



**Electricity Act, 1998**  
**Loi de 1998 sur l'électricité**

**ONTARIO REGULATION 438/07**

**PRODUCT SAFETY**

**Consolidation Period:** From June 26, 2013 to the e-Laws currency date.

Last amendment: 202/13.

Legislative History: [ + ]

***This Regulation is made in English only.***

**Definitions and application**

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

“certification body” means a body accredited in accordance with the *Standards Council of Canada Act* (Canada) to certify electrical products and devices and recognized by the Authority;

“consumer product” means a consumer product as defined in section 2 of the *Canada Consumer Product Safety Act* (Canada);

“field evaluation agency” means an inspection body accredited in accordance with the *Standards Council of Canada Act* (Canada) to evaluate electrical products and devices and recognized by the Authority;

“medical device” means a device as defined in section 2 of the *Food and Drugs Act* (Canada) but does not include any device that is intended for use in relation to animals;

“serious electrical incident or accident” means an electrical incident or accident that,

(a) results in death or serious injury to a person,

(b) has the potential to cause death or a risk of serious injury to a person, or

(c) causes or has the potential to cause substantial property damage. O. Reg. 438/07, s. 1 (1); O. Reg. 226/11, s. 1; O. Reg. 202/13, s. 1.

(2) This Regulation applies to electrical products and devices governed by the Electrical Safety Code adopted under Ontario Regulation 164/99 (Electrical Safety Code) made under the Act. O. Reg. 438/07, s. 1 (2).

**Deemed approvals**

**2.** (1) An electrical product or device that falls into one of the following categories is deemed to be approved:

1. An electrical product or device for which a certification body has issued a report certifying that the electrical product or device conforms to the applicable standards for the electrical product or device and,

i. the report is available to the Authority from the certification body,

- ii. the electrical product or device complies with all standards of design and construction and all terms and conditions set out in the report, and
- iii. the electrical product or device bears the certification body's mark, which identifies the electrical product or device as certified for use in Canada.

2. An electrical product or device, if a field evaluation agency has examined the electrical product or device or a sample and issued a report confirming that product or device conforms to the applicable standards for the electrical product or device and presents no undue hazard to persons or property and,

- i. the electrical product or device is within the scope of Section 3 of the Electrical Safety Code adopted under Ontario Regulation 164/99 (Electrical Safety Code) made under the Act and within the field evaluation agency's accreditation under the *Standards Council of Canada Act* (Canada),
- ii. the electrical product or device bears a label approved for use in either Ontario or Canada affixed by the field evaluation agency, and
- iii. where the field evaluation agency has examined only a sample, the electrical product or device is of the same design and construction as the sample.

3. An electrical product or device, if the Authority has examined or tested the electrical product or device or a sample and determines that it presents no undue hazard to persons or property and,

- i. the electrical product or device bears a label affixed by the Authority,
- ii. all applicable fees have been paid, and
- iii. where the examination or testing was of only a sample, the electrical product or device is of the same design and construction as the sample. O. Reg. 438/07, s. 2 (1).

(2) Where testing is required for the purposes of paragraph 3 of subsection (1), the Authority may accept reports or other evidence of testing from a certification body, field evaluation agency, professional engineer or other competent person. O. Reg. 438/07, s. 2 (2).

(3) If an electrical product or device consists of or incorporates a component or components that are deemed to be approved under this section, the electrical product or device is not deemed to be approved unless the whole product or device as assembled is deemed to be approved under this section. O. Reg. 438/07, s. 2 (3).

(4) In this section,

“competent person” means a person who is qualified because of knowledge, training and experience to assess the design, construction or functioning of an electrical product or device in accordance with applicable standards for the determination of any undue hazard to a person or property. O. Reg. 438/07, s. 2 (4).

#### **Product or device connected to electrical installation**

3. If an electrical product or device that is used in or connected to an electrical installation is inspected by the Authority, it is deemed to be approved if the installation and electrical product or device pass the inspection. O. Reg. 438/07, s. 3.

#### **Prohibition, affixing label not issued for product or device**

4. No person shall affix to any electrical product or device an approval label that was not issued for that electrical product or device. O. Reg. 438/07, s. 4.

#### **Prohibition, selling etc. non-approved product or device**

5. (1) No person shall use, advertise, display, sell, offer for sale or other disposal any electrical product or device unless it has been approved in accordance with this Regulation. O. Reg. 438/07, s. 5 (1).
- (2) No person shall use an electrical product or device for any purpose or in any manner other than the purpose or manner for which it is intended. O. Reg. 438/07, s. 5 (2).
- (3) If a certification report or a field evaluation report in respect of any approved electrical product or device requires that a notice indicating the proper and safe manner of use of the electrical product or device be affixed to the electrical product or device or be provided with it, no person shall use, advertise, display, sell, offer for sale or other disposal of the electrical product or device without affixing or providing the notice in the manner required by the report. O. Reg. 438/07, s. 5 (3).
- (4) Despite subsection (1), an electrical product or device does not require approval under this Regulation if,
- (a) it is displayed at a trade show or is activated in a demonstration of its use; and
  - (b) permission to display or activate it is given by the Authority. O. Reg. 438/07, s. 5 (4).

