period,

“CO” is the compliance obligation in respect of the facility for the compliance period, if any,

“RRO” is the sum of all previous revised report obligations in respect of the facility for the compliance period, if any, and

“EPU” is the sum of all emissions performance units distributed under section 16 in respect of the facility for the compliance period, if any. O. Reg. 562/22, s. 14.

(7) Paragraph 2 of subsection (1) does not apply if the amount determined under subsection (6) is zero or a negative number. O. Reg. 562/22, s. 14.

Application of s. 13, adverse or no verification amount conclusion

14. (1) If a verification statement for a report in respect of a facility for a compliance period includes an adverse verification amount conclusion or no verification amount conclusion, or if no verification statement was submitted in respect of a facility for a compliance period, the number determined in accordance with subsection (2) shall be substituted for the verified verification amount in respect of the report wherever it appears in section 13. O. Reg. 562/22, s. 15 (1).

(2) Subject to subsection (5), the number mentioned in subsection (1) shall be the amount that is equal to 120 per cent of the highest of the following:

1. Any verification amount set out in a report prepared under the Reporting Regulation in respect of the facility.
2. Any verification amount set out in a report prepared under Ontario Regulation 143/16 in respect of the facility.
3. Any result of a calculation under paragraph 4 of subsection 7.3 (2) of Ontario Regulation 452/09 as it read on July 31, 2018 for the purposes of a report prepared under that Regulation in respect of the facility.
4. Any amount required to be set out in a report under paragraph 9 of section 6 of Ontario Regulation 452/09 as it read on December 9, 2015 in respect of the facility. O. Reg. 562/22, s. 15 (1).

(3) If the number substituted is a number that is not a whole number, the number shall be rounded up to the nearest whole number. O. Reg. 241/19, s. 14 (3).

(4) For the purposes of this section, the Director may aggregate the amounts that were reported by facilities within the meaning of the Reporting Regulation, Ontario Regulation 143/16 or Ontario Regulation 452/09 and that are currently sites that form part of the EPS facility, to obtain an amount for the purposes of any of the paragraphs of subsection (2) for a reporting period for all the sites that form part of the EPS facility, and where the Director aggregates amounts, the Director shall give notice of the aggregation to the owner or operator of the EPS facility. O. Reg. 729/21, s. 12; O. Reg. 562/22, s. 2, 15 (2).

(5) Where the owner or operator of a facility receives a registered emitter notice under the *Greenhouse Gas Pollution Pricing Act* (Canada) after the first day of the first compliance period in respect of the registration for the facility, the value determined under subsection (2) shall be multiplied by the number of days from the effective date set out in the registered emitter's notice to December 31 of the first compliance period in respect of the registration and then divided by the number of days in the year in order to establish the compliance obligation in respect of first compliance period in respect of the registration, with any necessary modifications where the Director has aggregated under subsection (4). O. Reg. 729/21, s. 12; O. Reg. 562/22, s. 15 (3).

(6) A reference to a report in this section shall be read as including a revised report, if applicable. O. Reg. 562/22, s. 15 (4).

Application of s. 13, adverse or no production parameter verification conclusion etc.

15. (1) If a verification statement for a report in respect of a facility for a compliance period includes an adverse production parameter verification conclusion, no production parameter verification conclusion, an adverse total annual emissions limit verification conclusion or no total annual emissions limit verification conclusion, or if there is no verification statement for a report in respect of a facility for the compliance period, the number determined in accordance with subsection (2) shall be substituted for the verified total annual emissions limit in respect of the report wherever it appears in section 13. O. Reg. 562/22, s. 16 (1).

(2) Subject to subsection (5), the number mentioned in subsection (1) shall be the amount that is equal to 80 per cent of the lowest of the following:

1. Any verification amount set out in a report prepared under the Reporting Regulation in respect of the facility.
2. Any verification amount set out in a report prepared under Ontario Regulation 143/16 in respect of the facility.
3. Any result of a calculation under paragraph 4 of subsection 7.3 (2) of Ontario Regulation 452/09 as it read on July 31, 2018 for the purposes of a report prepared under that Regulation in respect of the facility.

