

Caution:

This consultation draft is intended to facilitate dialogue concerning its contents. Should the decision be made to proceed with the proposal, the comments received during consultation will be considered during the final preparation of the regulation. The content, structure, form and wording of the consultation draft are subject to change as a result of the consultation process and as a result of review, editing and correction by the Office of Legislative Counsel.

CONSULTATION DRAFT

ONTARIO REGULATION

to be made under the

PENSION BENEFITS ACT

Amending Reg. 909 of R.R.O. 1990

(GENERAL)

1. Clause 4 (2) (c.1) of Regulation 909 of the Revised Regulations of Ontario, 1990 is amended by striking out “sections 5.6 and 5.6.1” and substituting “sections 5.6, 5.6.1 and 5.6.2”.

2. (1) Subsection 5.5.3 (1) of the Regulation is amended by adding the following definitions:

“Option 6” means the type of solvency relief described in paragraph 1 of subsection 5.6.2 (3);
 (“option 6”)

“Option 7” means the type of solvency relief described in paragraph 2 of subsection 5.6.2 (3);
 (“option 7”)

(2) The definition of “solvency relief report” in subsection 5.5.3 (1) of the Regulation is amended by striking out “subsection 5.6 (1) or 5.6.1 (1)” and substituting “subsection 5.6 (1), 5.6.1 (1) or 5.6.2 (1)”.

3. (1) The French version of subparagraphs 8 iii A and A.1 of subsection 5.6 (6) of the Regulation is amended by striking out “rapport sur l’allègement du déficit” wherever it appears and substituting in each case “rapport sur l’allègement de la capitalisation du déficit”.

(2) The French version of the definition of “F” in subparagraph 8.1 iii of subsection 5.6. (6) of the Regulation is amended by striking out “et du montant représenté par” and substituting “et le montant représenté par”.

(3) Paragraph 4 of subsection 5.6 (7) of the Regulation is revoked and the following substituted:

4. The following pension plans:

- i. U.S. Steel Canada Inc. Retirement Plan for Salaried Employees at Hamilton Works registered under the Act as number 0338509.
- ii. U.S. Steel Canada Inc. Retirement Plan for USW Local 1005 Members at Hamilton Works registered under the Act as number as 0354878.
- iii. U.S. Steel Canada Inc. Retirement Plan for Salaried Employees at Lake Erie Works registered under the Act as number as 0698753.
- iv. U.S. Steel Canada Inc. Retirement Plan for USW Local 8782 Members at Lake Erie Works registered under the Act as number as 0698761.

4. (1) The French version of the portion before paragraph 1 of subsection 5.6.1 (6) of the Regulation is amended by striking out “aux termes au present” and substituting “aux termes du présent”.

(2) The French version of paragraph 1 of subsection 5.6.1 (6) of the Regulation is amended by striking out “visé au paragraphe 5.6” wherever it appears and substituting in each case “visé à l’article 5.6”.

(3) Subsubparagraph 1 i D of subsection 5.6.1 (6) of the Regulation is amended by adding “and” at the end.

(4) The French version of subsubparagraph 6 iv A of subsection 5.6.1 (6) of the Regulation is amended by striking out “rapport sur l’allègement du deficit” and substituting “rapport sur l’allègement de la capitalisation du deficit”.

(5) The French version of the definition of “F” in subparagraph 7 iv of subsection 5.6.1 (6) of the Regulation is amended by striking out “et du montant représenté par” and substituting “et le montant représenté par”.

(6) Subparagraph 3 i of subsection 5.6.1 (7) of the Regulation is revoked and the following substituted:

- i. the amount required to amortize the imputed going concern unfunded liability in respect of the solvency relief report is determined as a level percentage of pensionable earnings, and

(7) Subparagraph 3 ii of subsection 5.6.1 (7) of the Regulation is amended by striking out “in the plan’s solvency relief report” and substituting “in respect of the plan’s solvency relief report”.

