

## **BILL 15 – 2022**

# **LOW CARBON FUELS ACT**

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

**PART 1 – INTERPRETATION**

**Division 1 – Definitions and Application**

**Definitions**

1 In this Act:

“**allocation agreement**” means an agreement under section 7 (1) [*allocation agreements*];

“**alternative**”, in relation to a base fuel, has the meaning given to it in section 5 [*alternatives to base fuels*];

“**appeal board**” means the Environmental Appeal Board under the *Environmental Management Act*;

“**assessment**” means assessment under section 30 [*assessment by director*];

“**balance**”, in relation to a person, means the number of compliance units held by the person;

“**base fuel**” means any of the following:

- (a) fossil-derived diesel fuel;
- (b) fossil-derived gasoline;

- (c) fossil-derived jet fuel;
- (d) a prescribed fossil-derived fuel;

“**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 of the minister;

“**carbon intensity**”, in relation to fuel, means the greenhouse gas emissions attributable to the fuel proportionate to the energy provided by the fuel in its expected use, expressed as grams of carbon dioxide equivalent per megajoule of energy;

“**carbon intensity record**” has the meaning given to it in section 18 [*carbon intensity record*];

“**category**”, in relation to fuel, has the meaning given to it in section 3 [*categorization of fuels*];

“**compliance date**”, in relation to a compliance period, means a prescribed date that is after the compliance period;

“**compliance period**” means a prescribed period of time;

“**component**”, in relation to a base fuel, has the meaning given to it in section 4 [*components of base fuels*];

“**credit**” means a positive number of compliance units;

“**debit**” means a negative number of compliance units;

“**director**” means the government employee designated in writing by the minister as the director for the purposes of this Act;

“**eligible renewable fuel**”, in relation to a category of fuel, means a fuel prescribed for the category by the minister;

“**final supply equipment**” means the final equipment, determined in accordance with the regulations, through which a fuel is supplied for use;

“**fossil-derived**”, in relation to a fuel, means derived from material formed in the geological past from the remains of living organisms;

“**fuel**” means a fuel or other energy source;

“**greenhouse gas**” has the same meaning as in the *Climate Change Accountability Act*;

“**initiative fund**”, in relation to a reporting utility, means the fund established by the reporting utility under section 24 [*initiative fund*];

“**initiative plan**” means a plan approved under section 23 (3) (a) [*initiative plan*];

- “inter-refiner agreement”** means an allocation agreement in relation to
- (a) a base fuel, or
  - (b) a fossil-derived component of a base fuel;
- “local utility”** means a municipality or regional district that would be a public utility but for paragraph (c) of the definition of “public utility” in section 1 (1) of the *Utilities Commission Act*;
- “market”**, in relation to fuel, has the meaning given to it in section 6 (1) [*supply and marketing of fuel*];
- “notice of assessment”** means a notice under section 30;
- “notice of reassessment”** means a notice under section 31 [*reassessment by director*];
- “public utility”** has the same meaning as in section 1 (1) of the *Utilities Commission Act*;
- “published carbon intensity”**, in relation to a fuel, means the carbon intensity published under section 20 [*determining carbon intensity – publication*] for the fuel;
- “reassessment”** means reassessment under section 31;
- “recorded carbon intensity”**, in relation to a fuel, means the carbon intensity referenced or specified in the carbon intensity record for the fuel;
- “reportably export”** has the meaning given to it in section 8 (1) [*reportable export*];
- “reportably supply”** has the meaning given to it in section 6 (2) [*supply and marketing of fuel*];
- “reporting utility”** means a prescribed public or local utility;
- “responsible”**, in relation to fuel, has the meaning given to it in section 6;
- “supply”**, in relation to fuel, means to sell or otherwise provide the fuel to a person;
- “type A fuel”** means a fuel other than a type B fuel;
- “type B fuel”** means any of the following:
- (a) electricity;
  - (b) natural gas;
  - (c) propane;
  - (d) a prescribed fuel.

**Application of Act**

- 2 (1) Subject to subsection (2), this Act applies in relation to fuel that is
- (a) a base fuel, or
  - (b) a component of or alternative to a base fuel.

- (2) This Act does not apply in relation to
  - (a) prescribed fuel, or
  - (b) the use, supply or export of fuel in the prescribed circumstances or in an amount less than the prescribed amount.

