

# Climate Change Mitigation and Low-carbon Economy Act, 2016

## ONTARIO REGULATION 144/16 THE CAP AND TRADE PROGRAM

**Consolidation Period:** From February 27, 2017 to the [e-Laws currency date](#).

Last amendment: O. Reg. 56/17.

*This Regulation is made in English only.*

### CONTENTS

#### PART I GENERAL

- [1.](#) Interpretation
- [2.](#) Persons in business relationship, related persons, etc.
- [3.](#) Compliance periods

#### PART II ATTRIBUTION OF GREENHOUSE GAS EMISSIONS

- [4.](#) Attribution of emissions, specified GHG activities
- [5.](#) Attribution of emissions, other activities
- [6.](#) Attribution amount determined by Director
- [7.](#) Amount attributed is zero
- [8.](#) Amount attributed is zero, 2017
- [9.](#) Amount attributed is zero, first two consecutive years in which verification is required
- [9.1](#) Attribution of emissions, change in owner or operator of facility

#### PART III SUBMISSION OF EMISSION ALLOWANCES AND CREDITS FOR COMPLIANCE PERIOD

- [10.](#) Ontario emission allowance or Ontario credit, equivalence in CO<sub>2</sub>e
- [11.](#) Submission of emission allowances, etc., timing
- [12.](#) Submission of emission allowances, etc., permanent cessation of activities
- [13.](#) Restriction, emission allowances
- [14.](#) Restriction, credits
- [15.](#) Manner of submitting emission allowances and credits to Minister
- [16.](#) Minister's removal of emission allowances and credits from compliance account
- [17.](#) Restriction on accounts, shortfall
- [18.](#) Minister's removal of emission allowances and credits, shortfall
- [19.](#) Notice of continuing shortfall
- [20.](#) Failure to remedy continuing shortfall
- [20.1](#) Minister's removal of emission allowances and credits due to discrepancy

#### PART IV REGISTRATION IN THE CAP AND TRADE PROGRAM

##### MANDATORY PARTICIPANTS

- [21.](#) Registration not required
- [22.](#) Registration in 2016
- [23.](#) Registration in 2017 re 2016 activities
- [24.](#) Registration in 2017 and subsequent years
- [25.](#) Information to be provided
- [26.](#) Conditions
- [26.1](#) New owner, operator
- [27.](#) Cancellation

##### VOLUNTARY PARTICIPANTS

- [28.](#) Registration not permitted
- [29.](#) Registration in 2016
- [30.](#) Registration in 2017
- [31.](#) Registration after 2017
- [31.1](#) Registration, use of indirect useful thermal energy
- [32.](#) Information to be provided
- [33.](#) Director's powers, application to register
- [34.](#) Conditions
- [34.1](#) New owner, operator

[35.](#) Cancellation

[MARKET PARTICIPANTS](#)

[36.](#) Registration

[37.](#) Conditions

[38.](#) Cancellation

**[PART V](#)**

**CAP AND TRADE ACCOUNTS AND TRANSACTIONS**

[39.](#) Cap and trade accounts

[40.](#) Holding limit, current vintage emission allowances, etc

[41.](#) Non-application of holding limit

[42.](#) Holding limit, future vintage emission allowances

[43.](#) When holding limit exceeded

[44.](#) Account agents, classes

[45.](#) Account agents, recognition by Director

[46.](#) Account agents, powers and duties

[47.](#) Designations, requirements and restrictions

[48.](#) Termination of designation

[49.](#) Suspension of authority re accounts

[50.](#) Minister to transfer upon receiving transfer request

[51.](#) Transfer between registered participants

[51.1](#) Transfer using clearing house

[51.2](#) Information for request to transfer

[51.3](#) Transfers between compliance accounts

[52.](#) Removal of emission allowances or credits from holding account

[53.](#) Closing of accounts

[53.1](#) Holding of allowances, credits owned by another person

**[PART VI](#)**

**DISTRIBUTION OF ONTARIO EMISSION ALLOWANCES**

[CREATION AND DISTRIBUTION - GENERAL](#)

[54.](#) Ontario emission allowances created for 2017 - 2020

[55.](#) Allowances reserved for sales under s. 59

[56.](#) Allowances reserved for free distribution under subs. 31 (2) of the Act

[57.](#) Allowances reserved for auctions

[DISTRIBUTION BY AUCTION AND SALE](#)

[58.](#) Distribution by auction

[59.](#) Distribution by sale

[60.](#) Minister's notice of auction or sale

[61.](#) Financial assurance

[62.](#) Bids

[63.](#) Payment for purchases

[64.](#) Summary of auction, sale

[BIDDING IN AUCTIONS](#)

[65.](#) Auction or sale of allowances

[66.](#) Prohibition, bidding in auction

[67.](#) Permission to bid in auction

[68.](#) Suspension, revocation of permission

[69.](#) Purchase limits

[ADMINISTRATION OF AUCTION](#)

[70.](#) Lots

[71.](#) Minimum price

[72.](#) Bids in excess of holding limit, purchase limit

[73.](#) Determination of actual maximum bid value

[74.](#) Maximum bid value in excess of financial assurance

[75.](#) Acceptance of bids

[BIDDING IN SALES](#)

[75.1](#) Prohibition, bidding in sales

[76.](#) Permission to bid in sale

[77.](#) Suspension, revocation of permission

[78.](#) Criteria to be met before each sale

[ADMINISTRATION OF SALE](#)

[79.](#) Lots

[80.](#) Price

[81.](#) Bids in excess of holding limit

[82.](#) Determination of actual maximum bid value

[83.](#) Maximum bid value in excess of financial assurance

[84.](#) Acceptance of bids

DISTRIBUTION FREE OF CHARGE

<a href="#">85.</a>	Who may apply
<a href="#">86.</a>	Application
<a href="#">87.</a>	Notice of permanent cessation of activities after application made
<a href="#">88.</a>	Minister's consideration of application
<a href="#">89.</a>	Notice of decision
<a href="#">90.</a>	Rules re distribution free of charge

PART VII  
**MISCELLANEOUS**

<a href="#">91.</a>	Retention of records
<a href="#">92.</a>	Forms
<a href="#">93.</a>	Notice by Director
<a href="#">Schedule 1</a>	Information to be provided for registration

**PART I**  
**GENERAL**

**Interpretation**

**1. (1) In this Regulation,**

“2015 EPA Regulation” means Ontario Regulation 452/09 (Greenhouse Gas Emissions Reporting) made under the *Environmental Protection Act* as it read on January 1, 2015;

“2015 EPA report” means a report prepared under the 2015 EPA Regulation that deals with greenhouse gas emissions during 2015;

“2016 EPA Regulation” means Ontario Regulation 452/09 made under the *Environmental Protection Act* as it read on January 1, 2016;

“2016 EPA report” means a report prepared under the 2016 EPA Regulation that deals with activities engaged in during 2016;

“auction” means an auction held under section 58;

“Auction Class 1 emission allowance” means, when used in reference to an auction, an Ontario emission allowance that has been classified by the Minister as having a vintage year that is either the auction year or an earlier year;

“Auction Class 2 emission allowance” means, when used in reference to an auction, an Ontario emission allowance that has been classified by the Minister as having a vintage year that is later than the auction year;

“auction year” means, when used in reference to an auction, the year in which the auction is held;

“bid price” means the price offered for an Ontario emission allowance, as indicated in a bid submitted under this Regulation;

“capped participant” means a mandatory participant or a voluntary participant;

“chief officer” means, with respect to an organization or entity, the individual who holds the most senior executive position in the organization or entity, regardless of the actual title of the position;

“clearing house” means a recognized clearing agency as defined in the *Securities Act*, or a person who has been exempted under section 147 of that Act from the requirement to be a recognized clearing agency;

“CO<sub>2</sub>e” has the same meaning as in the Reporting Regulation;

“consultant” means a person that under an agreement, other than an employment agreement, provides expert or strategic advice and related services to a registered participant for consideration and decision-making related to the registered participant's participation in the cap and trade program;

“Consumer Price Index for Ontario” is the Consumer Price Index for Ontario as published by Statistics Canada under the authority of the *Statistics Act* (Canada);

“current vintage emission allowance” means, when used in reference to the current year, an Ontario emission allowance that has been classified by the Minister as having a vintage year that is either the current year or an earlier year;

“designated jurisdiction” means,

- (a) the province of Quebec, or
- (b) the state of California;

“facility” has the same meaning as in the Reporting Regulation;

“financial services administrator” means the person designated by the Minister to provide the financial services mentioned in sections 61 and 63;

“future vintage emission allowance” means, when used in reference to the current year, an Ontario emission allowance that has been classified by the Minister as having a vintage year that is later than the current year;

“GHG report” means a report required to be given to the Director under subsection 10 (3) of the Act;

“indirect useful thermal energy” has the same meaning as in the Reporting Regulation;

“lowest bid price (Auction Class 1)” means the lowest bid price accepted by the Minister for Auction Class 1 emission allowances;

“lowest bid price (Auction Class 2)” means the lowest bid price accepted by the Minister for Auction Class 2 emission allowances;

“Ministry” means the Ministry of the Environment and Climate Change;

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

“Ontario early reduction credits” means Ontario credits created by the Minister under section 35 of the Act in respect of actions taken before the Act receives Royal Assent to reduce greenhouse gas;

“Ontario offset credits” means Ontario offset credits created under section 35 of the Act in respect of offset initiatives that are registered under section 34 of the Act;

“Reporting Regulation” means Ontario Regulation 143/16 (Quantification, Reporting and Verification of Greenhouse Gas Emissions) made under the Act;

“specified GHG activity” has the same meaning as in the Reporting Regulation;

“year” means a calendar year. O. Reg. 473/16, s. 1.

(2) In this Regulation, a reference to electricity importation, natural gas distribution or petroleum product supply is a reference to that activity as prescribed under section 12 of the Reporting Regulation.

**Persons in business relationship, related persons, etc.**

**2.** (1) In this Regulation, a business relationship means, when used in reference to two persons, that the persons have one of the following types of relationship, either directly or indirectly:

1. One person owns more than 20 per cent of the securities of the other person or holds a call, option or other right or obligation to acquire such securities.
2. One person shares more than 20 per cent of its officers or directors with the other person or may appoint up to 20 per cent of the officers or directors of the other person.
3. One person owns voting securities carrying more than 20 per cent of the voting rights attached to all voting securities in the other person.
4. If one person is a partnership other than a limited partnership, the other person holds more than 20 per cent of the interests in the partnership.
5. If one person is a limited partnership, the other person is a general partner of the partnership.
6. The persons are both members of a group that meets one of the following descriptions:
  - i. The group consists of a person and that person’s subsidiaries.
  - ii. The group consists of,
    - A. a person who controls other persons as described in subsection (5), and
    - B. the controlled persons.

7. One person controls more than 20 per cent of the other person by any means.

(2) In this Regulation, two persons are related persons if their relationship meets one of the following descriptions:

1. They have both designated the same individual as an account representative, and that same individual is an employee of at least one of the persons.
2. They are in a business relationship as described in paragraph 1 of subsection (1) and one person owns more than 50 per cent of the securities of the other person or holds a call, option or other right or obligation to acquire such securities.

3. They are in a business relationship as described in in paragraph 2 of subsection (1) and one person shares more than 50 per cent of its officers or directors with the other person or may appoint up to 50 per cent of the officers or directors of the other person.
  4. They are in a business relationship as described in paragraph 3 of subsection (1) and one person owns voting securities carrying more than 50 per cent of the voting rights attached to all voting securities in the other person.
  5. They are in a business relationship as described in paragraph 4 of subsection (1) and one person holds more than 50 per cent of the interests in the partnership.
  6. They are in a business relationship as described in paragraph 5 or 6 of subsection (1).
  7. One person controls more than 50 per cent of the other person by any means.
- (3) In this Regulation, a person is a subsidiary of another person if the first person is,
- (a) controlled as described in subsection (5) by the second person;
  - (b) controlled as described in subsection (5) by the second person and one or more other persons, each of which is controlled as described in subsection (5) by the second person; or
  - (c) controlled as described in subsection (5) by two or more other persons, each of which is controlled as described in subsection (5) by the second person.
- (4) In this Regulation, if a first person is a subsidiary of a second person and the second person is a subsidiary of a third person, then the first person is also a subsidiary of the third person.
- (5) For the purposes of subsection (3), a person is controlled by another person if,
- (a) the second person has any direct or indirect influence over voting securities of the first person, other than voting securities to secure an obligation, and, if the second person exercised that influence, the second person would be entitled to elect a majority of directors of the first person;
  - (b) in the case of a partnership other than a limited partnership, the second person holds more than 50 per cent of the interests in the partnership; or
  - (c) in the case of a limited partnership, the second person is the general partner.

**Compliance periods**

3. The compliance periods are the following:
  1. January 1, 2017 to December 31, 2020.
  2. January 1, 2021 to December 31, 2023 and each subsequent three-year period.

**PART II  
ATTRIBUTION OF GREENHOUSE GAS EMISSIONS**

**Attribution of emissions, specified GHG activities**

4. Subject to sections 7, 8 and 9, the following rules apply for the purposes of attributing an amount of greenhouse gas emissions to a person under section 13 of the Act in relation to specified GHG activities engaged in at a facility during a year:
  1. If a positive or qualified positive verification statement has been submitted to the Director under the Reporting Regulation in respect of the GHG report with respect to the facility for the year, the amount attributed to the owner or operator of the facility for the year is the verification amount determined under the Reporting Regulation, as set out in the GHG report.
  2. If an adverse verification statement has been submitted to the Director under the Reporting Regulation in respect of the GHG report with respect to the facility for the year, the amount attributed to the owner or operator of the facility for the year is the amount determined by the Director in accordance with section 6.
  3. If a verification statement was required to be submitted to the Director under the Reporting Regulation in respect of a GHG report with respect to the facility for the year and was not submitted to the Director, the amount attributed to the owner or operator of the facility for the year is the amount determined by the Director in accordance with section 6.
  4. If the owner or operator of the facility gives the Director a revised GHG report with respect to the facility for the year on or before the deadline prescribed under subsection 11 (1) for the compliance period, the amount attributed to the person is the amount determined by applying paragraph 1, 2 or 3, as the case may be, in respect of the revised GHG report.
  5. If the owner or operator of the facility gives the Director a revised GHG report with respect to the facility for the year after the deadline prescribed under subsection 11 (1) for the compliance period, the amount attributed to the person is the amount determined by applying paragraph 1, 2 or 3, as the case may be, in respect of the revised GHG report only.

if the result of doing so would be an increase in the amount attributed from the amount attributed based on the original GHG report.