(8) Paragraph 6 of subsection 5.6.1 (8) of the Regulation is revoked and the following substituted:

6. The following pension plans:

- i. U.S. Steel Canada Inc. Retirement Plan for Salaried Employees at Hamilton Works registered under the Act as number 0338509.
- ii. U.S. Steel Canada Inc. Retirement Plan for USW Local 1005 Members at Hamilton Works registered under the Act as number as 0354878.
- iii. U.S. Steel Canada Inc. Retirement Plan for Salaried Employees at Lake Erie Works registered under the Act as number as 0698753.
- iv. U.S. Steel Canada Inc. Retirement Plan for USW Local 8782 Members at Lake Erie Works registered under the Act as number as 0698761.

5. The Regulation is amended by adding the following section:

5.6.2 (1) This section applies with respect to the first report of a pension plan that is filed by the administrator under section 13 or 14 for which the valuation date is on or after December 31, 2015 and before December 31, 2018. However, it does not apply with respect to any excluded plan described in subsection (8).

(2) This section applies despite any other provision of this Regulation and, in particular, despite subsections 5.6 (2) and 5.6.1 (2).

(3) The administrator of a plan that is not an excluded plan may, subject to this section, elect to use one or both of the following types of solvency relief:

1. Option 6: If a solvency deficiency was determined in a report filed under section 3, 13 or 14 before the solvency relief report under this section is filed and if that solvency deficiency has not been liquidated, the establishment of a new five-year period during which the plan’s consolidated prior solvency deficiency is to be liquidated.
2. Option 7: If there is a new solvency deficiency, the extension of the five-year period during which the new solvency deficiency would otherwise be required to be liquidated for up to an additional five years.

(4) The following exception applies for the purposes of this section:

1. Option 7 is not available for any pension plan (other than a jointly governed plan),
 - i. if the administrator does not comply with section 5.7,
 - ii. if the administrator receives notices of objection representing objections to the election from more than one-third of the persons who are eligible members, eligible former members or eligible retired members described in section 5.7, or
 - iii. if the administrator fails to file a certificate of consent under section 5.8 in accordance with that section.

(5) An election under this section must be in writing, may be made only once, cannot be rescinded and must be filed with the Superintendent no later than the day on which the solvency relief report under this section is filed.

(6) If the administrator of a plan makes an election under this section, the following rules apply in the circumstances described in the following paragraphs:

1. If there was a new solvency deficiency or the administrator elected Option 6 and, on a valuation date after the valuation date of the solvency relief report under this section, the sum of the solvency assets and the solvency asset adjustment exceeds the sum of the solvency liabilities, the solvency liability adjustment and the prior year credit balance (such excess being referred to in this paragraph as the “solvency excess”), the special payments or amortization periods under subsection 5 (1) with respect to the consolidated prior solvency deficiency, the consolidated prior solvency deficiency under section 5.6, the consolidated prior solvency deficiency under section 5.6.1, the new solvency deficiency, the new solvency deficiency under section 5.6 and the new solvency deficiency under section 5.6.1 or the amortization period with respect to any other solvency deficiency determined in a report filed under section 3, 13 or 14 may be adjusted in accordance with the following rules:
 - i. The special payments are reduced to zero if the solvency excess is greater than or equal to the sum of,
 - A. the present value of the special payments with respect to the new solvency deficiency, if any,
 - B. the present value of the special payments with respect to the new solvency deficiency determined under section 5.6, if any,

- C. the present value of the special payments with respect to the new solvency deficiency determined under section 5.6.1, if any,
 - D. if the administrator elected Option 6, the present value of the special payments with respect to the consolidated prior solvency deficiency, if any,
 - E. if the administrator did not elect Option 6 but did elect Option 4, the present value of the special payments with respect to the consolidated prior solvency deficiency determined under section 5.6.1, if any,
 - F. if the administrator did not elect Option 6 and did not elect Option 4, the present value of the special payments with respect to the consolidated prior solvency deficiency determined under section 5.6, if any, and
 - G. the present value of the special payments with respect to any other solvency deficiency determined in a report filed under section 3, 13 or 14.
- ii. If the solvency excess is less than the sum of the present value of the special payments described in sub-subparagraphs i A, B, C, D, E, F and G, the solvency excess may be applied to reduce any of the following in order to reduce the solvency excess to zero:
- A. The special payments with respect to the new solvency deficiency over the amortization period set out in the solvency relief report.
 - B. The special payments with respect to the new solvency deficiency determined under section 5.6 over the amortization period set out in the solvency relief report under section 5.6.
 - C. The special payments with respect to the new solvency deficiency determined under section 5.6.1 over the amortization period set out in the solvency relief report under section 5.6.1.
 - D. If the administrator elected Option 6, the special payments with respect to the consolidated prior solvency deficiency over the amortization period set out in the solvency relief report.
 - E. If the administrator did not elect Option 6 but did elect Option 4, the special payments with respect to the consolidated prior solvency

deficiency determined under section 5.6.1 over the amortization period set out in the solvency relief report under section 5.6.1.

