



Environment and
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NOTICE OF INTENT

to make regulations under Part 2 of the
Greenhouse Gas Pollution Pricing Act



Cat. No.: En4-359/2018E-PDF
ISBN: 978-0-660-28948-9

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NOTICE OF INTENT TO MAKE REGULATIONS UNDER PART 2 OF THE **GREENHOUSE GAS POLLUTION PRICING ACT**

PURPOSE

The purpose of this notice is to announce the intent to implement, by regulations under sections 192 and 193 of the *Greenhouse Gas Pollution Pricing Act* (the Act), the measures set out below that would complete the output-based pricing system set out in the Act that applies to large greenhouse gas emitters undertaking certain industrial activities (OBPS regulations).

Pursuant to section 194 of the Act, the measures referred to in this notice may take effect, if the regulations so provide, earlier than the day on which the regulations are made. Subject to Governor in Council approval, it is anticipated that the OBPS regulations would be made in 2019 and that they may take effect as early as the date of publication of this notice.

If the Governor in Council makes these regulations, they would apply to persons responsible for facilities that meet the definition of “covered facility” set out in section 169 of the Act.

CONTEXT

A price on carbon pollution is an essential part of Canada’s plan to fight climate change and grow the economy. Pricing carbon pollution is the most efficient way to reduce greenhouse gas (GHG) emissions and stimulate investments in clean innovation. A price on carbon pollution creates incentives for individuals, households, and businesses to choose cleaner options.

In October 2016, the Government of Canada announced the [*Pan-Canadian Approach to Pricing Carbon Pollution*](#) (the federal “benchmark”) would be flexible and would recognize that provinces and territories have implemented or are developing their own carbon pollution pricing systems. The federal benchmark outlined criteria that all systems must meet to ensure they are stringent, fair, and efficient. The federal government also committed to implementing a federal carbon pollution pricing system in provinces and territories that request it or do not have a carbon pollution pricing system that meets the federal benchmark (referred to as “backstop jurisdictions”).

The federal government has engaged with Canadians on the federal carbon pricing system over the past two years:

- In May 2017, the federal government released a [*Technical Paper on the Federal Carbon Pricing Backstop*](#) outlining the federal carbon pricing backstop’s elements.
- In January 2018, the federal government released a technical paper on the [*Regulatory Framework for the Output-Based Pricing System*](#) outlining the design of the system, including the need for, and the design of, rules to enhance market liquidity. At the same time, the federal government also released for comment [*draft legislative proposals*](#) relating to the *Greenhouse Gas Pollution Pricing Act* and Explanatory Notes.

- In May 2018, the federal government published the document titled [*Carbon pricing: compliance options under the federal output-based pricing system*](#) that describes the proposed rules related to the types of credits that can be used by the covered facility for the compensation of greenhouse gas emissions that have exceeded the emissions limit applicable to this facility.

Under the [*Greenhouse Gas Pollution Pricing Act*](#), in force on June 21, 2018, the federal carbon pollution pricing system has two parts:

1. A charge applicable to fossil fuels (fuel charge) that is generally payable by fuel producers or distributors, with rates for each fuel that are equivalent to \$10 per tonne of carbon dioxide equivalent (CO₂e) in 2018, rising by \$10 per year to \$50 per tonne CO₂e in 2022 (Part 1 of the Act, for which the Minister of National Revenue is responsible); and,
2. The Output-Based Pricing System (OBPS) for certain industrial facilities (Part 2 of the Act, for which the Minister of the Environment is responsible).

When Parts 1 and 2 of the Act apply in a particular jurisdiction, these parts are designed to avoid pricing the same tonne of CO₂e twice. Thus, a person subject to the OBPS under Part 2 of the Act may be eligible to register with the Canada Revenue Agency for Part 1 of the Act and may be eligible to obtain an exemption certificate that generally allows that person to purchase fuel that is exempt from the fuel charge, provided that the fuel is for use at the person's covered facility.

Part 2 of the Act sets out key obligations that will apply to a person subject to the OBPS (person responsible for a covered facility), such as the registration of a facility as a covered facility, submission of a report for each compliance period (report), compensation for greenhouse gas emissions above its applicable emissions limit, opening of accounts in a tracking system and record keeping.