**Attribution of emissions, other activities**

5. Subject to subsection 7 (2), the following rules apply for the purposes of attributing the amount of greenhouse gas emissions to a person under section 13 of the Act in relation to electricity importation, natural gas distribution or petroleum product supply engaged in by the person during a year:

1. If a positive or qualified positive verification statement has been submitted to the Director under the Reporting Regulation in respect of the GHG report with respect to the activity for the year, the amount attributed to the person is the amount of greenhouse gas emissions associated with the activity determined under the Reporting Regulation, as set out in the GHG report.
2. If an adverse verification statement has been submitted to the Director under the Reporting Regulation in respect of the GHG report with respect to the activity for the year, the amount attributed to the person for the year is the amount determined by the Director in accordance with section 6.
3. If a verification statement was required to be submitted to the Director under the Reporting Regulation in respect of a GHG report with respect to the activity for the year and was not submitted to the Director, the amount attributed to the person for the year is the amount determined by the Director in accordance with section 6.
4. If the person gives the Director a revised GHG report with respect to the activity for the year on or before the deadline prescribed under subsection 11 (1) for the compliance period, the amount attributed to the person is the amount determined by applying paragraph 1, 2 or 3, as the case may be, in respect of the revised GHG report.
5. If the person gives the Director a revised GHG report with respect to the activity for the year after the deadline prescribed under subsection 11 (1) for the compliance period, the amount attributed to the person is the amount determined by applying paragraph 1, 2 or 3, as the case may be, in respect of the revised GHG report only if the result of doing so would be an increase in the amount attributed from the amount attributed based on the original GHG report.

**Attribution amount determined by Director**

6. (1) If the Director is authorized under section 4 or 5 to determine the amount of greenhouse gas emissions attributed to a person in respect of an activity for a year, the Director shall make the determination based on one or more of the following:

1. Any verification statements and verification reports submitted to the Director under the Reporting Regulation or Ontario Regulation 452/09 (Greenhouse Gas Emissions Reporting) made under the *Environmental Protection Act* in respect of the activity, including any qualifications provided by an accredited verification body.
2. Any other information available to the Ministry in respect of the activity, which may include an environmental compliance approval in respect of the activity.
3. Any information in respect of the activity obtained by the Director by requesting information from the person.
4. Information in respect of similar activities engaged in by persons in Ontario or other jurisdictions. O. Reg. 473/16, s. 2.

(2) Written notice of a proposed amount of a determination under subsection (1) shall set out the following information:

1. The proposed amount.
2. An explanation of how the proposed amount was determined.
3. A statement that the person may, no later than five days following the day the notice was given, submit comments in writing to the Director in respect of the proposed amount.

(3) After considering any comments received from the person in respect of a proposed amount, the Director shall give written notice to the person of the final amount determined.

**Amount attributed is zero**

7. (1) Despite sections 4 and 6, the amount of greenhouse gas emissions attributed to a voluntary participant in respect of specified GHG activities engaged in at a facility is zero for,

- (a) any year in respect of which the participant is not registered in respect of the specified GHG activities engaged in at the facility; and
- (b) the year in which the person is first registered in respect of the specified GHG activities engaged in at the facility.

(2) Despite sections 4 to 6, the amount of greenhouse gas emissions attributed to a capped participant in respect of specified GHG activities engaged in at a facility is zero for any year in respect of which the participant is not required under the Reporting Regulation to have verified a GHG report with respect to the specified GHG activities engaged in at the facility.

**Amount attributed is zero, 2017**

**8.** (1) This section applies to a mandatory participant who is the owner or operator of a facility at which specified GHG activities are engaged in during a year if the following criteria are met:

1. No participant was required under the 2015 EPA Regulation to have a 2015 EPA report verified with respect to the facility.
2. The participant was required under the 2016 EPA Regulation to have a 2016 EPA report with respect to the facility verified.
3. The primary activity engaged in at the facility is not the activity described in Item 7 of Schedule 2 to the Reporting Regulation. O. Reg. 473/16, s. 3.

(2) Despite sections 4 and 6, the amount of greenhouse gas emissions attributed to the participant in respect of the specified GHG activities engaged in at the facility is zero for 2017.

**Amount attributed is zero, first two consecutive years in which verification is required**

**9.** (1) This section applies to a mandatory participant who is the owner or operator of a facility at which specified GHG activities are engaged in during a year if the following criteria are met:

1. No participant was required under the 2016 EPA Regulation to have a 2016 EPA report verified with respect to the facility.
2. The specified GHG activity described in Item 16 of Schedule 2 to the Reporting Regulation was not engaged in at the facility before January 1, 2017.
3. The specified GHG activities engaged in at the facility do not include the activity described in Item 18 of Schedule 2 to the Reporting Regulation.
4. The primary activity engaged in at the facility is not the specified GHG activity described in Item 7 of Schedule 2 to the Reporting Regulation. O. Reg. 473/16, s. 4.

(2) Despite sections 4 and 6, the amount of greenhouse gas emissions attributed to the participant in respect of the specified GHG activities engaged in at the facility is zero for each of the first two consecutive years following 2016 in respect of which a GHG report with respect to the facility is required to be verified.

**Attribution of emissions, change in owner or operator of facility**

**9.1** (1) This section applies if a person who is a capped participant in respect of specified GHG activities engaged in at a facility ceases to be the owner or operator of the facility during a compliance period but specified GHG activities continue to be engaged in at the facility during the compliance period under a new owner or operator. O. Reg. 473/16, s. 5.

(2) The amount of greenhouse gas emissions attributed to the previous owner or operator in respect of the specified GHG activities engaged in at the facility during the compliance period is zero. O. Reg. 473/16, s. 5.

(3) The amount of greenhouse gas emissions attributed to the new owner or operator of the facility for the compliance period includes any amount that, but for subsection (2), would be attributed to the previous owner or operator for the period during the compliance period when the previous owner or operator was a capped participant in respect of the activities at the facility. O. Reg. 473/16, s. 5.

(4) If the amount of greenhouse gas emissions attributed to the previous owner or operator under section 7, 8 or 9 for a year was zero, then that attribution shall apply to the new owner or operator as if the new owner had been the previous owner or operator at the time of the attribution. O. Reg. 473/16, s. 5.

(5) The previous owner shall give the Director notice of the change of ownership and a statement that the previous owner has complied with section 38 of the Reporting Regulation. The notice shall be in a form approved by the Director. O. Reg. 473/16, s. 5.

**PART III**

**SUBMISSION OF EMISSION ALLOWANCES AND CREDITS FOR COMPLIANCE PERIOD**

**Ontario emission allowance or Ontario credit, equivalence in CO<sub>2</sub>e**

**10.** An Ontario emission allowance or Ontario credit is equivalent to one tonne of CO<sub>2</sub>e.

**Submission of emission allowances, etc., timing**

**11.** (1) Subject to section 12, the deadline for submitting emission allowances and credits under section 14 of the Act for a compliance period is 8 p.m. eastern standard time or daylight saving time, as the case may be, on November 1 following the end of the compliance period.

(2) The deadline prescribed for the purposes of subsection 14 (9) of the Act is 8 p.m. eastern standard time or daylight saving time, as the case may be, on the day that is 180 days following the day a revised GHG report is given to the Director.

(3) If the deadline falls on a day that is not a business day, the deadline is 8 p.m. eastern standard time or daylight saving time, as the case may be, on the first business day following the deadline under subsection (1) or (2), as the case may be.

**Submission of emission allowances, etc., permanent cessation of activities**

**12.** (1) This section applies to the submission of emission allowances and credits under section 14 of the Act for a compliance period by a person if,

- (a) the submission is in respect of greenhouse gas emissions attributed to the person in respect of activities that have ceased permanently before the final year of the compliance period; and
- (b) the person is not registered as a capped participant in respect of any other activity.

(2) The deadline for submitting the emission allowances and credits by a person mentioned in subsection (1) is 8 p.m. eastern standard time or daylight saving time, as the case may be, on November 1 in the year in which the final GHG report is given to the Director with respect to the activities.

(3) If the deadline falls on a day that is not a business day, the deadline is 8 p.m. eastern standard time or daylight saving time, as the case may be, on the first business day following the deadline under subsection (2).

**Restriction, emission allowances**

**13.** Only the following emission allowances may be submitted for a compliance period:

1. Ontario emission allowances reserved by the Minister for a sale under section 59.
2. Ontario emission allowances classified by the Minister as having a vintage year that is a year in the compliance period or an earlier year.
3. Ontario emission allowances classified by the Minister as having a vintage year that is either the first or second year following the end of a compliance period, if the emission allowances have been distributed free of charge under subsection 31 (2) of the Act as a production adjustment.

**Restriction, credits**

**14.** Only the following credits may be submitted for a compliance period:

1. Ontario offset credits created by the Minister before the end of the year following the end of the compliance period.
2. Ontario early reduction credits.

**Manner of submitting emission allowances and credits to Minister**

**15.** (1) If Ontario emission allowances are transferred to a capped participant's compliance account as a result of a successful purchase at a sale under section 59 or an auction, the participant submits the Ontario emission allowances to the Minister by paying for the purchased emission allowances.

(2) A capped participant may submit to the Minister Ontario emission allowances described in paragraph 2 or 3 of section 13 and Ontario credits described in paragraphs 1 and 2 of section 14 by taking the following steps:

1. A designated account representative of the participant must submit a notice of the participant's intent to submit the emission allowances and credits to all other designated account representatives of the participant.
2. A second designated account representative of the participant must, no later than two days following the submission of the notice of intent under paragraph 1, confirm the participant's intent to submit the emission allowances and credits to all other designated account representatives of the participant.

(3) A capped participant may only submit Ontario emission allowances and Ontario credits under subsection (2) if the emission allowances or credits are held in the participant's holding account.

(4) Upon receipt of a confirmation under paragraph 2 of subsection (2), the Minister shall transfer the Ontario emission allowances and Ontario credits to the participant's compliance account.

(5) If the Minister asks a designated account representative of a participant for information relating to the submission of emission allowances or credits under this section, the account representative shall give the information to the Minister no later than five days following the request or such later day as may be specified by the Minister.

**Minister's removal of emission allowances and credits from compliance account**

**16.** (1) After the applicable deadline for submitting emission allowances and credits under section 14 of the Act for a compliance period, the Minister shall take the steps set out in subsection (2) in respect of each capped participant's compliance account, in the order in which the steps are set out, until the earlier of the following:

1. The amount of Ontario emission allowances and Ontario credits removed by the Minister from the compliance account is equal to the amount of emission allowances and credits required to be submitted by the participant for the compliance period.

2. The Minister has taken all of the steps set out in subsection (2).
- (2) The steps to be taken in respect of the compliance account are the following:
  1. The Minister shall remove Ontario offset credits that may be submitted for the compliance period, beginning with the credits that were created first and continuing chronologically to the most recently created credits until the earlier of the following:
    - i. No more of those credits remain in the compliance account.
    - ii. The amount of credits removed from the compliance account represents 8 per cent of the greenhouse gas emissions attributed to the participant for the compliance period.
  2. The Minister shall remove any Ontario emission allowances described in paragraph 1 of section 13 until no more of those allowances remain in the compliance account.
  3. The Minister shall remove any Ontario early reduction credits until no more of those credits remain in the compliance account.
  4. The Minister shall remove any Ontario emission allowances described in paragraph 2 of section 13, beginning with the emission allowances with the earliest vintage year and continuing chronologically to the emission allowances with the most recent vintage year, until no more of those emission allowances remain in the compliance account.
  5. The Minister shall remove any Ontario emission allowances described in paragraph 3 of section 13, beginning with the emission allowances with earlier vintage years and continuing chronologically to the emission allowances with later vintage years, until no more of those emission allowances remain in the compliance account.
- (3) The Minister shall retire from circulation all emission allowances and credits removed by the Minister under this section.

**Restriction on accounts, shortfall**

**17.** (1) If a capped participant fails to submit all of the required emission allowances and credits on or before the applicable deadline in accordance with this Regulation, the participant's authority to deal with emission allowances and credits in the participant's cap and trade accounts is restricted under paragraph 4 of subsection 14 (7) of the Act as follows: the participant is prohibited from transferring emission allowances or credits from the participant's holding account to any other account other than the participant's compliance account.

(2) If the restriction described in subsection (1) applies, the authority of the capped participant's designated account representative to transfer emission allowances and credits held in the participant's holding account to any account other than the participant's compliance account is suspended.

**Minister's removal of emission allowances and credits, shortfall**

**18.** (1) The Minister may only remove emission allowances and credits for a compliance period under subsection 14 (7) of the Act until such time as the Director issues an order under paragraph 1 of subsection 14 (8) of the Act.

(2) Subject to subsection (3), the Minister's authority to remove emission allowances and credits for a compliance period under paragraphs 1 and 3 of subsection 14 (7) of the Act may only be exercised by taking the following steps in respect of the participant's cap and trade accounts in the order in which the steps are set out:

1. To satisfy the shortfall mentioned in paragraph 1 of subsection 14 (7) of the Act, the Minister shall remove Ontario offset credits that may be submitted for the compliance period, beginning with the credits that were created first and continuing chronologically to the most recently created credits until the earlier of the following:
  - i. No more of those credits remain in the cap and trade accounts.
  - ii. The amount of credits removed from the cap and trade accounts, both under section 16 of this Regulation and this section, represents 8 per cent of the greenhouse gas emissions attributed to the participant for the compliance period.
2. To satisfy the shortfall mentioned in paragraph 1 of subsection 14 (7) of the Act, the Minister shall remove any Ontario early reduction credits until no more of those credits remain in the cap and trade accounts.
3. To satisfy the shortfall mentioned in paragraph 1 of subsection 14 (7) of the Act and to satisfy the amount mentioned in paragraph 3 of subsection 14 (7) of the Act, the Minister shall remove any Ontario emission allowances described in paragraph 2 of section 13 of this Regulation, beginning with the emission allowances with the earliest vintage year and continuing chronologically to the emission allowances with the most recent vintage year, until no more of those emission allowances remain in the cap and trade accounts.
4. To satisfy the shortfall mentioned in paragraph 1 of subsection 14 (7) of the Act and to satisfy the amount mentioned in paragraph 3 of subsection 14 (7) of the Act, the Minister shall remove any remaining Ontario emission allowances held in the participant's compliance account, beginning with the emission allowances with the earliest vintage year and

continuing chronologically to the emission allowances with later vintage years, until no more of those emission allowances remain in the compliance account.

