



# Regulatory Deviation or Exemption application process Guidelines

October 2021

## Overview

The Canada Energy Regulator (CER) regulates oil and gas exploration and production related work or activities under the [Canada Oil and Gas Operations Act](#) (COGOA) in the Canadian Arctic offshore north of 60° North, Nunavut, Norman Wells Proven Area, parts of the Gulf of St. Lawrence, James and Hudson Bays, parts of the Bay of Fundy, Sable Island, and areas offshore the west coast of British Columbia. The CER also regulates these activities in the onshore part of the Inuvialuit Settlement Region in the Northwest Territories under the Northwest Territories' [Oil and Gas Operations Act](#) (OGOA) till 31 March 2034.

Both the COGOA and the OGOA enable the Chief Safety Officer (CSO) or the Chief Conservation Officer (CCO), as applicable, to authorize the use of equipment, methods, measures or standards in lieu of any required by regulations, where those Officers are satisfied that the use of that other equipment and those other methods, measures or standards would provide a level of safety, protection of the environment and resource conservation equivalent to that provided by compliance with regulations<sup>1</sup>. They may also grant an exemption from any regulatory requirement in respect of equipment, methods, measures or standards, where those Officers are satisfied with the level of safety, protection of the environment and resource conservation that will be achieved without compliance with that requirement.

## Purpose

Sub-section 16(1) of the COGOA and sub-section 54(1) of the OGOA allow for changing technology, new scientific knowledge, and innovation. The CSO or the CCO, as applicable, may authorize the use of equipment, methods, measures and standards in lieu of any required by regulation where those Officers are satisfied that the use of that other equipment and those other methods, measures or standards would provide a level of safety, protection of the environment and conservation equivalent to that provided by compliance with the regulations; or grant an exemption from any regulatory requirement in respect of equipment, methods, measures or standards, where those

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<sup>1</sup> COGOA sub-section 16 (1) and OGOA sub-section 54 (1) state that, subject to subsection (2), the Chief Safety Officer and Chief Conservation Officer may

- (a) authorize the use of equipment, methods, measures or standards in lieu of any required by regulation, where those Officers are satisfied that the use of that other equipment and those other methods, measures or standards would provide a level of safety, protection of the environment and conservation equivalent to that provided by compliance with the regulations; or
- (b) grant an exemption from any regulatory requirement in respect of equipment, methods, measures or standards, where those Officers are satisfied with the level of safety, protection of the environment and conservation that will be achieved without compliance with that requirement.



Officers are satisfied with the level of safety, protection of the environment and conservation that will be achieved without compliance with that requirement.

The Regulatory Deviation/Exemption application process (RegDEx) described in this documents provides clarity and guidance on the how an applicant or operator may seek the equivalency or exemptions provided for in sub-section 16(1) of COGOA or sub-section 54(1) of OGOA. This document also describes how a RegDEx application is received, processed, and a decision by the appropriate Officer (CCO or CSO) is made and disclosed.

Examples of what may be the subject of RegDEx include:

- Deviations or exemptions from prescriptive requirements of sections of [Canada Oil and Gas Installation Regulations](#) (SOR/96-118) or the [Oil and Gas Installation Regulations](#) (NWT Regulations R-029-2014);
- Deviations or exemptions from prescriptive requirements of standards referenced in the [Canada Oil and Gas Installation Regulations](#) (SOR/96-118) or the [Oil and Gas Installation Regulations](#) (NWT Regulations R-029-2014);
- Equivalency of, or exemptions to, dynamic analysis of all mooring operations in lieu of the quasi-static approach in the [Canada Oil and Gas Installation Regulations](#) (SOR 96/-118) or the [Oil and Gas Installation Regulations](#) (NWT Regulations R-029-2014);
- Additional time for the submission of certain reports referenced in the [Canada Oil and Gas Geophysical Operations Regulations](#) (SOR/96-117) or [Oil and Gas Geophysical Operations Regulations](#) (NWT Regulations R-028-2014); and
- Equivalency to the requirement for retention of seismic sections as digital seismic images rather than in prescribed reproducible film media as referenced in the [Canada Oil and Gas Geophysical Operations Regulations](#) (SOR 96/-117) or [Oil and Gas Geophysical Operations Regulations](#) (NWT Regulations R-028-2014).

Regulatory Deviation/Exemption application process are not intended for:

- Statutory or regulatory provisions for authorizations and approvals under the COGOA or OGOA;
- Policy statements (e.g., Same Season Relief Well capability requirement);
- Financial matters (e.g., fees, penalties, liability and responsibilities, financial responsibility and financial capabilities, and cost recovery when promulgated);
- Regulatory requirements for having and implementing systems and plans (e.g., management systems, concept safety analysis, and safety, environment protection, contingency, emergency response, and resource management plans);
- Regulatory requirements for measuring, maintenance, and monitoring; and
- Regulatory requirements for submissions, notifications, records and retention, and reports and reporting.