In order for the OBPS to take effect starting on January 1, 2019, the following instruments have been published:

- On October 31, 2018, the Government of Canada published in the *Canada Gazette* the [*Order Amending Part 2 of Schedule 1 of the Greenhouse Gas Pollution Pricing Act*](#) to add a province, territory or area to Part 2 of Schedule 1 to the Act, in which a covered facility must be located to be subject to the OBPS. The provinces and territories added are: Ontario, New Brunswick, Manitoba, Prince Edward Island, Saskatchewan, Yukon and Nunavut.
- On October 31, 2018, the Minister of the Environment published in the *Canada Gazette* the [*Notice Establishing Criteria Respecting Facilities and Persons and Publishing Measures*](#) that sets out the criteria determining which facilities are required under the Act to register in the federal OBPS (covered facilities).

- On October 31, 2018, the Minister also published in the *Canada Gazette* the [Greenhouse Gas Emissions Information Production Order](#) that sets out the quantification, reporting and verification requirements for covered facilities. These include requirements related to: sampling, analysis and measurement in order to quantify the GHG emissions emitted from that facility, quantification of production amounts, making and keeping of records and producing verified reports. The requirements of the *Greenhouse Gas Emissions Information Production Order* take effect starting January 1, 2019 in provinces where the federal OBPS applies and July 1, 2019 in Nunavut and Yukon. An [amendment](#) to this order providing more details was published on December 20, 2018.

The measures set out in the *Notice Establishing Criteria Respecting Facilities and Persons and Publishing Measures* and the requirements in the *Greenhouse Gas Emissions Information Production Order* described above will be integrated, as appropriate, in the OBPS regulations.

To complete the OBPS, the Minister of the Environment is developing regulations that would give effect to the potential measures described below, for recommendation to the Governor in Council.

DESCRIPTION OF POTENTIAL MEASURES AND RELEVANT PROVISIONS OF THE ACT

COVERED FACILITIES

The OBPS regulations would apply to persons responsible for “covered facilities”. In order to be a “covered facility” pursuant to section 169 of the Act, a facility must first be located in a province, a territory or an area that is listed in Part 2 of Schedule 1 to the Act. The facility must also meet the criteria that will be specified in the OBPS regulations or be designated as covered facility by the Minister pursuant to section 172 of the Act.

The OBPS regulations would also set out circumstances in which a facility ceases to be a covered facility. A facility may cease to be a covered facility if, for example, the facility ceases operation or the province, territory or area in which the facility is located is no longer subject to the federal backstop. To address such circumstances, the OBPS regulations would set out transitional rules, such as rules in relation to the length of compliance periods, or reporting and compensation obligations. In accordance with the Act, the Minister will cancel the registration and covered facility certificate of a facility that ceases to be a covered facility.

The OBPS regulations would replace the *Notice Establishing Criteria Respecting Facilities and Persons and Publishing Measures* by replicating its criteria, as appropriate. The OBPS regulations would apply to the facilities described in this notice and to facilities designated as covered facilities by the Minister. Persons that have already registered their facility (i.e., facility that either has met the criteria in the *Notice Establishing Criteria Respecting Facilities and Persons and Publishing Measures* or has been designated as a covered facility) prior to the making of the OBPS regulations will not have to re-apply for registration.

COMPLIANCE PERIODS

Section 169 of the Act states that the *compliance period* means a period specified in the regulations. The key obligations under the OBPS, such as those respecting the submission and verification of the report for each compliance period and the provision of compensation, are all linked to a given compliance period. The OBPS regulations would set out rules respecting compliance periods, such as rules in relation to compliance periods for facilities that are located in certain provinces or territories, and to facilities that start or cease operating after the beginning of a compliance period.

The OBPS regulations would specify the compliance period applicable to a person responsible for a covered facility. A compliance period would generally be from January 1 to December 31 of a given year. The first compliance period would start on January 1, 2019 and end December 31, 2019, except in Yukon and Nunavut, where it would start on July 1, 2019 and end on December 31, 2019. The OBPS regulations would also set out rules with respect to partial compliance periods.

REPORTING FOR A COVERED FACILITY

Section 173 of the Act requires that, for each compliance period, a person responsible for a covered facility provides a report to the Minister of the Environment that includes information that would be specified in the OBPS regulations. The OBPS regulations would specify the form and manner related to the submission of the report, including the deadline for submitting the report, which would be in the year following the compliance period.

The OBPS regulations would require a person responsible for a covered facility to quantify greenhouse gas emissions from specified emission types at the facility (including greenhouse gases that are deemed to have been emitted by the facility) and production data for that facility using prescribed methodologies and to report on those. The OBPS regulations would also require the person to include in the report the greenhouse gas emissions limit that applies to the covered facility.

