

## CHAPTER 216H

### GREENHOUSE GAS EMISSIONS

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#### 216H.01 DEFINITIONS.

Subdivision 1. **Scope.** For the purpose of this chapter, the terms defined in this section have the meanings given them.

Subd. 1a. **Cogeneration facility or combined heat and power facility.** "Cogeneration facility" or "combined heat and power facility" means a facility that:

(1) has the meaning given in United States Code, title 16, section 796, clause (18), paragraph (A); and

(2) meets the applicable operating and efficiency standards contained in Code of Federal Regulations, title 18, part 292.205.

Subd. 2. **Statewide greenhouse gas emissions.** "Statewide greenhouse gas emissions" include emissions of carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride emitted by anthropogenic sources within the state and from the generation of electricity imported from outside the state and consumed in Minnesota. Carbon dioxide that is injected into geological formations to prevent its release to the atmosphere in compliance with applicable laws, and carbon dioxide associated with the combustion of fuels other than coal, petroleum, and natural gas are not counted as contributing to statewide greenhouse gas emissions.

**History:** 2007 c 136 art 5 s 1; 2016 c 189 art 6 s 11

#### 216H.02 GREENHOUSE GAS EMISSIONS CONTROL.

Subdivision 1. **Greenhouse gas emissions-reduction goal.** It is the goal of the state to reduce statewide greenhouse gas emissions across all sectors producing those emissions to a level at least 15 percent below 2005 levels by 2015, to a level at least 30 percent below 2005 levels by 2025, and to a level at least 80 percent below 2005 levels by 2050. The levels shall be reviewed based on the climate change action plan study.

Subd. 2. **Climate change action plan.** By February 1, 2008, the commissioner of commerce, in consultation with the commissioners of the Pollution Control Agency, the Housing Finance Agency, and the Departments of Natural Resources, Agriculture, Employment and Economic Development, and Transportation, and the chair of the Metropolitan Council, shall submit to the legislature a climate change action plan that meets the requirements of this section.

Subd. 3. **Stakeholder process.** The plan required by subdivision 2 must be developed through a structured, broadly inclusive stakeholder-based review of potential policies and initiatives that will reduce statewide greenhouse gas emissions from a broad range of sources and activities. The commissioner shall engage a

nationally recognized independent expert entity to conduct the stakeholder process. The report of the stakeholder process must form the basis for the plan submitted by the commissioner under subdivision 2.

Subd. 4. **General elements of the plan.** The plan must:

(1) estimate 1990 and 2005 greenhouse gas emissions in the state and make projections of emissions in 2015, 2025, and 2050;

(2) identify, evaluate, and integrate a broad range of statewide greenhouse gas reduction options for all emission sectors in the state;

(3) assess the costs, benefits, and feasibility of implementing the options;

(4) recommend an integrated set of reduction options and strategies for implementing the options that will achieve the goals in subdivision 1, including analysis of the associated costs and benefits to Minnesotans;

(5) estimate the statewide greenhouse gas emissions reductions anticipated from implementation of existing state policies;

(6) recommend a system to require the reporting of statewide greenhouse gas emissions, identifying which facilities must report, and how emission estimates should be made; and

(7) evaluate the option of exempting a project from the prohibitions contained in section 216H.03, subdivision 3, if the project contributes a specified fee per ton of carbon dioxide emissions emitted annually by the project, the proceeds of which would be used to fund permanent, quantifiable, verifiable, and enforceable reductions in greenhouse gas emissions that would not otherwise have occurred.

Subd. 5. **Specific plan requirements.** (a) The plan must evaluate and recommend interim goals as steps to achieve the goals in subdivision 1.

(b) The plan must determine the feasibility, assess the costs and benefits, and recommend how the state could adopt a regulatory system that imposes a cap on the aggregate air pollutant emissions of a group of sources, requires those subject to the cap to own an allowance for each ton of the air pollutant emitted, and allows for market-based trading of those allowances. The evaluation must contain an analysis of the state implementing a cap and trade system alone, in coordination with other states, and as a requirement of federal law applying to all states. The plan must recommend the parameters of a cap and trade system that includes a cap that would prevent significant increases in greenhouse gas emissions above current levels with a schedule for lowering the cap periodically to achieve the goals in subdivision 1 and interim goals recommended under paragraph (a). The plan must consider cost savings and cost increases on energy consumers in the state.

(c) The plan must include recommendations for improvements in the emissions inventory and recommend whether the state should require greenhouse gas emissions reporting from specific sources and, if so, which sources should be required to report. The plan must also evaluate options for an emissions registry after reviewing registries in other states and recommend a registry that will insure the greatest opportunity for Minnesota entities to obtain marketable credits.