4. Any amount required to be set out in a report under paragraph 9 of section 6 of Ontario Regulation 452/09 as it read on December 9, 2015 in respect of the facility.

5. Any total annual emissions limit set out in a report prepared under the Reporting Regulation in respect of the facility. O. Reg. 562/22, s. 16 (1).

(3) If the number substituted is a number that is not a whole number, the number shall be rounded down to the nearest whole number. O. Reg. 241/19, s. 15 (3).

(4) For the purposes of this section, the Director may aggregate the amounts that were reported by facilities within the meaning of the Reporting Regulation, Ontario Regulation 143/16 or Ontario Regulation 452/09 and that are currently sites that form part of the EPS facility, to obtain an amount for the purposes of any of the paragraphs of subsection (2) for a reporting period for all the sites that form part of the EPS facility, and where the Director aggregates amounts, the Director shall give notice of the aggregation to the owner or operator of the EPS facility. O. Reg. 729/21, s. 13; O. Reg. 562/22, s. 2, 16 (2).

(5) Where the owner or operator of a facility receives a registered emitter notice under the *Greenhouse Gas Pollution Pricing Act* (Canada) after the first day of the first compliance period in respect of the registration for the facility, the value determined under subsection (2) shall be multiplied by the number of days from the effective date set out in the registered emitter's notice to December 31 of the first compliance period in respect of the registration and then divided by the number of days in the year in order to establish the compliance obligation in respect of the first compliance period in respect of the registration, with any necessary modifications where the Director has aggregated under subsection (4). O. Reg. 729/21, s. 13; O. Reg. 562/22, s. 16 (3).

(6) A reference to a report in this section shall be read as including a revised report, if applicable. O. Reg. 562/22, s. 16 (4).

Distribution of emissions performance units

16. (1) The Director shall take the following steps in respect of a facility for a compliance period:

1. On or before November 15 in the year following the compliance period, subject to subsections (4) and (5), distribute into the facility account the number of emissions performance units equivalent to the amount determined under subsection (3).
2. If a verification statement for a revised report is given to the Director after October 15 in the year following the compliance period, no later than 60 days after the date on which the verification statement is given or is deemed to have been given to the Director, subject to subsections (8) and (9), distribute into the facility account the number of emissions performance units equivalent to the amount determined under subsection (7). O. Reg. 562/22, s. 17.

(2) The facility account mentioned in subsection (1) is the account established as a result of the most recent registration or continuation of registration in respect of the facility that occurred before the end of the registration period containing the compliance period. O. Reg. 562/22, s. 17.

(3) The amount mentioned in paragraph 1 of subsection (1) is the amount determined in accordance with the following formula:

$$\text{VTAEL} - \text{VVA}$$

in which,

"VTAEL" is the verified total annual emissions limit from the verification statement for the report in respect of the facility for the compliance period, and

"VVA" is the verified verification amount from the verification statement for the report in respect of the facility for the compliance period. O. Reg. 562/22, s. 17.

(4) Paragraph 1 of subsection (1) applies only if the amount determined under subsection (3) is greater than zero and the verification statement for the report in respect of the facility for the compliance period includes,

- (a) a positive or qualified positive verification amount conclusion; and
- (b) a positive or qualified positive total annual emissions limit verification conclusion. O. Reg. 562/22, s. 17.

(5) If the verified total annual emissions limit was calculated using the Historical Facility Emissions Limit Standard method under the Methodology, the number of emissions performance units to be distributed under paragraph 1 of subsection (1) shall not exceed the amount, rounded down to the nearest whole number, determined in accordance with the following formula:

$$0.05 \times VVA$$

in which,

“VVA” is the verified verification amount from the verification statement for the report in respect of the facility for the compliance period. O. Reg. 562/22, s. 17.