In addition, section 173 of the Act requires a person responsible for a covered facility to have the report verified by a third party. The third party verification body would have to be accredited to the ISO Standard 14065:2013 by any of the accreditation organizations specified in the OBPS regulations, and conduct the verification in accordance with ISO Standard 14064-3:2006 and with other requirements outlined in the OBPS regulations. The OBPS regulations would require that a verification report, including the verification statement and prescribed information, be submitted to the Minister of the Environment in accordance with the prescribed form and manner and at the same time as the report.

The OBPS regulations would replace the *Greenhouse Gas Emissions Information Production Order* by replicating its requirements, as appropriate.

QUANTIFICATION OF GHG EMISSIONS, PRODUCTION, AND THERMAL ENERGY TRANSFERS

In order to assess compliance with the GHG emission limit for a facility, the OBPS regulations would require that both the facility's GHG emissions and its production be quantified. The quantification of the facility's GHG emissions and its production would be based on the requirements set out in the *Greenhouse Gas Emissions Information Production Order*. In addition, the regulations will require the quantification of the quantity of thermal energy sold and purchased.

CALCULATION OF NET GHG EMISSIONS DUE TO CARBON STORAGE

To address the possibility that some or all of a facility's GHG emissions are permanently stored (for example, underground in a suitable geological formation), the OBPS regulations would require that net GHG emissions be calculated. The net emissions would be the quantified GHG emissions for the facility less the amount of carbon dioxide that is permanently stored—and demonstrated to be so. The OBPS regulations would require that information related to the permanent storage project be submitted in the report and undergo verification by a third party.

GHG LIMIT FOR A FACILITY

The OBPS regulations would prescribe that the calculation of the limit for GHG emissions from a covered facility is based on the sum of the production for each covered activity or sub-activity multiplied by the output-based standard for each of those activities or sub-activities. Output-based standards, determined on an emission-intensity basis, would be prescribed by the OBPS regulations.

RULES FOR CALCULATED OUTPUT-BASED STANDARDS

The OBPS regulations would provide a formula to calculate an output-based standard for activities or facilities for which no output-based standard is explicitly prescribed. This calculated output-based standard would be used in the calculation of the limit for GHG emissions described in the section above for some covered facilities.

TEMPORARY RULES FOR A NEW FACILITY

The OBPS regulations would set out specific time-limited rules that would apply to new facilities that first started producing a product in or after 2017. The rules would cover up to two full compliance periods following the compliance period in which a facility first started producing a product. During this time period, the facility would not have to compensate for excess emissions. The OBPS regulations would also provide that the Minister would not issue surplus credits in respect of those years, and that other obligations, including the obligation to provide a report and have it verified by a third party would remain.

ASSESSMENT OF EMISSIONS AGAINST LIMIT

The OBPS regulations would require a person responsible for a covered facility to assess, for each compliance period, the quantity of net greenhouse gases that was emitted by the covered facility against the applicable emissions limit for the facility. In other words, a person responsible for a covered facility would have to determine, for each compliance period, whether they would be required to provide compensation under section 174 of the Act, or whether they would be eligible to receive surplus credits under 175 of the Act.

RULES REGARDING COMPLIANCE UNITS

Section 169 of the Act provides that compliance units include:

- surplus credits that are issued by the Minister of the Environment;
- offset credits issued by the Minister of the Environment, if enabled by regulations; and,
- credits recognized as compliance units under the OBPS regulations.

The OBPS regulations would set out rules respecting compliance units, such as criteria for the recognition of credits as compliance units, the transfer of compliance units, the order of priority by which compliance units are retired for the purpose of compensation and, the time during which compliance units may be used for compensation under the Act.

The regulations would set out rules respecting the use, suspension, revocation, replacement, transfer, and expiration of compliance units.

COMPENSATION IF EMISSIONS ARE ABOVE A FACILITY'S LIMIT

Section 174 of the Act provides that a person that is responsible for a covered facility that emits greenhouse gases in a quantity that exceeds the emissions limit that applies to the covered facility during a compliance period must, in accordance with the regulations, provide compensation for the excess emissions by the increased-rate compensation deadline. The responsible person for a facility would have the following options to meet its compensation obligation if emissions exceed the emissions limit:

1. payment of the excess emissions charge to the Receiver General, set at the same level as the fuel charge
 - \$20 per tonne CO₂e owed for the 2019 compliance period, increasing by \$10 per tonne CO₂e each year to \$50 per tonne CO₂e for the 2022 compliance period and beyond unless specified;
2. remittance of OBPS surplus credits issued by the Minister of the Environment;
3. remittance of offset credits issued by the Minister of the Environment, if enabled through regulations;
4. remittance of recognized units (i.e. eligible offset credits from provincial offset systems); or
5. a combination of the above four compliance options.

