



Province of Alberta

CLIMATE CHANGE AND EMISSIONS
MANAGEMENT ACT

**SPECIFIED GAS
EMITTERS REGULATION**

Alberta Regulation 139/2007

With amendments up to and including Alberta Regulation 64/2017

Office Consolidation

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(Consolidated up to 64/2017)

ALBERTA REGULATION 139/2007

Climate Change and Emissions Management Act

SPECIFIED GAS EMITTERS REGULATION

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**Part 1
Interpretation and Application****Definitions**

1(1) In this Regulation,

- (a) “Act” means the *Climate Change and Emissions Management Act*;
- (b) “actual emissions intensity” means total direct emissions, not including industrial process emissions, less the cogeneration compliance adjustment, per unit of production from a facility;
- (c) “baseline emissions intensity” means the baseline emissions intensity for a facility established in accordance with Part 4;

- (d) “CO₂e” means the 100 year time horizon global warming potential of a specified gas expressed in terms of equivalency to CO₂ set out in column 3 of the Schedule;
- (d.1) “cogeneration compliance adjustment” means cogeneration compliance adjustment as defined in the Standard for Completing Greenhouse Gas Compliance Reports;
- (d.2) “department” means the department administered by the Minister;
- (e) “direct emissions” means all specified gases released from sources located at a facility, including specified gases sent off site, expressed in tonnes on a CO₂e basis;
- (f) “emission offset” means
 - (i) a reduction in the release of specified gases, expressed in tonnes on a CO₂e basis, that meets the requirements of section 7(1), but does not include an emission performance credit,
 - (ii) a geological sequestration of specified gases, expressed in tonnes on a CO₂e basis, that meets the requirements of section 7(1.1), and
 - (iii) a capture of specified gases that are geologically sequestered that meets the requirements of section 7(1.2);
- (f.1) “emission offset project” means a project undertaken to generate emission offsets;
- (f.2) “emission offset project developer” means a person who registers an emission offset project pursuant to the Standard for Greenhouse Gas Emission Offset Project Developers;
- (g) “emission performance credit” means a reduction in the release of specified gases, expressed in tonnes on a CO₂e basis, that meets the requirements of section 9(1);
- (h) “emissions intensity” means the quantity of specified gases released by a facility per unit of production from that facility;
- (i) “established facility” means a facility that
 - (i) completed its first year of commercial operation before January 1, 2000, or

- (ii) has completed 8 years of commercial operation;
- (j) “facility” means
 - (i) a plant, structure or thing where an activity listed in section 2 of the Schedule of Activities to the *Environmental Protection and Enhancement Act* occurs, and
 - (ii) a site or 2 or more contiguous or adjacent sites that are operated and function in an integrated fashion where an activity listed in any of sections 3 to 11 of the Schedule of Activities to the *Environmental Protection and Enhancement Act* occurs,

including all the buildings, equipment, structures, machinery and vehicles that are an integral part of the activity;
- (k) “Fund” means the Climate Change and Emissions Management Fund established by the Act;
- (l) “fund credit” means a fund credit described in section 8;
- (m) “industrial process emissions” means direct emissions from an industrial process involving chemical or physical reactions other than combustion, and where the primary purpose of the industrial process is not energy production;
- (n) “net emissions intensity” means the net emissions intensity for a facility determined in accordance with section 6(1);
- (o) “net emissions intensity limit” means the applicable net emissions intensity limit established by or under section 4;
- (p) “new facility” means a facility that
 - (i) completed its first year of commercial operation on December 31 of 2000 or a subsequent year, and
 - (ii) has completed less than 8 years of commercial operation;
- (p.1) “opted-in facility” means a facility designated as an opted-in facility under section 2.1(4);
- (q) “person responsible” means, where the release of the specified gas occurs
 - (i) at a facility that is the subject of an approval or registration under the *Environmental Protection and*

Enhancement Act, the holder of the approval or registration,

- (ii) at a facility that is not the subject of an approval or registration referred to in subclause (i) but is the subject of an approval or other authorization issued by the Alberta Energy Regulator or the Alberta Utilities Commission, the holder of that approval or authorization, or
 - (iii) at any other facility, the owner of the facility;
- (f) “production” means the quantity, expressed in the applicable unit of production, of
- (i) end product produced by a facility, or
 - (ii) any input, output or other thing specified under subsection (4);
- (s) “specified gas” means a gas listed in column 1 of the Schedule;
- (s.1) “Standard for Completing Greenhouse Gas Baseline Emissions Intensity Applications” means the Standard for Completing Greenhouse Gas Baseline Emissions Intensity Applications published by the department, as amended or replaced from time to time;
- (s.2) “Standard for Completing Greenhouse Gas Compliance Reports” means the Standard for Completing Greenhouse Gas Compliance Reports published by the department, as amended or replaced from time to time;
- (s.3) “Standard for Greenhouse Gas Emission Offset Project Developers” means the Standard for Greenhouse Gas Emission Offset Project Developers published by the department, as amended or replaced from time to time;
- (s.4) “Standard for Greenhouse Gas Verification” means the Standard for Greenhouse Gas Verification published by the department, as amended or replaced from time to time;
- (t) “third party auditor” means a person who meets the requirements set out in section 18;
- (u) “total annual emissions” means total direct emissions in a year, not including industrial process emissions;
- (v) repealed AR 104/2015 s2;

