

Notice of intent to amend the Output-Based Pricing System Regulations and to make an order under section 189 of the Greenhouse Gas Pollution Pricing Act

Purpose

The purpose of this notice is to announce the intent to make regulations to amend the Output-Based Pricing System Regulations (the Amending regulations), made under sections 192 and 193 of the Greenhouse Gas Pollution Pricing Act (the Act) and to make an order under section 189 of the Act to delete the name of certain provinces from Part 2 of Schedule 1 to the Act (the Order). The Amending regulations and the Order would implement the measures set out below taken in response to the stated intention of the Government of Canada to stand down the Output-Based Pricing System (OBPS) in Ontario and New Brunswick and in order to improve the implementation of the Output-Based Pricing System Regulations (OBPS Regulations).

Pursuant to section 194 of the Act, the measures referred to in this notice may take effect, if the Amending regulations and Order so provide, earlier than the day on which the Amending regulations and Order are made. Subject to Governor in Council approval, it is proposed that these Amending regulations and Order be made in 2021 and that some of their provisions may take effect as early as the date of publication of this notice.

Context

The OBPS Regulations, established under Part 2 of the Act, were published in the *Canada Gazette*, Part II, Vol. 153, No. 14, on July 10, 2019. The Minister of the Environment (the Minister) also published a Notice of Intent, on December 20, 2018, that allowed the OBPS Regulations to take effect on January 1, 2019, except in Yukon and Nunavut where they took effect on July 1, 2019, prior to the publication of the regulations in the *Canada Gazette*, Part II.

On September 20, 2020, the Minister informed the Governments of Ontario and New Brunswick that their carbon pollution pricing systems for industrial facilities meet the federal government's minimum stringency benchmark requirements for pricing carbon pollution for the sources that they cover. As a result, the Government of Canada intends to stand down the OBPS in both provinces as of a date in the future. An orderly transition from the OBPS to Ontario and New Brunswick's carbon pricing systems for industry requires careful consideration. The federal government is taking an approach that minimizes the potential for gaps in pricing or double pricing of industrial facilities. It will also take steps to maintain the incentive created by the carbon price for industrial facilities in remaining jurisdictions where the OBPS applies.

The removal of Ontario and New Brunswick from OBPS coverage could create an imbalance in the emissions trading market. To maintain the price signal in the OBPS, which is critical to achieving the anticipated greenhouse gas (GHG) emissions reductions in the provinces where it applies, amendments to the OBPS Regulations prior to the transitions to the Ontario and New Brunswick carbon pricing systems are necessary.

Experience gained over the first two compliance periods of the OBPS has also identified a number of areas where clarifications or changes to the Regulations would improve the implementation of the OBPS and reduce administrative burden.

Therefore, the Minister intends to develop regulations amending the OBPS Regulations and an order amending Part 2 of Schedule 1 to the Act that would give effect to the potential measures described below, for recommendation to the Governor in Council.

Description of potential measures and relevant provisions

Transition to Ontario and New Brunswick carbon pollution pricing systems

The OBPS, established under Part 2 of the Act, applies to covered facilities located in provinces listed in Part 2 of Schedule 1 to the Act. In order to stop applying the OBPS in Ontario and New Brunswick, an order made under section 189 of the Act would delete the names of the provinces of Ontario and New Brunswick from Part 2 of Schedule 1 to the Act.

For any compliance periods that follow the dates proposed for the transitions to the Ontario and New Brunswick carbon pricing systems for industry, the Amending regulations may remove obligations of persons responsible for covered facilities located in those provinces for quantifying GHGs, making records, preparing and submitting an annual report and causing it to be verified by a third party and notifying the Minister of changes in information. These regulations may also remove, for the same compliance periods, the obligations of persons responsible for those covered facilities located in those provinces of providing compensation for excess emissions and the ability for the Minister to issue surplus credits.

Ceasing to be a covered facility

Section 7 of the OBPS Regulations identifies circumstances under which a facility ceases to be a covered facility and the date at which it ceases to be covered. The Amending regulations would add circumstances and the correlated date at which the cessation takes effect. The Amending regulations would also clarify the residual obligations of the person responsible for a covered facility that ceases to be covered.

Calculated output-based standard

The Amending regulations would clarify the equation for the calculation of element O used in the calculation of an output-based standard in section 37 of the OBPS Regulations.

Rounding requirements

The Amending regulations would streamline the rounding requirements for greenhouse gas emissions and production quantities by only requiring the rounding of the assessment result identified in section 44 of the OBPS Regulations to the nearest whole number. This would improve the accuracy of compensation and surplus credit calculations.

Limiting use of surplus credits

To achieve the emission reductions expected, the OBPS emissions trading system must maintain a balance of supply and demand for credits. If the market is over supplied the price of credits and expected emission reductions will decrease. To avoid the risk of flooding the OBPS emissions trading market, the Amending regulations would prevent surplus credits issued to persons responsible for covered facilities located in provinces deleted from Part 2 of Schedule 1 to the Act from being remitted as compensation by persons responsible for covered facilities located in provinces that remain listed in Part 2 of Schedule 1 to the Act. The Amending regulations would, in certain circumstances, provide a mechanism to allow for the trading and the remittance of these surplus credits as revised compensation following a corrected report.

Quantification methods and emission factors

The OBPS Regulations incorporate by reference quantification methods and emissions factors from the *Greenhouse Gas Reporting Program, Canada's Greenhouse Gas Quantification Requirements* (GHGRPQR), published in 2017. The Greenhouse Gas Reporting Program (GHGRP) continuously improves and adds quantification methods and updates emissions factors in the GHGRPQR. Therefore, the Amending regulations would incorporate by reference updated quantification methods from a more recent version of the GHGRPQR. The Amending regulations would also require the use of certain emissions factors found in a more recent version of GHGRPQR when quantifying GHGs using the methods identified in the 2017 GHGRPQR.

Output-based standard for industrial processing of potatoes

The Amending regulations would update the output-based standard identified in column 3, item 30 of Schedule 1 to the OBPS Regulations for the industrial processing of potatoes for human or animal consumption.

Coming into force

The Act permits the Amending regulations and the Order to have effect retroactively. However, the Regulations and Order must not have effect before the day on which this notice is published.