- F. If the administrator did not elect Option 6 and did not elect Option 4, the special payments with respect to the consolidated prior solvency deficiency determined under section 5.6 over the amortization period set out in the solvency relief report under section 5.6.
 - G. The amortization period for the special payments with respect to the new solvency deficiency.
 - H. The amortization period for the special payments with respect to the new solvency deficiency determined under section 5.6.
 - I. The amortization period for the special payments with respect to the new solvency deficiency determined under section 5.6.1.
 - J. If the administrator elected Option 6, the amortization period for the special payments with respect to the consolidated prior solvency deficiency.
 - K. If the administrator did not elect Option 6 but did elect Option 4, the amortization period for the special payments with respect to the consolidated prior solvency deficiency determined under section 5.6.1.
 - L. If the administrator did not elect Option 6 and did not elect Option 4, the amortization period for the special payments with respect to the consolidated prior solvency deficiency determined under section 5.6.
 - M. The amortization period for the special payments with respect to any other solvency deficiency determined in a report filed under section 3, 13 or 14.
2. If the administrator elects Option 6,
- i. the consolidated prior solvency deficiency must be liquidated, with interest at the rates described in subsection 5 (2), by equal monthly instalments over a period of five years beginning on the valuation date of the solvency relief report, instead of over the remaining portion of the amortization period or periods that would otherwise apply,

- ii. the monthly instalments required to liquidate the consolidated prior solvency deficiency are deemed to be special payments under subsection 5 (1) for the purposes of liquidating a solvency deficiency,
 - iii. the solvency asset adjustment under clause 1.2 (1) (d) for a new solvency deficiency must include the present value of all special payments required to liquidate any solvency deficiency for which the amortization period ends more than five years after the valuation date of the solvency relief report and to liquidate the consolidated prior solvency deficiency, and
 - iv. the amount by which “A” exceeds “B” may be applied to reduce the amount of any contributions to be made in accordance with the solvency relief report until the next report under section 3, 13 or 14 is filed and, for the purposes of subsection 37 (12), is deemed not to be an excess special payment, where,
 - “A” is the amount of the special payments in respect of any solvency deficiency determined in a report filed previously under section 3, 13 or 14 that are made between the valuation date of the solvency relief report and the day the solvency relief report is filed, and
 - “B” is the amount of the special payments required to be made, between the valuation date of the solvency relief report and the day the solvency relief report is filed, in respect of any solvency deficiency for which the amortization period ends more than five years after the valuation date of the solvency relief report and in respect of the consolidated prior solvency deficiency.
3. Subject to paragraphs 4 and 5, if the plan is not a jointly sponsored pension plan, if the administrator elects Option 6 or Option 7 or both options and if, after the later of the day on which the solvency relief report is required to be filed and any certificate of consent under section 5.8 is required to be filed in respect of the election, the administrator files an amendment to the plan to increase pension benefits or ancillary benefits, any increase in the going concern unfunded liability that results from the amendment must be liquidated, with interest at the going concern valuation interest rate or rates, by special payments determined under section 5 over a period of five years, beginning on the valuation date of the report under section 3 or 14 in which the increase in the going concern unfunded liability is determined.
 4. Paragraph 3 does not apply with respect to an increase in a going concern unfunded liability that results from an amendment or a part of an amendment that does not take effect until after the latest of,
 - i. the day on which the consolidated prior solvency deficiency is liquidated, if the administrator elected Option 6 or both Options 6 and 7,

