



O.C. 186/2018

JUN 01 2018

Province of Alberta
Order in Council

ORDER IN COUNCIL

Approved and ordered:

Lieutenant Governor
or
Administrator

The Lieutenant Governor in Council makes the Carbon Competitiveness Incentive Amendment Regulation set out in the attached Appendix.

CHAIR

FILED UNDER
THE REGULATIONS ACT
as ALBERTA REGULATION 96/2018
ON June 1 2018
REGISTRAR OF REGULATIONS

For Information only

Recommended by: Minister of Environment and Parks

Authority: Climate Change and Emissions Management Act
(sections 5 and 60)

APPENDIX

Climate Change and Emissions Management Act

CARBON COMPETITIVENESS INCENTIVE AMENDMENT REGULATION

1 The *Carbon Competitiveness Incentive Regulation* (AR 255/2017) is amended by this Regulation.

2 Section 1 is amended

(a) in subsection (1)

(i) in clauses (k) and (m) by striking out “Alberta Emission Offset Registry” and substituting “Alberta Emissions Offset Registry”

(ii) in clause (x) by striking out “any” and substituting “the amount of”;

(iii) by repealing clauses (nn) and (oo) and substituting the following:

(nn) “Standard for Validation, Verification and Audit” means the Standard for Validation, Verification and Audit published by the department, as amended or replaced from time to time;

(oo) “third party assurance provider” means a person who has the qualifications referred to in, and is eligible to be a third party assurance provider under, section 24;

(b) by repealing subsections (4) and (5) and substituting the following:

(4) Notwithstanding subsection (3), the director may designate the year of commercial operation that a facility is in for the purposes of this Regulation if

(a) the facility

(i) is a new facility that is experiencing or has experienced a significant disruption during

commissioning resulting in the facility having significantly lower production than anticipated for an extended period of time,

- (ii) is undergoing or has undergone a significant expansion, or
- (iii) is undergoing or has undergone a significant change,

and

- (b) the director considers it appropriate to make the designation.

(4.1) The director shall not make more than one designation under subsection (4) with respect to a particular significant expansion or significant change.

(5) In determining whether it is appropriate to make a designation in respect of a facility under subsection (4), the director must consider

- (a) in the case of a significant disruption experienced by a new facility, the nature and extent of the delay in reaching or sustaining anticipated production levels and its effect on specified gas emissions,
- (b) in the case of a significant expansion or significant change undergone by a facility, the nature and extent of the expansion or change and the technologies employed in the expansion or change that affect specified gas emissions, and
- (c) 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.

(5.1) Notwithstanding subsection (3), the director may, on request of the person responsible for a facility, designate that the facility is in its 3rd or a subsequent year of commercial operation for the purposes of this Regulation.

(5.2) The director shall not make a designation under subsection (5.1) unless the director receives the request of the

person responsible for the facility on or before November 30 of the year for which the designation is requested.

3 Section 4 is amended

(a) in subsection (1)

(i) by repealing clause (a);

(ii) in clause (f) by striking out “all products” wherever it occurs and substituting “all end products”;

(b) in subsection (4)(b)

(i) by repealing subclause (i) and substituting the following:

(i) the facility competes directly with a facility to which this Regulation applies, or

(ii) in subclause (ii)(B) by striking out “second year” and substituting “3rd year”;

(c) in subsection (6) by striking out “under subsection (4)”.

4 Section 5(1) is amended by striking out “ “Alberta complexity weighted barrel” ” and substituting “Alberta complexity weighted barrel”.

5 Section 6 is amended

(a) by repealing subsection (1) and substituting the following:

Duty to not exceed output-based allocation

6(1) The person responsible for a facility, other than a renewable electricity facility, that is in its 3rd or a subsequent year of commercial operation shall comply with the requirement that the net emissions for the facility for reporting period four of the year shall not exceed the output-based allocation for the facility for reporting period four.