(w) “unit of production” means the unit of measure of production of a facility, unique to the facility, as approved or determined by the director in establishing a baseline emissions intensity for the facility under Part 4;

(x) “year” means a calendar year unless otherwise specified.

(2) and **(3)** Repealed AR 104/2015 s2.

(4) If a facility does not produce an end product, the director may specify an input, output or other thing as the standard of measurement of production of the facility for the purposes of this Regulation.

(5) For the purposes of this Regulation, a facility is considered to begin commercial operation

(a) on January 1 of the year immediately following the year in which the facility first produces a saleable end product, in the case of a facility that produces an end product that is offered for sale, or

(b) on January 1 of the year immediately following the year in which the facility first begins to conduct the activity that is the primary purpose of the facility, in the case of a facility that does not produce an end product that is offered for sale.

(6) Notwithstanding subsection (5), for the purposes of this Regulation, the director may in any year designate the year of commercial operation that a facility is in if the director considers it appropriate to do so.

(7) In determining whether it is appropriate to make a designation in respect of a facility under subsection (6), the director must consider

(a) the nature and extent of any expansion or significant change undergone by the facility and the technologies employed in the expansion or significant change that affect specified gas emissions, and

(b) any other matter that in the director’s opinion is relevant to determining whether it is fair and reasonable to make the designation considering the objective of reducing specified gas emissions.

AR 139/2007 s1;254/2007;127/2011;89/2013;104/2015;
64/2017

Application

2 This Regulation applies to the following facilities:

- (a) a facility that has direct emissions totalling 100 000 tonnes or more in 2003 or any subsequent year;
- (b) an opted-in facility.

AR 139/2007 s2;104/2015;64/2017

Opted-in facilities

2.1(1) In this section, “competitively-impacted facility” means a facility, other than a facility described in section 2(a), that competes directly with a facility described in section 2(a).

(2) A person responsible for a facility may apply to the director for the facility to be designated as an opted-in facility.

(3) An application under subsection (2) must

- (a) contain the information required by the director in the form and manner specified by the director, and
- (b) be received by the director on or before June 1, 2017.

(4) The director may designate a facility as an opted-in facility if

- (a) the application meets the requirements under subsection (3),
- (b) the director is satisfied the facility is a competitively-impacted facility, and
- (c) in the opinion of the director it is appropriate for the facility to be designated as an opted-in facility taking into consideration the circumstances that the director considers relevant, including, without limitation, whether or not any benefits have been or may be provided directly or indirectly in respect of the facility under an initiative of the Government of Alberta, or an agency of the Government of Alberta, that could alleviate the impact of the carbon levy in respect of the facility.

(5) The director shall notify the person responsible for a facility in writing of the director’s decision as to whether to designate the facility as an opted-in facility.

AR 64/2017 s3

Part 2
Emissions Intensity Limits, True-up,
Emission Offsets, Fund Credits,
Emission Performance Credits

3 Repealed AR 104/2015 s4.

Adoption of and duty to comply with standards

3.1(1) The following standards are adopted and form part of this Regulation:

- (a) Standard for Completing Greenhouse Gas Baseline Emissions Intensity Applications;
- (b) Standard for Completing Greenhouse Gas Compliance Reports;
- (c) Standard for Greenhouse Gas Emission Offset Project Developers;
- (d) Standard for Greenhouse Gas Verification.

(2) The person responsible for a facility shall comply with the rules and other requirements set out in Part 1 of the Standard for Completing Greenhouse Gas Baseline Emissions Intensity Applications in preparing and submitting an application for the establishment of a baseline emissions intensity for the facility under section 20.

(3) The person responsible for a facility shall comply with the rules and other requirements set out in Part 1 of the Standard for Completing Greenhouse Gas Compliance Reports in preparing and submitting a compliance report for the facility under section 11.

(4) An emission offset project developer shall comply with the rules and other requirements set out in Part 1 of the Standard for Greenhouse Gas Emission Offset Project Developers in initiating and implementing an emission offset project.

(5) A third party auditor shall comply with the rules and other requirements set out in Part 1 of the Standard for Greenhouse Gas Verification in providing a verification referred to in section 7(1.7)(b) or (2)(c.1), 11(4)(c), 12(b), 20(2)(c) or 22(1)(b).

