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GREENHOUSE GAS REDUCTION (RENEWABLE AND LOW CARBON FUEL REQUIREMENTS) ACT

[SBC 2008] CHAPTER 16

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Part 1 — Introductory Provisions

Definitions

1 In this Act:

"administrative penalty" means an administrative penalty under Part 4 [Administrative Penalties];

"appeal board" means the Environmental Appeal Board under the Environmental Management Act;

"attributable", in relation to greenhouse gas emissions, means attributable under the regulations to a Part 3 fuel;

"biodiesel fuel" means a fuel that

(a) is made up of mono-alkyl esters of long chain fatty acids derived from plant or animal matter, and

(b) if applicable, meets the prescribed standard;

"carbon dioxide equivalent" means the mass of carbon dioxide that would produce the same global warming impact as a given mass of another greenhouse gas, as determined in accordance with the regulations;

"carbon intensity", in relation to a Part 3 fuel, means the greenhouse gas emissions attributable under the regulations to the fuel proportionate to the energy provided by the fuel in its expected use for transport or another prescribed purpose,

(a) expressed as grams of carbon dioxide equivalent emissions per megajoule of energy, and

(b) as determined in accordance with section 6 [low carbon fuel requirement];

"class", in relation to fuel, means diesel class fuel or gasoline class fuel;

"compliance period" means the period prescribed, as applicable, for the purposes of section 2 [requirements for renewable fuel content] or 6 [low carbon fuel requirement];

"component", in relation to the carbon intensity of a Part 3 fuel, means a component of greenhouse gas emissions attributable to a stage in the life cycle of the fuel as established by the regulations;

"credit", in relation to a particular diesel class fuel or a particular gasoline class fuel, as applicable, for a period, means a positive difference, in tonnes of carbon dioxide equivalent emissions, between

(a) the number of tonnes of carbon dioxide equivalent emissions that a Part 3 fuel supplier could have had attributable to the quantity of the particular fuel it supplied in the period without exceeding the prescribed carbon intensity limit for the applicable class of fuel for the compliance period of which that period forms all or part, and

(b) the number of tonnes of carbon dioxide equivalent emissions attributable to the quantity of that particular Part 3 fuel that the Part 3 fuel supplier supplied in the period,

and includes a credit issued under a Part 3 agreement;

"debit", in relation to a particular diesel class fuel or a particular gasoline class fuel, as applicable, for a period, means a negative difference, in tonnes of carbon dioxide equivalent emissions, between

(a) the number of tonnes of carbon dioxide equivalent emissions that a Part 3 fuel supplier could have had attributable to the quantity of the particular fuel it supplied in the period without exceeding the prescribed carbon intensity limit for the applicable class of fuel for the compliance period of which that period forms all or part, and

(b) the number of tonnes of carbon dioxide equivalent emissions attributable to the quantity of that particular Part 3 fuel that the Part 3 fuel supplier supplied in the period;

"diesel class fuel" means,

(a) for the purposes of Part 2, fuel that is

(i) composed of

(A) petroleum-based diesel fuel, or petroleum-based diesel fuel in combination with renewable fuel in relation to diesel class fuel, or

(B) renewable fuel in relation to diesel class fuel, and

(ii) suitable for use

(A) by an engine in which internal combustion is initiated by compression, or

(B) in a furnace or boiler to produce heat, and

(b) for the purposes of Part 3, fuel that is

(i) described in paragraph (a) (i) and suitable for use by an engine in which internal combustion is initiated by compression, or

(ii) natural gas, propane, electricity, hydrogen or a prescribed energy source, if the Part 3 fuel supplier reasonably believes the natural gas, propane, electricity, hydrogen or prescribed energy source will be used in substitution for diesel fuel;

"director" means the government employee designated by the minister as the director for the purposes of this Act;

"fuel supplier" means a Part 2 fuel supplier or a Part 3 fuel supplier, as applicable;

"gasoline class fuel" means,

(a) for the purposes of Part 2, fuel that is

(i) composed of petroleum-based gasoline, or petroleum-based gasoline in combination with renewable fuel in relation to gasoline class fuel, and suitable for use in a spark ignition engine,

(ii) composed of a petroleum-based substance that is not suitable for use in a spark ignition engine until combined with an oxygenate, or such a substance in combination with an oxygenate, or

(iii) renewable fuel in relation to gasoline class fuel, and

(b) for the purposes of Part 3, fuel that is

(i) described in paragraph (a), or

(ii) natural gas, propane, electricity, hydrogen or a prescribed energy source, if the Part 3 fuel supplier reasonably believes the natural gas, propane, electricity, hydrogen or prescribed energy source will be used in substitution for gasoline;

"greenhouse gas" has the same meaning as in the Greenhouse Gas Reduction Targets Act;

"inspector" means a person designated as an inspector under the regulations or a person in a class designated as inspectors under the regulations;

"Part 2 fuel" means

(a) gasoline class fuel, or

(b) diesel class fuel,

(c) and (d) [Repealed 2012-18-15.]

but does not include a substance excluded by regulation;

"Part 2 fuel supplier" means, subject to the regulations,

(a) a person who, within British Columbia, sells Part 2 fuel for the first time after it is manufactured in or brought into British Columbia,

(b) in relation to Part 2 fuel that is not covered by paragraph (a) but is

(i) manufactured or received in British Columbia, or

(ii) brought into British Columbia,

for use in British Columbia, a person prescribed as being a Part 2 fuel supplier, or

(c) a person who is designated as a Part 2 fuel supplier under section 4 [application to become Part 2 fuel supplier];

"Part 3 agreement" means an agreement under section 8.01 [Part 3 agreements];

"Part 3 fuel" means

(a) gasoline class fuel, or

(b) diesel class fuel,

but does not include an energy source excluded by regulation;

"Part 3 fuel supplier" means

(a) a person who, within British Columbia, sells Part 3 fuel for the first time after it is manufactured in or brought into British Columbia,

(b) in relation to Part 3 fuel that is not covered by paragraph (a) but is

(i) manufactured or received in British Columbia, or

(ii) brought into British Columbia,

for use in British Columbia, a person prescribed as being a Part 3 fuel supplier, or

