

DRAFTING INSTRUCTIONS
CROSS-CUTTING PROVISIONS
LARGE FINAL EMITTERS REGULATIONS

NOTE: These are proposed drafting instructions for the cross-cutting provisions of the proposed regulations for the Large Final Emitters system. Final regulatory wording may differ from what is found in this document.

INTERPRETATION

1. The following definitions apply in these regulations.

“Assigned Amount Unit” (AAU) means a unit issued pursuant to Article 3 of the Kyoto Protocol and is equal to one metric tonne of carbon dioxide equivalent calculated using the global warming potentials as defined in Schedule 1.

“Certified Emission Reduction” (CER) means a unit that has been issued pursuant to a Clean Development Mechanism project, as defined by Article 12 of the Kyoto Protocol and is equal to one metric tonne of carbon dioxide equivalent calculated using the global warming potentials as defined in Schedule 1.

“carbon dioxide (CO₂) equivalent” means an amount of a substance listed in column 1 of Schedule 1 multiplied by the Global Warming Potential listed in column 3.

“compliance unit” means an eligible domestic credit or an eligible Kyoto unit.

“covered activity” means a covered activity specified in any regulation listed in Schedule 2.

“eligible domestic credit” means:

- (a) a tradeable unit issued under any program or measure established under section 322 of CEPA, including a temporary domestic credit and is equal to one metric tonne of carbon dioxide equivalent calculated using the global warming potentials as defined in Schedule 1;
- (b) a tradeable unit, equal to one metric tonne of carbon dioxide equivalent calculated using the global warming potentials as defined in Schedule 1, issued under section 16 of these regulations; or
- (c) a Technology Investment Unit, equal to one metric tonne of carbon dioxide equivalent calculated using the global warming potentials as defined in Schedule 1, issued pursuant to the *Greenhouse Gas Technology Investment Fund Act*.

“eligible Kyoto unit” means:

- (a) an Emission Reduction Unit (“ERU”),
- (b) a Removal Unit (“RMU”),
- (c) a Certified Emission Reduction Unit (“CER”), including
 - (i) a temporary Certified Emission Reduction Unit (“tCER”); or
 - (ii) a long-term Certified Emission Reduction Unit (“lCER”)
- (d) an Assigned Amount Unit (“AAU”) that has been designated eligible under section 3 of the *Canada Emission Reduction Incentives Act*;

“Emission Reduction Unit” (ERU) means a unit that has been issued pursuant to a Joint Implementation project, as defined by Article 6 of the Kyoto Protocol, and is equal to one metric tonne of carbon dioxide equivalent, calculated using the global warming potentials as defined in Schedule 1.

“facility” means any structure, equipment or other necessary physical component of a commercial operation engaged in one or more covered activities.

“greenhouse gas” means a gas listed in column 1 of Schedule 1.

“Kyoto Protocol” means the Kyoto Protocol to the United Nations Framework Convention on Climate Change done at Kyoto on December 11, 1997, and includes any decision related to the implementation of that protocol taken by the “Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol”, within the meaning of that protocol.

“long-term Certified Emission Reduction unit” (lCER) is a Certified Emission Reduction unit issued for an afforestation or reforestation project activity under the Clean Development Mechanism, as defined by Article 12 of the Kyoto Protocol, which expires at the end of the crediting period for which it was issued..

“operator” means the person who operates or has the charge, management or control of a facility.

“prescribed greenhouse gas emissions” means, in relation to a covered activity, the greenhouse gas emissions specified in the applicable sector-specific regulation that is listed in Schedule 2 and that regulates that activity.

“Removal Unit” (RMU) means a unit issued pursuant to Article 3, paragraphs 3 and 4, of the Kyoto Protocol, where such activities result in a net removal of greenhouse gases, and any relevant provisions for the modalities of accounting of assigned amounts as defined by the Marrakesh Accords to the Kyoto Protocol or subsequent revisions, and

is equal to one metric tonne of carbon dioxide equivalent calculated using the global warming potentials as defined in Schedule 1.