(6) If one or more verification statements for revised reports in respect of a compliance period are given to the Director on or before October 15 in the year following the compliance period, the most recent of those verification statements shall be used for the purposes of subsections (3) to (5) in respect of the compliance period. O. Reg. 562/22, s. 17.

(7) The amount mentioned in paragraph 2 of subsection (1) is the amount determined in accordance with the following formula:

$$VTAEL_R - VVA_R - EPU$$

in which,

“VTAEL_R” is the verified total annual emissions limit from the verification statement for the revised report in respect of the facility for the compliance period,

“VVA_R” is the verified verification amount from the verification statement for the revised report in respect of the facility for the compliance period, and

“EPU” is the total number of emissions performance units previously distributed in accordance with this section in respect of the facility for the compliance period. O. Reg. 562/22, s. 17.

(8) Paragraph 2 of subsection (1) does not apply and the Director shall not distribute additional emissions performance units into a facility account if any of the following circumstances exist:

1. The verification statement for the revised report is given or is deemed to have been given to the Director after October 15 in the fifth year following the compliance period to which the report relates.
2. The amount determined under subsection (7) is zero or a negative number.
3. Emissions performance units were not distributed under paragraph 1 of subsection (1) in respect of the facility for the compliance period.
4. The verification statement for the revised report does not include both,
 - i. a positive or qualified positive verification amount conclusion, and
 - ii. a positive or qualified positive total annual emissions limit verification conclusion. O. Reg. 562/22, s. 17.

(9) If the verified total annual emissions limit in the revised report was calculated using the Historical Facility Emissions Limit Standard method under the Methodology, the number of additional emissions performance units distributed under paragraph 2 of subsection (1) shall not exceed the amount, rounded down to the nearest whole number, determined in accordance with the following formula:

$$0.05 \times VVA_R - EPU$$

in which,

“VVA_R” is the verified verification amount from the verification statement for the revised report in respect of the facility for the compliance period, and

“EPU” is the total number of emissions performance units previously distributed in accordance with this section in respect of the facility for the compliance period. O. Reg. 562/22, s. 17.

Removal, retirement of compliance instruments

17. (1) The Director shall ensure that compliance instruments in a facility account that are eligible for use to satisfy a compliance obligation in respect of a compliance period and required for that purpose are removed in accordance with paragraph 2 of subsection (5) from the facility account and retired on or before December 31 in the year following the compliance period. O. Reg. 562/22, s. 17.

(2) The Director shall ensure that compliance instruments in a facility account that are eligible for use to satisfy a revised report obligation in respect of a compliance period and required for that purpose are removed in accordance with paragraph 2 of subsection (5) from the facility account and retired no later than 15 days after the deadline by which the revised report obligation is to be satisfied. O. Reg. 562/22, s. 17.

(3) If there is a compliance obligation shortfall, the Director shall, beginning in the year that is two years after the compliance period and ending when the compliance obligation shortfall and the obligation under paragraph 3 of subsection 13 (1) in respect of the compliance period have both been satisfied, remove compliance instruments in accordance with subsection (5) and retire them. O. Reg. 562/22, s. 17.

(4) If there is a revised report obligation shortfall, the Director shall, beginning on the deadline for the revised report obligation and ending when the revised report obligation shortfall and the obligation under paragraph 4 of subsection 13 (1) in respect of the compliance period have both been satisfied, remove compliance instruments in accordance with subsection (5) and retire them. O. Reg. 562/22, s. 17.

(5) The Director shall remove compliance instruments as follows:

1. As compliance instruments are transferred into the facility account at any time after December 15 in the year following the compliance period, the Director shall remove compliance instruments that are eligible for use to satisfy, as applicable,

- i. any compliance obligation shortfall,
- ii. any obligation under paragraph 3 of subsection 13 (1),
- iii. any revised report obligation shortfall, and
- iv. any obligation under paragraph 4 of subsection 13 (1).