#### **Suspending or revoking an approval**

6. (1) The Authority may suspend or revoke the approval of an electrical product or device if,
- (a) the electrical product or device is not manufactured or produced in accordance with all standards of design and construction and all terms and conditions set out in the certification report or field evaluation report;
  - (b) the Authority finds the electrical product or device to be unduly hazardous to persons or property; or
  - (c) an examination by the Authority of the electrical product or device or of the certification report or field evaluation report for the electrical product or device shows that the electrical product or device does not comply with all applicable standards. O. Reg. 438/07, s. 6 (1).
- (2) If an approval is suspended or revoked, the electrical product or device is deemed not to be approved. O. Reg. 438/07, s. 6 (2).
- (3) The Authority may establish rules with respect to a process for the suspension, revocation or reinstatement of deemed approvals. O. Reg. 438/07, s. 6 (3).

#### **Revocation of recognition**

7. (1) The Authority may, by notice in writing to a certification body or a field evaluation agency,
- (a) cease to recognize the body as a certification body for the purposes of certifying an electrical product or device under paragraph 1 of subsection 2 (1); or
  - (b) cease to recognize the agency as a field evaluation agency for the purposes of confirming an electrical product or device under paragraph 2 of subsection 2 (1). O. Reg. 438/07, s. 7 (1).
- (2) The Authority may establish rules with respect to a process for ceasing to recognize under subsection (1) a body as a certification body and an agency as a field evaluation agency. O. Reg. 438/07, s. 7 (2).

#### **Reporting serious electrical incidents or accidents or defects**

8. (0.1)-(4) REVOKED: O. Reg. 202/13, s. 2.

- (5) Upon the request of the Authority, the following persons or organizations shall assist in the investigation of the serious electrical incident or accident or the defect in the design, construction or functioning of the electrical product or device:
1. The manufacturer, wholesaler, importer, product distributor or retailer of the electrical product or device that is the subject of the report.

2. The certification body that certified the electrical product or device that is the subject of the report.
3. The field evaluation agency that examined the electrical product or device that is the subject of the report. O. Reg. 438/07, s. 8 (5).

**Order requiring notice to public or persons**

9. (1) The Authority may, by order issued under subsection 113 (11) of the Act, require that notice be given to the public or any person or class of persons by,

- (a) the manufacturer, wholesaler, importer, product distributor or retailer of the electrical product or device;
- (b) the certification body that certified the electrical product or device;
- (c) the field evaluation agency that examined the electrical product or device; or
- (d) any other person specified by the Authority,

of a risk or defect in an electrical product or device or occurrence of a serious electrical incident. O. Reg. 438/07, s. 9 (1).

(1.1) This section does not apply to a medical device or a consumer product except if a risk or defect in an electrical product or device or occurrence of a serious electrical incident relates to an approval of the electrical product or device. O. Reg. 226/11, s. 3; O. Reg. 202/13, s. 3.

(2) The order may require that the notice be,

- (a) in writing, sent by ordinary mail or registered mail, by fax or by other form of electronic transmission to known persons or classes of persons;
- (b) by publication in a newspaper with general distribution in Ontario;
- (c) by such other means as may be required by the Authority to bring the notice to the attention of the public or to any person or class of persons; or
- (d) by any combination of the means set out in clauses (a), (b) and (c). O. Reg. 438/07, s. 9 (2).

(3) The Authority may issue the notice, if the manufacturer, wholesaler, importer, product distributor or retailer of the electrical product or device, the certification body that certified the electrical product or device or the field evaluation agency that examined the electrical product or device refuses or fails to comply with subsection (1). O. Reg. 438/07, s. 9 (3).

(4) The Authority may, in its discretion, issue a notice to the public or to any person or class of person of a risk or defect in an electrical product or device or occurrence of a serious electrical incident. O. Reg. 438/07, s. 9 (4).

(5) If the Authority issues the notice, in addition to the methods set out in subsection (2), the Authority may post the notice on its website. O. Reg. 438/07, s. 9 (5).

(6) Before issuing a notice under subsection (3) or (4), the Authority shall give notice to the manufacturer, wholesaler, importer, product distributor or retailer of the electrical product or device, to the certification body that certified the electrical product or device or to the field agency that examined the electrical product or device and shall give them the opportunity to comment on the notice. O. Reg. 438/07, s. 9 (6).

(7) Any costs associated with the Authority issuing a notice under subsection (3) shall be paid by the manufacturer, wholesaler, importer, product distributor or retailer of the electrical product or device, by the certification body that certified the electrical product or device or by the field evaluation agency that examined the electrical product or device. O. Reg. 438/07, s. 9 (7).

**Order requiring electrical product or device be retained and preserved**

10. An order under subsection 113.13.1 (1) of the Act requiring that an electrical product or device be retained and preserved may include the following requirements:

1. That the product or device be retained in a secure place specified in the order, which is not accessible to the public.
  2. That an inventory of the product or device be provided.
  3. That an inspector have access to the product or device.
  4. That a label approved by the Authority be affixed to the product or device stating that,
    - i. the product or device is no longer approved for sale,
    - ii. the product or device presents a risk to the safety of any person, and
    - iii. if the product or device has been purchased, it should no longer be used.
  5. That any other requirements set out in the order be satisfied. O. Reg. 438/07, s. 10.
- 11. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS REGULATION).** O. Reg. 438/07, s. 11.