(c) a person who is designated as a Part 3 fuel supplier under section 7.1;

"petroleum-based diesel fuel" does not include the following:

- (a) renewable fuel in relation to diesel class fuel;
- (b) for the purposes of Part 3, natural gas, propane, electricity, hydrogen or an energy source prescribed for the purposes of paragraph (b) (ii) of the definition of "diesel class fuel";

"petroleum-based gasoline" does not include the following:

- (a) renewable fuel in relation to gasoline class fuel;
- (b) for the purposes of Part 3, natural gas, propane, electricity, hydrogen or an energy source prescribed for the purposes of paragraph (b) (ii) of the definition of "gasoline class fuel";

"renewable fuel" means

- (a) in relation to gasoline class fuel,
 - (i) ethanol produced from biomass, or
 - (ii) another substance prescribed by regulation as a renewable fuel in relation to gasoline class fuel, and
- (b) in relation to diesel class fuel,
 - (i) biodiesel, or
 - (ii) another substance prescribed by regulation as a renewable fuel in relation to diesel class fuel;

"supply", in relation to a fuel supplier, means, subject to the regulations,

- (a) in relation to a Part 2 fuel supplier, the activities described in or prescribed for the purposes of the definition of "Part 2 fuel supplier", and
- (b) in relation to a Part 3 fuel supplier, the activities described in or prescribed for the purposes of the definition of "Part 3 fuel supplier".

Part 2 — Renewable Fuel Requirements

Requirements for renewable fuel content

2 (1) Subject to this Act and the regulations, a Part 2 fuel supplier who supplies gasoline class fuel in a compliance period must ensure that, of this supplied fuel, renewable fuel comprises at least the percentage prescribed for the compliance period.

(2) Subject to this Act and the regulations, a Part 2 fuel supplier who supplies diesel class fuel in a compliance period must ensure that, of this supplied fuel, renewable fuel comprises at least the percentage prescribed for the compliance period.

Part 2 compliance reports

3 (1) For each compliance period, a Part 2 fuel supplier, including a Part 2 fuel supplier who supplies only renewable fuel in the compliance period, must submit to the director a report, in accordance with the regulations, respecting

(a) compliance with the requirements under section 2 [requirements for renewable fuel content], and

(b) any other matter prescribed for the purposes of this Act.

(2) A Part 2 fuel supplier must submit a supplementary report to the director within 60 days after the fuel supplier becomes aware that

(a) information in a previous report under this section did not completely and accurately disclose the information required to be included in the report, or

(b) information required to be reported in a previous report has changed.

(3) A supplementary report under this section must be made in accordance with the regulations or, if no specific direction is prescribed, in accordance with the regulations applicable to the report under subsection (1).

(4) The director may

(a) require a report under this section to be audited in accordance with the directions of the director, or conduct or authorize a person to conduct such an audit, and

(b) require a Part 2 fuel supplier to provide additional information in support of a report under this section.

Application to become Part 2 fuel supplier

4 (1) A person who is not a Part 2 fuel supplier may apply to the director, in accordance with the regulations, to be designated as a Part 2 fuel supplier.

(2) The director may designate as a Part 2 fuel supplier, for one or more compliance periods set out in the designation, a person who applies under subsection (1).

(3) A designation under subsection (2) must be in writing.

(4) If the director designates a person under subsection (2), the person is deemed to be a Part 2 fuel supplier for each compliance period set out in the designation but only in respect of Part 2 fuel that the person supplies or uses in the applicable compliance period under an agreement with a Part 2 fuel supplier, which agreement provides that

(a) the transferee of the Part 2 fuel will include the Part 2 fuel in its calculations for the purposes of section 2 for the applicable compliance period, and

(b) the transferor of the Part 2 fuel will not include the Part 2 fuel in its calculations for the purposes of section 2 for the same compliance period.

(5) A Part 2 fuel supplier that transfers fuel under an agreement described in subsection (4) to a person designated under subsection (2) must not include the Part 2 fuel that is subject to the agreement in its calculations for the purposes of section 2 for the applicable compliance period.

(6) The sale or use of Part 2 fuel, described in subsection (4), by a person designated under subsection (2) is deemed to be the first sale of that fuel after it is manufactured or brought into British Columbia.

Transferring or retaining renewable fuel excess or deficiency

5 (1) Subject to the regulations,

(a) a Part 2 fuel supplier may notionally transfer all or part of the renewable fuel that it supplied in a compliance period to another Part 2 fuel supplier, and

(b) the other Part 2 fuel supplier may receive the notional transfer for the purpose of the same compliance period.

(2) A notional transfer under this section must

(a) be made in accordance with the regulations,

(b) be supported by evidence satisfactory to the director, and

(c) be recorded in the reports under section 3 [Part 2 compliance reports] of both Part 2 fuel suppliers.

(3) If a Part 2 fuel supplier exceeds its renewable fuel obligation for a compliance period, the Part 2 fuel supplier may

(a) notionally retain the excess up to the prescribed percentage of the obligation, and

(b) apply that amount towards its renewable fuel obligation for the next compliance period.

(4) Despite section 2, if a Part 2 fuel supplier does not meet its renewable fuel obligation for a compliance period, the Part 2 fuel supplier may

(a) defer the deficiency up to the prescribed percentage of the obligation, excluding any amount that must be added under paragraph (b) from the previous compliance period, and

(b) add that amount to its obligation for the next compliance period.

Part 3 — Low Carbon Fuel Requirements

Low carbon fuel requirement

6 (1) A Part 3 fuel supplier must ensure that the sum of the credits it generates or acquires, and applies against debits for a compliance period, is equal to or greater than the number of debits the Part 3 fuel supplier is required to set off against credits for that compliance period.

(2) A Part 3 fuel supplier must set off against credits for a compliance period all debits that the Part 3 fuel supplier

(a) calculates under subsection (4) in respect of Part 3 fuel it supplies in the compliance period, or

(b) acquires under section 8 [transferring credits and debits] in that compliance period

and has not transferred under section 8.

(3) Subsections (1) and (2) do not apply in relation to Part 3 fuel that the Part 3 fuel supplier expects, on reasonable grounds, will be used for a purpose other than

(a) transport, or

(b) if applicable, another prescribed purpose.