5. To satisfy the shortfall mentioned in paragraph 1 of subsection 14 (7) of the Act and to satisfy the amount mentioned in paragraph 3 of subsection 14 (7) of the Act, the Minister shall remove any remaining Ontario emission allowances held in the participant's holding account, beginning with the emission allowances with the earliest vintage year and continuing chronologically to the emission allowances with later vintage years, until no more of those emission allowances remain in the holding account.

(3) If the participant purchases Ontario emission allowances at any time during the period during which the Minister is authorized to remove emission allowances and credits as described in subsection (1) and the Minister has already removed credits under paragraphs 1 and 2 of subsection (2), the Minister may remove those emission allowances in the order of the steps set out in paragraphs 3 to 5 of subsection (2).

(4) The Minister shall retire from circulation all emission allowances and credits removed by the Minister under paragraph 1 of subsection 14 (7) of the Act.

(5) Once the amount of emission allowances and credits retired from circulation under subsection (4) is the same as the amount of the shortfall, the Minister shall reserve all emission allowances removed by the Minister under paragraph 3 of subsection 14 (7) of the Act for the purpose of auctions.

#### **Notice of continuing shortfall**

**19.** A notice under subsection 14 (8) of the Act shall include, in addition to the amount of the outstanding obligations, the following:

1. A statement explaining that if the participant is eligible to apply for the distribution of emission allowances free of charge under subsection 31 (2) of the Act, the number of emission allowances the participant would be eligible to receive in the following year may decrease by the number of outstanding emission allowances and credits.
2. The deadline for submitting sufficient emission allowances or credits to satisfy the outstanding obligations, which must be 30 days from the day that the notice is given.
3. A statement that the Director may issue an order under subsection 14 (8) of the Act if the participant does not satisfy the outstanding obligations by the specified deadline.

#### **Failure to remedy continuing shortfall**

**20.** The amount required to be paid by an order under paragraph 1 of subsection 14 (8) of the Act shall be determined by applying the following formula:

$$A = B \times C$$

where,

A = the amount required to be paid,

B = the lowest bid price accepted for Auction Class 1 emission allowances at the most recent auction, and

C = the amount of outstanding obligations at the time of the determination.

#### **Minister's removal of emission allowances and credits due to discrepancy**

**20.1** (1) If a capped participant was required to give the Director a revised report under section 26 of the Reporting Regulation due to a discrepancy described in that section, the Minister may, under subsections 14 (7) and (9) of the Act, remove emission allowances and credits from the participant's compliance account in respect of the discrepancy as follows:

1. Allowances and credits shall be removed in accordance with subsections 16 (1) and (2).
2. If the amount of allowances and credits removed under paragraph 1 is insufficient to account for the discrepancy, the Minister shall remove any remaining Ontario emission allowances held in the participant's compliance account, beginning with the emission allowances with the earliest vintage year and continuing chronologically to the emission allowances with later vintage years, until no more of those emission allowances remain in the compliance account.
3. If the amount of allowances and credits removed under paragraph 2 is insufficient to account for the discrepancy, further allowances and credits shall be removed in accordance with subsections 18 (2) and (3).
4. For the purposes of removing allowances and credits under this section in accordance with subsections 16 (1), (2), 18 (2) and (3), those subsections apply, with necessary modifications, and the compliance period that applies is the compliance period that includes the year in respect of which the revised report was made. O. Reg. 473/16, s. 6.

(2) The Minister shall retire from circulation all emission allowances and credits removed by the Minister under this section. O. Reg. 473/16, s. 6.

**PART IV  
REGISTRATION IN THE CAP AND TRADE PROGRAM**

**MANDATORY PARTICIPANTS**

**Registration not required**

**21.** (1) Subsection 15 (1) of the Act does not apply to the owner or operator of a facility in respect of specified GHG activities engaged in at a facility if the facility meets all of the following criteria:

1. The primary activity engaged in at the facility is the specified GHG activity described in Item 7 of Schedule 2 to the Reporting Regulation.
2. No products are produced at the facility other than electricity and any heat, steam or by-product gas.
3. The facility does not receive natural gas directly from an international or inter-provincial natural gas transmission pipeline.
4. No electricity is generated at the facility from the incineration of waste.
5. No electricity is generated at the facility from a fuel other than natural gas, petroleum products or biomass. O. Reg. 473/16, s. 7 (1).

(2) Subsection 15 (1) of the Act does not apply to a person who is a clearing house. O. Reg. 473/16, s. 7 (2).

**Registration in 2016**

**22.** (1) A person who meets one of the following descriptions is required to register no later than November 30, 2016 as a mandatory participant under subsection 15 (1) of the Act:

1. A person who was required under the 2015 EPA Regulation to prepare and have verified a 2015 EPA report.
2. Subject to subsection (2), a person who was required under the 2016 EPA Regulation to prepare a 2016 EPA report but was exempt under section 26 of that regulation from the requirement to have the report verified.
3. Subject to subsection (3), a person who was required under the 2016 EPA Regulation to prepare and have verified a 2016 EPA report with respect to a facility that meets the following criteria:
  - i. The primary activity engaged in at the facility is the specified GHG activity described in Item 7 of Schedule 2 to the Reporting Regulation.
  - ii. No products are produced at the facility other than electricity and any heat, steam or by-product gas.
  - iii. The facility receives natural gas directly from an international or inter-provincial natural gas transmission pipeline.

(2) If, were it not for section 26 of the 2016 EPA Regulation, the requirement to verify the 2016 EPA report mentioned in paragraph 2 of subsection (1) would have been triggered on or after November 30, 2016, then the person is required to register no later than March 31, 2017.

(3) If the requirement to verify the report mentioned in paragraph 3 of subsection (1) is triggered on or after November 30, 2016, then the person is required to register no later than March 31, 2017.

(4) A person described in paragraph 1, 2 or 3 of subsection (1) shall register as a mandatory participant in respect of the activities with respect to which each of the person's reports mentioned in subsection (1) relate.

**Registration in 2017 re 2016 activities**

**23.** (1) A person who meets the following criteria is required to register no later than September 1, 2017 as a mandatory participant under subsection 15 (1) of the Act:

1. The person was required under the 2016 EPA Regulation to prepare a 2016 EPA report and to have the report verified.
2. The person is not a person described in paragraph 1 of subsection 22 (1) of this Regulation.

(2) The person shall register as a mandatory participant in respect of the activities with respect to which each of the person's 2016 EPA reports relate.

**Registration in 2017 and subsequent years**

**24.** (1) A person who is required under subsection 11 (2) of the Act to have a GHG report verified is required to register under subsection 15 (1) of the Act as a mandatory participant in accordance with the following rules:

1. Subject to subsections (2) and (3), if the verification is of a GHG report with respect to specified GHG activities engaged in during a year at a facility, the person shall register in respect of those activities no later than September 1 in the following year.

2. If the verification is of a GHG report with respect to electricity importation during a year, the person shall register in respect of that activity,
  - i. no later than September 1 in the same year, if the person imports electricity before September 1, or
  - ii. no later than March 31 in the following year, if the person only imports electricity on or after September 1.
3. If the verification is of a GHG report with respect to natural gas distribution during a year, the person shall register in respect of that activity,
  - i. no later than September 1 in the same year, if the requirement to verify the report is triggered before September 1, or
  - ii. no later than March 31 in the following year, if the requirement to verify the report is triggered on or after September 1.
4. If the verification is of a GHG report with respect to petroleum product supply during a year, the person shall register in respect of that activity,
  - i. no later than September 1 in the same year, if the requirement to verify the report is triggered before September 1, or
  - ii. no later than March 31 in the following year, if the requirement to verify the report is triggered on or after September 1.

(2) If the specified GHG activities engaged in during a year at the facility include the activity described in Item 18 of Schedule 2 to the Reporting Regulation, the person shall register in respect of the specified GHG activities,

- (a) no later than September 1 in the same year, if the requirement to verify the report is triggered before September 1; or
- (b) no later than March 31 in the following year, if the requirement to verify the report is triggered on or after September 1.

(3) If the specified GHG activities are engaged in during a year at a facility that meets the criteria set out in paragraph 3 of subsection 22 (1), the person shall register in respect of the specified GHG activities,

- (a) no later than September 1 in the same year, if the requirement to verify the report is triggered before September 1; or
- (b) no later than March 31 in the following year, if the requirement to verify the report is triggered on or after September 1.

**Information to be provided**

**25.** A person who is required to register as a mandatory participant shall give the Director the information set out in Schedule 1 and the following information relating to each activity in respect of which the person is required to register as a mandatory participant:

1. Any unique identifiers that have been provided to the person by the Ministry in respect of each activity for the purposes of the 2015 EPA Regulation, the 2016 EPA Regulation or the Reporting Regulation.
2. All primary NAICS codes and any secondary NAICS codes related to each activity.
3. The names and contact information of any persons responsible for preparing a 2015 EPA report, a 2016 EPA report or a GHG report in respect of the activities.

**Conditions**

**26.** (1) The following conditions of registration apply in respect of a mandatory participant:

1. The participant must notify the Director of any change to information provided to the Director under section 25 no later than 30 days following the change.
2. The participant must not sell, trade or otherwise deal with emission allowances or credits in the participant's compliance account.

(1.1) The condition in paragraph 2 of subsection (1) does not apply if the participant is the previous owner or operator of a facility at which a specified GHG activity is engaged in and submits a request to the Minister under section 51.3 to have the emission allowances or credits transferred from the previous owner's compliance account to the compliance account of the new owner or operator of the facility. O. Reg. 473/16, s. 8.

(2) If a person registers as a mandatory participant in 2016 in respect of activities with respect to which a 2015 EPA report relates and the person is not required under Ontario Regulation 452/09 (Greenhouse Gas Emissions Reporting) made under the Environmental Protection Act to do the following, it is a condition of the registration that the person,

- (a) give the Director a 2016 EPA report with respect to all Table 2 activities, within the meaning of the 2016 EPA Regulation, that were engaged in at the facility during 2016, prepared in accordance with subsection (3); and

(b) have the report verified in accordance with subsection (4) and give the Director a positive or qualified positive verification statement that was prepared in respect of the report in accordance with the 2016 EPA Regulation.

(2.1) If the reason that a person described in subsection (2) was not required under Ontario Regulation 452/09 to do the things mentioned in clauses (2) (a) and (b) was because the owner or operator of the facility changed during 2016, the conditions described in those clauses do not apply to the person. O. Reg. 473/16, s. 8.

(3) The report mentioned in clause (2) (a) must be prepared in accordance with section 7 of the 2016 EPA Regulation and given to the Director no later than June 1, 2017.

(4) The verification mentioned in clause (2) (b) must be conducted in accordance with the requirements set out in the 2016 EPA Regulation relating to verification of reports and the verification statement must be given to the Director no later than September 1, 2017.

#### **New owner, operator**

**26.1** Despite section 23, if a person who is a mandatory participant in respect of specified GHG activities engaged in at a facility ceases to be the owner or operator of the facility, the new owner or operator of the facility is required to register as a mandatory participant in respect of specified GHG activities at the facility no later than 30 days after becoming the new owner or operator of the facility. O. Reg. 473/16, s. 9.

#### **Cancellation**

**27.** (1) For the purposes of subsection 20 (1) of the Act, a mandatory participant must request the cancellation of the participant's registration in writing.

(2) If the Director proposes to refuse to cancel a mandatory participant's registration after receiving a request to do so, the Director shall give written notice to the participant, setting out the following:

1. The proposed refusal and the reasons for the proposed refusal.
2. A statement that the participant may, no later than five days following the day the notice was given, submit comments in writing to the Director in respect of the proposed refusal.

(3) After considering any comments received from the mandatory participant in respect of a proposed refusal, the Director shall give written notice to the participant of the Director's decision.

### **VOLUNTARY PARTICIPANTS**

#### **Registration not permitted**

**28.** (1) A person who is the owner or operator of a facility that meets all of the criteria set out in paragraphs 1 to 5 of section 21 is not permitted to apply for registration as a voluntary participant in respect of the specified GHG activities engaged in at the facility. O. Reg. 473/16, s. 10 (1).

(2) A person who is a clearing house is not permitted to apply for registration as a voluntary participant. O. Reg. 473/16, s. 10 (2).

#### **Registration in 2016**

**29.** (1) A person who meets the following criteria may apply in 2016 to register as a voluntary participant under subsection 16 (1) of the Act in respect of specified GHG activities engaged in at a facility:

1. The person is the owner or operator of the facility.
2. The person is not required to register as a mandatory participant in respect of the specified GHG activities engaged in at the facility.
3. The amount of CO<sub>2</sub>e emitted during 2015 from all Table 2 activities, within the meaning of the 2016 EPA Regulation, that were engaged in at the facility, as quantified under paragraph 4 of subsection 7.3 (2) of the 2016 EPA Regulation, was 10,000 tonnes of CO<sub>2</sub>e or more.
4. The person has given the Director a report in accordance with subsection (2) with respect to all Table 2 activities, within the meaning of the 2016 EPA Regulation, that were engaged in at the facility during 2015.
5. The person has had the report mentioned in paragraph 4 verified in accordance with subsection (2) and has given the Director a positive or qualified positive verification statement that was prepared in respect of the report in accordance with the 2016 EPA Regulation.

(2) The report mentioned in paragraph 4 of subsection (1) must be prepared in accordance with section 7 of the 2016 EPA Regulation and verified in accordance with the requirements set out in that regulation relating to the verification of reports.