2. If a facility account includes both emissions performance units and excess emissions units, the Director shall remove the compliance instruments as follows:

- i. Before removing any emissions performance units, remove all excess emissions units that are eligible for use to satisfy the applicable obligation in respect of the compliance period and required for that purpose.
- ii. When removing emissions performance units that are eligible for use to satisfy the applicable obligation in respect of the compliance period and required for that purpose, begin by removing those distributed in respect of the earliest compliance period and end with those distributed in respect of the most recent compliance period. O. Reg. 562/22, s. 17.

(6) The Director shall ensure that compliance instruments in a facility account that are no longer eligible for use under this Regulation are removed from the facility account and retired. O. Reg. 562/22, s. 17.

Cumulative outstanding amount

18. (1) Each year, the Director shall give written notice to the owner or operator of a facility in respect of a registration period setting out the amount determined in accordance with the following formula:

$$A + B + C + D - E$$

in which, subject to subsection (2),

“A” is the sum of all compliance obligations, if any, in respect of the facility for each compliance period in the registration period,

“B” is the sum of all obligations under paragraph 3 of subsection 13 (1), if any, in respect of the facility for each compliance period in the registration period,

“C” is the sum of all revised report obligations, if any, in respect of the facility for each compliance period in the registration period,

“D” is the sum of all obligations under paragraph 4 of subsection 13 (1), if any, in respect of the facility for each compliance period in the registration period, and

“E” is, subject to subsection (3), the total number of all compliance instruments that have been removed and retired under subsection 17 (1), (2), (3) or (4) in respect of the facility for the registration period. O. Reg. 562/22, s. 17.

(2) Subsection (1) does not apply if the amount determined under that subsection is zero or a negative number. O. Reg. 562/22, s. 17.

(3) An obligation that has a deadline after February 15 in the year in which the notice is given shall not be included in a determination made under subsection (1). O. Reg. 562/22, s. 17.

(4) A compliance instrument that was transferred into a facility account after February 15 in the year in which the notice is given shall not be included in the determination of “E” in subsection (1). O. Reg. 562/22, s. 17.

Authorized transfers between facility accounts

19. (1) If a facility’s registration is continued under section 6, an account representative in respect of a facility account that was established for the registration in respect of the previous owner or operator of the facility may, by giving written notice to the Director, request that the Director transfer compliance instruments from that account to an account that was established for the registration in respect of the new owner or operator of the facility. O. Reg. 562/22, s. 18 (1).

(2) If two facilities are owned or operated by the same person, an account representative may, by giving written notice to the Director, request that the Director transfer compliance instruments from a facility account in respect of one facility to a facility account in respect of the other facility if the following criteria are met:

1. Each facility account was established for the same owner or operator in respect of the facility.
2. Each facility account is the most recently established account in respect of each facility.
3. The account representative giving notice is identified in respect of at least one of the facility accounts. O. Reg. 562/22, s. 18 (1).

(3) If a person who registered a facility enters into an agreement with another person who registered a facility to transfer emissions performance units from the facility account of the first person to the facility account of the second person, an account representative in respect of the transferee’s facility account may, by giving written notice to the Director, request that the Director transfer emissions performance units from the transferor’s facility account to the transferee’s facility account. O. Reg. 562/22, s. 18 (1).

(3.1) If two facility accounts were established for the same person, an account representative in respect of one of the facility accounts may, by giving written notice to the Director, request that the Director transfer emission performance units from that facility account to the other facility account. O. Reg. 562/22, s. 18 (1).