- ii. the day on which the remaining period during which any new solvency deficiency determined under section 5.6 must be liquidated is equal to five years,
 - iii. the day on which the remaining period during which any new solvency deficiency determined under section 5.6.1 must be liquidated is equal to five years, and
 - iv. the day on which the remaining period during which the new solvency deficiency must be liquidated is equal to five years, if the administrator elected Option 7 or both Options 6 and 7.
5. Paragraph 3 does not apply with respect to an increase in a going concern unfunded liability that results from an amendment made to confer a benefit improvement that is required by law.
6. If a benefit allocation method is used to set contribution rates for the plan and if the administrator elects Option 7, the following apply:
- i. The period under subsection 5 (1) in which the new solvency deficiency must be liquidated begins on a day that is not more than 12 months after the valuation date of the solvency relief report and ends on a day not more than 10 years after that day.
 - ii. The solvency asset adjustment under clause 1.2 (1) (d) for the new solvency deficiency must include the present value of all special payments required to be made in respect of each of the following that are scheduled for payment during the period that begins on the valuation date of the solvency relief report and ends at the end of the period referred to in subparagraph i:
 - A. The new solvency deficiency determined under section 5.6.
 - B. The new solvency deficiency determined under section 5.6.1.
 - C. Any going concern unfunded liability.
 - iii. Subparagraph 8 iii of subsection 5.6 (6) does not apply with respect to the calculation of the solvency asset adjustment.
 - iv. Subparagraph 6 iv of subsection 5.6.1 (6) does not apply with respect to the calculation of the solvency asset adjustment.

- v. The solvency asset adjustment under clause 1.2 (1) (d) for a solvency deficiency determined in a report under section 3 or 14 (called the “subsequent report” in this subparagraph) for a valuation date after the valuation date of the solvency relief report but before the day on which the new solvency deficiency is liquidated, the day on which the new solvency deficiency determined under section 5.6 is liquidated or the day on which the new solvency deficiency determined under section 5.6.1 is liquidated, whichever is the latest, must include,
 - A. the present value of special payments referred to in subsection 5 (1) with respect to any going concern unfunded liability arising on or before the valuation date of the solvency relief report that are scheduled for payment within the period that begins on the valuation date of the subsequent report and ends at the end of the period in which the new solvency deficiency determined under section 5.6 is liquidated, at the end of the period in which the new solvency deficiency determined under section 5.6.1 is liquidated, at the end of the period in which the new solvency deficiency is liquidated or at the end of a five-year period that begins on a day not more than 12 months after the valuation date of the subsequent report, whichever is the latest, and
 - B. the present value of special payments with respect to the new solvency deficiency, the new solvency deficiency determined under section 5.6 and the new solvency deficiency determined under section 5.6.1, if applicable, that are scheduled for payment within the period that begins on the valuation date of the subsequent report and ends at the end of the period in which the new solvency deficiency is liquidated, at the end of the period in which the new solvency deficiency determined under section 5.6 is liquidated or the end of the period in which the new solvency deficiency determined under section 5.6.1 is liquidated, whichever is the latest.
7. If a benefit allocation method is not used to set contribution rates for the plan and the administrator elects Option 7, the following apply:
- i. The period under subsection 5 (1) in which the new solvency deficiency must be liquidated begins on a day that is not more than 12 months after the valuation date of the solvency relief report and ends on a day not more than 10 years after that day.
 - ii. The solvency asset adjustment under subsection 1.2 (2) for the new solvency deficiency must be determined as if “C” in the definition of “B” in that subsection were the present value of the required contributions, which are

determined using the actuarial cost method adopted by the plan, for the period that begins on the valuation date of the solvency relief report and ends at the end of the period referred to in subparagraph i.

- iii. Subparagraph 8.1 iii of subsection 5.6 (6) does not apply with respect to the calculation of the solvency asset adjustment.
- iv. Subparagraph 7 iv of subsection 5.6.1 (6) does not apply with respect to the calculation of the solvency asset adjustment.
- v. The solvency asset adjustment under subsection 1.2 (2) for a solvency deficiency determined in a report under section 3 or 14 (called the “subsequent report” in this subparagraph) for a valuation date that is after the valuation date of the solvency relief report but before the new solvency deficiency is liquidated, before the new solvency deficiency determined under section 5.6 is liquidated or before the new solvency deficiency determined under section 5.6.1 is liquidated, whichever is the latest, must be determined as if “B” in that subsection is the greater of zero and the amount calculated using the formula,