## **Division 2 – Categorization of Fuels**

### **Categorization of fuels**

- 3 For the purposes of this Act, fuels are to be categorized into categories defined by a base fuel and consisting of
  - (a) the base fuel, and
  - (b) components of and alternatives to the base fuel.

### **Components of base fuels**

- 4 Subject to the regulations of the minister, a fuel is a component of a base fuel if the fuel is supplied to be used as a component of the base fuel.

### **Alternatives to base fuels**

- 5 (1) Subject to the regulations of the minister, a fuel is an alternative to a base fuel if
  - (a) the fuel is supplied for the purpose of transportation and the base fuel would most likely be used for that purpose if the only useable fuels were base fuels, or
  - (b) the fuel is supplied for a purpose other than transportation and the base fuel would most likely be used for that purpose if the only useable fuels were
    - (i) base fuels, and
    - (ii) electricity supplied by a public or local utility.
- (2) For the purpose of subsection (1) (b), electricity supplied by a public or local utility is to be considered not to be useable at a location if the location is
  - (a) in a prescribed geographic area, or
  - (b) at least the prescribed distance from a connection to a prescribed electrical transmission grid.

## **PART 2 – RESPONSIBILITY FOR FUEL**

### **Supply and marketing of fuel**

- 6 (1) A person markets fuel in a compliance period if
  - (a) the fuel is reportably supplied in the period, and

- (b) the person is responsible for the fuel at the end of the compliance date for the period.
- (2) A fuel is reportably supplied in a compliance period if the fuel
  - (a) has not previously been reportably supplied, and
  - (b) meets one of the following criteria in the period:
    - (i) the fuel is used in British Columbia;
    - (ii) the fuel is type A fuel and is supplied in British Columbia by a person who is responsible for the fuel at the end of the compliance date for the period;
    - (iii) the fuel is type B fuel and is supplied in British Columbia through final supply equipment.
- (3) A person becomes responsible for a type A fuel if the person
  - (a) manufactures or imports the fuel in British Columbia,
  - (b) is made responsible for the fuel under the regulations, or
  - (c) is made responsible for the fuel under an allocation agreement.
- (4) A person becomes responsible for a type B fuel if the person
  - (a) supplies the fuel through final supply equipment in British Columbia,
  - (b) is made responsible for the fuel under the regulations, or
  - (c) is made responsible for the fuel under an allocation agreement.
- (5) A person who becomes responsible for a fuel under a paragraph in subsection (3) or (4) ceases to be responsible for the fuel if another person becomes responsible for the fuel under a later paragraph of subsection (3) or (4) or under a further allocation agreement.

**Allocation agreements**

- 7 (1) Subject to subsection (2) and the regulations, a person may, in relation to fuel for which the person is responsible, enter into an agreement with another person that makes the other person responsible for the fuel.
- (2) An agreement under subsection (1) is subject to the following restrictions:
  - (a) an agreement in relation to a type A fuel may allocate responsibility to a person to whom the allocating person supplies the fuel;
  - (b) an agreement in relation to a type B fuel may allocate responsibility
    - (i) to a person to whom the allocating person supplies the fuel,
    - (ii) to a person who supplied the fuel to the allocating person, if responsibility for the fuel has not previously been allocated as described in subparagraph (i), or
    - (iii) to any person, in the case of electricity.

**Reportable export**

- 8** (1) A person reportably exports fuel in a compliance period if
- (a) the person exports the fuel out of British Columbia in the period, and
  - (b) the fuel was marketed in British Columbia in or before the period.
- (2) If fuel is reportably exported and brought back into British Columbia, a reportable supply made before the reportable export is not to be considered for the purposes of section 6 (2) (a).

**PART 3 – RENEWABLE FUEL REQUIREMENTS**

**Renewable fuel target**

- 9** (1) In this section:
- “**tracked category**” means
- (a) the diesel fuel category,
  - (b) the gasoline fuel category,
  - (c) the jet fuel category, and
  - (d) a prescribed category;
- “**tracked fuel**”, in relation to a tracked category, means
- (a) the base fuel for the category,
  - (b) fossil-derived components of that base fuel, and
  - (c) eligible renewable fuel in the category.
- (2) This section applies on assessment and on reassessment.
- (3) A person who markets tracked fuel in a tracked category in a compliance period must ensure that, of that fuel, eligible renewable fuel comprises at least the percentage prescribed for the period.