(4) For the purposes of subsections (1) to (3.1), the notice shall include the following:

1. The account number assigned by the Ministry to each facility account involved in the transfer.
2. The total number of emissions performance units to be transferred and the total number of excess emissions units to be transferred.
- 2.1 The proposed date that the compliance instruments are to be transferred, which must be one of the following dates:

- i. December 15 in any year.
- ii. February 15 in any year.
- iii. A deadline by which a revised report obligation in respect of the facility is to be satisfied.
- iv. A deadline by which an obligation under paragraph 4 of subsection 13 (1) in respect of the facility is to be satisfied.

3. For each emissions performance unit to be transferred, the compliance period in respect of which it was distributed.
4. For each excess emissions unit to be transferred, the year in which it was distributed.
5. If the notice is under subsection (3), the price to be paid for each emissions performance unit under the agreement entered into between the transferor and the transferee.
6. A statement signed by an account representative in respect of each facility account involved in the transfer, attesting that the account representative authorizes the transfer and that the information included in the notice is accurate.
7. The date on which the request is submitted. O. Reg. 241/19, s. 19 (4); O. Reg. 562/22, s. 18 (2-4).

(4.1) A notice under this section must be given,

- (a) if the proposed transfer date is December 15 in a year, no later than December 1 of that year;
- (b) if the proposed transfer date is February 15 in a year, no later than February 1 of that year; or
- (c) in all other cases, no later than 15 days before the proposed transfer date. O. Reg. 562/22, s. 18 (5).

(5) Subject to subsection (6), if the Director receives a notice that has been made in accordance with subsections (4) and (4.1), the Director shall transfer the compliance instruments specified in the notice no later than the proposed transfer date set out in the notice. O. Reg. 562/22, s. 18 (6).

(5.1) REVOKED: O. Reg. 562/22, s. 18 (6).

(6) The Director shall refuse to transfer a compliance instrument if,

- (a) the Director is of the opinion that the transfer would result in a failure to comply with this Regulation;
- (b) the Director has reasonable grounds to believe that an offence has been committed under the Act in relation to the request;
- (c) the Director is of the opinion that the request contains errors or omissions or is otherwise incomplete;
- (d) the compliance instrument is expired at the time of transfer; or
- (e) the registration in respect of a facility was continued under section 6 and the facility account into which the compliance instrument is requested to be transferred was established for the registration in respect of a previous owner or operator of the facility. O. Reg. 562/22, s. 18 (7).

(7) If the Director refuses to transfer compliance instruments under subsection (6), the Director shall provide written reasons for the refusal to all of the account representatives who signed the statement mentioned in subsection (4). O. Reg. 241/19, s. 19 (7).

(8) The reasons provided under subsection (7) shall identify any errors or omissions in the request and shall include a description of any manner in which the request is incomplete. O. Reg. 241/19, s. 19 (8).

(9) If the Director requests information from any of the following persons relating to the transfer of compliance instruments from or to a facility account under this Regulation, the person shall give the information to the Director by the date specified in the request:

1. An account representative in respect of a facility account involved in the transfer.
2. A person whose registration resulted in the facility account being established.
3. A person whose continuation of a registration resulted in the facility account being established. O. Reg. 562/22, s. 18 (8).

(10) For greater certainty, this section does not apply in respect of a facility account that has been closed. O. Reg. 562/22, s. 18 (8).

PART IV
MISCELLANEOUS

Retention of records

20. A person who registered a facility shall ensure that all records relating to the following matters, including records created by any account representative in respect of the facility account, are kept in paper or electronic format for a period of at least seven years after the record was created:

1. The registration, and if applicable, the continuation or cancellation of the registration under this Regulation.
2. Transactions under this Regulation in respect of the facility account established as a result of the registration or continuation.
3. Identification of account representatives in respect of the facility account. O. Reg. 562/22, s. 19.

Giving or submitting records, form and manner

21. (1) In this Regulation, if a record is required to be given or submitted, other than a record required to be given or submitted by the Director, the record shall be submitted in a form provided by or approved by the Director and in a manner approved by the Director.