#### **Registration in 2017**

**30.** (1) A person who meets the following criteria may apply in 2017 to register as a voluntary participant under subsection 16 (1) of the Act in respect of specified GHG activities engaged in at a facility:

1. The person is the owner or operator of the facility.
2. The person is not required to register as a mandatory participant with respect to the specified GHG activities engaged in at the facility.
3. The person is required under the 2016 EPA Regulation to give the Director a 2016 EPA report with respect to the specified GHG activities engaged in at the facility.
4. The person has had the report mentioned in paragraph 3 verified in accordance with subsection (2) and has given the Director a positive or qualified positive verification statement that was prepared in respect of the report in accordance with the 2016 EPA Regulation.

(2) The report mentioned in paragraph 3 of subsection (1) must be verified in accordance with the requirements set out in the 2016 EPA Regulation relating to the verification of reports.

**Registration after 2017**

**31.** (1) A person may apply in a year following 2017 for registration as a voluntary participant under subsection 16 (1) of the Act in respect of specified GHG activities engaged in at a facility if the following criteria are met:

1. The person is the owner or operator of the facility.
2. The person is not required to register as a mandatory participant in respect of the specified GHG activities engaged in at the facility.
3. The person was required to give the Director a GHG report with respect to the specified GHG activities engaged in at the facility in the year prior to the year in which the application is made.
4. The verification amount set out in the GHG report mentioned in paragraph 3 is 10,000 tonnes of CO<sub>2</sub>e or more.
5. The person has had the report mentioned in paragraph 3 verified in accordance with subsection (2) and has given the Director a positive or qualified positive verification statement that was prepared in respect of the report in accordance with the Reporting Regulation.

(2) The report mentioned in paragraph 3 of subsection (1) must be verified in accordance with the requirements set out in the Reporting Regulation relating to the verification of GHG reports.

**Registration, use of indirect useful thermal energy**

**31.1** A person who is the owner or operator of a facility may apply for registration as a voluntary participant in a year in respect of activities engaged in at the facility if the following criteria are met:

1. The person is not eligible under section 30 or 31 to apply for registration as a voluntary participant.
2. The person is not a mandatory participant.
3. The use of indirect useful thermal energy is engaged in at the facility in the year in which the application is made and was engaged in at the facility during the previous year.
4. The amount of greenhouse gas emitted from the use of indirect useful thermal energy and other specified GHG activities engaged in at the facility during the previous year, as calculated in accordance with the following formula, is 10,000 tonnes of CO<sub>2</sub>e or more:

$$T = (A - B)$$

where,

T = the amount,

A = the amount of greenhouse gas emitted during the specified GHG activities engaged in at the facility, quantified in accordance with section 4 of the Reporting Regulation, and

B = the portion of “A” that is carbon dioxide emitted from the combustion of biomass.

5. The person has given the Director a report, prepared in accordance with the requirements relating to GHG reports in the Reporting Regulation, with respect to any specified GHG activities engaged in at the facility in the previous year.
6. The person has had the report mentioned in paragraph 5 verified in accordance with the requirements set out in the Reporting Regulation relating to the verification of GHG reports and has given the Director a positive or qualified positive verification statement that was prepared in respect of the report in accordance with the Reporting Regulation. O. Reg. 473/16, s. 11.

**Information to be provided**

**32.** A person who applies to register as a voluntary participant must give the Director the information set out in Schedule 1 and the information set out in paragraphs 1 to 3 of section 25 relating to each activity in respect of which the person is registered or wishes to register as a voluntary participant.

**Director's powers, application to register**

**33.** (1) If the Director proposes to refuse an application for registration as a voluntary participant, the Director shall give written notice to the applicant, setting out the following:

1. The proposed refusal and the reasons for the proposed refusal.
  2. A statement that the participant may, no later than five days following the day the notice was given, submit comments in writing to the Director in respect of the proposed refusal.
- (2) After considering any comments received from the applicant in respect of a proposed refusal, the Director shall,
- (a) register the applicant as a voluntary participant; or
  - (b) give the applicant written notice of the Director's refusal of the application.

**Conditions**

**34.** (1) The following conditions of registration apply in respect of a voluntary participant:

1. The participant must notify the Director of any change to information provided to the Director under section 32 no later than 30 days following the change.
2. Subject to subsection (1.1), the participant must not sell, trade or otherwise deal with emission allowances or credits in the participant's compliance account. O. Reg. 473/16, s. 12 (1).

(1.1) The condition in paragraph 2 of subsection (1) does not apply if the participant is the previous owner or operator of a facility at which a specified GHG activity is engaged in and submits a request to the Minister under section 51.3 to have the emission allowances or credits transferred from the previous owner's compliance account to the compliance account of the new owner or operator of the facility. O. Reg. 473/16, s. 12 (2).

- (2) If a person registers as a voluntary participant in 2016, it is a condition of the registration that the person,
  - (a) give the Director a 2016 EPA report with respect to all Table 2 activities, within the meaning of the 2016 EPA Regulation, that were engaged in at the facility during 2016, prepared in accordance with subsection (3); and
  - (b) have the report verified in accordance with subsection (4) and give the Director a positive or qualified positive verification statement that was prepared in respect of the report in accordance with the 2016 EPA Regulation.
- (3) The report mentioned in clause (2) (a) must be prepared in accordance with section 7 of the 2016 EPA Regulation and given to the Director no later than June 1, 2017.
- (4) The verification mentioned in clause (2) (b) must be conducted in accordance with the requirements set out in the 2016 EPA Regulation relating to the verification of reports and the verification statement must be given to the Director no later than September 1, 2017.

**New owner, operator**

**34.1** If a person who is a voluntary participant in respect of specified GHG activities engaged in at a facility ceases to be the owner or operator of the facility, the new owner or operator of the facility is required to register as a voluntary participant in respect of specified GHG activities at the facility no later than 30 days after becoming the new owner or operator of the facility. O. Reg. 473/16, s. 13.

**Cancellation**

**35.** (1) For the purposes of subsection 20 (2) of the Act, a voluntary participant must request the cancellation of the participant's registration in writing.

(2) If the Director proposes to refuse to cancel a voluntary participant's registration after receiving a request to do so, the Director shall give written notice to the participant, setting out the following:

1. The proposed refusal and the reasons for the proposed refusal.
  2. A statement that the participant may, no later than five days following the day the notice was given, submit comments in writing to the Director in respect of the proposed refusal.
- (3) After considering any comments received from the voluntary participant in respect of a proposed refusal, the Director shall give written notice to the participant of the Director's decision.
- (4) The Director may cancel a voluntary participant's registration under subsection 20 (6) of the Act if the participant is no longer required to give GHG reports to the Director under the Reporting Regulation with respect to the specified GHG activities in respect of which the participant is registered as a voluntary participant.

## MARKET PARTICIPANTS

### Registration

**36.** (1) A person that is not an owner, operator or employee of a mandatory or voluntary participant may apply to the Director for registration as a market participant under subsection 17 (1) of the Act if,

- (a) the person is an individual and the person resides in Canada; or
- (b) the person is not an individual and the person has an establishment in Canada. O. Reg. 473/16, s. 14.

(2) A person applying to register as a market participant must give the Director the information set out in Schedule 1 of this Regulation.

(3) If the Director proposes to refuse an application for registration as a market participant, the Director shall give written notice to the applicant, setting out the following:

1. The proposed refusal and the reasons for the proposed refusal.
  2. A statement that the participant may, no later than five days following the day the notice was given, submit comments in writing to the Director in respect of the proposed refusal.
- (4) After considering any comments received from the applicant in respect of a proposed refusal, the Director shall,
- (a) register the applicant as a market participant; or
  - (b) give the applicant written notice of the Director's refusal of the application.

### Conditions

**37.** It is a condition of registration as a market participant that the participant must notify the Director of any change to information provided to the Director under subsection 36 (2) no later than 30 days following the change.

### Cancellation

**38.** (1) For the purposes of subsection 20 (2) of the Act, the prescribed criteria for cancellation of the registration of a market participant are the following:

1. The participant has requested the cancellation in writing.
2. No emission allowances or credits remain in the participant's holding account.

(2) If the Director proposes to refuse to cancel a market participant's registration after receiving a request to do so, the Director shall give written notice to the participant, setting out the following:

1. The proposed refusal and the reasons for the proposed refusal.
2. A statement that the participant may, no later than five days following the day the notice was given, submit comments in writing to the Director in respect of the proposed refusal.

(3) After considering any comments received from the market participant in respect of a proposed refusal, the Director shall give written notice to the participant of the Director's decision.

(4) The Director may cancel a market participant's registration under subsection 20 (6) of the Act in either of the following circumstances:

1. The participant has been convicted of an offence under section 21, 28 or 29 of the Act.
2. Subject to subsection (5), there has been no activity with respect to the participant's holding account for six years and no emission allowances or credits remain in the account.

(5) If the circumstances in paragraph 2 of subsection (4) apply, the Director shall give written notice to the participant of the Director's intention to cancel the participant's registration and shall only cancel the registration if, after 30 days following the day on which the notice was given, no activity has occurred with respect to the holding account.

## PART V CAP AND TRADE ACCOUNTS AND TRANSACTIONS

### Cap and trade accounts

**39.** (1) The Director shall establish a holding account for each registered participant, to and from which emission allowances and credits may be transferred.

(2) In addition to the holding account mentioned in subsection (1), the Director shall establish a compliance account for each capped participant.

### Holding limit, current vintage emission allowances, etc

40. (1) Subject to section 41, a registered participant shall ensure that the total number of emission allowances and credits mentioned in subsection (2) that are held in the participant's cap and trade accounts, and in the cap and trade accounts of participants who are related persons in respect of the registered participant, does not at any time in a year exceed the limit determined by applying the following formula:

$$L = 2,500,000 + 0.025 \times (C - 25,000,000)$$

where,

L = the limit, and

C = the number of Ontario emission allowances created for the year.

(2) The limit applies in respect of the following held in a registered participant's cap and trade accounts:

1. Current vintage emission allowances.
2. Ontario emission allowances that are classified as Category A, B or C.
3. Ontario early reduction credits.

(3) Registered participants who are related persons shall allot the limit calculated under this section among themselves and each related person shall hold emission allowances or credits in an amount that is equal to or less than the person's allotted portion of the limit.

(4) This section does not apply to a market participant that is a clearing house. O. Reg. 473/16, s. 15.

(5) In 2017, Enbridge Gas Distribution Inc. and Union Gas Limited shall be treated, for the purposes of this section, as if each registered participant were a separate registered participant that is not related to the other registered participant, within the meaning of subsection 2 (2). O. Reg. 56/17, s. 1.

**Note: On January 1, 2018, subsection 40 (5) of the Regulation is revoked. (See: O. Reg. 56/17, s. 6)**

**Non-application of holding limit**

41. (1) Subject to subsections (2) and (3), the limit established under section 40 does not apply during a time period set out in Column 1 of the following Table in respect of emission allowances and credits that are held in a capped participant's compliance account during the period, up to and including the amount of emission allowances and credits that is equivalent to the amount of CO<sub>2</sub>e set out opposite the time period in Column 2 of the Table.

TABLE

Item	Column 1 Time period	Column 2 Amount of CO <sub>2</sub> e
1.	January 1, 2017 to December 31, 2017.	A <sub>2015</sub>
2.	January 1, 2018 to December 31, 2018	A <sub>2015</sub> + A <sub>2016</sub>
3.	January 1, 2019 to December 31, 2019.	A <sub>2016</sub> + (A <sub>2017</sub> × 2)
4.	January 1, 2020 to December 31, 2020.	(A <sub>2017</sub> × 2) + (A <sub>2018</sub> × 2)
5.	January 1, 2021 to November 1, 2021.	A <sub>2017</sub> + (A <sub>2018</sub> × 2) + (A <sub>2019</sub> × 2)
6.	November 2, 2021 to December 31, 2021.	A <sub>2019</sub>
7.	January 1, 2022 to December 31, 2022.	A <sub>2019</sub> + A <sub>2020</sub>

(2) If an amount required for the purpose of determining a value referred to in Column 2 of the Table to subsection (1) cannot be obtained in respect of an activity, the amount is deemed to be,

- (a) the most recently obtained comparable amount in respect of the activity from a previous year of reporting under either the Act or the *Environmental Protection Act*; or
- (b) if no comparable amount can be obtained, the amount assigned by the Director.

(3) For the purposes of clause (2) (b), a capped participant may apply to the Director for the Director to assign an amount.

(4) For the purposes of determining an amount to assign under clause (2) (b), the Director shall consider the following information:

1. Any information available to the Ministry in respect of the activity, which may include an environmental compliance approval in respect of the activity.
2. Any information in respect of the activity obtained by the Director by requesting information from the capped participant.
3. Information in respect of similar activities engaged in by persons in Ontario or other jurisdictions. O. Reg. 473/16, s. 16.

(5) If the Director proposes to determine an amount under clause (2) (b), the Director shall give written notice to the applicant, setting out the following information:

1. The proposed amount.
2. An explanation of how the proposed amount was determined.
3. A statement that the participant may, no later than five days following the day the notice was given, submit comments in writing to the Director in respect of the proposed amount.

(6) After considering any comments received from the applicant in respect of a proposed amount, the Director shall give written notice to the applicant of the amount determined under clause (2) (b).

(7) The Director may increase a maximum amount determined under subsection (1) if a capped participant applies to the Director on or before October 1 in a year for the increase and demonstrates that the participant's registered activities are likely to increase in the year of the application, such that the greenhouse gas emissions during the activities or associated with the activities are likely to increase by at least 250,000 tonnes from the previous year.

(8) If the Director proposes to increase the maximum amount under subsection (7), the Director shall give written notice to the applicant, setting out the following information:

1. The proposed increase.
2. An explanation of how the proposed increase was determined.
3. A statement that the participant may, no later than five days following the day the notice was given, submit comments in writing to the Director in respect of the proposed increase.

(9) After considering any comments received from the applicant in respect of a proposed increase, the Director shall give written notice to the applicant of the increase.

(10) The amount of an increase under subsection (7) shall be determined by the Director based on the information available about the likely increase and shall apply until such time as the actual amount of the increase in respect of the activity is available to the Director.