**Notional transfer, retention and deferral**

- 10** (1) Subject to the regulations, a person who is required to meet a renewable fuel target under section 9 in a compliance period may notionally transfer all or part of the eligible renewable fuel that the person markets in the period to another person who is required to meet the target and agrees to the transfer.
- (2) If a person who is required to meet a renewable fuel target under section 9 exceeds the target, the person may
- (a) notionally retain an amount of the eligible renewable fuel that does not exceed the lesser of the excess and the prescribed portion of the target, and
  - (b) apply that amount to the target for the next compliance period.



- (3) Despite subsection (2), if a person who is required to meet a renewable fuel target under section 9 fails to meet the target, the person may
  - (a) defer a portion of the target that does not exceed the lesser of the deficiency and the prescribed portion of the target as it stands before any addition under paragraph (b) of this subsection, and
  - (b) add the deferred portion to the target for the next compliance period.

**Renewable fuel labelling**

- 11 If and as required by the regulations of the minister, a person who supplies fuel to a consumer must
  - (a) post labels respecting the renewable fuel content of the fuel, and
  - (b) give notice to the consumer respecting that content.

**PART 4 – LOW CARBON FUEL REQUIREMENTS**

**Division 1 – Low Carbon Fuel Target**

**Low carbon fuel target**

- 12 (1) This section applies on assessment and on reassessment.
- (2) A person who markets fuel in a compliance period must, at the end of the compliance date for the period, have a balance of zero or more compliance units.

**Supply of fuel**

- 13 (1) This section applies
  - (a) on assessment and on reassessment, and
  - (b) on application in accordance with the regulations of the minister.
- (2) The director may, in accordance with subsection (3), issue compliance units to a person in relation to fuel if
  - (a) the person markets the fuel, or
  - (b) in the case of an application under subsection (1) (b), the director is satisfied that the person intends to market the fuel.

- (3) Subject to subsection (4), the number of compliance units to be issued under subsection (2) in relation to the fuel, which may be a positive or negative number, is the number determined in accordance with the following formula, as it applies on the date the fuel is reportably supplied:

$$\text{number} = (\text{TCI} \times \text{EER} - (\text{RCI} + \text{UCI})) \times \frac{\text{EC}}{1\,000\,000 \text{ grams}}$$

where

- TCI = the target carbon intensity for the fuel, as determined under subsection (5);
- EER = the energy effectiveness ratio of the fuel, as determined in accordance with the regulations of the minister;
- RCI = the recorded carbon intensity of the fuel;
- UCI = the additional carbon intensity attributed to the use of the fuel, as determined in accordance with the regulations of the minister;
- EC = the energy content of the fuel in megajoules, as determined in accordance with the regulations of the minister.

- (4) If a person described in subsection (2) does not have a carbon intensity record for the fuel, the recorded carbon intensity of the fuel for the purposes of subsection (3) is deemed to be the applicable carbon intensity specified in section 19 (a) or (b) (ii) [*determining carbon intensity*].
- (5) For the purposes of subsection (3), the target carbon intensity for a fuel is the number determined in accordance with the following formula:

$$\text{TCI} = \text{BCI} \times (1 - \text{R})$$

where

- BCI = the carbon intensity specified in section 19 (a) for the base fuel for the category to which the fuel belongs;
- R = the prescribed reduction for that category, expressed as a percentage.

#### Sequestration of greenhouse gas

- 14 (1) In this section:

“**eligible greenhouse gas**” means carbon dioxide or a prescribed greenhouse gas that is removed in accordance with the regulations, if any, from

- (a) the atmosphere at a site in British Columbia, or
- (b) the exhaust of a vehicle in British Columbia;

- “**sequester**”, in relation to a greenhouse gas, means to sequester the gas, or a component of the gas, so that it is permanently unavailable to the atmosphere.
- (2) This section applies
    - (a) on assessment and on reassessment, and
    - (b) on application in accordance with the regulations of the minister.
  - (3) Subject to subsection (5), the director may, in accordance with subsection (4), issue compliance units to a person who sequesters an eligible greenhouse gas in British Columbia or elsewhere in accordance with the regulations, if any.
  - (4) The number of compliance units to be issued under subsection (3) in relation to the sequestration of an eligible greenhouse gas is the difference between the following, both expressed in tonnes of carbon dioxide equivalent:
    - (a) the amount of the eligible greenhouse gas sequestered;
    - (b) the amount of greenhouse gases emitted to remove and sequester the gas.
  - (5) The director may not issue compliance units under subsection (3) to a person in relation to the sequestration of an eligible greenhouse gas in a compliance period for which the person did not submit a report under section 28 (3) [*compliance reports*].