Subd. 6. **Regional activities.** The state must, to the extent possible, with other states in the Midwest region, develop and implement a regional approach to reducing greenhouse gas emissions from activities in the region, including consulting on a regional cap and trade system. The commissioner of commerce shall coordinate Minnesota's regional activities under this subdivision and report to the legislative committees in the senate and house of representatives with jurisdiction over energy and environmental policy by February

1, 2008, and February 1, 2009, on the progress made and recommendations for further action. The commissioner of commerce, as part of the activities required under this subdivision, must meet with responsible officials from bordering states, other states in the Midwest region, and states in other regions of the country to:

- (1) determine whether other states are interested in establishing and cooperating in a multistate or regional greenhouse gas cap and trade allowance program;
- (2) identify and prepare an inventory of greenhouse gas reduction resources available to support a multistate or regional greenhouse gas cap and trade allowance program;
- (3) seek cooperation on a regional inventory of greenhouse gas emission sources; and
- (4) prepare an inventory of available renewable energy resources within a state or region.

The commissioner of commerce must develop a definition of scope of this regional activity that is in addition to the components described in clauses (1) to (4). The commissioner must report on the additional scoping definitions to the chairs and ranking minority members of the legislative committees with jurisdiction over energy and environmental finance and policy on or before the commencement of the 2008 regular legislative session.

**History:** 2007 c 136 art 5 s 2

#### **216H.021 GREENHOUSE GAS EMISSIONS REPORTING.**

Subdivision 1. **Commissioner to establish reporting system and maintain inventory.** In order to measure the progress in meeting the goals of section 216H.02, subdivision 1, and to provide information to develop strategies to achieve those goals, the commissioner of the Pollution Control Agency shall establish a system for reporting and maintaining an inventory of greenhouse gas emissions. The commissioner must consult with the chief information officer of the Office of MN.IT Services about system design and operation. Greenhouse gas emissions include those emissions described in section 216H.01, subdivision 2.

Subd. 2. **Reporting system design.** (a) The commissioner shall, to the extent practicable, design the system to coordinate with other regional or federal greenhouse gas emissions-reporting and inventory systems. The coordination may, without limitation, include the use of similar forms and reports, the sharing of information, and the use of common facilities, systems, and databases.

(b) The reporting system need not include all sources of emissions nor all amounts of emissions but, at its outset, must include:

(1) all stationary sources and other facilities required to obtain a permit under Title V of the federal Clean Air Act, United States Code, title 42, section 7401 et seq.; and

(2) facilities whose annual carbon dioxide equivalent emissions, as defined in section 216H.10, subdivision 3, exceed a threshold set by the commissioner at between 10,000 tons and 25,000 tons. The reporting threshold set by the commissioner must be consistent with the goal of accurately tracking progress in attaining greenhouse gas emissions-reduction goals and the need for emissions data to assist in developing greenhouse gas emissions-reduction strategies.

(c) In designing the greenhouse gas emissions-reporting system, the commissioner shall consider requiring the reporting of greenhouse gas emissions from transportation fuels and greenhouse gas emissions from natural gas combustion that are not included in reporting from stationary sources. In determining whether to include reporting of these emissions, the commissioner must consider both the goal of accurately tracking

progress in attaining greenhouse gas emissions-reduction goals and the need for emissions data to assist in developing greenhouse gas emissions-reduction strategies recommended by the Minnesota Climate Change Advisory Group. If the commissioner decides that transportation fuels and portions of natural gas combustion should not be included in the initial emissions-reporting system, the commissioner must report to the chairs and ranking minority members of the senate and house of representatives committees with primary jurisdiction over energy and environmental policy the reasons for that decision and suggestions for steps that should be taken to allow their inclusion in the emissions-reporting system in the future.

(d) A facility reporting greenhouse gas emissions under this section must maintain the data used to create the reports for a minimum of five years.

Subd. 3. **Rules.** The commissioner of the Pollution Control Agency may adopt rules for the purposes of this section.