AR 104/2015 s4

Net emissions intensity limits

4(1) Commencing with the year 2015, the net emissions intensity limit for a year for a facility is

- (a) 88% of the facility's baseline emissions intensity, in the case of a facility in its 9th or subsequent year of commercial operation,
- (b) 90% of the facility's baseline emissions intensity, in the case of a facility in its 8th year of commercial operation,
- (c) 92% of the facility's baseline emissions intensity, in the case of a facility in its 7th year of commercial operation,
- (d) 94% of the facility's baseline emissions intensity, in the case of a facility in its 6th year of commercial operation,
- (e) 96% of the facility's baseline emissions intensity, in the case of a facility in its 5th year of commercial operation, and
- (f) 98% of the facility's baseline emissions intensity, in the case of a facility in its 4th year of commercial operation.

(2) Commencing with the year 2016, the net emissions intensity limit for a year for a facility is

- (a) 85% of the facility's baseline emissions intensity, in the case of a facility in its 9th or subsequent year of commercial operation,
- (b) 87% of the facility's baseline emissions intensity, in the case of a facility in its 8th year of commercial operation,
- (c) 90% of the facility's baseline emissions intensity, in the case of a facility in its 7th year of commercial operation,
- (d) 92% of the facility's baseline emissions intensity, in the case of a facility in its 6th year of commercial operation,
- (e) 95% of the facility's baseline emissions intensity, in the case of a facility in its 5th year of commercial operation, and
- (f) 97% of the facility's baseline emissions intensity, in the case of a facility in its 4th year of commercial operation.

(3) Commencing with the year 2017, the net emissions intensity limit for a year for a facility is

- (a) 80% of the facility's baseline emissions intensity, in the case of a facility in its 9th or subsequent year of commercial operation,
- (b) 83% of the facility's baseline emissions intensity, in the case of a facility in its 8th year of commercial operation,

- (c) 87% of the facility's baseline emissions intensity, in the case of a facility in its 7th year of commercial operation,
- (d) 90% of the facility's baseline emissions intensity, in the case of a facility in its 6th year of commercial operation,
- (e) 93% of the facility's baseline emissions intensity, in the case of a facility in its 5th year of commercial operation, and
- (f) 97% of the facility's baseline emissions intensity, in the case of a facility in its 4th year of commercial operation.

(4) The Minister may, by order, establish net emissions intensity limits that apply to one or more facilities in addition to or in substitution for the net emissions intensity limits set out in subsections (1) to (3) and shall specify in the order the period or periods for which the net emissions intensity limits apply.

(5) If the Minister makes an order under subsection (4) that applies to a facility, the net emissions intensity for the facility in the period or periods specified in the order, as determined in accordance with the order, shall not exceed the net emissions intensity limit established by the order.

AR 139/2007 s4;104/2015

True-up

5(1) The emission offsets, fund credits and emission performance credits that may be subtracted from total annual emissions under section 6(1) are those emission offsets, fund credits and emission performance credits that are described in sections 7, 8 and 9 respectively and that are available to the person responsible on the earlier of the date the compliance report required by section 11 is submitted and the deadline for submitting the compliance report.

(2) The determination required by section 6(1) must be made on or before the deadline for submitting the compliance report required by section 11.

AR 139/2007 s5;104/2015

Duty to ensure net emissions intensity limit is not exceeded

6(1) For the purposes of this Regulation, the net emissions intensity for a facility must be determined in accordance with the following formula:

$$NEI = \frac{(TAE - (EO + FC + EPC)) - CCA}{P}$$

where

- NEI is the net emissions intensity for the facility for the year;
- TAE is the total annual emissions from the facility for the year;
- EO is the allowable emission offsets used by the person responsible for the year;
- FC is the allowable fund credits used by the person responsible for the year;
- EPC is the allowable emission performance credits used by the person responsible for the year;
- CCA is the cogeneration compliance adjustment for the year;
- P is the production of the facility for the year.

(2) The person responsible for a facility shall ensure that the net emissions intensity of the facility for a year does not exceed the net emissions intensity limit for the facility for that year.

(3) If there is more than one person responsible for a facility in a year, subsection (2) applies only to the person who is the person responsible on December 31 of that year.

AR 139/2007 s6;104/2015

Emission offsets

7(1) The following requirements must be met in order for a reduction in specified gas emissions to constitute one or more emission offsets:

- (a) the specified gas emissions reduction must occur in Alberta;
- (b) the specified gas emissions reduction must be from an action taken that is not otherwise required by law at the time the action is initiated;
- (c) the specified gas emissions reduction must
 - (i) result from actions taken on or after January 1, 2002, and
 - (ii) occur on or after January 1, 2002;

- (d) the specified gas emissions reduction must be real and demonstrable;
- (e) the specified gas emissions reduction must be quantifiable and measurable, directly or by accurate estimation using replicable techniques.