#### **Initiative agreements**

- 15**
- (1) In this section, “**eligible goal**” means
    - (a) reducing the carbon intensity of a fuel, or
    - (b) increasing the use of a fuel with a carbon intensity below the prescribed carbon intensity.
  - (2) The director may issue credits to a person in accordance with an agreement under this section.
  - (3) Subject to this section and the regulations, the director may, with the approval of the minister, enter into an agreement with a person that provides for the issuance of credits to the person in relation to an action that the person proposes to take.
  - (4) The director may not enter into an agreement under this section with a person in relation to a proposed action unless
    - (a) the person manufactures or supplies fuel, in British Columbia or elsewhere, for use in British Columbia and the director is satisfied that the proposed action has a reasonable possibility of achieving an eligible goal,
    - (b) the person manufactures or supplies feedstock, in British Columbia or elsewhere, for manufacturing described in paragraph (a) and the director is satisfied that the proposed action has a reasonable possibility of achieving an eligible goal,

- (c) the person intends to become a person described in paragraph (a) or (b) and the director is satisfied that the proposed action
    - (i) has a reasonable possibility of achieving an eligible goal, and
    - (ii) will advance the intention, or
  - (d) the director is satisfied that the proposed action has a reasonable possibility of reducing the use of a base fuel in British Columbia for a purpose other than transportation.
- (5) The director may not enter into an agreement under this section that contemplates the issuance of more than the following numbers of credits:
- (a) in the compliance period in which the agreement is entered, the difference between
    - (i) 25% of the number of debits, expressed as a positive number, that the director estimates have been or will be issued under section 13 (2) [*supply of fuel*] in relation to the previous compliance period, and
    - (ii) the number of credits that the director estimates have been or will be issued in the compliance period under other agreements under this section;
  - (b) in each subsequent compliance period, the difference between
    - (i) 20% of the number of debits, expressed as a positive number, that the director estimates will be issued under section 13 (2) in relation to the previous compliance period, and
    - (ii) the number of credits that the director estimates will be issued in the compliance period under other agreements under this section.

**Transfer of credits**

- 16** (1) Subject to the regulations, the director may record a transfer of credits from one person to another if the persons
- (a) are both registered under the regulations, and
  - (b) both submit a notice of the proposed transfer in accordance with subsection (2).
- (2) A notice under subsection (1) (b) must
- (a) be submitted to the director in the form and manner required by the director, and
  - (b) include any information and signed statements required by the regulations.

- (3) A transfer recorded under this section takes effect on the later of the following dates:
  - (a) the date the transfer is recorded;
  - (b) the date specified in the notice under subsection (1) (b).

#### **Export of fuel**

- 17 (1) This section applies
  - (a) on assessment and on reassessment, and
  - (b) on application in accordance with the regulations of the minister.
- (2) The director may, in accordance with subsection (3), issue compliance units to a person who reportably exports fuel.
- (3) Subject to subsection (4), the number of compliance units to be issued under subsection (2) in relation to the fuel, which may be a positive or negative number, is the product of
  - (a) the number determined in accordance with the formula under section 13 (3) [*supply of fuel*], modified in accordance with the regulations, as that section applies on the date the fuel is exported out of British Columbia, and
  - (b) negative one.
- (4) If a person who reportably exports fuel does not have a carbon intensity record for the fuel, the recorded carbon intensity of the fuel for the purposes of subsection (3) is deemed to be the lowest carbon intensity that could have been recorded under section 18 (2) [*carbon intensity record*] for the fuel in the 12 months immediately before the date the fuel is exported.

### **Division 2 – Carbon Intensity of Fuels**

#### **Carbon intensity record**

- 18 (1) If required by the regulations, a person must prepare a carbon intensity record for fuel in accordance with subsection (2).
- (2) A carbon intensity record must
  - (a) be in the form specified by the director,
  - (b) reference the provision under which that carbon intensity is determined, which must be one of the following:
    - (i) section 19 (a) [*prescribed carbon intensity*];
    - (ii) section 19 (b) (i) [*published carbon intensity*];
    - (iii) section 19 (b) (ii) [*default carbon intensity*],

- (c) if section 19 (b) (i) is the provision referenced, specify the published carbon intensity as it stood on the date the record is prepared, and
  - (d) include any prescribed information.
- (3) If required by the regulations, a person who supplies fuel to another person must, in accordance with the regulations, give the other person a copy of the carbon intensity record for the fuel.
- (4) A person who holds a carbon intensity record for a fuel with a published carbon intensity may, if the record was prepared before the published carbon intensity was published and in the period specified under section 20 (4) [*determining carbon intensity – publication*] for the published carbon intensity,
- (a) rely on the record, or
  - (b) revise the record, in accordance with the regulations of the minister, to show the published carbon intensity.