(4) A Part 3 fuel supplier must calculate, using the following formula, the credits it generated or debits it incurred for each Part 3 fuel it supplied in the compliance period:

$$\text{Credit or Debit} = (\text{CI class} \times \text{EER fuel} - \text{CI fuel}) \times \text{EC fuel} / 1\,000\,000$$

where

Credit or Debit = the number of credits generated, if the number is positive, or the number of debits incurred, if the number is negative, for the compliance period;

CI Class = the prescribed carbon intensity limit for the compliance period for the class of fuel of which the fuel is a part;

EER fuel = the prescribed energy effectiveness ratio for that fuel in that class of fuel;

CI fuel = the carbon intensity of the fuel;

EC fuel = the energy content of the fuel calculated in accordance with the regulations.

(5) For the purposes of subsection (4), the carbon intensity of each Part 3 fuel for a compliance period is,

(a) for petroleum-based gasoline, the prescribed carbon intensity,

(b) for petroleum-based diesel fuel, the prescribed carbon intensity,

(c) for a Part 3 fuel, other than petroleum-based gasoline or petroleum-based diesel fuel, produced by a specific producer, if the director has approved under subsection (6) the carbon intensity proposed for the fuel by the producer and published that carbon intensity on a publicly accessible website maintained by the ministry of the minister, the carbon intensity posted, except as limited under subsection (10), and

(d) for any other fuel,

(i) the default carbon intensity deemed by the regulations to be the carbon intensity of the Part 3 fuel, or

(ii) the carbon intensity that results from summing the carbon intensities of the components in respect of the fuel, calculated

(A) in accordance with the regulations, or

(B) by using an alternative method of determining the carbon intensity of a component, which method is proposed in accordance with the regulations by a Part 3 fuel supplier and accepted by the director as a more accurate method of determining the carbon intensity of that component.

(6) For the purposes of subsection (5) (c), the director may

(a) accept from a producer of a Part 3 fuel, other than petroleum-based gasoline or petroleum-based diesel fuel, evidence, satisfactory to and in the form specified by the director, of the carbon intensity of a Part 3 fuel produced by that producer, and

(b) if satisfied that the carbon intensity proposed by the producer accurately reflects the carbon intensity of the fuel, approve that carbon intensity for that fuel and publish that carbon intensity as described in subsection (5) (c).

(7) A decision of the director refusing to

(a) approve a carbon intensity that is proposed by a producer for the purposes of subsection (5) (c), or

(b) accept an alternative method of determining carbon intensity that is proposed by a Part 3 fuel supplier for the purposes of subsection (5) (d) (ii) (B)

must be served on the producer or Part 3 fuel supplier, as applicable.

(8) A producer referred to in subsection (6) need not be a Part 3 fuel supplier.

(9) If a producer whose proposed carbon intensity for a fuel has been approved by the director becomes aware that that carbon intensity will change or has changed, the producer must immediately give written notice to the director.

(10) If, after publishing a carbon intensity under subsection (5) (c), the director is reasonably satisfied that the published carbon intensity is different from the actual carbon intensity of the fuel, the director may limit the application of the published carbon intensity by publishing on the website the date on and after which that carbon intensity may not be applied except in respect of fuel supplied before that date.

Part 3 compliance reports

7 (1) For each compliance period, a Part 3 fuel supplier must submit to the director a report, in accordance with the regulations, respecting

(a) compliance with the requirements under section 6 (1) [low carbon fuel requirement], and

(b) any other matter prescribed for the purposes of this Act.

(2) A Part 3 fuel supplier must submit a supplementary report to the director within 60 days after the fuel supplier becomes aware that

(a) information in a previous report under this section did not completely and accurately disclose the information required to be included in the report, or

(b) information required to be reported in a previous report has changed.

(3) A supplementary report under this section must be made in accordance with the regulations or, if no specific direction is prescribed, in accordance with the regulations applicable to the report under subsection (1).

(4) The director may

(a) require a report under this section to be audited in accordance with the directions of the director, or conduct or authorize a person to conduct such an audit, and

(b) require a Part 3 fuel supplier to provide additional information in support of a report under this section.

Application to become Part 3 fuel supplier

7.1 (1) A person who is not a Part 3 fuel supplier may apply to the director, in accordance with the regulations, to be designated as a Part 3 fuel supplier.

(2) The director may designate as a Part 3 fuel supplier, for one or more compliance periods set out in the designation, a person who applies under subsection (1).

(3) A designation under subsection (2) must be in writing.

(4) If the director designates a person under subsection (2), the person is deemed to be a Part 3 fuel supplier for each compliance period set out in the designation but only in respect of Part 3 fuel that the person supplies or uses in the applicable compliance period under an agreement with a Part 3 fuel supplier, which agreement provides that

(a) the transferee of the Part 3 fuel will include the Part 3 fuel in its calculations for the purposes of section 6 for the applicable compliance period, and

(b) the transferor of the Part 3 fuel will not include the Part 3 fuel in its calculations for the purposes of section 6 for the same compliance period.

(5) A Part 3 fuel supplier who transfers fuel under an agreement described in subsection (4) to a person designated under subsection (2) must not include the Part 3 fuel that is subject to the agreement in its calculations for the purposes of section 6 for the applicable compliance period.

(6) The sale or use of Part 3 fuel, described in subsection (4), by a person designated under subsection (2) is deemed to be the first sale of that fuel after it is manufactured or brought into British Columbia.

Transferring credits and debits

8 (1) In this section, "validated credit" means a credit

(a) validated by the director under subsection (5), or

(b) issued by the director under a Part 3 agreement.

(2) Subject to the regulations, a Part 3 fuel supplier may transfer to another Part 3 fuel supplier

(a) some or all of its validated credits for a compliance period or for a 3 month period of a compliance period, or

(b) some or all of the debits it incurs for a compliance period.