(1.1) The following requirements must be met in order for a geological sequestration of specified gas to constitute one or more emission offsets:

- (a) the specified gas that is geologically sequestered must be captured through a dedicated process from sources located at a facility in Alberta;
- (b) the specified gas must be stored in a geological formation that is located wholly or partly in Alberta;
- (c) the geological sequestration of the specified gas must not be required by law at the time geological sequestration of specified gas is initiated;
- (d) the construction of the infrastructure used to geologically sequester the specified gas must have been initiated on or after January 1, 2002;
- (e) the geological sequestration of the specified gas must occur after January 1, 2002;
- (f) the quantity of specified gas that is geologically sequestered must be quantifiable and measurable, directly or by accurate estimation using replicable techniques.

(1.2) The following requirements must be met in order for a capture of specified gas to constitute one or more emission offsets:

- (a) the specified gas must be captured through a dedicated process from sources located at a facility upgrading or refining bitumen in Alberta;
- (b) the capture of the specified gas must not be required by law at the time capture of specified gas is initiated;
- (c) the construction of the infrastructure used to capture the specified gas must have been initiated on or after January 1, 2012 and use of the infrastructure to capture specified gas must have been initiated before December 31, 2017;
- (d) the specified gas must be
 - (i) captured by infrastructure capable of capturing, and

- (ii) stored in geological formations capable of storing 1 000 000 tonnes of specified gas per year, expressed on a CO₂e basis;
- (e) at least 51% of the volume of specified gas captured through the dedicated process from sources located at a facility upgrading or refining bitumen in Alberta in a year must be sequestered in a geological formation in respect of which a pore space tenure agreement has been entered into with the Government of Alberta on or after January 1, 2011;
- (f) the quantity of specified gas that is captured must be quantifiable and measurable, directly or by accurate estimation using replicable techniques;
- (g) the captured specified gas must be geologically sequestered in accordance with subsection (1.1);
- (h) the amount established under section 8(2) must be \$80 or less at the time the captured specified gas is geologically sequestered.

(1.3) The calculation of the amount of

- (a) a reduction in specified gas emissions, or
- (b) specified gas that is geologically sequestered

must accord with any Ministerial guidelines issued under section 62 of the Act.

(1.4) A one tonne reduction in specified gas emissions, expressed on a CO₂e basis, that meets the requirements of subsection (1) constitutes one emission offset.

(1.5) A geological sequestration of one tonne of specified gas, expressed on a CO₂e basis, that meets the requirements of subsection (1.1) constitutes one emission offset.

(1.6) The quantity of emission offsets constituted by a capture of specified gas that meets the requirements of subsection (1.2) is determined in accordance with the following:

- (a) if the amount established under section 8(2) is equal to or less than \$40 at the time that the captured specified gas is geologically sequestered, the quantity of emission offsets constituted is calculated in accordance with the following formula:

$A \times 1$

where

A equals the emission offsets constituted by the geological sequestration of the captured specified gas in accordance with subsection (1.1);

- (b) if the amount established under section 8(2) is more than \$40 but not more than \$80 at the time that the captured specified gas is geologically sequestered, the quantity of emission offsets constituted is calculated in accordance with the following formula:

$A \times (80 - B) / 40$

where

A equals the emission offsets constituted by the geological sequestration of the captured specified gas in accordance with subsection (1.1);

B equals the amount established under section 8(2).

(1.7) On considering emission offsets submitted for registration by an emission offset project developer pursuant to the Standard for Greenhouse Gas Emission Offset Project Developers, the director may do one or more of the following:

- (a) require the emission offset project developer to provide additional information or data;
- (b) require verification or further verification by a third party auditor of any information or data;
- (c) collect any additional information or data or conduct any review that the director considers necessary;
- (d) direct the emission offset project developer to resubmit information or data in accordance with any directions that the director considers necessary

(2) An emission offset may be used in meeting net emissions intensity limits subject to the following rules:

- (a) an emission offset must be held by the person responsible using it;

- (b) an emission offset may only be used once;
- (c) if an emission offset is jointly held, each holder may only use a portion of the offset on a pro rata basis;
- (c.1) an emission offset must be verified by a third party auditor;
- (d) the use of an emission offset must accord with any Ministerial guidelines issued under section 62 of the Act.
AR 139/2007 s7;127/2011;104/2015

Fund credits

8(1) A person responsible may obtain fund credits by contributing money to the Fund.

(2) The Minister may, by order, establish the amount of money that a person responsible must contribute to the Fund to obtain one fund credit equal to a one tonne reduction in emissions, expressed on a CO₂e basis.