**History:** 2009 c 37 art 1 s 54; 2013 c 134 s 30; 2013 c 142 art 3 s 36

### 216H.03 FAILURE TO ADOPT GREENHOUSE GAS CONTROL PLAN.

Subdivision 1. **Definition; new large energy facility.** For the purpose of this section, "new large energy facility" means a large energy facility, as defined in section 216B.2421, subdivision 2, clause (1), that is not in operation as of January 1, 2007, but does not include a facility that (1) uses natural gas as a primary fuel, (2) is a cogeneration facility or combined heat and power facility located in the electric service area of a public utility, as defined in section 216B.02, subdivision 4, or is designed to provide peaking, intermediate, emergency backup, or contingency services, (3) uses a simple cycle or combined cycle turbine technology, and (4) is capable of achieving full load operations within 45 minutes of start-up for a simple cycle facility, or is capable of achieving minimum load operations within 185 minutes of start-up for a combined cycle facility.

Subd. 2. **Definition; statewide power sector carbon dioxide emissions.** For the purpose of this section, "statewide power sector carbon dioxide emissions" means the total annual emissions of carbon dioxide from the generation of electricity within the state and all emissions of carbon dioxide from the generation of electricity imported from outside the state and consumed in Minnesota. Emissions of carbon dioxide associated with transmission and distribution line losses are included in this definition. Carbon dioxide that is injected into geological formations to prevent its release to the atmosphere in compliance with applicable laws, and emissions of carbon dioxide associated with the combustion of biomass, as defined in section 216B.2411, subdivision 2, paragraph (c), clauses (1) to (4), are not counted as contributing to statewide power sector carbon dioxide emissions.

Subd. 3. **Long-term increased emissions from power plants prohibited.** Unless preempted by federal law, until a comprehensive and enforceable state law or rule pertaining to greenhouse gases that directly limits and substantially reduces, over time, statewide power sector carbon dioxide emissions is enacted and in effect, and except as allowed in subdivisions 4 to 7, on and after August 1, 2009, no person shall:

(1) construct within the state a new large energy facility that would contribute to statewide power sector carbon dioxide emissions;

(2) import or commit to import from outside the state power from a new large energy facility that would contribute to statewide power sector carbon dioxide emissions; or

(3) enter into a new long-term power purchase agreement that would increase statewide power sector carbon dioxide emissions. For purposes of this section, a long-term power purchase agreement means an agreement to purchase 50 megawatts of capacity or more for a term exceeding five years.

*[See Note.]*

Subd. 4. **Exception for facilities that offset emissions.** (a) The prohibitions in subdivision 3 do not apply if the project proponent demonstrates to the Public Utilities Commission's satisfaction that it will offset the new contribution to statewide power sector carbon dioxide emissions with a carbon dioxide reduction project identified in paragraph (b) and in compliance with paragraph (c).

(b) A project proponent may offset in an amount equal to or greater than the proposed new contribution to statewide power sector carbon dioxide emissions in either, or a combination of both, of the following ways:

(1) by reducing an existing facility's contribution to statewide power sector carbon dioxide emissions;  
or

(2) by purchasing carbon dioxide allowances from a state or group of states that has a carbon dioxide cap and trade system in place that produces verifiable emissions reductions.

(c) The Public Utilities Commission shall not find that a proposed carbon dioxide reduction project identified in paragraph (b) acceptably offsets a new contribution to statewide power sector carbon dioxide emissions unless the proposed offsets are permanent, quantifiable, verifiable, enforceable, and would not have otherwise occurred. This section does not exempt emissions that have been offset under this subdivision and emissions exempted under subdivisions 5 to 7 from a cap and trade system if adopted by the state.

Subd. 5. **Exception for new steel production facility.** The prohibitions in subdivision 3 do not apply to increases in statewide power sector carbon dioxide emissions from a new steel production project located in a taconite relief area that has filed an application for an air quality permit from the Pollution Control Agency prior to January 1, 2007.

Subd. 6. **Exception for iron nugget production facility.** The prohibitions in subdivision 3 do not apply to an iron nugget production facility that began construction prior to January 31, 2007, nor to associated mining activities and beneficiation facilities with a concentrate capacity of up to three million tons annually. For the purposes of this subdivision, "iron nugget" means a product with at least 90 percent iron content.