(3) A Part 3 fuel supplier that acquires credits or debits under subsection (2) or paragraph (c) of this subsection may

(a) apply the credits against its debits for any compliance period or, if the regulations restrict the application of credits generated in a compliance period to prescribed compliance periods, apply the credits against its debits for a compliance period prescribed for that purpose,

(b) set off the debits against its credits for the compliance period in which the debits were incurred by a Part 3 fuel supplier, or

(c) transfer some or all of the credits or debits to another Part 3 fuel supplier.

(4) Before transferring a credit under subsection (2) (a), the Part 3 fuel supplier must apply to the director, in accordance with the regulations, for validation of the credit.

(5) On application under subsection (4), the director may validate a credit if satisfied that the applicant has generated the credit in the applicable period.

(6) A validated credit is conclusively deemed to be valid for the purposes of the transferee's calculation under section 6 [low carbon fuel requirement] for the compliance period in which the transferee is applying the validated credit against its debits.

(7) A Part 3 fuel supplier may apply for validation of credits after each 3 month period of a compliance period in respect of some or all of the Part 3 fuel that the Part 3 fuel supplier supplied in the 3 month period or in an earlier 3 month period of the compliance period in respect of which the Part 3 fuel supplier has not applied for validation of credits.

(8) If a Part 3 fuel supplier does not apply, before the date the compliance report for a compliance period is due, for validation of credits generated in the compliance period, the director must give notice to the Part 3 fuel supplier, after the compliance report has been received by the director, of any credits the director validates in respect of the compliance period.

(9) A transfer of credits under this section must be

(a) made in accordance with the regulations, and

(b) recorded in the reports under section 7 [Part 3 compliance reports] of both the Part 3 fuel suppliers.

(10) Part 3 fuel suppliers must maintain, in accordance with the regulations, records of evidence, satisfactory to the director, of any transfers made or accepted under this section.

Part 3 agreements

8.01 (1) Subject to the regulations, the director may enter into an agreement under this section with a Part 3 fuel supplier.

(2) The director may not enter into an agreement under this section unless the director is satisfied that the action a Part 3 fuel supplier proposes to take under the agreement has a reasonable possibility of reducing the amount of carbon dioxide equivalent emissions resulting from the use of Part 3 fuels.

(3) The director may enter into an agreement under subsection (1)

(a) on request of a Part 3 fuel supplier, or

(b) after advertising to and inviting proposals from all Part 3 fuel suppliers.

(4) The terms and conditions of an agreement under subsection (1) must include

(a) a description of the action that the Part 3 fuel supplier agrees to take under the agreement,

- (b) the dates by which the action, or a stage of the action, will be completed,
 - (c) the number of credits that the Part 3 fuel supplier may be issued in respect of the action or stage of the action, and the compliance period or periods in which the credits are expected to be issued,
 - (d) the evidence that must be provided to the director to demonstrate compliance with the agreement,
 - (e) prescribed terms and conditions, and
 - (f) any other terms or conditions the director considers advisable.
- (5) The director may agree to issue credits under a Part 3 agreement for an action in respect of which the Part 3 fuel supplier also generates, or is likely to generate, credits under section 6 (4) [low carbon fuel requirement] for the same or a different compliance period.
- (6) If the director is satisfied by evidence provided under subsection (4) (d) that the Part 3 fuel supplier has completed the action, or a stage of the action, that, under the agreement, entitles the Part 3 fuel supplier to a credit, the director must issue the credit.
- (7) A credit issued under subsection (6) may be
- (a) applied against the Part 3 fuel supplier's debits for any compliance period or, if the regulations restrict the application of credits generated in a compliance period to prescribed compliance periods, against the Part 3 fuel supplier's debits for a compliance period prescribed for that purpose, or
 - (b) transferred under section 8 [transferring credits and debits].
- (8) A credit issued under subsection (6) is conclusively deemed to be a validated credit for the purposes of section 8.
- (9) The director must not agree to issue under Part 3 agreements entered into in a compliance period more than 25% of the sum of all the debits that resulted from the calculation under section 6 (4) by all Part 3 fuel suppliers for the previous compliance period.

Part 3.1 — Fuel Labelling Requirements

Definition of purchaser

8.1 In this Part, "purchaser" means a person who, within British Columbia, buys or receives delivery of fuel

- (a) for the person's own use or for use by another person at the first person's expense, or
- (b) on behalf of or as an agent for a principal for use by the principal or by other persons at the expense of the principal.

Renewable fuel labelling

8.2 A person who provides to a purchaser gasoline class fuel, or diesel class fuel, that contains renewable fuel must comply with the regulations requiring

(a) the posting of labels, or

(b) that notice be given to the purchaser

respecting the renewable fuel content of the fuel.

Part 4 — Administrative Penalties

Automatic administrative penalties: Part 2 fuel requirements

9 (1) If a report under section 3 [Part 2 compliance reports] indicates that the Part 2 fuel supplier has not complied with its obligation under section 2 [requirements for renewable fuel content] for a compliance period, the Part 2 fuel supplier is subject to the administrative penalty calculated using the following formula:

administrative penalty = (required RF – actual RF) x penalty rate

where

required RF = the quantity in litres of renewable fuel required for the Part 2 fuel supplier to comply with section 2 for the compliance period;

actual RF = the quantity in litres of renewable fuel supplied by the Part 2 fuel supplier in the compliance period;

penalty rate = the rate prescribed by regulation.

(2) An administrative penalty under this section must be paid to the government on or before the date on which the applicable report under section 3 is due.

Automatic administrative penalties: Part 3 fuel requirements

10 (1) If a report under section 7 [Part 3 compliance reports] indicates that the number of debits a Part 3 fuel supplier is required to set off against credits for the compliance period is greater than the number of credits the Part 3 fuel supplier applies against those debits for that compliance period, the Part 3 fuel supplier is subject to an administrative penalty calculated using the following formula:

Administrative Penalty = (Debits – Credits) × Penalty Rate

where

Debits = the number of debits that the Part 3 fuel supplier must, under section 6 (2), set off against credits for the compliance period;

Credits = the number of credits that the Part 3 fuel supplier is applying against debits for the purposes of section 6 (1) for the compliance period;

Penalty Rate = the penalty rate prescribed by regulation.

(1.1) [Repealed 2012-18-22.]