(3) A fund credit may be used in meeting net emissions intensity limits subject to the following rules:

- (a) repealed AR 104/2015 s8;
- (b) a fund credit obtained on or before March 31 in a year may only be used in meeting net annual emissions intensity limits for the previous year;
- (c) a fund credit obtained after March 31 in a year may only be used in meeting net annual emissions intensity limits for that year;
- (d) a fund credit may not be used by more than one party;
- (e) the use of a fund credit must accord with any Ministerial guidelines issued under section 62 of the Act.
AR 139/2007 s8;127/2011;104/2015

Emission performance credits

9(1) If the actual emissions intensity of a facility is less than the applicable net emissions intensity limit for the facility for that year, the director may issue one or more emission performance credits to the person responsible for the facility.

(1.1) The maximum amount of emission performance credits the director may issue to the person responsible for the facility for the year must be determined in accordance with the following formula:

$$\text{EPC} = \text{NEIL} \times \text{P} - \text{TAE} + \text{CCA}$$

where

EPC is the maximum amount of emission performance credits, expressed in tonnes on a CO₂e basis, that the director may issue to the person responsible;

NEIL is the net emissions intensity limit for the facility for the year;

P is the production of the facility for the year;

TAE is the total annual emissions for the facility for the year;

CCA is the cogeneration compliance adjustment for the facility for the year.

(2) An emission performance credit may be used in meeting net emissions intensity limits subject to the following rules:

- (a) an emission performance credit created at a facility in a year may be used in meeting net emissions intensity limits
 - (i) for another facility for that year, or
 - (ii) for the facility at which it was created or for another facility, for a subsequent year;
- (b) an emission performance credit must be held by the person responsible using it;
- (c) an emission performance credit may only be used once;
- (d) if an emission performance credit is jointly held, each holder may only use a portion of the credit on a pro rata basis;
- (e) the use of an emission performance credit must accord with any Ministerial guidelines issued under section 62 of the Act.

AR 139/2007 s9;104/2015;199/2015

Nature of emission offsets, fund credits and emission performance credits

10(1) For greater certainty, emission offsets, fund credits and emission performance credits are revocable licences authorizing persons responsible, subject to this Part, to use the emission offsets, fund credits and emission performance credits in meeting net emissions intensity limits.

(2) Nothing in this Regulation ensures or guarantees the availability of emission offsets or emission performance credits.

AR 139/2007 s10;104/2015

Part 3

Reporting, Records, Confidentiality and Third Party Auditors

Compliance report

11(1) The person responsible for a facility on December 31 of a year shall submit to the director a compliance report with respect to that facility for that year by March 31 of the following year.

(2) The report must contain the information and data required in a form prescribed by the director.

(3) The person responsible shall report by electronic means as prescribed by the director.

(4) The report must

(a) either confirm that the net emissions intensity limit for the facility has been met or provide an acknowledgement that the net emissions intensity limit for the facility has not been met, with an explanation and proposal to address and remedy the non-compliance,

(b) be certified by a person and in a manner required by the form, and

(c) be verified by a third party auditor.

(5) The person responsible may submit one report in a form prescribed by the director for all of the facilities in respect of which the person is the person responsible if, in the report, the information required by subsection (4) is provided in respect of each facility.

Further information, verification, resubmission

12 The director may do one or more of the following regarding a report or information submitted to the director:

(a) require that additional information or data be provided;

(b) require verification or further verification by a third party auditor of any information or data;

(c) collect any additional information or conduct any review that the director considers necessary;

- (d) direct the person responsible to resubmit information in accordance with any directions that the director considers necessary.

Access to application for baseline or compliance report

13(1) Within a reasonable time after receiving a request in writing to review an application for the establishment of a baseline emissions intensity or a compliance report, the director shall, except with respect to prescribed information within the meaning of section 16(6) and (7) and information that is the subject of enforcement proceedings under the Act or this Regulation,

- (a) make the application or report available for review by the person requesting it during normal business hours at the location where the application or report is kept, and
- (b) provide a copy of the application or report free of charge to the person requesting it.

(2) The director may refuse to comply with subsection (1) unless the director is satisfied that the person making the request to inspect has first made a request to obtain a copy of the application or report from the appropriate person responsible and that the request

- (a) was refused, or
- (b) was not satisfied within 30 days after the request was made.

Publishing application for baseline or compliance report

14 Subject to section 59 of the Act and any order made under section 16(4)(a) of this Regulation, the director may publish an application for the establishment of a baseline emissions intensity or a compliance report or information in an application or a report in any form and manner the director considers appropriate.

Retention of records

15(0.1) The person responsible for an opted-in facility shall retain

- (a) a copy of the application for the facility to be designated as an opted-in facility, and
- (b) the records, information and data on which the application was based

for 7 years after the year in which the application was made.

(1) The person responsible for a facility shall retain all records, information or data respecting the emissions intensity of the facility for at least 7 years after the date on which the records, information or data are created.

(2) The person responsible for a facility shall retain

- (a) a copy of an application for the establishment of a baseline emissions intensity for the facility, and
- (b) the records, information and data on which an application for the establishment of a baseline emissions intensity for the facility is based

for 7 years after the year in which the baseline emissions intensity established by the director in respect of the application ceases to be the baseline emissions intensity for the facility.