- (b) **in subsection (2) by striking out “2nd” and substituting “3rd”;**
- (c) **in subsection (3) by striking out “Notwithstanding subsection (1), the” and substituting “The”.**

6 Section 12 is amended

- (a) **in subsection (1) by striking out “2nd” and substituting “3rd”;**
- (b) **in subsection (3)(e) by by striking out “third party verifier” and substituting “third party assurance provider”;**
- (c) **by repealing subsection (5) and substituting the following:**

(5) A third party assurance provider shall comply with the rules and other requirements set out in Part 1 of the Standard for Validation, Verification and Audit in providing a verification referred to in subsection (3)(e).

7 Section 13 is amended

- (a) **in subsection (1) by striking out “2nd” and substituting “3rd”;**
- (b) **in subsection (3)(e) by striking out “third party verifier” and substituting “third party assurance provider”;**
- (c) **by repealing subsection (5) and substituting the following:**

(5) A third party assurance provider shall comply with the rules and other requirements set out in Part 1 of the Standard for Validation, Verification and Audit in providing a verification referred to in subsection (3)(e).

8 Section 16 is amended

- (a) **in subsection (4) by striking out “one-tonne net sequestration of carbon dioxide” and substituting “net sequestration of one tonne of carbon dioxide”;**

(b) in subsection (6)

(i) in clause (a)

(A) by adding “N =” before “A x 1”;

(B) by adding the following before the description of variable A:

N is the number of emission offsets constituted by the capture of carbon dioxide that meets the requirements of subsection (3);

(ii) in clause (b)

(A) by adding “N =” before “A x (80-B)/40”;

(B) by adding the following before the description of variable A:

where

N is the number of emission offsets constituted by the capture of carbon dioxide that meets the requirements of subsection (3);

9 Section 22 is repealed and the following is substituted:

Powers on reviewing applications, etc.

22(1) On reviewing an application, report or information submitted under this Regulation, or on considering emission offsets submitted for serialization by an emission offset project developer pursuant to the Standard for Greenhouse Gas Emission Offset Project Developers, the director or Minister, as the case may be, may do one or more of the following:

- (a) require the person responsible or emission offset project developer to provide additional information;
- (b) require an audit or further audit of any financial statements contained in the application or report;
- (c) require validation or further validation by a third party assurance provider of any information;
- (d) require verification or further verification by a third party assurance provider of any information;

- (e) collect any additional information or conduct any review that the director or Minister, as the case may be, considers necessary;
- (f) direct the person responsible, or emission offset project developer, to resubmit the application, report, emission offsets or information in accordance with any directions that the director or Minister, as the case may be, considers necessary.

(2) An auditor shall comply with the rules and other requirements set out in Part 1 of the Standard for Validation, Verification and Audit in providing an audit referred to in subsection (1)(b).

(3) A third party assurance provider shall comply with the rules and other requirements set out in Part 1 of the Standard for Validation, Verification and Audit in providing

- (a) a validation referred to in subsection (1)(c), or
- (b) a verification referred to in subsection (1)(d).

(4) The person responsible for a facility or the emission offset project developer, as the case may be, shall comply with a requirement imposed or direction given under subsection (1).

10 Section 25(4) is amended

- (a) **by striking out** “shall” **and substituting** “shall,”;
- (b) **by repealing clause (b) and substituting the following:**
 - (b) if the director considers that the request for confidentiality is not well founded, refuse the request.

11 Section 32 is amended

- (a) **in clause (a) by striking out** “section 6” **and substituting** “section 6(1), (2) or (3)”;
- (b) **by repealing clause (b) and by substituting the following:**

- (b) contravenes section 7(3) or (4), 9(3) or (4), 12(1), (2), (4) or (5), 13(1), (4) or (5), 14(1) or (5), 15(1) or (3), 19(5) or (6), 22(2), (3) or (4), 29(1), (2), (3) or (4), 34.2(3), (4) or (5), 34.3(4) or (5), 34.4(1), (4) or (5) or 34.9,
 - (b.1) submits a compliance report that is not in compliance with section 12(3),
 - (b.2) submits an interim compliance report that is not in compliance with section 13(3),
 - (b.3) submits an annual forecasting report that is not in compliance with section 14(3),
 - (b.4) does not comply with section 29(5) in retaining applications, records, reports or information,
 - (b.5) submits an emissions reduction plan report that is not in compliance with section 34.4(2),
- (c) in clause (c) by striking out “third party verifier” wherever it occurs and substituting “third party assurance provider”;**
- (d) by repealing clause (d) and substituting the following”**
- (d) retains a person as a third party assurance provider who does not have the qualifications referred to in, or is not eligible to be a third party assurance provider under, section 24

12 Section 33(2) is amended by adding “(b.1), (b.2), (b.3), (b.4), (b.5),” after “section 32(b),”.

13 The heading of Part 5 is amended by striking out “Transitional” and substituting “Compliance Cost Containment, Transitional Provisions”.