(2) An administrative penalty under this section must be paid to the government on or before the date on which the applicable report under section 7 [Part 3 compliance reports] is due.

Imposed administrative penalties: fuel requirements

11 (1) The director must take action under subsection (2), in accordance with the regulations,

(a) if the director is satisfied on a balance of probabilities that

(i) the actual quantities of renewable fuel for a compliance period were different from those reported under section 3 [Part 2 compliance reports] by a Part 2 fuel supplier, and

(ii) as a consequence, the Part 2 fuel supplier has not complied with the requirements under section 2 [requirements for renewable fuel content], or

(b) if

(i) a Part 2 fuel supplier fails to submit a report in accordance with section 3 [Part 2 compliance reports], and

(ii) the director is satisfied on a balance of probabilities that the Part 2 fuel supplier has not complied with the requirements under section 2 [requirements for renewable fuel content].

(2) In the circumstances referred to in subsection (1), the director must serve the Part 2 fuel supplier with an administrative penalty notice,

(a) identifying the Part 2 fuel supplier's non-compliance as determined by the director, and

(b) requiring the Part 2 fuel supplier to pay an administrative penalty in the amount calculated in accordance with the formula set out in section 9 (1) [automatic administrative penalties: Part 2 fuel requirements].

(3) The director must take action under subsection (4), in accordance with the regulations,

(a) if the director is satisfied on a balance of probabilities that

(i) the actual number of credits or debits for a compliance period was different than the number reported under section 7 [Part 3 compliance reports] by a Part 3 fuel supplier, and

(ii) as a consequence, the Part 3 fuel supplier has not complied with the requirement under section 6 (1) [low carbon fuel requirement], or

(b) if

(i) a Part 3 fuel supplier fails to submit a report in accordance with section 7 [Part 3 compliance reports], and

(ii) the director is satisfied on a balance of probabilities that the Part 3 fuel supplier has not complied with the requirement under section 6 (1) [low carbon fuel requirement].

(4) In the circumstances referred to in subsection (3), the director must serve the Part 3 fuel supplier with an administrative penalty notice,

(a) identifying the Part 3 fuel supplier's non-compliance as determined by the director, and

(b) requiring the Part 3 fuel supplier to pay an administrative penalty in the amount calculated in accordance with the formula set out in section 10 (1) [automatic administrative penalties: Part 3 fuel requirements].

(5) An administrative penalty under this section is due on the date the compliance report to which it relates is due but may not be recovered under section 13 until one of the following has occurred:

(a) the fuel supplier admits the non-compliance and its extent in writing;

(b) the time for appealing the determination of non-compliance or its extent has elapsed and no appeal has been commenced;

(c) the determination of non-compliance or its extent is appealed and a final determination is made.

(6) An administrative penalty under this section must be paid to the government in accordance with the regulations.

Administrative penalties in relation to other matters

12 (1) The director may take action under this section, in accordance with the regulations, if the director is satisfied on a balance of probabilities that a person has contravened a prescribed provision of this Act or the regulations.

(2) In the circumstances referred to in subsection (1), the director may serve the person with an administrative penalty notice,

(a) identifying the person's non-compliance as determined by the director, and

(b) requiring the person to pay the administrative penalty specified in the notice.

(3) A person served with an administrative penalty notice under subsection (2) is subject to an administrative penalty as follows:

(a) if the person admits, in writing, the non-compliance and its extent as determined by the director, the penalty indicated in the notice is imposed at the time of that admission;

(b) if the time for appealing the determination of non-compliance or its extent under Part 5 [Appeals to Environmental Appeal Board] has elapsed and no appeal has been commenced, the penalty indicated in the notice is imposed at the end of the time for appealing;

(c) if the non-compliance or its extent as determined by the director is appealed and, under the final determination of the appeal, the person is subject to an administrative penalty, the penalty specified in the final determination is imposed at the time of that final determination.

(4) An administrative penalty under this section must be paid to the government within the prescribed time after the penalty is imposed and in accordance with any other prescribed requirements.

Recovery of penalties

13 (1) An administrative penalty may be recovered as a debt due to the government.

(2) If a person fails to pay an administrative penalty as required under this Act, the director may file a certificate in a court that has jurisdiction and, on filing, the certificate has the same force and effect, and all proceedings may be taken on it, as if it were a judgment of the court with which it is filed.

(3) A certificate under subsection (2) may be in the prescribed form, must be signed by the director and must contain

(a) the name of the person who is liable for the penalty,

(b) particulars of the administrative penalty, and

(c) the amount of the penalty under subsection (1).

Part 5 — Appeals to Environmental Appeal Board

What decisions may be appealed, who may appeal, the process of appeal

14 (1) For the purposes of this Part, "decision" means any of the following:

(a) the determination of non-compliance under section 11 [imposed administrative penalties: fuel requirements] or of the extent of that non-compliance, as set out in an administrative penalty notice;

(b) the determination of non-compliance under section 12 [administrative penalties in relation to other matters], of the extent of that non-compliance or of the amount of the administrative penalty, as set out in an administrative penalty notice;

(c) a refusal to accept an alternative calculation of carbon intensity under section 6 (5) (d) (ii) (B) [low carbon fuel requirement];

(d) a prescribed decision or a decision in a prescribed class.

(2) A person who is served with

(a) an administrative penalty notice referred to in subsection (1) (a) or (b),

(b) a refusal referred to in subsection (1) (c), or

(c) a document evidencing a decision referred to in subsection (1) (d)

may appeal the applicable decision to the appeal board.

(3) Subject to this Act, Division 1 of Part 8 [Appeals] of the Environmental Management Act applies in relation to appeals under this Act.

Part 6 — Offences

Offences against Act and corresponding penalties

15 (1) A Part 2 fuel supplier who contravenes section 3 (1), (2) or (3) [Part 2 compliance reports] commits an offence.

(2) A Part 3 fuel supplier who contravenes section 7 (1), (2) or (3) [Part 3 compliance reports] commits an offence.

(2.1) A person that contravenes section 8.2 by

(a) failing to label fuel dispensing equipment or give notice in the circumstances required by the regulations,

(b) labelling fuel dispensing equipment or giving notice in a form or manner that does not comply with the regulations, or

(c) providing false or misleading information on a label or notice required under section 8.2

commits an offence.