“temporary Certified Emission Reduction unit” (tCER) is a Certified Emission Reduction unit issued for an afforestation or reforestation project activity under the Clean Development Mechanism, as defined by Article 12 of the Kyoto Protocol, which expires at the end of the commitment period following the one during which it was issued.

“temporary domestic credit” means a tradeable unit created under section 322 of CEPA that is valid for only one year.

PROHIBITION TO EMIT

2. Subject to section 3, no operator shall, in a given calendar year, release prescribed greenhouse gas emissions from covered activities that exceed the aggregate amount calculated by the following equation:

$$L = \sum_{j=1} \sum_{i=1} [A_i \times B_{ij}]$$

where: i = the i^{th} covered activity

j = facility where the operator carries out covered activity i

A_i is the emission intensity standard for covered activity i

B_{ij} is the physical production for covered activity i that is carried out in facility j

where A_i and B_i are defined in the applicable sector-specific regulation listed in Schedule 2.

REMITTANCE OF COMPLIANCE UNITS

3.(1) Despite section 2, when carrying out a covered activity, an operator may release prescribed greenhouse gas emissions in a given calendar year that are in excess of the aggregate amount prescribed in section 2 if the operator remits the required number of compliance units to the Minister.

The required number of compliance units that must be remitted is equal to the difference between the sum of the actual amount of prescribed greenhouse gas emissions released from each covered activity at each facility, as determined by the quantification methods prescribed in the applicable sector-specific regulation specified in Schedule 2, and the prescribed emissions limit set in section 2, where such a difference is a positive number, plus any compliance units the operator is required to remit under sections 5 and 6.

3.(2) Neither the number of temporary Certified Emission Reduction units or long-term Certified Emission Reduction units remitted under section 3(1) shall exceed 30% of the total number of required compliance units

3.(3) For any given year, temporary Certified Emission Reduction units, long-term Certified Emission Reduction units or temporary domestic credits may not be remitted under section 3(1) if the operator is under the protection of either the *Bankruptcy and Insolvency Act* or the *Companies' Creditors Arrangement Act* .

4. If the calculation in section 3.(1) results in a number that is not a whole number, it must be rounded to the nearest whole number.

5. An operator who has remitted temporary eligible domestic credits in compliance with these regulations in the previous year must replace the temporary eligible domestic credits by remitting an equivalent number of compliance units to the Minister.

6. An operator who has remitted temporary Certified Emission Reduction units or long-term Certified Emission Reduction units in previous years that have expired in accordance with section 8 or 9 must replace the expired temporary Certified Emission Reduction units or long-term Certified Emission Reduction units by remitting an equivalent number of compliance units to the Minister.

7. An operator required to remit compliance units to the Minister must remit the required number of units before September 30 of the year following the year in which the operator released greenhouse gas emissions under these regulations.

8. Temporary Certified Emission Reduction units remitted to the Minister between 2008 and 2012 shall be deemed to have expired as of January 1, 2017 for the purpose of compliance with these regulations.

9. Long-term Certified Emission Reduction credits remitted to the Minister between 2008 and 2012 shall be deemed to have expired as of the earlier of (a) or (b):

- (a) the date that a long-term Certified Emission Reduction credit has been cancelled;
- or
- (b) the date specified by the Clean Development Mechanism Executive Board when it issued the long-term Certified Emission Reduction units.

10. An operator who is no longer engaged in a covered activity and who has remitted temporary domestic credits, temporary Certified Emission Reduction units, or long-term Certified Emission Reduction units for the purpose of complying with these regulations shall, within [30] days, replace these tradeable units with a compliance unit that is not a temporary compliance unit, regardless of whether these units have expired.

11. Where the tCERs and ICERs referred to in section 10 have not expired, the Minister shall transfer the units to an account specified by the operator.