14 The following is added before section 35:

Compliance Cost Containment

Interpretation

34.1(1) In sections 34.2 to 34.91,

- (a) “compliance cost containment allocation benchmark” means a benchmark assigned under section 34.6(2);
- (b) “cost containment designation” means a designation issued under section 34.3;
- (c) “emissions reduction plan” means a plan referred to in section 34.2(2)(c) or an updated plan referred to in section 34.4(3);
- (d) “emissions reduction plan report” means a report referred to in section 34.4.

(2) For the purposes of sections 34.3(1)(c) and (d)(ii), 34.5(1)(d) and 34.6(3)(a), whether a person responsible for a facility is likely to experience economic hardship attributable to the incremental compliance costs incurred in respect of the facility must be determined in accordance with the Standard for Establishing and Assigning Benchmarks.

Application for cost containment designation

34.2(1) A person responsible for a facility may apply to the Minister for a cost containment designation in respect of the facility.

(2) An application under subsection (1) must

- (a) be submitted in the form and manner prescribed by the Minister,
- (b) include financial statements for the facility that have been audited, as provided for by the Standard for Validation, Verification and Audit, by a professional accounting firm registered under the *Chartered Professional Accountants Act* and authorized to perform an audit engagement,
- (c) include an emissions reduction plan that must
 - (i) be submitted in the form and manner prescribed by the Minister,
 - (ii) include the information required by the Minister, and

- (iii) be validated by a third party assurance provider,
- (d) include any other information required by the Minister,
- (e) be certified by the person responsible for the facility in the manner required by the Minister, and
- (f) be received by the Minister on or before November 30 of the year preceding the first year in respect of which the designation is intended to be effective.

(3) The person responsible for a facility shall comply with the rules and other requirements set out in Part 1 of the Standard for Establishing and Assigning Benchmarks in preparing and submitting

- (a) an application for a cost containment designation, and
- (b) an emissions reduction plan.

(4) An auditor shall comply with the rules and other requirements set out in Part 1 of the Standard for Validation, Verification and Audit in providing an audit referred to in subsection (2)(b).

(5) A third party assurance provider shall comply with the rules and other requirements set out in Part 1 of the Standard for Validation, Verification and Audit in providing a validation referred to in subsection (2)(c)(iii).

Cost containment designation

34.3(1) The Minister may issue a cost containment designation in respect of a facility to the person responsible for the facility if

- (a) the application meets the requirements under section 34.2(2),
- (b) the facility produces a product that has an established or assigned benchmark,
- (c) the person responsible for the facility is likely to experience economic hardship attributable to the incremental compliance costs incurred in respect of the facility for one or more years for which the designation is requested, and
- (d) implementation of the emissions reduction plan will

- (i) reduce the emissions intensity with respect to the facility, and
- (ii) result in the person responsible for the facility no longer being likely to experience economic hardship attributable to the incremental compliance costs incurred in respect of the facility.

(2) The Minister may refuse to issue a cost containment designation to a person responsible for a facility in any of the following circumstances:

- (a) the person responsible for the facility is not in compliance with the Act, the regulations or any other applicable law with respect to the facility;
- (b) the facility is a subject of, or is subject to,
 - (i) receivership, insolvency or bankruptcy actions or proceedings,
 - (ii) proceedings under the *Companies' Creditors Arrangement Act* (Canada), or
 - (iii) seizure, foreclosure, distress or other enforcement actions or proceedings;
- (c) the total amount of one or more benefits that have been, are being or will be provided to the person responsible for the facility in respect of the facility under an initiative of the Government of Alberta, or an agency of the Government of Alberta, exceeds, or is considered by the Minister to be comparable to, the value of fund credits that would be needed to meet the true-up obligation for the facility if only funds credits were used to meet the true-up obligation;
- (d) a cost containment designation was previously issued in respect of the facility and was revoked under section 34.5(1)(a), (b) or (c).