(2) The Director may require that a record that is given to the Director under this Regulation be given in an electronic format specified by the Director.

Form and manner of information

21.1 If, under this Regulation, a person applies to the Director or is required to notify the Director or provide information to the Director, the person shall supply the application, notice or information in a form and manner acceptable to the Director. O. Reg. 562/22, s. 20.

Additional information requirements

21.2 The owner or operator of an EPS facility shall provide the Director with copies of the following promptly after receiving them, and in no case more than 30 days after receiving them:

1. A statement provided by Environment Canada in respect of the facility that indicates that the facility is subject to a provincial output-based performance standards system relating to a provincial pricing mechanism for greenhouse gas emissions.
2. The notice of registration under subsection 64 (2) of the *Greenhouse Gas Pollution Pricing Act (Canada)* from the Minister of National Revenue setting out the effective date of registration of the owner or operator as a registered emitter in respect of the facility. O. Reg. 729/21, s. 17; O. Reg. 562/22, s. 2.

Notice by Director

22. For the purposes of this Regulation, the Director may give notice in an electronic format.

Extension of deadlines by Director

23. (1) The Director may extend any deadline set out in this Regulation if,

- (a) a deadline established for submitting information or reports concerning greenhouse gases or submitting verification of that information or those reports under the *Canadian Environmental Protection Act, 1999*, the *Greenhouse Gas Pollution Pricing Act (Canada)* or any regulations or notices under those Acts has been extended or an extension has been proposed;
- (b) a technical problem exists with the electronic reporting system or the compliance instrument tracking system that would make electronic submission by the deadline not reasonably practicable; or
- (c) an emergency has been declared under the *Emergency Management and Civil Protection Act* or there is a public welfare emergency under the *Emergencies Act (Canada)*. O. Reg. 562/22, s. 21.

(2) The Director shall give public notice in writing of an extension of a deadline made under subsection (1) in a manner the Director considers appropriate. O. Reg. 562/22, s. 21.

(3) For greater certainty, if the Director extends a deadline under subsection (1), the deadline is extended for all persons. O. Reg. 562/22, s. 21.

SCHEDULE 1
REGISTRATION INFORMATION

1. The name and contact information of the owner or operator of the facility and each of the sites that form part of the facility and whether the owner or operator is an individual or a corporation, partnership or sole proprietor.
2. The primary address of the owner or operator and the mailing address of the owner or operator, if the mailing address is different from the primary address.
- 2.1 Where the facility comprises multiple sites,
 - i. a description of each site that forms part of the EPS facility and on what basis the site forms part of the facility, with reference to section 1.1 of this Regulation, and
 - ii. the address of the sites that form part of the facility, where applicable, and such supporting geographical information on the site location as may be specified by the Director.
3. The name and contact information of the individual who is the authorized representative of the owner or operator and the name and contact information of the individual who is the primary contact for the owner or operator, if the primary contact is different from the authorized representative.
4. In the case of a corporation, the business number and the name under which the corporation operates.
5. In the case of a partnership,
 - i. the business number and the name under which the partnership operates, and
 - ii. the name and contact information of each partner, or, in the case of a limited partnership, the name and contact information of each partner and general partner.
6. In the case of a sole proprietorship, the business number, if applicable, and the name under which the sole proprietorship operates.
7. A document signed by a chief officer of the owner or operator or a resolution of the board of directors of the owner or operator that sets out the following:
 - i. An undertaking that the chief officer or board of directors will comply with this Regulation.
 - ii. A statement that,
 - A. all the information provided under this Regulation and its Schedules is accurate, complete and true, to the best of the chief officer's or the board of directors' knowledge,
 - B. the facility meets the definition of EPS facility and, where the facility comprises multiple sites, the sites that are included in the application are part of the EPS facility, and
 - C. the person registering the EPS facility is the owner or operator of the facility.
8. Any unique identifiers that have been provided to the owner or operator of the facility by the Ministry in respect of the facility and each of the sites that form part of the facility, in respect of which a report is or was required under Ontario Regulation 452/09, Ontario Regulation 143/16 or the Reporting Regulation.
- 8.1 The name of the owner and operator of the EPS facility and each of the sites that form part of the facility.
9. All primary NAICS codes and any secondary NAICS codes related to each facility and each site that forms part of the facility.
10. Identification of each industrial activity engaged in at the facility and each site that forms part of the facility.
11. In respect of at least two individuals being identified as account representatives in respect of the facility account, each individual's name, job title, address, telephone number and email address.
12. A statement signed by each individual identified as an account representative in respect of the facility account, attesting that,