Subd. 7. **Other exemptions.** The prohibitions in subdivision 3 do not apply to:

(1) a new large energy facility under consideration by the Public Utilities Commission pursuant to proposals or applications filed with the Public Utilities Commission before April 1, 2007, or to any power purchase agreement related to a facility described in this clause. The exclusion of pending proposals and applications from the prohibitions in subdivision 3 does not limit the applicability of any other law and is not an expression of legislative intent regarding whether any pending proposal or application should be approved or denied;

(2) a contract not subject to commission approval that was entered into prior to April 1, 2007, to purchase power from a new large energy facility that was approved by a comparable authority in another state prior to that date, for which municipal or public power district bonds have been issued, and on which construction has begun;

(3) a new large energy facility or a power purchase agreement between a Minnesota utility and a new large energy facility located outside Minnesota that the Public Utilities Commission has determined is essential to ensure the long-term reliability of Minnesota's electric system, to allow electric service for increased industrial demand, or to avoid placing a substantial financial burden on Minnesota ratepayers. An order of the commission granting an exemption under this clause is stayed until the June 1 following the next regular or annual session of the legislature that begins after the date of the commission's final order; or

(4) a new large energy facility with a combined electric generating capacity of less than 100 megawatts, which did not require a Minnesota certificate of need, which received an air pollution control permit to construct from an adjoining state before January 1, 2008, and on which construction began before July 1, 2008, or to any power purchase agreement related to a facility described in this clause.

Subd. 8. **Enforcement.** Whenever the commission or the Department of Commerce determines that any person is violating or about to violate this section, it may refer the matter to the attorney general who shall take appropriate legal action. This section may be enforced by the attorney general on the same basis as a law listed in section 8.31, subdivision 1, except that the remedies provided by section 8.31, subdivision 3a, do not apply to a violation of this section.

**History:** 2007 c 136 art 5 s 3; 2011 c 97 s 30; 2016 c 189 art 6 s 12

**NOTE:** Subdivision 3, clauses (2) and (3), were deemed either unconstitutional or preempted by other federal law in *State of North Dakota v. Heydinger*, 825 F.3d 912 (8th Cir. 2016).

## 216H.06 EMISSIONS CONSIDERATION IN RESOURCE PLANNING.

By January 1, 2008, the Public Utilities Commission shall establish an estimate of the likely range of costs of future carbon dioxide regulation on electricity generation. The estimate, which may be made in a commission order, must be used in all electricity generation resource acquisition proceedings. The estimates, and annual updates, must be made following informal proceedings conducted by the commissioners of commerce and pollution control that allow interested parties to submit comments.

**History:** 2007 c 136 art 5 s 4

## 216H.07 EMISSIONS-REDUCTION ATTAINMENT; POLICY DEVELOPMENT PROCESS.

Subdivision 1. **Definition.** For the purpose of this section, "reductions" means the greenhouse gas emissions-reductions goals specified in section 216H.02, subdivision 1.

Subd. 2. **Purpose.** This section is intended to create a nonexclusive, regular, mandated process for the state to develop policies to attain the greenhouse gas reduction goals specified in section 216H.02.

Subd. 3. **Biennial report.** (a) By January 15 of each odd-numbered year, the commissioners of commerce and the Pollution Control Agency shall jointly report to the chairs and ranking minority members of the legislative committees with primary policy jurisdiction over energy and environmental issues the most recent and best available evidence identifying the level of reductions already achieved and the level necessary to achieve the reductions timetable in section 216H.02.

(b) The report must be in easily understood nontechnical terms.

Subd. 4. [Repealed, 2012 c 272 s 98]

Subd. 5. **Reduction principles.** Legislation proposed under subdivision 4 must be based on the following principles:

(1) the greenhouse gas emissions-reduction goals specified in section 216H.02, subdivision 1, must be attained;

(2) the reductions must be attained on a schedule that keeps pace with the reduction timetable required by section 216H.02, subdivision 1;

(3) conservation, including ceasing some activities, doing some activities less, and doing some activities more energy efficiently, is the first choice for reduction;

(4) public education is a key component;

(5) all levels of government should lead by example;

(6) strategies that may lead to economic dislocation should be phased in and should be coupled with strategies that address the dislocation; and

(7) there must be coordination with other federal and regional greenhouse gas emissions-reduction requirements so that the state benefits and is not penalized from its reduction activities.

**History:** 2008 c 296 art 1 s 20; 2009 c 86 art 1 s 33; 2012 c 272 s 80

#### **216H.077 LEGISLATIVE REVIEW.**

By March 15, 2016, the commissioners of commerce and the Pollution Control Agency shall jointly submit to the senate and house committees with primary jurisdiction over energy and environmental policy for review and comment the draft plan the state is required to submit to the federal Environmental Protection Agency to comply with the proposed rule for the federal Clean Power Plan for Existing Power Plants, as published in the Federal Register on June 18, 2014, Docket No. EPA-HQ-OAR-2013-0602, or any final rule issued in that docket or federal order pertaining thereto.

**History:** 1Sp2015 c 1 art 3 s 24

#### **216H.10 DEFINITIONS.**

Subdivision 1. **Applicability.** For purposes of sections 216H.10 to 216H.13, the following terms have the meanings given.