## Regulatory Deviation/Exemption application process

An applicant (e.g., Operator, vessel owner or installation owner) may submit a regulatory Deviation/Exemption application (RegDEX application) to the applicable Chief (CSO – for matters dealing with safety or CCO – for matters dealing with protection of the environment or resource conservation).

The RegDEX application may be submitted:

- Prior to making an application for authorization under paragraph 5(1)(b) of COGOA, or paragraph 10(1)(b) of OGOA;
- During the application assessment phase prior to a regulatory decision on the sought authorization or approval;
- During subsequent approvals; or
- During the operations phase following issuance of an authorization or an approval.

The applicant shall not implement the proposed approach until the applicable Chief (CSO or CCO as the case may be) has approved the proposed approach (i.e., equipment, method, measures, or standards) or exemption sought in the RegDEX application.

A RegDEX applicant is encouraged to bring the RegDEX application to the applicable Chief as early in the process as practicable.

As described further in step 2 below, members of the public, including potentially impacted parties, could provide submissions in relation to a RegDEX application using the CER's on-line submission portal – LiveLink. Guidance on using this portal is available in the [Filer's Guide to Electronic Submission](#). The RegDEX Application Number must be included in all submissions. Those submitting comments should also send the comments to the RegDEX applicant. The RegDEX applicant shall file a written response to the Chief(s). The relevant submissions received in relation to the RegDEX and the applicant's written response will be considered in the assessment of the RegDEX application.

## Regulatory Deviation/Exemption application process Steps

1. An applicant initiates the RegDEX application process by submitting an RegDEX application to the applicable Chief(s). The RegDEX application includes:
  - a. A written consent to disclose for COGOA or OGOA RegDEX application.

For work or activity regulated under COGOA the RegDEX applicant shall use the [COGOA Consent to Disclose form](#). For additional information on transparency, please see the [Transparency Guidelines](#) as they pertain to the COGOA. If the applicant believes that any part of the RegDEX application is confidential and release may cause harm to their competitive position<sup>2</sup>, they

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<sup>2</sup> Information considered to be confidential and release may cause harm to their competitive position is expected to be aligned with the following criteria:



must identify what part of the request they wish to keep confidential along with documentation supporting the proposed request for confidentiality using the Request for Confidentiality procedure on the 'Submit Applications and Regulatory Documents' on our [website](#). The Regulator would then make a determination on what part, if any, could be granted confidentiality.

OGOA RegDEx application are disclosable under provisions of sub-section 22(2) of OGOA. The OGOA RQ applicant may seek confidentiality if they meet the criteria in paragraph 22(2) (a) to (c) of OGOA using the procedure described above. The Regulator may grant confidentiality for information under these paragraphs.

b. Detailed information or documentation on the RegDEx.

Applicant is encouraged to submit a request using a 'Regulatory Deviation/Exemption application form' to the applicable Chief Safety Officer or the Chief Conservation Officer for approval using CER's on-line submission portal – LiveLink. Guidance on using this portal is available in the [Filer's Guide to Electronic Submission](#). The Applicant is encouraged to use either the [COGOA Regulatory Deviation/Exemption application form](#) or [OGOA Regulatory Deviation/Exemption application form](#) based on where the work or activity would be taking place. RegDEx applications must contain the following information:

- i. Whether the RegDEx application is for equivalency or for the granting of an exemption to a regulatory requirement including reference to the relevant statute and regulations along with applicable section, sub-section, or paragraph;
- ii. What is being proposed including legible drawings and figures describing the proposal as appropriate;
- iii. Reasons for the proposal;
- iv. Description of how the proposed alternative would provide an equivalent or better level of safety, environmental protection and resource conservation, or in the case of an exemption request, details describing why safety, environmental protection and resource conservation (as applicable) would not be compromised;
- v. Examples of recent practices or trends that support the request; and

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- information that, if disclosed, could reasonably be expected to result in a material loss or gain to a person, or to prejudice their competitive position, and the potential harm resulting from the disclosure outweighs the public interest in making the disclosure;
  - financial, commercial, scientific or technical information or documentation that is confidential and has been consistently treated as such by a person who would be directly affected by its disclosure, and for which the person's interest in confidentiality outweighs the public interest in its disclosure; or
  - information that, if disclosed, there is a real and substantial risk it will impair the security of pipelines, as defined in section 2 of the COGOA, buildings, installations, vessels, vehicles, aircraft or systems, including computer or communication systems, used for any work or activity in respect of which the COGOA applies — or methods employed to protect them — and the need to prevent its disclosure outweighs the public interest in its disclosure.