REPORTING, RECORDS, AND OTHER DOCUMENTS

12. Every operator shall submit, for each facility that he or she operates, in a form approved by the Minister, an annual report to the Minister, containing:

- (a) the facility name;
the facility civic and postal address;
the two- and four-digit North American Industry Classification System (NAICS) codes and the six-digit NAICS Canada code;
the National Pollutant Release Inventory identification number (if applicable);
the name, position, address, telephone, fax number (if any), and e-mail address (if any) of the operator;
the name, position, civic and postal address, telephone number, and fax number (if applicable) of the public contact for the operator (if applicable); and
the name, position, civic and postal address, telephone number, and fax number (if applicable) of the person authorized to submit the annual report on behalf of the operator (if applicable).
- (b) the information specified in any regulation listed in Schedule 2 that applies to that facility.

13. The annual report shall be submitted by March 31 of the following calendar year.

14. The operator of a facility shall keep a copy of the annual report in section 12 and all records, books of account or other documents required by these regulations and any applicable regulations in Schedule 2, including calculations, measurements and any other data on which the information is based, at the facility to which it relates or, upon notice to the Minister, at any other location in Canada, for a period of not less than seven years from the year for which the information in the report applies.

15. The operator shall certify that the information submitted in the annual report is accurate and complete. The report shall be signed and dated or certified by means of a secure electronic signature by:

- (a) in the case of a corporation, a person authorized to do so; and
- (b) in any other case, the person submitting the report, or by a person authorized to act on behalf of that person.

ISSUANCE OF DOMESTIC CREDITS

16. If the result of the calculation in section 3(1) is a negative number, the Minister shall create and issue to that operator eligible domestic credits equal to the absolute value of the amount calculated in metric tonnes of carbon dioxide equivalent.

17. The Minister shall issue eligible domestic credits to an operator under section 16 within 60 days of submission of the annual report.

18. The Minister may refuse to issue or may cancel an eligible domestic credit issued to an operator pursuant to these regulations if any false or misleading information material to credit entitlement has been submitted by the operator receiving the eligible domestic credits.

19. The Minister shall not refuse to issue, or shall not cancel a domestic credit issued pursuant to these regulations, unless the Minister

- (a) has provided the operator with written reasons for refusing to issue the domestic credit or for cancelling it; and
- (b) has allowed that operator a period of at least 30 days after sending the notice in which to make oral or written representations in respect of the refusal or cancellation.

CHANGE IN OPERATOR

20. When there is a change in the operator of a facility that is subject to these regulations the obligation to comply with these regulations with respect to that facility for the year in which the change of operator occurs shall rest with the person who is the operator on December 31 of that year.

REQUESTS FOR CONFIDENTIALITY

21. The proposed regulations would contain provisions regarding requests for confidential treatment of data.

NOTE: Penalty provisions are provided for in the Canadian Environmental Protection Act, 1999, and therefore do not appear in the regulations.

SCHEDULE 1

*(Section 1)*DATA FOR THE DETERMINATION OF CO₂ EQUIVALENT GREENHOUSE GAS

	Column 1	Column 2	Column 3
Item	Greenhouse Gas	Formula	Global Warming Potential
1.	Carbon dioxide	CO ₂	1
2.	Methane	CH ₄	21
3.	Nitrous oxide	N ₂ O	310
4.	Sulphur hexafluoride	SF ₆	23,900
Hydrofluorocarbons (HFCs)			
5.	HFC-134a	C ₂ H ₂ F ₄ (CH ₂ FCF ₃)	1,300
Perfluorocarbons (PFCs)			
6.	Perfluoromethane	CF ₄	6,500
7.	Perfluoroethane	C ₂ F ₆	9,200

SCHEDULE 2
(Section 1)

LIST OF SECTOR-SPECIFIC GREENHOUSE GAS EMISSION REGULATIONS

Column 1	
Item	Name of Regulation
1.	<i>Placeholder for name of sector-specific regulation</i> <i>For example, the Electrolytic Magnesium Greenhouse Gas Emission Regulations.</i>
2.	
3.	
4.	
5.	
6.	
7.	