(3) A person who does either of the following commits an offence:

(a) obstructs or resists the director or an inspector exercising powers or performing duties under this Act;

(b) fails to comply with a direction given or requirement imposed under this Act by the director or an inspector.

(4) A person convicted of an offence under subsection (1), (2) or (3) is liable to a fine of not more than \$1 000 000 or imprisonment for a term of not more than 6 months, or both.

(5) A person who contravenes section 22 (2) commits an offence.

(6) A person convicted of an offence under subsection (2.1) or (5) is liable to a fine of not more than \$200 000 or imprisonment for a term of not more than 6 months, or both.

Offences of providing false or misleading information and penalties

16 (1) A person who knowingly provides false or misleading information when required under this Act to provide information commits an offence and is liable on conviction to a fine of not more than \$1 000 000 or imprisonment for a term of not more than 6 months, or both.

(2) A person who provides false or misleading information when required under this Act to provide information, other than a person described in subsection (1), commits an offence and is liable on conviction to a fine of not more than \$500 000 or imprisonment for a term of not more than 6 months, or both.

(3) A person is not guilty of an offence under subsection (2) if the person establishes that, at the time the information was provided, the person did not know that it was false or misleading and exercised reasonable care and diligence in providing the information.

Continuing offences

17 If an offence under section 15 [offences against Act and corresponding penalties] continues for more than one day, separate fines, each not exceeding the maximum fine for the offence, may be imposed for each day the offence continues.

Liability of directors, officers and agents

18 (1) If a corporation commits an offence under this Act, an officer, director or agent of the corporation who authorized, permitted or acquiesced in the offence commits the offence.

(2) Subsection (1) applies whether or not the corporation is prosecuted for or convicted of the offence.

Relationship between administrative penalties and offences

19 (1) A person may be prosecuted under this Act for a contravention or failure in relation to which an administrative penalty has been imposed.

(2) In imposing a sentence for an offence under this Act, the court may consider an administrative penalty imposed in relation to the same matter.

(3) An administrative penalty may not be imposed on a person for a contravention or failure in relation to which the person has been convicted of an offence under this Act.

Other provisions relating to offences

20 (1) Section 5 of the Offence Act does not apply to this Act or the regulations.

(2) The time limit for laying an information for an offence under this Act is

(a) 3 years after the date that the facts on which the information is based arose, or

(b) if the minister completes a certificate described in subsection (3), 18 months after the date that the facts on which the information is based first came to the knowledge of the minister.

(3) A document purporting to have been issued by the minister, certifying the date on which the minister became aware of the facts on which the information is based, is proof of the certified facts.

Part 7 — General

Notice and service under this Act

21 (1) Any notice under this Act may be given by registered mail sent to the last known address of the person.

(2) A notice or other thing that, under this Act, must be served on a person may be served by registered mail sent to the last known address of the person.

(3) If a notice or other thing under this Act is sent by registered mail to the last known address of the person, the notice or other thing is deemed to be served on the person to whom it is addressed on the 14th day after deposit with Canada Post unless the person received actual service before that day.

Confidentiality

22 (1) In this section:

"protected information" means information that would reveal

(a) trade secrets of a third party, or

(b) commercial, financial, labour relations, scientific or technical information of or about a third party;

"third party" has the same meaning as in the Freedom of Information and Protection of Privacy Act;

"trade secret" has the same meaning as in the Freedom of Information and Protection of Privacy Act.

(2) Subject to this section, a person who has access to protected information that is in the custody or under the control of the government through

(a) reports required to be provided by a fuel supplier under this Act,

(b) the exercise of powers under section 29 [regulations in relation to inspections] in relation to a fuel supplier, or

(c) an information-sharing agreement under section 23 that provides that the information is to be kept confidential

must not disclose the protected information to any other person.

(3) The prohibition in subsection (2) does not apply to disclosure of the following information:

(a) information that is publicly available;

(b) in relation to Part 2,

(i) percentages of gasoline class fuel or diesel class fuel supplied by a Part 2 fuel supplier in a compliance period that are renewable fuel, and

(ii) any notional transfers under section 5 [transfers between Part 2 fuel suppliers];

(c) in relation to Part 3,

(i) the determination of credits or debits in relation to all Part 3 fuels supplied in a compliance period by a Part 3 fuel supplier, and

(ii) transfers of credits and debits and their application under section 8 [transferring credits and debits];

(d) information that is required or authorized to be made public under this Act.

(4) The prohibition in subsection (2) does not apply to disclosure in the following circumstances:

(a) if required under Part 2 [Freedom of Information] of the Freedom of Information and Protection of Privacy Act;

(b) in the course of administering or enforcing this Act or a prescribed enactment;

(c) for the purpose of court proceedings;

(d) in accordance with an information-sharing agreement under section 23;

(e) with the consent of the person, group of persons or organization that is the third party in relation to the protected information.

Information-sharing agreements

23 (1) For the purposes of this section, "information-sharing agreement" means a data-matching or other agreement to provide or exchange information related to Part 2 fuels or Part 3 fuels, or to reducing concentrations of greenhouse gas in the atmosphere or reducing greenhouse gas emissions into the atmosphere.

(2) With the prior approval of the Lieutenant Governor in Council, the minister may enter into an information-sharing agreement with Canada, another province or another jurisdiction in or outside Canada, or with an agent of any of them.

General regulation powers

24 (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the Interpretation Act.

(2) Without limiting any other provision of this Act, the Lieutenant Governor in Council may make regulations as follows:

(a) prescribing information that must or may be made public under this Act, other than information referred to in paragraph (a) of the definition of "protected information" in section 22 [confidentiality];

(b) establishing criteria that must be applied by the director in making decisions under this Act;

(c) defining words or expressions used but not defined in this Act;

(c.1) respecting applications or proposals authorized or required under this Act;

(d) respecting any other matter for which regulations are contemplated by this Act.

(3) A regulation under this Act may do any or all of the following:

(a) delegate a matter to a person;

(b) confer a discretion on a person;

(c) make different regulations in relation to different types or classes of fuels or different compliance periods, as established by regulation.