(11) Subject to subsection (12), a value referred to in Column 2 of the Table to subsection (1) must be the sum of all amounts that were set out in reports prepared under the *Environmental Protection Act* or GHG reports, as the case may be, in respect of which positive or qualified positive verification statements were issued or submitted in accordance with the applicable Act.

(12) In the case of an amount required for the purpose of determining  $A_{2016}$ , an amount set out in a 2016 EPA report may be included in the sum even if no positive or qualified positive verification statement was issued in respect of the report, if verification of the report was not required under section 26 of the 2016 EPA Regulation.

(13) In this section,

" $A_{2015}$ " means the sum of the amounts relating to the capped participant's registered activities engaged in during 2015, as quantified under the 2015 EPA Regulation and, if applicable, as quantified as described in paragraph 3 of subsection 29 (1) of this Regulation;

" $A_{2016}$ " means the sum of the amounts relating to the capped participant's registered activities engaged in during 2016, as quantified under paragraph 4 of subsection 7.3 (2) of the 2016 EPA Regulation and calculated under subsection 7.4 (1), (2) or (3) of the 2016 EPA Regulation;

" $A_{2017}$ " means the sum of,

- (a) all verification amounts calculated in respect of the capped participant's registered activities engaged in during 2017, as quantified under the Reporting Regulation, and
- (b) all amounts of greenhouse gas emissions associated with the capped participant's registered activities engaged in during 2017, as calculated under the Reporting Regulation;

" $A_{2018}$ " means the sum of,

- (a) all verification amounts calculated in respect of the capped participant's registered activities engaged in during 2018, as quantified under the Reporting Regulation, and
- (b) all amounts of greenhouse gas emissions associated with the capped participant's registered activities engaged in during 2018, as calculated under the Reporting Regulation;

" $A_{2019}$ " means the sum of,

- (a) all verification amounts calculated in respect of the capped participant's registered activities engaged in during 2019, as quantified under the Reporting Regulation, and
- (b) all amounts of greenhouse gas emissions associated with the capped participant's registered activities engaged in during 2019, as calculated under the Reporting Regulation;

“A<sub>2020</sub>” means the sum of,

- (a) all verification amounts calculated in respect of the capped participant’s registered activities engaged in during 2020, as quantified under the Reporting Regulation, and
- (b) all amounts of greenhouse gas emissions associated with the capped participant’s registered activities engaged in during 2020, as calculated under the Reporting Regulation;

“registered activities” means, when used in reference to a capped participant, the activities in respect of which the participant is registered.

**Holding limit, future vintage emission allowances**

**42.** (1) A registered participant shall ensure that the total number of future vintage emission allowances held in a person’s cap and trade accounts at any time in a year, or in the cap and trade accounts of related persons in respect of the registered participant, do not at any time in a year exceed the limit determined by applying the following formula in respect of each future vintage year:

$$HL_j = 2,500,000 + 0.025 \times (C_j - 25,000,000)$$

where,

HL<sub>j</sub>= the limit on future vintage emission allowances with vintage year j that are held in the cap and trade accounts during a year, and

C<sub>j</sub>= the number of Ontario emission allowances created for year j.

(2) Registered participants who are related persons shall allot the limit calculated under this section among themselves and each related person shall hold emission allowances or credits in an amount that is equal to or less than the person’s allotted portion of the limit.

(3) This section does not apply to a market participant that is a clearing house. O. Reg. 473/16, s. 17.

(4) In 2017, Enbridge Gas Distribution Inc. and Union Gas Limited shall be treated, for the purposes of this section, as if each registered participant were a separate registered participant that is not related to the other registered participant, within the meaning of subsection 2 (2). O. Reg. 56/17, s. 2.

**Note: On January 1, 2018, subsection 42 (4) of the Regulation is revoked. (See: O. Reg. 56/17, s. 6)**

**When holding limit exceeded**

**43.** (1) The Minister may, at any time starting five days after the day a registered participant is in contravention of section 40 or 42, remove the number of emission allowances or credits that exceed the applicable limit from the participant’s cap and trade accounts. O. Reg. 473/16, s. 18 (1).

(1.1) The Minister’s authority under subsection 27 (1) of the Act to remove emission allowances and credits that exceed the applicable limit from the participant’s cap and trade accounts may only be exercised by taking the following steps in respect of the participant’s cap and trade accounts in the order in which the steps are set out, until the excess number of allowances or credits has been removed:

1. The Minister shall remove any Ontario emission allowances described in paragraph 2 of section 13, beginning with the emission allowances with the earliest vintage year and continuing chronologically to the emission allowances with the most recent vintage year, until no more of those emission allowances remain in the holding account.
2. The Minister shall remove any Ontario early reduction credits until no more of those credits remain in the holding account.
3. The Minister shall remove any Ontario emission allowances described in paragraph 2 of section 13, beginning with the emission allowances with the earliest vintage year and continuing chronologically to the emission allowances with the most recent vintage year, until no more of those emission allowances remain in the compliance account.
4. The Minister shall remove any Ontario early reduction credits until no more of those credits remain in the compliance account.
5. The Minister shall remove any emission allowances described in paragraph 1 of section 13, until no more of those allowances remain in the compliance account. O. Reg. 473/16, s. 18 (2).

(2) The Minister shall,

- (a) retire from circulation all credits removed under subsection (1); and
- (b) reserve all emission allowances removed under subsection (1) for the purpose of auctions.

**Account agents, classes**

**44.** (1) The following classes of account agents are established:

1. Primary account representative.
2. Alternate account representative
3. Account viewing agent.

(2) Only an individual who resides in Ontario may be designated as the primary account representative of a registered participant.

#### **Account agents, recognition by Director**

**45.** (1) An individual may apply to the Director, in the manner approved by the Director, for recognition as an account agent if the person meets the following eligibility criteria:

1. The individual has not been convicted of a criminal offence in the five years before the individual submitted the application to the Director, unless a pardon, including a record suspension within the meaning of the *Criminal Records Act* (Canada), has been obtained.
2. The individual has not been found guilty of an offence under the Act.
3. The individual has not been found guilty of an offence under the *Commodity Futures Act* or the *Securities Act*.
4. REVOKED: O. Reg. 473/16, s. 19 (1).

O. Reg. 473/16, s. 19 (1).

(2) The application shall include the following:

1. The name, address and date of birth of the applicant.
2. Copies of two government-issued identity documents, one of which must have a photograph, the person's name and date of birth.
3. A statement signed by a lawyer or notary, completed no earlier than three months before the application is submitted, verifying the identity of the applicant and certifying the authenticity of the identity documents.
4. The name and contact information of the applicant's employer, if any.
5. Confirmation from a financial institution located in Canada that the person has an account with the institution and that the financial institution has verified the person's identity.
6. A document signed by the applicant that includes the following:
  - i. A statement that the applicant meets the criteria in subsection (1) and the information included in the application is true and accurate.
  - ii. A statement that the applicant consents to the Ministry giving information relating to the person to authorities in designated jurisdictions when necessary for the purposes of the cap and trade program or a corresponding program in a designated jurisdiction.

(3) If the Director recognizes the applicant as an account agent, the Director shall assign an identification number to the applicant unless the applicant already has an identification number assigned by a designated jurisdiction. O. Reg. 473/16, s. 19 (2).

(4) It is a condition of recognition as an account agent that the individual give the Director updated information no later than 30 days of any change in respect of the individual's satisfaction of the eligibility criteria under subsection (1).

(5) It is a condition of recognition as an account agent that the individual give the Director, if the Director so requests and no later than the day specified by the Director, updated information regarding the individual's satisfaction of the eligibility criteria under subsection (1) and any other information requested by the Director.

(6) The Director may cancel an individual's recognition as an account agent by providing the individual with written notice of the cancellation if the Director is satisfied that the individual has been convicted of a criminal offence or if the individual no longer satisfies the criteria set out in paragraphs 2 and 3 of subsection (1), or fails to provide information required under subsection (5) or subsection 51 (4).

#### **Account agents, powers and duties**

**46.** (1) A designated primary account representative or a designated alternate account representative of a registered participant is authorized to act on behalf of the participant to perform any actions that the participant is required or permitted to take under the Act.

(2) An individual who is designated as an account viewing agent by a registered participant is authorized to observe the participant's cap and trade accounts on behalf of the participant.

(3) If a designated primary or alternate account representative submits a notice or confirmation under this Regulation, the individual must include a statement that he or she is authorized to submit the notice or confirmation on behalf of the registered participant who made the designation and that the information set out in the notice or confirmation is true, accurate and complete to the best of the individual's knowledge.

**Designations, requirements and restrictions**

- 47.** (1) Each registered participant shall designate,
- (a) one individual as a primary account representative; and
  - (b) subject to subsection (2), at least one and no more than four individuals as alternate account representatives, none of whom may also be designated as the primary account representative.
- (2) A market participant who is an individual is not required to designate an alternate account representative.
- (3) Each registered participant may designate up to five individuals as account viewing agents.
- (4) The designation shall include the following information in respect of each individual being designated:
- 1. The individual's name and the identification number assigned by the Director or by a designated jurisdiction.
  - 2. A statement signed by a chief officer or a resolution of the board of directors of the registered participant, confirming that the individual has been designated to act on behalf of the registered participant as either an account representative or an account viewing agent, as the case may be.
  - 3. A statement signed by a lawyer or notary, confirming the relationship between the individual and the registered participant.
  - 4. A statement signed by the individual, confirming that the individual has been designated to act on behalf of the registered participant for the purposes of this Regulation and that the individual undertakes to comply with this Regulation.
  - 5. If the individual is designated by any other person as an account representative or as an account viewing agent for the purposes of this Regulation, or is designated by any other person to perform similar functions under a corresponding program of a designated jurisdiction, a statement signed by the individual, providing the name and contact information of any such person.

**Termination of designation**

- 48.** The designation of an individual as an account agent for a registered participant terminates when,
- (a) the Director receives a written request from the registered participant for termination of the designation;
  - (b) all of the registered participant's accounts are closed;
  - (c) the Director cancels the recognition of the individual; or
  - (d) the person's designation under a corresponding program, as mentioned in paragraph 5 of subsection 47 (4), is terminated by a designated jurisdiction.

**Suspension of authority re accounts**

**49.** (1) The Director shall suspend a participant's or a designated account representative's authority to deal with emission allowances and credits held in a participant's cap and trade accounts by providing written notice of the suspension if the Director has reason to believe that the participant or account representative has contravened this Regulation or section 21, 28 or 29 of the Act.

(2) If the Director is satisfied that the participant or designated account representative, as the case may be, is not contravening this Regulation or section 21, 28 or 29 of the Act, the Director shall reinstate the authority.

**Minister to transfer upon receiving transfer request**

**50.** (1) Upon receiving a request to transfer emission allowances or credits under this Regulation, the Minister shall transfer the allowances or credits that are identified in the request in accordance with the request, unless the Minister is of the view that,

- (a) the transfer would result in non-compliance with the Act or the regulations;
- (b) the Minister has reasonable grounds to believe that an offence has been committed under the Act in relation to the request; or
- (c) the request contains errors, omissions or is otherwise incomplete.

(2) If the Minister refuses to transfer emission allowances or credits under subsection (1), the Minister shall provide notice of the reason for the refusal to all of the designated account representatives who have taken steps under this Regulation with respect to the request.

(3) If the Minister refuses to transfer emission allowances or credits under clause (1) (c), the notice shall identify the errors or omissions or shall include a description of how the request is otherwise incomplete.

#### **Transfer between registered participants**

**51.** (1) A registered participant may submit a request to the Minister to transfer emission allowances or credits from the participant's holding account to another registered participant's holding account by taking the following steps:

1. A designated account representative of the participant who wishes to transfer the emission allowances or credits must submit a notice of the intent to transfer emission allowances or credits to all other designated account representatives of the participant, setting out the information mentioned in section 51.2.

i.-iii. REVOKED: O. Reg. 473/16, s. 20.

2. A second designated account representative of the participant must, no later than two days following the submission of the notice of intent under paragraph 1, confirm the participant's intent to transfer the emission allowances and credits mentioned in the notice to all other designated account representatives of the participant and to all designated account representatives of the registered participant to whom the emission allowances and credits would be transferred.

3. A designated account representative of the participant to whom the emission allowances and credits would be transferred must, no later than three days following the submission of the notice of intent under paragraph 1, submit a confirmation that the participant to whom the emission allowances and credits would be transferred intends to accept the transfer. O. Reg. 473/16, s. 20.

(2) Subject to subsection 50 (1), the Minister shall ensure that upon receipt of a confirmation of acceptance of the transfer under paragraph 3 of subsection (1), the emission allowances and credits specified in the confirmation of acceptance are transferred.

(3) The steps described in paragraphs 1 and 2 of subsection (1) may both be taken by the same individual if the participant is a market participant and has only one designated account representative.

(4) If the Minister asks a designated account representative of a participant for information relating to the transfer of emission allowances or credits under this section, the account representative shall give the information to the Minister by the date specified by the Minister.

#### **Transfer using clearing house**

**51.1** (1) Despite section 51, this section applies to transfers of emission allowances or credits between a registered participant that is not a clearing house and a registered participant that is a clearing house. O. Reg. 473/16, s. 21.

(2) A registered participant may submit a request to the Minister to transfer emission allowances or credits from the participant's holding account to a clearing house's holding account by taking the steps set out in paragraphs 1 and 2 of subsection 51 (1). O. Reg. 473/16, s. 21.

(3) A clearing house may submit a request to the Minister to transfer emission allowances or credits from its holding account to another registered participant's holding account by taking the following steps:

1. A designated account representative of the clearing house must submit a notice of the intent to transfer emission allowances or credits to all other designated account representatives of the clearing house, setting out the information described in section 51.2.

2. A second designated account representative of the clearing house must, no later than two days following the submission of the notice of intent under paragraph 1, confirm the clearing house's intent to transfer the emission allowances and credits mentioned in the notice to all other designated account representatives of the clearing house and to all designated account representatives of the registered participant to whom the emission allowances and credits would be transferred. O. Reg. 473/16, s. 21.