- i. the individual meets the criteria set out in subsection 7 (2),
 - ii. the individual has been identified as a person authorized to act as an account representative in respect of the facility account,
 - iii. the individual undertakes to comply with this Regulation, and
 - iv. the information included in the statement is true and accurate.
13. A statement signed by a chief officer or a resolution of the board of directors of the owner or operator of the facility, confirming that each individual mentioned in paragraph 12 has been identified as an account representative in respect of the facility account and is authorized to act as an account representative in respect of the facility on behalf of the owner or operator.
14. Such other information in respect of the owner or operator of a facility as may be specified by the Minister of the Environment under section 171 of the *Greenhouse Gas Pollution Pricing Act* (Canada).
15. If the application is in respect of an EPS facility described in paragraph 2 or 3 of subsection 4 (1) of this Regulation, a statement, signed by a chief officer, or a resolution of the board of directors of the owner or operator of the facility that the information provided to the licensed engineering practitioner in the development of the estimates in the report is complete and accurate to the best of the chief officer's or the board of directors' knowledge.

O. Reg. 241/19, Sched. 1; O. Reg. 729/21, s. 18; O. Reg. 562/22, s. 2, 22.

SCHEDULE 2 INDUSTRIAL ACTIVITIES

1. Smelting or refining, from feedstock that comes primarily from ore, of at least one of the following metals: nickel, copper, zinc, lead, or cobalt.
2. Extracting, processing and producing bitumen or crude oil.
3. Upgrading of bitumen or heavy oil to produce synthetic crude oil.
4. Petroleum refining through either the distillation of crude oil or through cracking, rearranging or reforming unfinished petroleum derivatives.
5. Processing of natural gas, including processing to produce natural gas liquids.
6. Natural gas transmission.
7. Producing hydrogen gas using steam hydrocarbon reforming or partial oxidation of hydrocarbons.
8. Producing cement from clinker.
9. Producing grain ethanol for use in an industrial or fuel application.
10. Producing carbon black in any form, including pellets and powders, using thermal oxidation or thermal decomposition of hydrocarbon feedstock.
11. Producing 2-methylpenta-methylenediamine (MPMD).
12. Producing resins or fibres of Nylon 6 or Nylon 6,6.
13. Producing hydrogen gas, ethylene, propylene, butadiene or pyrolysis gas from steam cracking, from feedstocks derived from petroleum or from petroleum and liquefied natural gas, excluding producing them as a by-product of producing petrochemicals.
- 13.1 Producing aromatic cyclic hydrocarbons from feedstocks derived from petroleum or from petroleum and liquefied natural gas, excluding producing them as a by-product of producing petrochemicals.
- 13.2 Producing higher olefins from feedstocks derived from petroleum or from petroleum and liquefied natural gas, excluding producing them as a by-product of producing petrochemicals.
- 13.3 Producing hydrocarbon solvents from feedstocks derived from petroleum or from petroleum and liquefied natural gas, excluding producing them as a by-product of producing petrochemicals.