$$A + B - C + D$$

in which,

- “A” is the present value of required contributions, determined using the actuarial cost method adopted by the plan, for the period that begins on the valuation date of the subsequent report and ends at the end of a five-year period that begins on a day not more than 12 months after the valuation date of the subsequent report,
- “B” is the present value of any special payments described in clause 5 (1) (e), other than special payments required to liquidate a solvency deficiency determined in the subsequent report,
- “C” is the present value of the normal cost, which is determined using a benefit allocation method, for the period described in the definition of “A”, and
- “D” is zero, if the period defined as “E” ends not later than the end of the period described in the definition of “A” or, if the period defined as “E” ends after the end of the period described in the definition of “A”, “D” is the lesser of “F” and “G”, where,

“E” is the period that begins on the valuation date of the subsequent report and ends at the end of the period in which the new solvency deficiency is liquidated, at the end of the period in which the new solvency deficiency determined under section 5.6 is liquidated, or at the end of the period in which the new solvency deficiency determined under section 5.6.1 is liquidated, whichever is the latest,

“F” is the amount by which the difference between the present value of required contributions, determined using the actuarial cost method adopted by the plan, for the period defined as “E” and the amount of “A” exceeds the difference between the present value of the normal cost, determined using a benefit allocation method, for the period defined as “E” and the amount of “C”, and

“G” is the amount by which the present value of the imputed going concern special payments for the period defined as “E” exceeds the present value of the imputed going concern special payments for the period described in the definition of “A”.

8. Subject to paragraphs 9 and 10, if the plan is a jointly sponsored pension plan, if the administrator elects Option 6 or Option 7 or both options and if, after the day the solvency relief report is required to be filed, the administrator files an amendment to the plan to increase pension benefits or ancillary benefits, any increase in the going concern unfunded liability that results from the amendment must be liquidated, with interest at the going concern valuation interest rate or rates, by special payments determined under section 5 over a period of five years, beginning not later than 12 months after the valuation date of the report under section 3 or 14 in which the increase in the going concern unfunded liability is determined.
9. Paragraph 8 does not apply with respect to an increase in a going concern unfunded liability that results from an amendment or part of an amendment that does not take effect until after the latest of,
 - i. the day on which the consolidated prior solvency deficiency is liquidated, if the administrator elected Option 6 or both Options 6 and 7,
 - ii. the day on which the remaining period during which any new solvency deficiency determined under section 5.6 must be liquidated is equal to five years,

- iii. the day on which the remaining period during which any new solvency deficiency determined under section 5.6.1 must be liquidated is equal to five years, and
 - iv. the day on which the remaining period during which the new solvency deficiency must be liquidated is equal to five years, if the administrator elected Option 7 or both Options 6 and 7.
10. Paragraph 8 does not apply with respect to an increase in a going concern unfunded liability that results from an amendment made to confer a benefit improvement that is required by law.

(7) The following apply for the purposes of the definition of “G” in the definition of “D” in subparagraph 7 v of subsection (6):

1. For the purposes of paragraphs 2 and 3, an imputed going concern unfunded liability in respect of a solvency relief report for a plan for which a benefit allocation method is not used to set contribution rates for the plan is the amount by which “H” exceeds “J” where,
 - “H” is the present value, as of the valuation date of the plan’s solvency relief report, of the monthly contributions determined using the actuarial cost method adopted by the plan for a period beginning on the valuation date of the plan’s solvency relief report and ending at the end of a 15-year period that begins on a day not more than 12 months after the valuation date, and
 - “J” is the present value of the normal cost determined using a benefit allocation method over the period described in the definition of “H”.
2. The imputed going concern special payments in respect of a plan that is not a jointly sponsored pension plan are the monthly contributions, calculated using the going concern valuation interest rate or rates, that would be required to amortize the imputed going concern unfunded liability over a period beginning on the valuation date of the plan’s solvency relief report and ending at the end of a 15-year period that begins on a day not more than 12 months after the valuation date.
3. In the case of a plan that is a jointly sponsored pension plan,
 - i. the amount required to amortize the imputed going concern unfunded liability in respect of the solvency relief report is determined as a level percentage of pensionable earnings, and
 - ii. the amount of the imputed going concern unfunded liability in respect of the plan’s solvency relief report is determined under paragraph 1 as if the

amounts of “H” and “J” were calculated based on the total projected pensionable earnings for the period that begins on the valuation date of the solvency relief report and ends at the end of a 15-year period that begins on a day not more than 12 months after the valuation date.