(4) Subject to subsection 50 (1), the Minister shall ensure that upon receipt of a confirmation by the second designated account representative of a clearing house under paragraph 2 of subsection (3), the emission allowances and credits specified in the confirmation are transferred. O. Reg. 473/16, s. 21.

(5) If the Minister asks a designated account representative of a clearing house or other participant for information relating to the transfer of emission allowances or credits under this section, the account representative shall give the information to the Minister by the date specified by the Minister. O. Reg. 473/16, s. 21.

(6) If emission allowances or credits that were transferred to the holding account of a clearing house remain in the holding account for a period exceeding five business days,

(a) the clearing house shall request a reversal of the transfer; and

(b) for the purposes of subsection 27 (4) of the Act, the Minister or Director may reverse the transfer, whether or not a request has been made under clause (a). O. Reg. 473/16, s. 21.

#### **Information for request to transfer**

**51.2** (1) For the purposes of subsections 51 (1) and 51.1 (3), the request to transfer shall include the following information:

1. The transferor's holding account number.
2. The transferee's holding account number.
3. The total number of allowances or credits to be transferred.
4. For each allowance or credit to be transferred,
  - i. the type of allowance or credit: emission allowance, Ontario offset credit or Ontario early reduction credit,
  - ii. the vintage year, or, in the case of an Ontario offset credit, the effective year, and
  - iii. the price to be paid for the allowance or credit under the transfer agreement.
5. For each allowance of the same type and vintage year and for each credit of the same type and effective year, the method used to determine the price to be paid.
6. A detailed description of the transfer agreement in a form approved by the Director that includes,
  - i. the day on which the transferor and transferee signed the agreement,
  - ii. the day by which all terms of the agreement are to be fulfilled, and
  - iii. a description of any other matters dealt with in the agreement.
7. The day on which the request is submitted. O. Reg. 473/16, s. 21.

(2) Subparagraph 4 iii of subsection (1) does not apply if the transferor and transferee are related persons, unless the transferor or transferee is a clearing house. O. Reg. 473/16, s. 21.

#### **Transfers between compliance accounts**

**51.3** (1) A previous owner or operator of a facility at which a specified GHG activity is engaged in may submit a request to the Minister to transfer emission allowances or credits from the previous owner or operator's compliance account to the compliance account of the new owner or operator by having a designated account representative submit a notice of intent to transfer emission allowances or credits to the Minister setting out the following information:

1. The previous owner or operator's compliance account number.
2. The new owner or operator's compliance account number.
3. The total number of allowances or credits to be transferred.
4. For each allowance or credit to be transferred,
  - i. the type of allowance or credit: emission allowance, Ontario offset credit or Ontario early reduction credit, and
  - ii. the vintage year, or, in the case of an Ontario offset credit, the effective year. O. Reg. 473/16, s. 21.

(2) Subject to subsection 50 (1), the Minister shall ensure that upon receipt of the transfer request and the notice of change of ownership under subsection 9.1 (5), the emission allowances and credits specified in the transfer request are transferred. O. Reg. 473/16, s. 21.

(3) If the Minister asks a designated account representative of the previous or new owner or operator for information relating to the transfer of emission allowances or credits under this section, the account representative shall give the information to the Minister by the date specified by the Minister. O. Reg. 473/16, s. 21.

#### **Removal of emission allowances or credits from holding account**

**52.** (1) A registered participant may submit a request to the Minister for the removal of emission allowances or credits from the participant's holding account by taking the following steps:

1. A designated account representative of the participant who wishes to have the emission allowances or credits removed must submit a notice of the participant's intent to remove emission allowances and credits to all other designated account representatives of the participant, setting out the number of emission allowances and credits and a description of the emission allowances and credits to be removed.
2. A second designated account representative of the participant must, no later than two days following the submission of the notice of intent under paragraph 1, confirm the participant's intent to remove the emission allowances and credits mentioned in the notice to all other designated account representatives of the participant.

(2) Upon receiving a confirmation under paragraph 2 of subsection (1), the Minister shall remove the emission allowances or credits specified in the confirmation from the holding account and retire them from circulation.

(3) The steps described in paragraphs 1 and 2 of subsection (1) may both be taken by the same individual if the participant is a market participant and has only one designated account representative.

(4) If the Minister asks a designated account representative of a participant for information relating to the transfer of emission allowances or credits under this section, the account representative shall give the information to the Minister by the date specified by the Minister.

#### **Closing of accounts**

**53.** (1) The cap and trade accounts of a registered participant are closed under subsection 26 (1) of the Act if the participant's registration is cancelled.

(2) If cap and trade accounts are closed under section 26 of the Act and any Ontario emission allowances or Ontario credits remain in the accounts, the Director shall take the following steps:

1. The Director shall reserve any Ontario emission allowances for auctions.
2. The Director shall retire from circulation any Ontario early reduction credits.
3. The Director shall retain any Ontario offset credits for the purposes prescribed under subsection 36 (2) of the Act.

#### **Holding of allowances, credits owned by another person**

**53.1** Subsection 28 (2) of the Act does not apply to a market participant that is a clearing house. O. Reg. 473/16, s. 22.

## **PART VI DISTRIBUTION OF ONTARIO EMISSION ALLOWANCES**

### **CREATION AND DISTRIBUTION - GENERAL**

#### **Ontario emission allowances created for 2017 - 2020**

**54.** On or before January 1, 2017, the Minister shall create the following:

1. 142,332,000 Ontario emission allowances for 2017.
2. 136,440,000 Ontario emission allowances for 2018.
3. 130,556,000 Ontario emission allowances for 2019.
4. 124,668,000 Ontario emission allowances for 2020.

#### **Allowances reserved for sales under s. 59**

**55.** (1) Before January 1 in the first year of a compliance period and before taking any steps under sections 56 and 57, the Minister shall reserve 5 per cent of the Ontario emission allowances created for each year of the compliance period for the purpose of sales under section 59.

(2) The Minister shall classify the emission allowances reserved under subsection (1) into three categories with the labels of Category A, B and C, with each category consisting of, to the extent possible, an equal number of emission allowances.

#### **Allowances reserved for free distribution under subs. 31 (2) of the Act**

**56.** (1) Before January 1 in each year in a compliance period and before taking any steps under section 57, the Minister shall reserve such number of Ontario emission allowances that were created for the upcoming year as are required for the purpose of distributing them free of charge under subsection 31 (2) of the Act.

(2) The Minister shall classify the emission allowances reserved under subsection (1) with the upcoming year as their vintage year.

#### **Allowances reserved for auctions**

**57.** (1) The Minister shall, on or before January 15 in each auction year, reserve emission allowances for the purpose of auctions to be held in the auction year as follows:

1. Reserve the remaining Ontario emission allowances created for that year, which must be classified with the auction year as their vintage year.
2. Reserve 10 per cent of the original number of Ontario emission allowances created for the year that is three years later than the auction year, which must be classified with the year that is three years later than the auction year as their vintage year.

(2) After an order is issued under paragraph 1 of subsection 14 (8) of the Act, the Minister shall remove the following from the Ontario emission allowances that have been reserved by the Minister for the next auction and retire them from circulation: the number of Ontario emission allowances equal to 25 per cent of the amount of the outstanding obligations set out in the order.

## DISTRIBUTION BY AUCTION AND SALE

### Distribution by auction

**58.** (1) Each year starting in 2017, the Minister shall auction Ontario emission allowances on four separate occasions, each consisting of a single round of bidding.

(2) Only the following emission allowances shall be auctioned:

1. Such Ontario emission allowances as have been reserved by the Minister for the purpose of auctions.
2. Any Ontario emission allowances that have been submitted to the Minister under paragraph 2 of subsection 14 (7) of the Act.
3. Any Ontario emission allowances that have been removed by the Minister from a capped participant's cap and trade accounts under paragraph 3 of subsection 14 (7) of the Act.
4. Any Ontario emission allowances that have been removed by the Minister under subsection 27 (1) of the Act. O. Reg. 473/16, s. 23.

(3) At each auction in an auction year, the Minister shall auction,

(a) such percentage as the Minister considers appropriate of the Ontario emission allowances mentioned in paragraph 1 of subsection 57 (1), as long as 100 per cent of those emission allowances are auctioned by the end of the fourth auction; and

(b) 25 per cent of the Ontario emission allowances mentioned in paragraph 2 of subsection 57 (1).

(4) If, at the end of an auction, any of the Ontario emission allowances that were auctioned remain unsold, the Minister shall reserve them for the purpose of subsequent auctions and may auction them subsequently, subject to the following rules:

1. An unsold Auction Class 1 emission allowance may be auctioned subsequently only if, following the most recent auction in which the allowance remained unsold, the lowest bid price (Auction Class 1) was higher than the minimum price at two or more consecutive auctions held by the Minister.
2. An unsold Auction Class 2 emission allowance may be auctioned subsequently in a year that is no earlier than the vintage year of the unsold emission allowance.
3. The maximum number of unsold Auction Class 1 emission allowances that may be auctioned on a single occasion is the number that is equal to 25 per cent of the emission allowances that are being auctioned on the occasion that,
  - i. have not previously been auctioned, and
  - ii. have been classified as having a vintage year that is the auction year.

### Distribution by sale

**59.** (1) Each year starting in 2017, in addition to holding auctions, the Minister may offer Ontario emission allowances for sale to capped participants on a maximum of four separate occasions.

(2) The Minister shall only offer for sale such Ontario emission allowances as have been reserved for sales under this section.

(3) If any of the emission allowances that were offered for sale under subsection (1) remain unsold after the Minister has offered them for sale, the Minister shall reserve them for the purpose of a subsequent sale under this section.

### Minister's notice of auction or sale

**60.** At least 60 days before an auction or a sale, the Minister shall provide notice of the auction or sale to the public in such manner as the Minister considers appropriate, setting out the following information:

1. The day on which and time period during which bidding in the auction or sale may take place.
2. The location or internet address at which the auction or sale will be held.
3. A summary of the requirements of this Regulation relating to the auction or sale.
4. A summary of the auction or sale process.
5. In the case of an auction, the vintage years of the Ontario emission allowances being offered for sale at the auction and the number of emission allowances with each vintage year being offered.
6. In the case of a sale,
  - i. the categories of the Ontario emission allowances being offered for sale and the number of emission allowances of each category being offered, and
  - ii. the price of the emission allowances in each category.

#### Financial assurance

**61.** (1) Financial assurance required to be given by a registered participant under this Regulation for the purpose of bidding in an auction or a sale must meet the following criteria:

1. It must be in Canadian dollars.
  2. It must be valid for at least 26 days following the day of the auction or sale.
  3. It must be one or a combination of the following and must be given in a form approved by the Minister:
    - i. A bank transfer.
    - ii. An irrevocable letter of credit or letter of guarantee issued by a bank within the meaning of the *Bank Act* (Canada) or by a financial services cooperative that is authorized by a statute of Canada or Ontario to carry on business in Canada or Ontario.
  4. If the financial assurance is a bank transfer, it must be deposited in an escrow account of the financial services administrator or of the institution indicated by the financial services administrator.
  - 4.1 If the financial assurance is an irrevocable letter of credit or a letter of guarantee,
    - i. it must be made payable to the financial services administrator, and
    - ii. it must be payable within three business days of a payment request.
  5. It must be for an amount that is greater than or equal to the participant's proposed maximum bid value, as determined under subsection (2) or (3). O. Reg. 473/16, s. 24.
- (2) The participant's proposed maximum bid value for an auction is determined as follows:
1. For each bid price proposed by the participant, multiply the bid price by the number of emission allowances that the participant proposes to purchase at that bid price or at a higher bid price.
  2. The highest value calculated under paragraph 1 is the proposed maximum bid value.
- (3) The participant's proposed maximum bid value for a sale is determined as follows:
1. For each bid price proposed by the participant, multiply the bid price by the number of emission allowances that the participant proposes to purchase at that bid price.
  2. Determine the sum of the results calculated under paragraph 1.

#### Bids

- 62.** (1) A registered participant must include the following in a bid submitted in an auction or a sale:
1. The bid price, in dollars and whole cents.
  2. The quantity of lots that the participant wishes to purchase.
- (2) Each bid must be sealed and submitted in the form approved by the Minister.
- (3) A participant may submit more than one bid in an auction or sale.

#### Payment for purchases

**63.** (1) A registered participant who has been notified by the Minister that one or more bids by the participant have been successful in an auction or a sale shall pay the amount set out in the notice to the financial services administrator no later than seven days after receiving the notice. O. Reg. 473/16, s. 25 (1).

(2) If the participant provided a bank transfer as financial assurance, it must be used to satisfy the amount payable under subsection (1). O. Reg. 473/16, s. 25 (1).

(3) If the amount of the bank transfer is not sufficient to satisfy the whole amount payable under subsection (1) and the participant does not pay the whole amount by the deadline set out in that subsection, the irrevocable letter of credit or letter of guarantee shall be used to satisfy the balance. O. Reg. 473/16, s. 25 (1).

(3.1) If the participant did not provide a bank transfer as financial assurance and does not pay the whole amount payable under subsection (1) by the deadline set out in that subsection, the irrevocable letter of credit or letter of guarantee shall be used to satisfy the amount. O. Reg. 473/16, s. 25 (1).

- (4) The Minister shall transfer the Ontario emission allowances paid for under subsections (1) to (3.1) to the participant's,
  - (a) holding account, in the case of an auction purchase, subject to subsection (6); or
  - (b) compliance account, in the case of a sale. O. Reg. 473/16, s. 25 (2).
- (5) The financial services administrator shall return any unused portions of financial assurance. O. Reg. 473/16, s. 25 (3).

(6) Despite clause (4) (a), the Minister may transfer Ontario emission allowances purchased at an auction to a participant's compliance account if the emission allowances are current vintage emission allowances to which the limit in section 40 would not apply under section 41 once they are transferred to the compliance account.

#### **Summary of auction, sale**

**64.** (1) The Minister shall make available to the public, in a manner that the Minister considers appropriate, a written summary of each auction or sale, setting out the following information:

1. In the case of an auction, the lowest bid price (Auction Class 1) and the lowest bid price (Auction Class 2).
2. The registered participants to whom the Minister gave permission to participate in the auction or sale.
3. Details regarding the number of emission allowances sold, the number of each vintage year or category of emission allowances sold, and a description of how the emission allowances were distributed among the participants who submitted bids, without identifying which participants purchased the emission allowances.