(3) The person responsible for a facility shall retain

- (a) a copy of a compliance report submitted in respect of the facility, and
- (b) the records, information and data on which the compliance report was based

for 7 years after the year in which the compliance report was submitted.

(4) An emission offset project developer shall retain all records, information or data associated with an emission offset until the later of

- (a) 7 years after the day on which the emission offset is used by a person responsible for a facility to meet a net emissions intensity limit, and
- (b) 8 years after the day on which the emission offset is serialized in accordance with the Standard for Greenhouse Gas Emission Offset Project Developers.

(5) An application, report, record, information or data required to be retained by this section must be retained

- (a) at the head or principal office, in Alberta, of the person responsible or emission offset project developer, as the case may be, or
- (b) at the facility or the location of the emission offset project to which the application, report, record, information or data relates.

AR 139/2007 s15;104/2015;64/2017

Request for confidentiality

16(1) A person responsible who submits an application for the establishment of a baseline emissions intensity or a compliance report may include a written request that certain information in the application or report be kept confidential for a period of up to 5 years after the date of submission on the basis that the information is commercial, financial, scientific or technical information that would reveal proprietary business, competitive or trade secret information about a specific facility, technology or corporate initiative.

(2) The director shall have regard to the following when making a decision on a request for confidentiality made under subsection (1):

- (a) whether disclosure of the information could reasonably be expected to harm significantly the competitive position of the person responsible;
- (b) whether disclosure of the information could reasonably be expected to interfere significantly with the negotiating position of the person responsible;
- (c) whether disclosure of the information could reasonably be expected to result in undue financial loss or gain to any person or organization;
- (d) the availability of the information or the means to obtain the information from other public sources;
- (e) whether there are any other competing interests that would suggest that disclosure of the information is warranted.

(3) The director may require a person responsible to provide additional reasons, in writing, in support of a request for confidentiality made under subsection (1).

(4) The director shall

- (a) if the director considers that the request is well founded, approve the request and order that the information to which the request relates be kept confidential and not be disclosed for the period prescribed by the director, or
- (b) refuse the request if the director considers that the request is not well founded.

(5) The director shall, in writing, notify the person responsible of the director's decision under subsection (4) within 150 days after receiving the request.

(6) If the director is considering a request for confidentiality under this section, the information to which the request relates is prescribed information for the purposes of section 59 of the Act until a decision is made.

(7) If the director makes an order under subsection (4)(a), the information that is the subject of the order is prescribed information for the purposes of section 59 of the Act for the period prescribed in the order.

Annual report to Information and Privacy Commissioner

17 The director shall provide annually to the Information and Privacy Commissioner, in the form and manner the director considers appropriate, a report setting out the following:

- (a) the number of requests received by the director under section 16(1) in the year;
- (b) the number of requests approved by the director under section 16(4)(a) in the year;
- (c) the period prescribed by the director under section 16(4)(a) for each approved request.

Qualifications of third party auditors

18(1) A person is eligible to be a third party auditor under this Regulation if the person

- (a) is
 - (i) registered as
 - (A) a professional engineer under the *Engineering and Geoscience Professions Act*, or
 - (B) a chartered professional accountant under the *Chartered Professional Accountants Act*,
 - (ii) a member of a profession that has substantially similar competence and practice requirements as a profession referred to in subclause (i)
 - (A) in a province or territory of Canada, or
 - (B) approved by the director, in a jurisdiction outside of Canada,
- (b) has technical knowledge of
 - (i) specified gas emission quantification methodologies,

- (ii) audit practices, and
 - (iii) any other matters considered relevant by the director,
- and
- (c) has any other qualifications that the director considers necessary.
- (2) A person is not eligible to be a third party auditor for a facility if
- (a) that person is the person responsible for the facility or is a director, officer or employee of the person responsible for the facility or of an affiliate, within the meaning of section 2 of the *Business Corporations Act*, of the person responsible, or
 - (b) the person is an employee or agent of the Government.
- (3) The director may request evidence of a person's qualifications and eligibility as a third party auditor and may determine that the person is not eligible to perform the functions of a third party auditor if the director is not satisfied that the person possesses the necessary qualifications or that the person is eligible.

AR 139/2007 s18;170/2012;199/2015

Prescribing forms

19 The director may prescribe forms for the purposes of this Regulation.

Part 4 Emissions Intensity Baselines

Application for establishment of baseline emissions intensity

- 20(1)** The person responsible for a facility, other than an opted-in facility, shall apply for the establishment of a baseline emissions intensity for the facility on or before the later of
- (a) June 1 of the 4th year of commercial operation of the facility, and
 - (b) June 1 of the year following the year of commercial operation of a facility in which the facility first has direct emissions of 100 000 tonnes or more.