(3) The Minister may

- (a) impose any terms and conditions the Minister considers appropriate with respect to a cost containment designation,

- (b) amend a term or condition of, add a term or condition to or delete a term or condition from a cost containment designation, and
- (c) subject to subsection (6), set out in a cost containment designation the years for which the designation is in effect
 - (i) for the purposes of section 34.4, and
 - (ii) for the purposes of section 34.6.

(4) The person responsible for a facility in respect of which a cost containment designation has been issued shall comply with the terms and conditions of the cost containment designation.

(5) The person responsible for a facility in respect of which a cost containment designation has been issued shall immediately notify the Minister if the total amount of one or more benefits that have been, are being or will be provided to the person responsible for the facility in respect of the facility under an initiative of the Government of Alberta, or an agency of the Government of Alberta, exceeds, or is comparable to, the value of fund credits that would be needed to meet the true-up obligation for the facility if only fund credits were used to meet the true-up obligation.

(6) No cost containment designation is effective after December 31, 2022.

(7) The Minister shall notify the person responsible for a facility in writing of the Minister's decision as to whether to issue a cost containment designation in respect of the facility.

Emissions reduction plan report

34.4(1) The person responsible for a facility in respect of which a cost containment designation has been issued shall submit to the director an emissions reduction plan report for the facility for reporting period four of each year for which the designation is in effect for the purposes of this section by March 31 of the following year.

- (2) An emissions reduction plan report must
 - (a) be submitted in the form and manner prescribed by the director,

- (b) include financial statements for the facility that have been audited by a professional accounting firm that is registered under the *Chartered Professional Accountants Act* and authorized to perform an audit engagement,
- (c) include any other information required by the director, and
- (d) be verified by a third party assurance provider.

(3) An emissions reduction plan report may include an updated emissions reduction plan that meets the requirements of section 34.2(2)(c).

(4) An auditor shall comply with the rules and other requirements set out in Part 1 of the Standard for Validation, Verification and Audit in providing an audit referred to in subsection (2)(b).

(5) A third party assurance provider shall comply with the rules and other requirements set out in Part 1 of the Standard for Validation, Verification and Audit in providing

- (a) a validation of an updated emissions reduction plan, or
- (b) a verification referred to in subsection (2)(d).

Revocation of cost containment designation

34.5(1) The Minister may revoke a cost containment designation

- (a) if in the Minister's opinion, a term or condition of the cost containment designation has not been complied with,
- (b) if the facility is a subject of, or is subject to,
 - (i) receivership, insolvency or bankruptcy actions or proceedings,
 - (ii) proceedings under the *Companies' Creditors Arrangement Act* (Canada), or
 - (iii) seizure, foreclosure, distress or other enforcement actions or proceedings,
- (c) if the total amount of one or more benefits that have been, are being or will be provided to the person responsible for

the facility in respect of the facility under an initiative of the Government of Alberta, or an agency of the Government of Alberta, exceeds, or is considered by the Minister to be comparable to, the value of fund credits that would be needed to meet the true-up obligation for the facility if only fund credits were used to meet the true-up obligation,

- (d) if it is no longer likely that the person responsible for the facility will experience economic hardship attributable to the incremental compliance costs incurred in respect of the facility, or
- (e) on the request of the person responsible for the facility.

(2) The Minister shall notify the person responsible for a facility in writing of the Minister's decision as to whether to revoke a cost containment designation issued in respect of the facility.

Compliance cost containment measures

34.6(1) Section 19(5) and (6) do not apply to a facility in respect of which a cost containment designation is in effect for the purposes of this section.

(2) If a cost containment designation is in effect for a facility for the purposes of this section for a year, the director may, subject to subsection (3), assign a compliance cost containment allocation benchmark for that year for any product of the facility that has an established benchmark or an assigned benchmark for that year.