(2) The summary shall be made available no later than 45 days following the conclusion of the auction or sale.

### **BIDDING IN AUCTIONS**

#### **Auction or sale of allowances**

##### **Disclosure re auction**

**65.** (1) For the purposes of subsection 32 (9) of the Act, subsections 32 (6), (7) and (8) of the Act do not apply with respect to,

- (a) a disclosure to the Ontario Energy Board; or
- (b) a disclosure between persons who are related, within the meaning of subsection 2 (2) of this Regulation. O. Reg. 473/16, s. 26.

(2) A person is exempt from subsection 32 (10) of the Act for the purpose of coordinating the bidding strategies of more than one prospective purchaser in connection with an auction provided that the person is related, within the meaning of subsection 2 (2) of this Regulation, to each of the prospective purchasers. O. Reg. 473/16, s. 26.

(3) The exemption set out in subsection (2) does not apply in 2017 to a person who is a parent or subsidiary of Enbridge Gas Distribution Inc. or Union Gas Limited. O. Reg. 56/17, s. 3.

**Note: On January 1, 2018, subsection 65 (3) of the Regulation is revoked. (See: O. Reg. 56/17, s. 6)**

(4) In 2017, Enbridge Gas Distribution Inc. and Union Gas Limited shall be treated, for the purposes of this section, as if each registered participant were a separate registered participant that is not related to the other registered participant, within the meaning of subsection 2 (2). O. Reg. 56/17, s. 3.

**Note: On January 1, 2018, subsection 65 (4) of the Regulation is revoked. (See: O. Reg. 56/17, s. 6)**

##### **Prohibition, bidding in auction**

**66.** (1) If any of the information provided by a person under section 8 or 9 of Schedule 1 changes during the period beginning 39 days before the auction and ending on the day of the auction, the person is prohibited from bidding in the auction.

(2) A market participant that is a clearing house is prohibited from bidding in auctions. O. Reg. 473/16, s. 27.

##### **Permission to bid in auction**

**67.** (1) A registered participant may apply to the Minister for permission to bid in an auction by taking the following steps:

1. No later than 40 days before the day of the auction, the participant must, if applicable, update any information required to be updated as a condition of the participant's registration.
2. No later than 30 days before the day of the auction, the participant must submit the following information to the Minister:
  - i. The name, contact information and holding account number of the participant.
  - ii. The names and identification numbers of all designated account representatives of the participant.
  - ii.1 The name and contact information of any consultant that provides advice related to the auction participant's bidding strategy and, if applicable, the name of the consultant's employer.
  - iii. If the participant is an individual, the individual's social insurance number.
  - iv. The form of financial assurance to be given.

3. No later than 12 days before the day of the auction, the person must submit financial assurance. O. Reg. 473/16, s. 28.
- (2) Subject to subsection (3), upon receiving an application from a participant that meets the requirements set out in subsection (1), the Minister shall permit the participant to bid in the auction.
- (3) The Minister shall refuse permission to bid in an auction if any of the following circumstances apply:
  1. The participant has given false or misleading information in the application.
  2. The participant has failed to disclose information required under subsection (1).
  3. The participant's registration or cap and trade accounts are subject to conditions under this Regulation or imposed by the Director that prohibit participation in auctions or otherwise prevent emission allowances or credits from being transferred to the person's cap and trade accounts.
- (4) Despite subsections (1) and (3), for any auction in 2017, Enbridge Gas Distribution Inc. and Union Gas Limited are exempt from the requirement set out in paragraph 1 of subsection (1) if the updated information that would be required is the result of,
  - (a) any change in the business relationship, as defined in subsection 2 (1), between Enbridge Gas Distribution Inc. and Union Gas Limited, their parent companies or their subsidiaries; or
  - (b) Enbridge Gas Distribution Inc. and Union Gas Limited becoming related persons within the meaning of subsection 2 (2). O. Reg. 56/17, s. 4.

**Note: On January 1, 2018, subsection 67 (4) of the Regulation is revoked. (See: O. Reg. 56/17, s. 6)**

#### **Suspension, revocation of permission**

- 68.** (1) The Minister shall suspend permission to bid in an auction if the circumstances described in paragraph 3 of subsection 67 (3) apply.
- (2) If permission has been suspended, the Minister shall reinstate the permission once the circumstances described in paragraph 3 of subsection 67 (3) no longer apply.
- (3) The Minister may revoke permission to bid in an auction if the Minister becomes aware that the participant has given false or misleading information in the application for permission, or if the participant has failed to comply with section 29 of the Act, subsections 32 (6), (7) or (8) of the Act or failed to disclose information required by this Regulation.

#### **Purchase limits**

- 69.** (1) A capped participant or a group of capped participants who are related persons shall not purchase more than 25 per cent of the Ontario emission allowances available at an auction.
- (2) Capped participants who are related persons shall allocate the purchase limit set out in subsection (1) among themselves and none of the capped participants shall purchase more than the share of the purchase limit allocated to the participant.
- (3) A market participant or a group of market participants who are related persons shall not purchase more than 4 per cent of the Ontario emission allowances available at an auction.
- (4) Market participants who are related persons shall allocate the purchase limit set out in subsection (3) among themselves and none of the market participants shall purchase more than the share of the purchase limit allocated to the participant.
- (5) If a group of related persons includes at least one capped participant and one market participant, the total purchased by the group at an auction shall not exceed 25 per cent of the Ontario emission allowances available at the auction.
- (6) Participants who are related persons shall allocate the purchase limit set out in subsection (5) in such a manner that any of them who is a market participant complies with subsection (3).
- (7) For the purposes of this section, a group of persons is established if more than two persons are members of a group that meets one of the descriptions set out in paragraph 6 of subsection 2 (1).
- (8) In 2017, Enbridge Gas Distribution Inc. and Union Gas Limited shall be treated, for the purposes of this section, as if each registered participant were a separate registered participant that is not related to the other registered participant, within the meaning of subsection 2 (2). O. Reg. 56/17, s. 5.

**Note: On January 1, 2018, subsection 69 (8) of the Regulation is revoked. (See: O. Reg. 56/17, s. 6)**

### ADMINISTRATION OF AUCTION

#### **Lots**

- 70.** The Minister shall divide Ontario emission allowances that are to be auctioned into lots in accordance with the following rules:

1. Each lot, other than the final lot, shall consist of 1,000 Ontario emission allowances.
2. The final lot may consist of fewer than 1,000 Ontario emission allowances if fewer than 1,000 Ontario emission allowances remain once all other emission allowances have been divided into lots of 1,000.
3. Each lot may consist of only one of the following:
  - i. Auction Class 1 emission allowances.
  - ii. Auction Class 2 emission allowances, all of which must have been classified as having the same vintage year.

**Minimum price**

**71.** (1) The minimum price of an emission allowance in an auction is the higher of the annual auction reserve prices most recently established, as of the day of the auction, for each of Quebec and California.

(2) The annual auction reserve price for each of Quebec and California is the price set out for each jurisdiction in the annual auction reserve price notice published by and available on the website of the California Air Resources Board.

(3) If an annual auction reserve price is listed in a currency other than Canadian dollars, the price is deemed, in Canadian dollars, to be the amount that would be realized by converting to Canadian dollars the amount at the following rate:

1. If, on the day before the day of the auction, the Bank of Canada provided a Canadian dollar exchange rate for that currency, the currency conversion is calculated at that rate.
2. If paragraph 1 does not apply, the currency conversion is calculated at the Canadian dollar exchange rate for that currency as provided by the Bank of Canada for the date that is before, and is as close as possible to, the day of the auction.

**Bids in excess of holding limit, purchase limit**

**72.** (1) After the period of time for bidding has concluded, the Minister shall reject bids or portions of bids of a participant if acceptance of all of the participant's bids would result in contravention of a limit under section 40, 42 or 69

(2) The Minister shall reject bids or portions of bids, starting with the participant's lowest bid price and continuing in increasing order by bid price, until the total of the participant's bids remaining would, if accepted, not result in contravention of a limit under section 40, 42 or 69.

**Determination of actual maximum bid value**

**73.** (1) Before accepting any bids, the Minister shall determine whether each participant's actual maximum bid value, as determined under subsection (2), is greater than the participant's financial assurance. O. Reg. 473/16, s. 29.

(2) The participant's actual maximum bid value is determined as follows:

1. For each bid price included in the participant's bids, multiply the bid price by the number of emission allowances that the participant proposed to purchase at that bid price or at a higher bid price.
2. The highest value calculated under paragraph 1 is the actual maximum bid value.

**Maximum bid value in excess of financial assurance**

**74.** (1) If the actual maximum bid value of a participant's bids exceeds the value of the participant's financial assurance, the Minister shall remove from the participant's bids enough lots such that the remaining bids would not result in the actual maximum bid value exceeding the value of the financial assurance.

(2) If the Minister has removed lots under subsection (1), each removed lot of Auction Class 1 emission allowances shall be considered as a new bid at each valid bid price in descending order, between,

- (a) the bid price at which the actual maximum bid value was greater than the participant's financial assurance; and
- (b) the lowest bid price. O. Reg. 473/16, s. 30.

(3) For the purposes of subsection (2), a bid price is a valid bid price if that participant's actual maximum bid value at that bid price would not exceed the value of that participant's financial assurance or the limits in sections 40, 42 and 69. O. Reg. 473/16, s. 30.

(4) The participant is deemed to bid on the removed lots at the first valid bid price between the prices mentioned in clauses (2) (a) and (b) that would result in the participant's actual maximum bid value being less than or equal to the value of the participant's financial assurance. O. Reg. 473/16, s. 30.

(5) If no valid bid price between the prices mentioned in clauses (2) (a) and (b) would result in a bid with an actual maximum bid value being less than or equal to the value of the participant's financial assurance, the Minister shall reject the removed lot. O. Reg. 473/16, s. 30.

(6) After the processes described in this section and section 75 are completed for Auction Class 1 emission allowances, it shall be repeated for Auction Class 2 emission allowances. O. Reg. 473/16, s. 30.

#### Acceptance of bids

- 75.** (1) No bid price that is below the minimum price shall be accepted.
- (2) The Minister shall accept bids that have not been rejected, starting with the highest bid price and continuing in decreasing order by bid price until no more acceptable bids remain or no more of the emission allowances described in the notice of the auction are available.
- (3) Subsection (4) applies if more than one bid has been submitted,
- (a) at the lowest bid price (Auction Class 1) for Auction Class 1 emission allowances; or
- (b) at the lowest bid price (Auction Class 2) for Auction Class 2 emission allowances.
- (4) If the total quantity of emission allowances bid upon at a bid price mentioned in clause (3) (a) or (b) is greater than the quantity of emission allowances available at that bid price, the Minister shall divide the remaining emission allowances available at that bid price between the participants who submitted the bids at that bid price, in accordance with the following steps:
1. Divide the quantity of emission allowances bid upon by each participant at that bid price by the total quantity of emission allowances that were bid upon at that bid price. This is the participant's share of the emission allowances.
  2. Multiply each participant's share determined under paragraph 1 by the quantity of emission allowances remaining, rounding down to the nearest whole number. This is the number of emission allowances to be distributed to the participant.
  3. If any emission allowances remain after carrying out the steps under paragraphs 1 and 2, distribute the remaining emission allowances as follows:
    - i. Assign a random number to each participant who submitted a bid at the applicable lowest bid price.
    - ii. Distribute one emission allowance at a time to the participants in ascending order by the random number assigned, until no more of the emission allowances available at that bid price remain.
- (5) The Minister shall sell each emission allowance in respect of which a bid has been accepted at the lowest bid price (Auction Class 1) or at the lowest bid price (Auction Class 2), as the case may be.

#### BIDDING IN SALES

##### Prohibition, bidding in sales

**75.1** A market participant that is a clearing house is prohibited from bidding in sales under section 59. O. Reg. 473/16, s. 31.

##### Permission to bid in sale

- 76.** (1) A capped participant may apply to the Minister for permission to bid on emission allowances offered for sale under section 59 by taking the following steps:
1. No later than 40 days before the day of the sale, the participant must, if applicable, update any information required to be updated as a condition of the participant's registration.
  2. No later than 30 days before the day of the sale, the participant must submit the following to the Minister:
    - i. The information set out in subparagraphs 2 i to iv of subsection 67 (1).
    - ii. The number of the participant's compliance account.
  3. No later than 12 days before the day of the sale, the person must submit financial assurance.
- (2) Subject to subsection (3), upon receiving an application from a participant that meets the requirements set out in subsection (1), the Minister shall permit the participant to bid in the sale.
- (3) The Minister shall refuse permission to bid in the sale if any of the following circumstances apply:
1. The participant has given false or misleading information in the application.
  2. The participant has failed to disclose information required under subsection (1).
  3. The participant's registration or compliance account is subject to conditions under this Regulation or imposed by the Director that prohibit the person's participation in sales or otherwise prevent emission allowances or credits from being transferred to the person's compliance account.

##### Suspension, revocation of permission

**77.** (1) The Minister shall suspend permission to bid in a sale if the circumstances described in paragraph 3 of subsection 76 (3) apply.

(2) If a permission has been suspended, the Minister shall reinstate the permission once the circumstances described in paragraph 3 of subsection 76 (3) no longer apply.

(3) The Minister may revoke permission to bid in a sale if the Minister becomes aware that the participant has given false or misleading information in the application for permission or if the participant has failed to comply with section 78 of this Regulation or section 29 of the Act or failed to disclose information required by this Regulation.

**Criteria to be met before each sale**

**78.** (1) Subject to subsection (2), only a capped participant who meets the following criteria may bid in a sale held by the Minister:

1. The person has been a capped participant for at least 40 days before the sale.
2. The person has permission under section 76 to bid in the sale.
3. The participant has given financial assurance to the Minister at least 12 days before the sale.
4. On the day of the sale, the participant does not hold any emission allowances in the participant's holding account that may be submitted for the current compliance period.