**Determining carbon intensity**

- 19** For the purposes of preparing a carbon intensity record under section 18 (1),
- (a) a base fuel or a fossil-derived component of the base fuel has the carbon intensity prescribed by the minister on the date the fuel is reportably supplied, and
  - (b) the carbon intensity of any other fuel is
    - (i) the published carbon intensity for the fuel on the date the record is prepared, or
    - (ii) if subparagraph (i) does not apply, the default carbon intensity prescribed for the fuel by the minister on the date the fuel is reportably supplied.

**Determining carbon intensity – publication**

- 20** (1) The director may determine in accordance with section 21 [*determining carbon intensity – lifecycle analysis*], and publish on a publicly accessible website maintained by or on behalf of the minister, the carbon intensity of a fuel if
- (a) the fuel is prescribed by the minister, or
  - (b) the manufacturer of the fuel
    - (i) applies to have a carbon intensity published for the fuel, or
    - (ii) is invited, in a notice served on the manufacturer by the director, to apply by a date specified in the notice to have a carbon intensity published for the fuel and fails to apply by that date.

- (2) An application under this section must
  - (a) propose a carbon intensity, and
  - (b) include information in support of the proposed carbon intensity.
- (3) An application, including the information referred to in subsection (2) (b), must
  - (a) be submitted in the form and manner required by the director, and
  - (b) if required by the director or the regulations of the minister, be verified in accordance with the regulations of the minister, as applicable, and any direction of the director.
- (4) A publication under subsection (1) must specify the period of time during which the published carbon intensity applies for the purposes of sections 18 [*carbon intensity record*] and 19 [*determining carbon intensity*], which may begin
  - (a) on or after the date of publication, or
  - (b) in the case of a carbon intensity published in response to an application under this section, on or after the date of the application.
- (5) The director must serve on a person who applies, or is invited to apply, under this section written reasons for any of the following decisions:
  - (a) in the case of an application, a decision
    - (i) to publish a higher carbon intensity than proposed, or
    - (ii) not to publish a carbon intensity;
  - (b) in the case of a failure to apply, a decision to publish a carbon intensity.
- (6) If a person who manufactures, supplies or exports fuel with a published carbon intensity becomes aware that the carbon intensity of the fuel has changed or will change, the person must immediately give written notice to the director.
- (7) The director may reduce the period of time referred to in subsection (4) during which a published carbon intensity applies if the director
  - (a) considers that the published carbon intensity is or might be inaccurate, and
  - (b) in the case of a carbon intensity published in response to an application under this section, serves a notice of the reduction on the applicant at least 30 days before the last day of the reduced period.

**Determining carbon intensity – lifecycle analysis**

- 21** (1) In this section, “**stage**”, in relation to the lifecycle of a fuel, has the meaning prescribed by the minister.
- (2) For the purposes of section 20 (1) [*determining carbon intensity – publication*], the carbon intensity of a fuel is the sum of the carbon intensities for the stages in the lifecycle of the fuel, as determined under subsection (3).
- (3) The carbon intensity for a stage in the lifecycle of a fuel is to be determined
- (a) in accordance with the regulations of the minister, or
  - (b) by using an alternative method that is
    - (i) developed and proposed in accordance with the regulations, if any, of the minister, and
    - (ii) accepted by the director as a more accurate method of determining the carbon intensity for the stage.
- (4) If the director decides not to accept an alternative method proposed under subsection (3) (b), the director must serve written reasons on the person who made the proposal.