- vi. Information with respect to the consequences to health, safety, environment and/or resource conservation that might reasonably be anticipated if the equivalency or exemption is granted.

The extent of supporting documentation will depend on the nature, scope, scale, and complexity of the RegDEx application.

Note that all information provided via the CER's on-line submission portal will be available for viewing without restrictions.

- c. When the RegDEx application request relates to an approved scope of work by a certifying authority, the proposal shall include a statement of concurrence from the certifying authority. The concurrence of the certifying authority shall clearly state that the alternative arrangement or exemption will meet fit-for-purpose requirements under Sub-paragraph 4(2)(a)(ii) of the [Canada Oil and Gas Certificate of Fitness Regulations](#) (SOR/96-114) or Sub-paragraph 3(2)(a)(ii) of the Northwest Territories' [Oil and Gas Certificate of Fitness Regulations](#) (R-025-2014);

When the RegDEx application request relates to an onshore location where the [Canada Oil and Gas Certificate of Fitness Regulations](#) (SOR/96-114) or the Northwest Territories' [Oil and Gas Certificate of Fitness Regulations](#) (R-025-2014) do not apply, the RegDEx application form shall be signed by a competent independent third-party – e.g., a Professional Engineer in the principle discipline of the Regulatory Deviation or Exemption request, certifying that the proposed alternative arrangement or exemption will be fit-for-purpose and meet or exceed regulatory requirements;

- d. A summary of concerns of potentially affected parties, the RegDEx applicant's response to those concerns, and written acknowledgement of worker consultation on the Regulatory Deviation/Exemption proposal from the Occupational Health and Safety Committee's co-chairs, as applicable.

Where a proposal pertains to regulations regarding safety or protection of the environment under the COGOA or OGOA and might be of material interest to any potentially impacted parties, these parties should be consulted *prior to* submitting a RegDEx application. A reasonable period of time should be provided to allow for comments from, and discussions with, any potentially affected party, including communities, employees, committees or unions prior to submission of a RegDEx as applicable;

A copy of the RegDEx application pertaining to safety shall be posted in printed form by the Operator at a prominent place at the applicable workplace. A copy shall also be provided to any committee established for that workplace and to any union representing employees, as applicable.



2. Upon receipt of a RegDEX application, the CSO or the CCO will make it available to the public for a comment period of up to 30 days by posting it on the CER's website. The length of the comment period would be commensurate with the nature, scope, and scale of the potential effect of granting the sought equivalency or exemption, and could be reduced or eliminated during an emergency event, or extended if the CCO or the CSO determine it is warranted.
3. The public may provide submissions in relation to a RegDEX application using CER's on-line submission portal – LiveLink. Guidance on using this portal is available in the [Filer's Guide to Electronic Submission](#).

Upon receipt of a RegDEX, the CSO or the CCO will make it available to the public for a comment period of 30 days by posting it on the CER's website. This comment period could be reduced or eliminated during an emergency event, or extended if the CCO or the CSO determine it is warranted.

The public is invited to provide submission in relation to a RegDEX using CER's on-line submission portal – LiveLink as well as provide a copy to the RegDEX applicant including the RegDEX Reference Number. Only submissions received during this period will be considered by the Chief(s).

A response from the RegDEX applicant to the public comments should be submitted using CER's on-line submission portal – LiveLink as soon as practicable after the close of the public comment period.

To promote an open, accessible, and transparent process, all information provided via the CER's on-line submission portal will be available for viewing without restrictions.

4. The CCO and/or the CSO will assess the RegDEX application and accompanying information or documentation, and may seek additional information from the RegDEX applicant. The RegDEX application would be considered complete when all relevant information has been received as well as responses from the RegDEX applicant to public comments.
5. The Chief(s) will make a decision on the RegDEX application, and advise the applicant. The RegDEX application decision will be subsequently posted on the CER website.
6. The applicant may revise their RegDEX application at any time prior to the Chief(s) making a decision on the RegDEX application. In these instances, the public review and comment period would re-start.
7. The applicant may withdraw the RegDEX application at any time prior to the Chief(s) making a decision on the RegDEX application.



## Annual Reporting

Each Operator holding a valid work or activity authorization under the COGOA or the OGOA is directed to provide an annual status report on Regulatory Deviation/Exemption granted to the Chief Safety Officer or the Chief Conservation Officer, as applicable, not later than March 31 of each year relating to the preceding calendar year describing the following:

- a listing of the status of all Regulatory Deviation/Exemption granted to the Operator, and those submitted by other Regulatory Deviation/Exemption granted to owners of vessels and/or installations, that remain active under an Operator's work or activity authorization; and
- a listing of all associated Regulatory Deviation/Exemption application related commitments and/or conditions and their individual status.

If you have any questions regarding this guideline, please contact:

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