Subd. 2. **Agency.** "Agency" means the Pollution Control Agency.

Subd. 3. **Carbon dioxide equivalent.** "Carbon dioxide equivalent" means the quantity of carbon dioxide that has the same global warming potential as a given amount of another greenhouse gas.

Subd. 4. **Commissioner.** "Commissioner" means the commissioner of the Pollution Control Agency.

Subd. 5. **Global warming.** "Global warming" means the observed and predicted increase in the temperature of the atmosphere near the earth's surface and the oceans.

Subd. 6. **Global warming potential or GWP.** "Global warming potential" or "GWP" means a quantitative measure of the potential of an emission of a greenhouse gas to contribute to global warming over a 100-year period expressed in terms of the equivalent emission of carbon dioxide needed to produce the same 100-year warming effect, as reported in Fourth Assessment Report: Climate Change 2007, Intergovernmental Panel on Climate Change.

Subd. 7. **High-GWP greenhouse gas.** "High-GWP greenhouse gas" means hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, nitrous trifluoride, and any other gas the agency determines by rule to have a high global warming potential.

Subd. 8. **Mobile air conditioner.** "Mobile air conditioner" means mechanical vapor compression refrigeration equipment used to cool the passenger compartment of a motor vehicle.

Subd. 9. **Motor vehicle.** "Motor vehicle" has the meaning given in section 168.002, subdivision 18.

Subd. 10. **New motor vehicle.** "New motor vehicle" has the meaning given in section 80E.03, subdivision 7.

Subd. 11. **Refrigerant.** "Refrigerant" means a substance used, sold for use, or designed and intended for use in a mobile air conditioner to transfer heat out of the space being cooled.

**History:** 2008 c 296 art 1 s 21; 2009 c 37 art 1 s 55

## 216H.11 HIGH-GWP GREENHOUSE GAS REPORTING.

Subdivision 1. **Gas manufacturers.** By October 1 each year, a manufacturer of a high-GWP greenhouse gas must report to the agency the total amount of each high-GWP greenhouse gas sold to a purchaser in this state during the previous year.

Subd. 2. **Purchases.** By October 1 each year, a person who purchases 10,000 metric tons or more carbon dioxide equivalent of a high-GWP greenhouse gas for use or retail sale in this state must report to the agency, on a form prescribed by the commissioner, the total amount of each high-GWP greenhouse gas purchased for use or retail sale in this state during the previous year and the purpose for which the gas was used. The commissioner may adopt rules under chapter 14 to establish a different reporting threshold or to adopt specific reporting requirements for commercial or industrial facilities that purchase high-GWP gases for use or retail sale in this state.

Subd. 3. **Acceptance of federal filing.** With the approval of the commissioner, this section may be satisfied by filing with the commissioner a copy of a greenhouse gas emissions report filed with a federal agency or a regional or national greenhouse gas registry, provided that the entity with which the report is filed requires the emissions data to be verified.

**History:** 2008 c 296 art 1 s 22; 2009 c 37 art 1 s 56

## 216H.12 MOBILE AIR CONDITIONER LEAKAGE RATES; DISCLOSURE.

Subdivision 1. **Leakage disclosure.** Beginning January 1, 2009, a manufacturer selling or offering for sale a new motor vehicle in this state containing a mobile air conditioner that uses the high-GWP greenhouse gas HFC-134a (1,1,1,2-tetrafluoroethane) as a refrigerant must, 90 days prior to the initial sale or offer for sale, report to the commissioner the leakage rate, in grams of refrigerant per year, for the type of mobile air conditioner contained in that make, model, and model year. The leakage rate must be calculated using the information provided in the most recently published version of the SAE International document J2727, "HFC-134a Mobile Air Conditioning System Emission Chart." The method by which the leakage rate is calculated, accounting for each component of the air conditioning unit, must also be reported to the commissioner.

Subd. 2. **Posting.** Beginning January 1, 2009, the agency and the Office of the Attorney General must post on their Web sites:



(1) the leakage rate disclosed by a manufacturer under subdivision 1 for each model and make of new motor vehicle sold or offered for sale in this state; and

(2) the following statement: "Vehicle air conditioning systems may leak refrigerants. Information provided in the chart compares the potential global warming effects of refrigerant leakage from different makes and models of vehicles."

**History:** 2008 c 296 art 1 s 23

#### **216H.13 ENFORCEMENT.**

Sections 216H.10 to 216H.12 may be enforced under section 116.072.

**History:** 2008 c 296 art 1 s 24