(1.1) If the director has not established a baseline emissions intensity under section 22(2)(c) for an opted-in facility that is in its 4th or subsequent year of commercial operation in 2017, the person responsible for the opted-in facility shall apply for the establishment of a baseline emissions intensity for the facility on or before October 1, 2017.

(2) An application for the establishment of a baseline emissions intensity for a facility must

- (a) be submitted by the person responsible to the director on a form prescribed by the director,
- (b) include the information and supporting data required by the form, and
- (c) include the verification by a third party auditor of the information and data provided with the application form as required by the form.

AR 139/2007 s20;156/2007;210/2007;104/2015;64/2017

Determination of baseline emissions intensity

21(1) The baseline emissions intensity for an established facility, other than an opted-in facility, must be determined by one of the following methods:

- (a) by calculating the average of the ratio of total annual emissions to production for the years 2003, 2004 and 2005, as expressed in the following formula:

$$BEI = \frac{\left(\frac{TAE_{2003}}{P_{2003}} + \frac{TAE_{2004}}{P_{2004}} + \frac{TAE_{2005}}{P_{2005}} \right)}{3}$$

where

BEI is baseline emissions intensity;

TAE is total annual emissions for the year indicated;

P is production for the year indicated;

- (b) by an alternative method specified in writing by the director where the director determines that the method in clause (a) is not appropriate.

(2) The baseline emissions intensity for a new facility, other than an opted-in facility, must be determined by one of the following methods:

- (a) by calculating the ratio of total annual emissions to production for the 3rd year of commercial operation of the facility as expressed in the following formula:

$$BEI = \frac{TAE_3}{P_3}$$

where

BEI is baseline emissions intensity;

TAE₃ is total annual emissions for the 3rd year of commercial operation;

P₃ is production for the 3rd year of commercial operation;

- (b) by an alternative method specified in writing by the director where the director determines that the method in clause (a) is not appropriate.

(3) The baseline emissions intensity for an opted-in facility must be determined by one of the following methods:

- (a) by calculating the ratio of total annual emissions to production of the facility for 2015 as expressed in the following formula:

$$BEI = \frac{TAE_{2015}}{P_{2015}}$$

where

BEI is baseline emissions intensity;

TAE₂₀₁₅ is total annual emissions for 2015;

P₂₀₁₅ is production for 2015;

- (b) by an alternative method specified in writing by the director where the director determines that the method in clause (a) is not appropriate.

AR 139/2007 s21;64/2017

Establishment of baseline emissions intensity

22(1) On considering an application for the establishment of a baseline emissions intensity, or on considering the establishment of a baseline emissions intensity for an opted-in facility without receiving an application for the establishment of a baseline emissions intensity, the director may do one or more of the following:

- (a) request additional information or data;
- (b) require verification or further verification by a third party auditor of any information or data;
- (c) collect any additional information or conduct any review that the director considers necessary in order to determine the baseline emissions intensity for the facility;
- (d) direct the applicant if applicable, to resubmit the application and give any directions about the resubmission that the director considers necessary.

(2) The director may establish a baseline emissions intensity for a facility

- (a) as requested in an application,
- (b) that is different from the baseline emissions intensity requested in an application and may, for that purpose, determine the unit of production for the facility, or
- (c) in the case of an opted-in facility, without receiving an application if the director considers it appropriate to do so.

(3) The director shall give written notice of a decision under subsection (2) to the person responsible.

(4) In making a decision under subsection (2), the director may consider factors the director considers relevant, including, but not limited to,

- (a) technologies that affect specified gas emissions that are in use at comparable facilities, and
- (b) the best available technology economically achievable for the facility, integrating sustainability and economics, accounting for project technology and design characteristics.

AR 139/2007 s22;64/2017

Establishment of new baseline emissions intensity

23 The director may at any time review the baseline emissions intensity for a facility and establish a new baseline emissions intensity or direct the person responsible to apply for a new baseline emissions intensity if the director is of the opinion that

- (a) the baseline emissions intensity is inaccurate,
- (b) the facility has undergone an expansion or significantly changed, or
- (c) for any other reason, a revised baseline emissions intensity is appropriate.

Part 5 Exemptions

Application for exemption

24 The director may, on application, exempt the person responsible for a facility from the duties imposed by Parts 2 and 3 subject to any terms or conditions the director considers appropriate for a period not exceeding one year if the director is of the opinion that

- (a) for a prolonged period the facility was operated under unusual conditions or was shut down, and
- (b) the conditions or shutdown caused a material reduction in the specified gas emissions for the applicable period.

Part 6 Enforcement

Inspections, investigations, audits

25 For the purpose of administering the Act or this Regulation, an inspector or investigator may, in accordance with the Act, undertake an inspection, investigation or audit of a person responsible, a facility, an emission offset project developer, an emission offset project or a third party auditor.