(3) The director may assign a compliance cost containment allocation benchmark for a product of a facility only if

- (a) the person responsible for the facility continues to be likely to experience economic hardship attributable to the incremental compliance costs incurred in respect of the facility after taking into account the combined effects of
 - (i) the operation of subsection (1) in respect of the facility,
 - (ii) the total amount of any benefits that have been, are being or will be provided to the person responsible for the facility in respect of the facility under an

initiative of the Government of Alberta, or an agency of the Government of Alberta, that are funded out of the Fund or out of revenue from the carbon levy under the *Climate Leadership Act*, and

- (iii) any compliance cost containment allocation benchmarks the director has assigned or is considering assigning for other products of the facility

and

- (b) the director is satisfied that the product constitutes a significant portion of the total production of the facility or is otherwise fundamental to the continued operation of the facility.

(4) Each compliance cost containment allocation benchmark must be determined in accordance with the Standard for Establishing and Assigning Benchmarks.

(5) Except in a case in which subsection (6) applies, if the director has assigned a compliance cost containment allocation benchmark for a product of a facility, then, for the purposes of this Regulation, the formula in section 5(1) shall be read as follows with respect to a reporting period in the year for which the compliance cost containment allocation benchmark is assigned:

$$OBA = \sum_i (BE_{i-Y} \times P_i) + \sum_j (BA_{j-Y} \times P_j) - ((BE_{E-Y} \times I_E) + (BE_{Hy-Y} \times I_{Hy}) + (BE_{He-Y} \times I_{He})) + \sum_l (BCCA_{l-Y} \times P_l)$$

where

each term that is given a meaning in section 5(1) has that meaning;

$BCCA_{l-Y}$ is the compliance cost containment allocation benchmark for year Y for each product l;

l is each product of the facility that has a compliance cost containment allocation benchmark assigned under subsection (2);

P_l is the production for each product l for the facility during the reporting period.

(6) If the director has assigned a compliance cost containment allocation benchmark for a product of a facility for 2018 or 2019 and has also assigned a transition allocation benchmark for a product of the facility for that year, then, for the purposes of this Regulation, the formula in section 5(1) shall be read as follows with respect to a reporting period in the year for which the compliance cost containment allocation benchmark and the transition allocation benchmark are assigned:

$$\begin{aligned} \text{OBA} = & \sum_i (\text{BE}_{i-Y} \times P_i) + \sum_j (\text{BA}_{j-Y} \times P_j) - ((\text{BE}_{E-Y} \times I_E) + \\ & (\text{BE}_{H_Y-Y} \times I_{H_Y}) + (\text{BE}_{H_E-Y} \times I_{H_E})) + \sum_k (\text{BTA}_{k-Y} \times P_k) + \\ & \sum_l (\text{BCCA}_{l-Y} \times P_l) \end{aligned}$$

where

each term that is given a meaning in section 5(1) or 36(3) or subsection (5) of this section has that meaning.

No emission performance credits

34.7 Notwithstanding section 17(1), the director shall not issue emission performance credits to the person responsible for a facility in respect of any year for which a cost containment designation issued in respect of the facility is in effect for the purposes of section 34.6.

Request for confidentiality respecting compliance cost containment

34.8(1) The person responsible for a facility may, in respect of an application, an emissions reduction plan, an emissions reduction plan report, an audit, a validation or a verification under this Part, submit a written request that certain information be kept confidential for a period of 5 years after the date it is submitted or provided 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) Sections 25(2) to (7) and 26 apply with respect to a request under subsection (1) as though it were a request under section 25(1).

Retention of compliance cost containment records

34.9 The person responsible for a facility in respect of which a cost containment designation has been issued shall retain, at a place referred to in section 29(5),

- (a) a copy of the application for the cost containment designation in respect of the facility together with the records and information on which the application was based for at least 7 years after the year in which the application was made, and
- (b) a copy of an emissions reduction plan report submitted in respect of the facility together with the records and information on which the report was based for at least 7 years after the year in which the report was submitted.