(8) The following pension plans are excluded plans for the purposes of this section:

1. A plan that does not provide defined benefits.
2. A plan that was not registered under the Act or under the legislation of a designated jurisdiction before December 31, 2015,
 - i. unless the plan is deemed under section 80 of the Act to be a continuation of another plan that was registered before that day,
 - ii. unless the plan is a successor pension plan described in section 81 of the Act and the original pension plan was registered before that day, or
 - iii. unless the plan was formed by the merger of two or more plans and at least one of the original pension plans was registered before that day.
3. A specified Ontario multi-employer pension plan within the meaning of section 6.0.1.
4. A participating Ontario pension plan within the meaning of section 3 of Ontario Regulation 196/11 (Resolute FP Canada Inc. Pension Plans) made under the Act.
5. The Hourly Plan and the Salaried Plan within the meaning of subsection 2 (1) of Ontario Regulation 321/09 (General Motors Pension Plans) made under the Act.
6. U.S. Steel Canada Inc. Retirement Plan for Salaried Employees at Hamilton Works registered under the Act as number 0338509.
7. U.S. Steel Canada Inc. Retirement Plan for USW Local 1005 Members at Hamilton Works registered under the Act as number as 0354878.
8. U.S. Steel Canada Inc. Retirement Plan for Salaried Employees at Lake Erie Works registered under the Act as number as 0698753.
9. U.S. Steel Canada Inc. Retirement Plan for USW Local 8782 Members at Lake Erie Works registered under the Act as number as 0698761.
10. Any pension plan that is a new pension plan as defined in section 1 of Ontario Regulation 202/02 (Essar Steel Algoma Inc. Pension Plans) made under the Act.

11. A public sector pension plan as described in subsection 1 (5) of the Act.
12. A plan to which not all of the contributions set out in reports filed under section 3, 13 or 14 that were required to be made before the valuation date of the solvency relief report under this section have been made in accordance with the Act and the regulations.

(9) In this section, unless otherwise indicated, “consolidated prior solvency deficiency” and “new solvency deficiency” refer to those deficiencies as determined in a solvency relief report under this section.

6. Subsection 5.7 (1) of the Regulation is amended by striking out “under section 5.6 or Option 5 under section 5.6.1” and substituting “under section 5.6, Option 5 under section 5.6.1 or Option 7 under section 5.6.2”.

7. (1) Subsection 5.8 (1) of the Regulation is amended by striking out “Option 3 or Option 5” at the end and substituting “Option 3, Option 5 or Option 7”.

(2) Paragraph 2 of subsection 5.8 (2) of the Regulation is amended by striking out “Option 3 or Option 5” and substituting “Option 3, Option 5 or Option 7”.

8. (1) Subsection 5.9 (1) of the Regulation is amended by striking out “section 5.6 or 5.6.1” in the portion before paragraph 1 and substituting “section 5.6, 5.6.1 or 5.6.2”.

(2) Paragraph 8 of subsection 5.9 (1) of the Regulation is amended by striking out “Option 3 or Option 5” in the portion before subparagraph i and substituting “Option 3, Option 5 or Option 7”.

9. (1) Subsection 5.10 (1) of the Regulation is amended by striking out “Option 3 or Option 5” and substituting “Option 3, Option 5 or Option 7”.

(2) Subsection 5.10 (2) of the Regulation is revoked and the following substituted:

(2) If more than one option referred to in subsection (1) has been elected, a single progress report may be used for all options.

10. (1) Subsection 7 (3.1) of the Regulation is amended by striking out “after June 29, 2010 and before January 1, 2013” in the portion before clause (a) and substituting “after June 29, 2017 and before January 1, 2020”.

(2) Subsection 7 (3.2) of the Regulation is amended by striking out “after June 29, 2010 and before January 1, 2013” in the portion before clause (a) and substituting “after June 29, 2017 and before January 1, 2020”.

Commencement**11. [Commencement].**