(4) A regulation under this Act may adopt by reference, in whole, in part or with any changes considered appropriate, a regulation, code, standard or rule

(a) enacted as or under a law of another jurisdiction, including a foreign jurisdiction, or

(b) set by a provincial, national or international body or any other code, standard or rule making body,

as the regulation, code, standard or rule stands at a specific date, as it stands at the time of adoption or as amended from time to time.

Regulations in relation to Part 2 fuels

25 (1) Without limiting any other provision of this Act, the Lieutenant Governor in Council may make regulations in relation to Part 2 fuels as follows:

(a) [Repealed 2012-18-27.]

(b) excluding substances from being included in one or both classes of Part 2 fuel, including excluding them on the basis of the purpose for which they are reasonably expected to be used;

(c) prescribing a substance, or prescribing a substance that meets a prescribed standard, as a renewable fuel in relation to gasoline class fuel or diesel class fuel on the basis that the substance is derived from a source that

(i) is renewable, or

(ii) would be biomass waste if not used for fuel production;

(d) prescribing circumstances in which

(i) a person is a Part 2 fuel supplier under paragraph (b) of the definition of "Part 2 fuel supplier", or

(ii) a person who would otherwise be a Part 2 fuel supplier is not considered to be a Part 2 fuel supplier;

(e) providing, with or without conditions, for sales between Part 2 fuel suppliers to not be considered as the first sale in British Columbia for the purposes of the definition of "supply";

(f) respecting circumstances in which the definition of "supply" does not apply to a Part 2 fuel;

(f.1) for purposes of regulations under paragraph (e) or (f), deeming a sale of Part 2 fuel that is not the first time the fuel is sold after it is manufactured or brought into British Columbia to be the first sale of the fuel after it is manufactured or brought into British Columbia;

(g) prescribing the percentage of renewable fuel that is required for compliance with section 2 [requirements for renewable fuel content];

(h) prescribing compliance periods for the purposes of section 2 [requirements for renewable fuel content];

- (i) prescribing matters to be reported under section 3 (1) (b) [Part 2 compliance reports];
 - (j) requiring Part 2 fuel suppliers to provide additional reports relating to the supply of Part 2 fuel;
 - (k) respecting reports in relation to Part 2 fuels, including, without limitation, prescribing requirements respecting the timing, form, content, supporting evidence, verification, certification and manner of submission of the reports;
 - (l) requiring Part 2 fuel suppliers to retain for prescribed periods records relating to reports required under this Act, including records necessary to provide proof of compliance with this Act;
 - (m) establishing conditions or restrictions on notional transfers or retentions under section 5 [transfers between Part 2 fuel suppliers];
 - (n) [Repealed 2012-18-27.]
 - (o) authorizing the director, on application in accordance with the regulations, to exempt a Part 2 fuel supplier from compliance with section 2 (1) or (2) in relation to one or both classes of Part 2 fuel for a compliance period, if
 - (i) the director, on considering the prescribed matters, is satisfied that the fuel supplier meets the prescribed criteria, and
 - (ii) the fuel supplier supplies the prescribed amount or less of the class or classes, as applicable, of Part 2 fuel in the compliance period.
- (2) An exemption under subsection (1) (o)
- (a) is conditional until the Part 2 fuel supplier submits a report under section 3 showing that the Part 2 fuel supplier supplied the amount prescribed under subsection (1) (o) (ii) or less of the class or classes, as applicable, of Part 2 fuel in the compliance period, and
 - (b) is cancelled and has no effect if the Part 2 fuel supplier's report under section 3 for the compliance period shows that the fuel supplier supplied more than the amount prescribed under subsection (1) (o) (ii) of the class or classes, as applicable, of Part 2 fuel in that compliance period.

Regulations in relation to Part 3 fuels

26 (1) Without limiting any other provision of this Act, the Lieutenant Governor in Council may make regulations in relation to Part 3 fuels as follows:

- (a) prescribing an energy source, or prescribing an energy source that has a carbon intensity below a prescribed level, including an energy source that is not a fuel, to be a gasoline class fuel or a diesel class fuel;
- (a.1) excluding an energy source from being included as a gasoline class fuel or a diesel class fuel, including excluding the energy source on the basis of the purpose for which it is reasonably expected to be used;

(b) establishing the greenhouse gas emissions that are deemed to be attributable to a Part 3 fuel, including, without limitation, greenhouse gas emissions related to the life cycle of the fuel, including its feedstock, whether they occur inside or outside British Columbia;

(c) prescribing circumstances in which

(i) a person is a Part 3 fuel supplier under paragraph (b) of the definition of "Part 3 fuel supplier", and

(ii) a person who would otherwise be a Part 3 fuel supplier is not considered to be a Part 3 fuel supplier;

(d) providing, with or without conditions, for sales between Part 3 fuel suppliers to not be considered as the first sale in British Columbia for the purposes of the definition of "supply";

(e) respecting circumstances in which the definition of "supply" does not apply to a Part 3 fuel;

(e.1) for purposes of regulations under paragraph (d) or (e), deeming a sale of Part 3 fuel that is not the first time the fuel is sold after it is manufactured or brought into British Columbia to be the first sale of the fuel after it is manufactured or brought into British Columbia;

(f) respecting the calculation under section 6 (4) [low carbon fuel requirement], including, without limitation, prescribing the following:

(i) the carbon intensity limit for gasoline class fuel and diesel class fuel for a compliance period;

(ii) carbon intensities of fuels or methods for calculating the carbon intensities of fuels;

(iii) the energy effectiveness ratio for each fuel in each class of fuel;

(iv) a method for calculating the energy content of each fuel;

(g) prescribing compliance periods for the purposes of section 6 [low carbon fuel requirement];

(h) prescribing matters to be reported under section 7 (1) (b) [Part 3 compliance reports];

(i) requiring Part 3 fuel suppliers to provide additional reports relating to the supply of Part 3 fuel;

(j) respecting reports in relation to Part 3 fuels, including, without limitation, prescribing requirements respecting the timing, form, content, supporting evidence, verification, certification and manner of submission of the reports;

(k) requiring Part 3 fuel suppliers to retain for prescribed periods records relating to reports required under this Act, including records necessary to provide proof of compliance with this Act;

(l) establishing components for the purposes of determining the carbon intensity of a Part 3 fuel;

(m) respecting determinations of carbon intensity for the purposes of section 6 [low carbon fuel requirement], including by providing differently in relation to any factor that the Lieutenant Governor in Council considers contributes differently to the greenhouse gas emissions attributable to the Part 3 fuel;

(n) respecting the transfer, retention and validation of credits, and the transfer of debits, and their application under section 8 [transferring credits and debits];

(o) [Repealed 2012-18-28.]