Publication of compliance cost containment information

34.91 The director may, in any form and manner the director considers appropriate, annually publish

- (a) the names of the facilities in respect of which a cost containment designation was in effect, and
- (b) the names of the facilities for which a product was assigned a compliance cost containment allocation benchmark.

Expiry of provisions

34.92 Sections 34.1 to 34.91 and this section expire on December 31, 2022.

Transitional Provisions, Consequential Amendments, Review and Coming into Force

15 Section 35 is amended

- (a) **by repealing subsection (1) and substituting the following:**

Transitional

35(1) Notwithstanding section 4(3)(c), in the case of an application under section 4(2) for a facility to be designated as an opted-in facility for 2018 or 2019, the application must be received by the director on or before September 1, 2018.

(b) in subsection (3) by striking out “Notwithstanding section 10, the” **and substituting** “The”;

(c) by adding the following after subsection (4):

(4.1) Notwithstanding section 34.2(2)(f), in the case of an application under section 34.2(1) for a cost containment designation to be issued in respect of a facility for 2018, the application must be received by the Minister on or before November 1, 2018.

16 Section 36 is amended

(a) in subsection (1) by striking out “The Director” **and substituting** “The director”;

(b) by adding the following after subsection (2):

(2.1) The director may at any time review an assigned transition allocation benchmark for a product of a facility for 2018 or 2019 and may assign a new assigned transition allocation benchmark for the product for that year if the director is of the opinion that a new assigned benchmark is appropriate.

(c) in subsection (3) by striking out “Director” **and substituting** “director”.

17 The following provisions are amended by striking out “Standard for Verification” **wherever it occurs and substituting** “Standard for Validation, Verification and Audit”:

section 2(d);
section 9(4);
section 15(3).

18 The following provisions are amended by striking out “third party verifier” **wherever it occurs and substituting** “third party assurance provider”:

section 9(2)(c) and (4);
section 15(2) and (3);
section 24(1), (2) and (3);
section 31.

19 Schedule 2 is amended

(a) in section 1(1)

(i) by repealing clause (b) and substituting the following:

- (b) “electricity” means electricity that is exported from a facility, but does not include electricity exported from a renewable electricity facility in respect of which an economic benefit is being provided under a program or other scheme that is attributable to the electricity having been produced from an energy resource referred to in section 1(1)(dd);

(ii) by adding the following after clause (c):

- (c.1) “hydrogen” means hydrogen exported from a facility other than a facility that produces a product with a benchmark unit of Alberta complexity weighted barrel;

(iii) in clause (d) by renumbering subclause (i) as subclause (i.1) and adding the following before subclause (i.1):

- (i) an emission offset project registered on the Alberta Emissions Offset Registry,

(b) in the Table

- (i) in the row labelled Hydrogen by striking out “7.970”, “7.970”, “7.890”, “7.810”, “7.730”, and “ $BE = BE_{Y-1} - 0.080$ ” and substituting “9.068”, “9.068”, “8.977”, “8.886”, “8.795” and “ $BE = BE_{Y-1} - 0.091$ ”;**
- (ii) in the row labelled Softwood kraft pulp by striking out “0.2416”, “0.2416”, “0.2392”, “0.2368” and “0.2344” and substituting “0.2423”, “0.2423”, “0.2399”, “0.2375” and “0.2351”.**

Consequential amendment

20 The *Administrative Penalty Regulation* (AR 140/2007) is amended in the Schedule by repealing section 1.1 and substituting the following:

1.1 Carbon Competitiveness Incentive Regulation
(AR 255/2017)

- sections 6(1), (2) and (3), 7(3) and (4), 9(3) and (4), 12(1), (2), (4) and (5), 13(1), (4) and (5), 14(1) and (5), 15(1) and (3), 19(5) and (6), 22(2), (3) and (4), 29(1), (2), (3) and (4), 32(b.1), (b.2), (b.3), (b.4), (b.5), (c) and (d), 34.2(3), (4) and (5), 34.3(4) and (5), 34.4(1), (4) and (5) and 34.9.

Consequential amendment

21 The Specified Gas Reporting Regulation (AR 251/2004) is amended in section 3(2)(b)(ii) by striking out “Director;” and substituting “Director.”