Part 2 of the Act provides for two compensation deadlines: the regular-rate compensation deadline and the increased-rate compensation deadline.

Subsection 174(3) of the Act indicates that if a person provides compensation for excess emissions of the facility by the regular-rate compensation deadline, the following rate applies:

- one compliance unit for each tonne of CO₂e;
- the excess emissions charge for the calendar year in which the compliance period falls, for each tonne of CO₂e.

If the person provides compensation for excess emissions of the facility after the regular rate compensation deadline, subsection 174(4) of the Act provides that the applicable rate is equal to four times the regular rate. Ultimately, subsection 174(1) of the Act requires that compensation must be provided by the increased-rate compensation deadline. The OBPS regulations would specify rules with respect to compensation, and the regular-rate and increased-rate deadlines.

CRITERIA FOR RECOGNIZING UNITS FROM OTHER JURISDICTIONS

The OBPS regulations would recognize offset units or credits from other jurisdictions for use as compensation. The regulations would set out criteria for the recognition of eligible offset programs and protocols whose units or credits would be recognized as compliance units under the OBPS regulations as well as the start date and third-party verification requirements of the offset programs and protocols.

SURPLUS CREDITS IF EMISSIONS ARE BELOW A FACILITY'S LIMIT

Section 175 of the Act provides that if a covered facility emits greenhouse gases in a quantity that is below the emissions limit that applies to it during a compliance period, the Minister must, in accordance with the regulations, issue to a person that is responsible for the covered facility a number of surplus credits that is equal to the difference between that limit, expressed in CO₂e tonnes, and the number of CO₂e tonnes emitted. The OBPS regulations would provide rules regarding the issuance of surplus credits.

NOTIFICATION OF ERRORS AND OMISSIONS

A person responsible for a covered facility is required, pursuant to section 176 of the Act, to notify the Minister of the Environment when that person becomes aware of an error or omission in its report within five years of having submitted that report. The OBPS regulations would specify the circumstances under which a person responsible for a covered facility would be required to submit a corrected report to the Minister of the Environment and to cause that report to be verified by a third party.

If the Minister of the Environment discovers an error or omission in a report within five years of the report being submitted, the Minister may require, pursuant to section 177 of the Act, the person responsible for a covered facility to submit a corrected report and may require that the report be verified by a third party.

The regulations would identify the time and manner by which the corrected report and verified corrected report must be provided.

RECOVERY OF COMPENSATION

If a person responsible for a covered facility owes compensation under section 174 or 178 of the Act and does not fully compensate before the applicable deadline, the Minister of Environment is authorized, pursuant to section 182 of the Act, to withdraw from a covered facility's account in the tracking system, a number of compliance units that represents the person's outstanding balance in CO₂e tonnes.

The Minister of the Environment's authority to recover compliance units is a measure that is complimentary to other powers under Part 2 of the Act.

TRACKING SYSTEM

Section 185 of the Act requires that the Minister establish and maintain a tracking system that tracks the issuance of compliance units by the Minister; the transfer, retirement, suspension, revocation and cancellation of those compliance units; excess emissions charge payments; and any other transaction specified in the regulations.

Section 186 of the Act specifies that a person responsible for a covered facility must open and maintain any accounts in a tracking system required by the regulations, and that any other person may open an account and maintain accounts in the system in accordance with the regulations. The OBPS regulations would provide rules describing accounts and identifying any accounts required.

OFFENCES

There are penalties set out in the Act for offences. Section 232 of the Act sets out offences that attract a higher range of penalties than other offences. Subsection 246(1) authorizes the Governor in Council to, by regulations, designate provisions of regulations that, if contravened, attract that same range of penalties. The OBPS regulations will set out which provisions of the regulations that, if contravened, will attract that higher range.

RECORDS AND RECORDKEEPING

Section 187 of the Act provides that a person responsible for a covered facility that opens and maintains accounts in the tracking system must retain all records that are necessary to determine whether the regulated person has complied with their obligations under the OBPS. The Act specifies that the record retention period is seven years, unless the OBPS regulations specify another period. The OBPS regulations would set out rules respecting the making and keeping of records.

CONFIDENTIALITY

Section 254 of the Act provides that any person that provides information to the Minister of the Environment under Part 2 can request, in writing and with supporting justifications, that the information be treated as confidential. The OBPS regulations will specify the information that must be provided to the Minister in a request for confidentiality.

COMING INTO FORCE

The Act permits the OBPS regulations to have effect retroactively. However, the regulations must not have effect before the day on which this Notice is published.