- 13.4 Producing styrene from feedstocks derived from petroleum or from petroleum and liquefied natural gas, excluding producing it as a by-product of producing petrochemicals.
- 13.5 Producing polyethylene from feedstocks derived from petroleum or from petroleum and liquefied natural gas, excluding producing it as a by-product of producing petrochemicals.
14. Producing vaccines for human or animal use.
15. Producing iron ore pellets from iron ore concentrate.
16. Producing steel from feedstock that comes primarily from iron or scrap steel.
17. Producing iron or steel from smelted iron ore or producing metallurgical coke.
18. Producing lime from limestone using a kiln.
19. Producing coal by mining coal deposits.
20. Producing metal or diamonds from the mining or milling of ore or kimberlite.
21. Calcining coal to produce char.
22. Producing activated carbon from coal.
23. Producing nitric acid by the catalytic oxidation of ammonia.
24. Producing anhydrous ammonia or aqueous ammonia by the steam reforming of a hydrocarbon.
25. Industrial processing of potatoes or oilseeds for human or animal consumption.
26. Producing ethanol by distillation for use in the production of alcoholic beverages.
27. Processing corn through wet milling.
28. Producing citric acid.
29. Producing refined sugar from raw cane sugar.
30. Producing potash from the mining and refining of potash ore.
31. Producing pulp from wood or other plant material or producing paper or any product derived directly from pulp or a pulping process.
32. Producing brick or other products made from clay or shale using a kiln.
33. Assembling four-wheeled self-propelled vehicles that are designed for use on a highway and that have a gross vehicle weight rating of less than 4,536 kg (10,000 pounds).
34. Producing glass using a furnace.
35. Producing gypsum products.
36. Producing mineral wool insulation, other than glass wool.
37. Producing metal tubes.
38. Generating electricity using fossil fuels.
39. Engaging in an activity described under any of the following NAICS codes:
 - i. 212220 (Gold ore and silver ore mining).
 - ii. 2123 (Non-metallic mineral mining and quarrying).
 - iii. 3112 (Grain and oilseed milling).
 - iv. 3113 (Sugar and confectionery product manufacturing).
 - v. 3114 (Fruit and vegetable preserving and specialty food manufacturing).
 - vi. 3115 (Dairy product manufacturing).

- vii. 3116 (Meat product manufacturing).
- viii. 3118 (Bakeries and tortilla manufacturing).
- ix. 3119 (Other food manufacturing).
- x. 3121 (Beverage manufacturing).
- xi. 321 (Wood product manufacturing).
- xii. 3222 (Converted paper product manufacturing).
- xiii. 324 (Petroleum and coal product manufacturing).
- xiv. 3251 (Basic chemical manufacturing).
- xv. 3252 (Resin, synthetic rubber, and artificial and synthetic fibres and filaments manufacturing).
- xvi. 3254 (Pharmaceutical and medicine manufacturing).
- xvii. 3259 (Other chemical product manufacturing).
- xviii. 3261 (Plastic product manufacturing).
- xix. 3262 (Rubber product manufacturing).
- xx. 3271 (Clay product and refractory manufacturing).
- xxi. 3272 (Glass and glass product manufacturing).
- xxii. 3274 (Lime and gypsum product manufacturing).
- xxiii. 3279 (Other non-metallic mineral product manufacturing).
- xxiv. 331 (Primary metal manufacturing).
- xxv. 3321 (Forging and stamping).
- xxvi. 3326 (Spring and wire product manufacturing).
- xxvii. 3327 (Machine shops, turned product, and screw, nut and bolt manufacturing).
- xxviii. 3336 (Engine, turbine and power transmission equipment manufacturing).
- xxix. 3339 (Other general-purpose machinery manufacturing).
- xxx. 3363 (Motor vehicle parts manufacturing).
- xxxi. 3364 (Aerospace product and parts manufacturing).
- xxxii. 3372 (Office furniture (including fixtures) manufacturing).

xxxiii. 3399 (Other miscellaneous manufacturing).

O. Reg. 241/19, Sched. 2; O. Reg. 729/21, s. 19; O. Reg. 562/22, s. 23.

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