AR 139/2007 s25;104/2015

Emissions intensity order where net emissions intensity limit exceeded

26(1) The director may issue an emissions intensity order to the person responsible for a facility requiring the person responsible to take the measures specified in the emissions intensity order to

minimize or remedy the effects of the facility releasing specified gases into the environment in amounts in excess of those within the net emissions intensity limit for the facility where

- (a) a compliance report indicates that the net emissions intensity limit for the facility was exceeded,
- (b) the director determines that the calculation of the net emissions intensity of the facility in a compliance report was incorrect or was based on inaccurate, incorrect or false information and that the net emissions intensity limit for the facility was exceeded,
- (c) the value for the emission offsets that was used to calculate the net emissions intensity for a year is no longer valid because
 - (i) some or all of the tonnes of specified gases which the emission offsets represented as not being released into the environment were released into the environment,
 - (ii) the calculation of the emission offsets was incorrect or was based on inaccurate, incorrect or false information, or
 - (iii) some or all of the tonnes of specified gases which the emission offsets represented as being sequestered were released into the environment,

or

- (d) the value for the emission performance credits that was used to calculate the net emissions intensity of the facility for a year is no longer valid because
 - (i) some or all of the tonnes of specified gases which the emission performance credits represented as not being released into the environment were released into the environment, or
 - (ii) the calculation of the emission performance credits was incorrect or was based on inaccurate, incorrect or false information.

(2) An emissions intensity order under subsection (1) may require the person responsible to take one or more of the following measures:

- (a) obtain emission offsets;
- (b) obtain emission performance credits;

- (c) make contributions to the Fund;
 - (d) any other measures that the director considers advisable.
- (3)** An emission offset or emission performance credit obtained to comply with the terms of an emissions intensity order under this section may not be used to meet a net emissions intensity limit.
- (4)** This section applies whether or not a person has been charged with or convicted of an offence or required to pay an administrative penalty in relation to the matter with respect to which the emissions intensity order is made.

AR 139/2007 s26;104/2015

Offences

27 A person who

- (a) contravenes section 6,
- (b) contravenes section 3.1(2), (3), (4) or (5), 11, 15 or 20,
- (c) performs the functions of a third party auditor and does not meet the requirements set out in section 18,
- (d) retains a person as a third party auditor who does not meet the requirements set out in section 18, or
- (e) does not comply with an emissions intensity order issued under section 26

is guilty of an offence.

AR 139/2007 s27;104/2015

Penalties

28(1) A person who is guilty of an offence under section 27(a) is liable to a fine of not more than \$200 for every tonne of specified gas expressed on a CO₂e basis per unit of production by which the net emissions intensity of the facility exceeds the net emissions intensity limit for the facility, multiplied by production.

(2) A person who is guilty of an offence under section 27(b), (c), (d) or (e) is liable

- (a) to a fine of not more than \$50 000, in the case of an individual, or
- (b) to a fine of not more than \$500 000, in the case of a corporation.

AR 139/2007 s28;104/2015

Due diligence

29 No person shall be convicted of an offence under this Regulation if that person establishes on a balance of probabilities that the person took all reasonable steps to prevent its commission.

Part 7 Expiry

Expiry

30 For the purpose of ensuring that this Regulation is reviewed for ongoing relevancy and necessity, with the option that it may be repassed in its present or an amended form following a review, this Regulation expires on December 31, 2017.

AR 139/2007 s30;137/2014;225/2014;104/2015

Schedule

Specified Gases and Their Global Warming Potentials

Specified Gas	Chemical Formula	Global Warming Potential (100 year time horizon)
Carbon dioxide	CO ₂	1
Methane	CH ₄	25
Nitrous oxide	N ₂ O	298
HFC-23	CHF ₃	14800
HFC-32	CH ₂ F ₂	675
HFC-41	CH ₃ F	92
HFC-43-10mee	C ₅ H ₂ F ₁₀	1640
HFC-125	C ₂ HF ₅	3500
HFC-134	C ₂ H ₂ F ₄	1100
HFC-134a	CH ₂ FCF ₃	1430
HFC-152a	C ₂ H ₄ F ₂	124
HFC-143	C ₂ H ₃ F ₃	353
HFC-143a	C ₂ H ₃ F ₃	4470
HFC-227ea	C ₃ HF ₇	3220
HFC-236fa	C ₃ H ₂ F ₆	9810
HFC-245ca	C ₃ H ₃ F ₅	693
Sulphur hexafluoride	SF ₆	22800
Perfluoromethane	CF ₄	7390
Perfluoroethane	C ₂ F ₆	12200
Perfluoropropane	C ₃ F ₈	8830
Perfluorobutane	C ₄ F ₁₀	8860
Perfluorocyclobutane	c-C ₄ F ₈	10300
Perfluoropentane	C ₅ F ₁₂	9160
Perfluorohexane	C ₆ F ₁₄	9300

AR 139/2007 Sched.;225/2014



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