(2) If any of the information provided by a person under section 8 or 9 of Schedule 1 changes during the period beginning 39 days before the sale and ending on the day of the sale, the person is prohibited from bidding in the sale. O. Reg. 473/16, s. 32.

**ADMINISTRATION OF SALE**

**Lots**

**79.** The Minister shall divide Ontario emission allowances that are to be offered for sale under section 59 into lots in accordance with the following rules:

1. Each lot, other than the final lot, shall consist of 1,000 Ontario emission allowances of the same category.
2. The final lot may consist of fewer than 1,000 Ontario emission allowances if fewer than 1,000 Ontario emission allowances remain once all other allowances have been divided into lots of 1,000.

**Price**

**80.** (1) The price of an Ontario emission allowance classified as Category A in 2017 is determined by applying the following formula:

$$P_{2017} = 47.88 \times (0.05 + Ir)$$

where,

$P_{2017}$  = the price for a Category A allowance in 2017, and

$Ir$  = the average monthly Consumer Price Index for Ontario for the 12-month period ending on September 30, 2016, divided by the average monthly Consumer Price Index for Ontario for the 12-month period ending on September 30, 2015.

(2) The price of an Ontario emission allowance classified as Category B in 2017 is determined by applying the following formula:

$$P_{2017} = 53.86 \times (0.05 + Ir)$$

where,

$P_{2017}$  = the price for a Category B allowance in 2017, and

$Ir$  = the average monthly Consumer Price Index for Ontario for the 12-month period ending on September 30, 2016, divided by the average monthly Consumer Price Index for Ontario for the 12-month period ending on September 30, 2015.

(3) The price of an Ontario emission allowance classified as Category C in 2017 is determined by applying the following formula:

$$P_{2017} = 59.85 \times (0.05 + Ir)$$

where,

$P_{2017}$  = the price for a Category C allowance in 2017, and

$Ir$  = the average monthly Consumer Price Index for Ontario for the 12-month period ending on September 30, 2016, divided by the average monthly Consumer Price Index for Ontario for the 12-month period ending on September 30, 2015.

(4) The price of an Ontario emission allowance classified as Category A, B or C in each year after 2017 is determined by applying the following formula:

$$P_y = P_{(y-1)} \times (0.05 + Ir)$$

where,

$P_y$  = the price for an emission allowance of the relevant category in year y,

$P_{(y-1)}$  = the price for an emission allowance of the relevant category in the year immediately preceding year y, and

$Ir$  = the average monthly Consumer Price Index for Ontario for the 12-month period ending on September 30 in the year immediately preceding year y, divided by the average monthly Consumer Price Index for Ontario for the 12-month period ending on September 30 in the year that is two years immediately preceding year y.

#### **Bids in excess of holding limit**

**81.** (1) After the period of time for bidding has concluded, the Minister shall, in the circumstances described in subsection (2), reject bids or portions of bids of a participant, starting with the participant's lowest bid price and continuing in increasing order by bid price.

(2) The Minister shall reject bids or portions of bids under subsection (1) if acceptance of all of the participant's bids would result in contravention of a limit under section 40.

(3) The Minister shall reject bids or portions of bids under subsection (1) until the total of the participant's bids remaining would, if accepted, not result in contravention of the limit under section 40.

#### **Determination of actual maximum bid value**

**82.** (1) Before accepting any bids, the Minister shall determine whether each participant's actual maximum bid value, as determined under subsection (2), is greater than the participant's financial assurance. O. Reg. 473/16, s. 33.

(2) The participant's actual maximum bid value is determined as follows:

1. For each bid price proposed by the participant, multiply the bid price by the number of emission allowances that the participant proposed to purchase at that bid price.
2. Determine the sum of the results calculated under paragraph 1.

#### **Maximum bid value in excess of financial assurance**

**83.** If the actual maximum bid value of a participant's bids exceeds the value of the participant's financial assurance, the Minister shall remove from the participant's bids enough lots such that the remaining bids would not result in the actual maximum bid value exceeding the value of the financial assurance.

#### **Acceptance of bids**

**84.** (1) The Minister shall accept bids that have not been rejected for each category in accordance with this section, dealing with each category of emission allowances in the following order: Category A, Category B, Category C.

(2) If the total quantity of emission allowances bid upon in a category is equal to or less than the quantity of emission allowances of that category available, then the Minister shall distribute the emission allowances of that category in accordance with the bids.

(3) If the total quantity of emission allowances bid upon in a category exceeds the quantity of emission allowances of that category offered for sale, as set out in the notice of sale, then the Minister shall distribute the emission allowances of that category in accordance with the following steps:

1. Divide the quantity of emission allowances of the category bid upon by each participant by the total quantity of emission allowances of that category offered for sale. This is the participant's share of the emission allowances of that category.
2. Multiply each participant's share determined under paragraph 1 by the quantity of emission allowances of the category offered for sale, rounding down to the nearest whole number. This is the number of emission allowances to be distributed to the participant.
3. If any emission allowances remain after carrying out the steps under paragraphs 1 and 2, distribute the remaining emission allowances as follows:
  - i. Assign a random number to each participant who submitted a bid for emission allowances of the category.
  - ii. Distribute one emission allowance at a time to the participants in ascending order by the random number assigned, until no more emission allowances of the category remain.

## DISTRIBUTION FREE OF CHARGE

### Who may apply

**85.** (1) Subject to subsection (3), a person described in subsection (2) may apply to the Minister for Ontario emission allowances to be distributed free of charge to the person under subsection 31 (2) of the Act.

(2) The person must, in the year in which the person applies, be the owner or operator of a facility at which a specified GHG activity is engaged in and must meet one of the following descriptions:

1. The person is required to register in that year or is registered in that year as a mandatory participant in respect of the specified GHG activities engaged in at the facility.
2. Subject to subsection (3), the person is registered as a voluntary participant in respect of the specified GHG activities engaged in at the facility.

(3) A person may apply in 2016 if the person could, before the end of the year, be eligible to apply to register as a voluntary participant in respect of the specified GHG activities engaged in at the facility.

(4) A person is not permitted to apply to the Minister in a year if any of the following circumstances applies:

1. In the year in which the application is made,
  - i. the only specified GHG activity engaged in at the facility is the activity described in Item 18 of Schedule 2 to the Reporting Regulation, or
  - ii. the specified GHG activity described in Item 19 of Schedule 2 to the Reporting Regulation is engaged in at the facility.
2. The following criteria are met in respect of the facility at which the specified GHG activities are engaged in:
  - i. The primary activity engaged in at the facility is the specified GHG activity described in Item 7 of Schedule 2 to the Reporting Regulation.
  - ii. No products are produced at the facility other than electricity and any heat, steam or by-product gas.
  - iii. The facility receives natural gas directly from an international or inter-provincial natural gas transmission pipeline or electricity is generated at the facility from a fuel other than natural gas, petroleum products or biomass.
3. On a day before the application is made, all specified GHG activities engaged in at the facility cease permanently.
4. The owner or operator of the facility changed during the year and the previous owner or operator already applied in the year to the Minister for Ontario emission allowances to be distributed free of charge. O. Reg. 473/16, s. 34.

### Application

**86.** (1) Each application under section 85 must be for the distribution of emission allowances in the year following the year in which the application is made.

(2) Subject to subsection (3), the deadline for submitting an application to the Minister is September 1 in each year.

(3) The Minister may extend the deadline to a day no later than October 30 by providing notice in writing to the public in a manner that the Minister considers appropriate.

(4) Each application must be in respect of the specified GHG activities engaged in at a single facility.

(5) An applicant must apply by completing the application form approved by the Director.

(6) The application must include a statement signed and dated by an individual who is authorized by the applicant to sign on behalf of the person, certifying that,

- (a) the applicant is eligible to apply under section 85;
- (b) the individual has examined the application to ensure that it is complete and accurate; and
- (c) the statements and information contained in the application are true and accurate to the best of the individual's knowledge.

### Notice of permanent cessation of activities after application made

**87.** If a person has applied under section 85 in respect of specified GHG activities engaged in at a facility and those activities permanently cease to be engaged in at the facility in the same year in which the application was made, the applicant shall withdraw the application by giving written notice to the Minister no later than December 31 in that year, stating that the activities have ceased permanently and the day on which they ceased.

### Minister's consideration of application

**88.** (1) Upon receiving an application under section 85 from a person who is eligible to apply to the Minister under that section, the Minister shall determine the number of emission allowances that may be distributed free of charge to the person in respect of the specified GHG activities.

(2) The Minister shall determine the number of emission allowances in accordance with the document entitled “Methodology for the Distribution of Ontario Emission Allowances Free of Charge”, published by the Ministry and available from the Ministry, dated December 12, 2016. O. Reg. 473/16, s. 35.

(3) If, upon receipt of an application, the Minister is of the opinion that any of the information required to be included in the application is inaccurate or incomplete, the Minister may request in writing that the applicant give additional information to the Minister on or before a day specified in the request, for the purpose of allowing the Minister make a determination in respect of the application.

(4) The Minister is not required to consider any information the applicant gives to the Minister after the day specified in the request.

(5) The Minister may refuse the application as a whole or any portion of an application in respect of which the information given under this section is, in the opinion of the Minister, inaccurate or incomplete.

(6) For the purposes of subsection (5), information given under this section includes information given as part of the initial application and information given in response to a request for information under this section.

(7) The Minister shall refuse an application in respect of specified GHG activities engaged in at a facility if the Minister has information that satisfies the Minister that the activities have permanently ceased to be engaged in at the facility in the year in which the application is made.

#### **Notice of decision**

**89.** (1) The Minister shall give written notice to an applicant of the Minister’s proposed decision in respect of an application under section 85.

(2) The notice shall include the following information:

1. If the Minister proposes to refuse the application or a portion of the application, a description of the proposed refusal and the reasons for the proposed refusal.
2. If the Minister proposes to distribute a number of emission allowances to the applicant under subsection 31 (2) of the Act, the proposed determination.
3. A statement that the applicant may, no later than five days following the day the notice was given, submit comments in writing to the Minister in respect of the proposal. O. Reg. 473/16, s. 36 (1).

(3) The Minister shall consider any comments received from the applicant before making a final decision. O. Reg. 473/16, s. 36 (2).

#### **Rules re distribution free of charge**

**90.** (1) In respect of each year in which applications under section 85 are received, the Minister may only distribute Ontario emission allowances that have a vintage year that is the year following the year in which the application was made.

(2) The Minister may only distribute emission allowances under subsection 31 (2) of the Act to applicants who are capped participants at the time of the distribution.

(3) Subject to subsection (4), if the Minister decides to distribute emission allowances to an applicant under subsection 31 (2) of the Act, the Minister shall transfer the emission allowances to the applicant’s holding account during the period beginning on January 1 and ending on January 15 in the year following the year in which the application was made.

(4) For the purposes of applications made in 2016, the Minister shall transfer the emission allowances during the period beginning on January 1 and ending on February 1, 2017.

## **PART VII MISCELLANEOUS**

#### **Retention of records**

**91.** A registered participant shall keep all records created by the participant relating to the following matters in a paper or electronic format for a period of at least seven years after the records were created:

1. Registration in the cap and trade program.
2. Transactions in the cap and trade program.
3. Designation of account agents.
4. Application for distribution of emission allowances free of charge.

5. Ontario early reduction credits.

#### Forms

**92.** (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.

#### Notice by Director

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

**94.** OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS REGULATION).

### SCHEDULE 1 INFORMATION TO BE PROVIDED FOR REGISTRATION

1. The name and contact information of the person and whether the person is an individual or a corporation, partnership, sole proprietor or other type of organization or entity.

2. In the case of a corporation,

- (a) the date and place of the incorporation;
- (b) the business number;
- (c) the names and contact information of the directors and officers;
- (d) the names and contact information of persons controlling over 10 per cent of the voting rights attached to all the outstanding voting securities; and
- (e) the name of each subsidiary or parent corporation.

3. In the case of a partnership,

- (a) the business number;
- (b) the name and contact information of each partner, or, in the case of a limited partnership, the name and contact information of each general partner;
- (c) the name and contact information of the directors and officers of each partner that is a corporation;
- (d) the name and contact information of each special partner having provided over 10 per cent of the common stock; and
- (e) the name of any person that is controlled by the partnership or by whom the partnership is controlled and a description of the nature of that control.

4. In the case of a person who is not an individual, corporation or partnership,

- (a) the date and place of the person's establishment by other means;
- (b) the business number, if applicable;
- (c) the name and contact information of an individual authorized to act on behalf of the person; and
- (d) the name of any person that is controlled by the person or by whom the person is controlled and a description of the nature of that control.

5. If the person has a business relationship with any other person who is registered under the Act or who is required to be registered under the Act,

- (a) the name and contact information of the other person;
- (b) whether the other person is an individual or a corporation, partnership, sole proprietor or other type of organization or entity;
- (c) if the other person is not an individual, the date and place of its incorporation or the date and place of its establishment by other means;
- (d) a description of the nature of the business relationship, which must include the percentage of shares, securities or other interests of each person held by others and which must be accompanied by a diagram showing the relationship;
- (e) the holding account number of the other person; and
- (f) the name and contact information of the other person's primary account representative.

6. A designation of account representatives prepared in accordance with section 47 for the purposes of that section and a statement indicating whether any account representatives are consultants.

7. A document signed by the chief officer of the person registering or a resolution of the board of directors of the person that sets out the following:

1. An undertaking that the chief officer or board of directors will comply with the Act and this Regulation.
2. A statement that the information provided under this section is accurate, to the best of the chief officer's or the board of directors' knowledge.
3. The chief officer's or board of directors' consent to the Ministry giving information relating to the person to authorities in designated jurisdictions when necessary for the purposes of this Regulation and the similar rules and regulations of designated jurisdictions.

8. Unless the person is a clearing house, the percentage of the holding limit allotted to the person in accordance with section 40 or 42, if applicable.

9. Unless the person is a clearing house, the percentage of the purchase limit allotted to the person in accordance with section 69, if applicable.

10. If the person is a clearing house, a copy of either the written recognition made under subsection 21.2 (2) of the *Securities Act* or an order issued under section 147 of that Act exempting the clearing house from the requirement to have such recognition.

O. Reg. 473/16, s. 37.

[Back to top](#)