(p) [Repealed 2010-21-57.]

(q) authorizing the director, on application in accordance with the regulations, to exempt a Part 3 fuel supplier from compliance with section 6 (1) in relation to one or both classes of Part 3 fuel for a compliance period, if

(i) the director, on considering the prescribed matters, is satisfied that the fuel supplier meets the prescribed criteria, and

(ii) the fuel supplier supplies the prescribed amount or less of the class or classes, as applicable, of Part 3 fuel in the compliance period;

(r) respecting Part 3 agreements.

(2) An exemption under subsection (1) (q)

(a) is conditional until the Part 3 fuel supplier submits a report under section 7 showing that the Part 3 fuel supplier supplied the amount prescribed under subsection (1) (q) (ii) or less of the class or classes, as applicable, of Part 3 fuel in the compliance period, and

(b) is cancelled and has no effect for the compliance period if the Part 3 fuel supplier's report under section 7 for the compliance period shows that the fuel supplier supplied more than the amount prescribed under subsection (1) (q) (ii) of the class or classes, as applicable, of Part 3 fuel in that compliance period.

Regulations in relation to administrative penalties

27 Without limiting any other provision of this Act, the Lieutenant Governor in Council may make regulations for the purposes of Part 4 [Administrative Penalties] as follows:

(a) prescribing a penalty rate for a compliance period for the purposes of section 9 [automatic administrative penalties: Part 2 fuel requirements] or 10 [automatic administrative penalties: Part 3 fuel requirements];

(b) in relation to administrative penalties under section 11 [imposed administrative penalties: fuel requirements] or 12 [administrative penalties in relation to other matters],

(i) prescribing a limitation period for imposing an administrative penalty and evidentiary matters in relation to that period,

(ii) prescribing procedures to be applied by the director in making a determination of non-compliance, and

(iii) requiring the director to serve a person with a notice of intent to impose an administrative penalty and provide the person with an opportunity to be heard before sending an administrative penalty notice;

(c) in relation to administrative penalties under section 12 [administrative penalties in relation to other matters],

(i) prescribing a maximum or minimum amount of an administrative penalty that may be imposed generally, or for specified contraventions, or the manner of calculating those amounts,

(ii) prescribing provisions of this Act and the regulations in relation to which an administrative penalty may be imposed,

(iii) authorizing administrative penalties to be imposed on a daily basis for continuing contraventions or failures,

(iv) prescribing matters that must be considered by the director in imposing the penalty in a particular case, and

(v) prohibiting the director from serving an administrative penalty notice on a person who has demonstrated to the satisfaction of the director that the person exercised due diligence to prevent the specified contravention or failure;

(d) establishing the required content of administrative penalty notices;

(e) establishing procedures for providing a person on whom a notice of intent to impose an administrative penalty has been served with an opportunity to be heard, which may include opportunities that do not involve an oral hearing;

(f) respecting the time limit, manner and process for paying an administrative penalty;

(g) prescribing the consequences of failing to pay an administrative penalty which may include, but are not limited to, imposing additional administrative penalties under section 12;

(h) providing for the publication of information respecting the imposition of an administrative penalty.

Regulations in relation to labelling

27.1 Without limiting any other provision of this Act, the Lieutenant Governor in Council may make regulations requiring a person that provides to a purchaser gasoline class fuel, or diesel class fuel, that contains renewable fuel to label its fuel dispensing equipment or provide notice to the purchaser

(a) in the prescribed circumstances,

(b) in the form and manner specified in the regulation, and

(c) identifying the renewable fuel and the range of renewable fuel content contained in the gasoline class fuel or diesel class fuel.

Regulations in relation to appeals

28 (1) The Lieutenant Governor in Council may make regulations respecting appeals under Part 5 [Appeals to Environmental Appeal Board], including, without limitation, prescribing decisions or classes of decisions as being appealable under that Part.

(2) Regulations under subsection (1) may provide that specified provisions of the Environmental Management Act in relation to appeals apply in relation to appeals under this Act with the changes the Lieutenant Governor in Council considers necessary or advisable.

Regulations in relation to inspections

29 (1) Without limiting any other provision of this Act, the Lieutenant Governor in Council may make regulations respecting inspections for the purposes of ensuring compliance with this Act and the regulations, including, without limitation, regulations as follows:

(a) authorizing the director to designate persons or classes of persons as inspectors and issue identification to those inspectors;

(b) prescribing inspection and seizure powers, including, without limitation, and as is necessary for the purposes of inspection, the authority to

(i) enter land or premises,

(ii) inspect, analyze, measure, sample or test anything,

(iii) use or operate anything or require the use or operation of anything, under conditions specified by the inspector,

(iv) take away samples,

(v) make or take away copies of records, photographs or audio or video records,

(vi) take, with the inspector, other persons or equipment, and

(vii) require a person who is the subject of an inspection or who is or was a director, receiver, receiver manager, officer, employee, banker or agent of such a person to produce records for examination or copying or to provide information;

(c) limiting inspection and seizure powers of an inspector who is not an employee under the Public Service Act and requiring that the limitations be set out in identification provided by the director;

(d) requiring that an inspector exercising powers under this Act provide identification on request.

(2) Regulations under subsection (1) may provide that specified provisions of the Environmental Management Act in relation to inspections or seizures apply in relation to inspections or seizures under this Act with the changes the Lieutenant Governor in Council considers necessary or advisable.

Repealed

29.1 [Repealed 2012-18-29.]

Commencement

30 This Act comes into force by regulation of the Lieutenant Governor in Council.

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