**PART 5 – PUBLIC AND LOCAL UTILITIES**

**Division 1 – Legacy Electricity**

**Legacy electricity**

- 22** (1) In this section, “**TransLink**” has the same meaning as “authority” in section 1 (1) of the *South Coast British Columbia Transportation Authority Act*.
- (2) Despite section 6 (4) (a) [*responsibility for fuel*], a public or local utility that supplies to a person other than a public or local utility electricity to be used for any of the following purposes is responsible for the electricity unless another person becomes responsible under section 6 (4) (b) or (c) and (5):
- (a) to charge a vehicle at a residential building that includes fewer than 5 dwelling units;
  - (b) to power an electric train operated by TransLink on a fixed rail that was operated by TransLink on December 31, 2020 or a replacement fixed rail installed in the same location;
  - (c) to power a trolley bus operated by TransLink on trolley wires that were operated by TransLink on December 31, 2020 or replacement trolley wires installed along the same roads.



## Division 2 – Initiative Planning

### Initiative plan

- 23 (1) A reporting utility must
- (a) prepare a plan, in accordance with the regulations, if any, for the purposes of section 24 [*initiative fund*], and
  - (b) submit the plan to the minister for approval.
- (2) The minister may, in accordance with the regulations,
- (a) approve a plan submitted under subsection (1) (b), or
  - (b) require the reporting utility to make changes to the plan and resubmit it under that subsection.
- (3) A plan must be submitted under subsection (1) (b)
- (a) in the form and manner required by the minister, and
  - (b) by the date specified by the minister.
- (4) The minister may, in accordance with the regulations, amend or cancel an initiative plan.

### Initiative fund

- 24 (1) A reporting utility must establish a fund that consists of
- (a) money required under section 25 (3) to be paid into the fund, and
  - (b) interest calculated on and attributable to the balance in the fund.
- (2) Subject to subsection (3), a reporting utility that has an initiative plan
- (a) must implement the initiative plan, and
  - (b) may expend amounts out of the initiative fund only if the expenditure is
    - (i) in accordance with both the regulations and the initiative plan, or
    - (ii) ordered or authorized under section 26 (1) [*financial control*].
- (3) An initiative plan that conflicts with the regulations under subsection (2)
- (b) (i) is without effect to the extent of the conflict.

### Sale of credits

- 25 (1) In this section:
- “**counted sales**”, in relation to a reporting utility and sale period, means the lesser of the following:
- (a) the number of credits sold by the reporting utility in accordance with subsection (2) in the sale period;
  - (b) the sale target specified by subsection (4) for the sale period;

“**sale period**”, in relation to a reporting utility, means

- (a) the prescribed period, or
  - (b) if no period is prescribed, the fiscal year of the reporting utility.
- (2) A reporting utility must, in accordance with the regulations, offer for sale under section 16 [*transfer of credits*] a number of credits in each sale period that is at least equal to the sale target specified by subsection (4) for the sale period.
- (3) A reporting utility must, in each sale period, pay into the initiative fund of the reporting utility an amount of money that is equal to the amount of money paid or payable to the reporting utility for the counted sales of the reporting utility for the sale period.
- (4) For the purposes of this section, the sale target for a reporting utility and a sale period is the number determined in accordance with the following formula:

sale target = preliminary target + previous sale target – previous counted sales

where

preliminary target = the preliminary target, as determined in accordance with subsection (5);

previous sale target = the sale target of the reporting utility for the previous sale period;

previous counted sales = the counted sales of the reporting utility for the previous sale period.

- (5) For the purposes of subsection (4), the preliminary target for a reporting utility and a sale period is the greater of zero and the product of
- (a) 0.75, and
  - (b) the number of compliance units issued under section 13 (2) [*supply of fuel*] in the sale period to the reporting utility in relation to electricity other than electricity described in section 22 (2) (b) or (c) [*legacy electricity for trains and trolley buses*].

#### **Financial control**

- 26** (1) Subject to the regulations, the minister may, by order,
- (a) require the reporting utility to pay some or all of the money in the initiative fund to the government, or
  - (b) authorize the reporting utility to remove money from the initiative fund.

- (2) Without limiting subsection (1), but subject to the regulations, the minister may make an order under that subsection in relation to a reporting utility if the reporting utility
  - (a) fails to comply with section 24 (2) [*initiative fund*], or
  - (b) is not implementing an initiative plan to the satisfaction of the minister.
- (3) An amount of money specified in an order under subsection (1) may be recovered as a debt due to the government.
- (4) If a reporting utility fails to pay an amount of money specified in an order under subsection (1) by the date specified in the order, the minister 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.
- (5) A certificate under subsection (4) must
  - (a) be signed by the minister, and
  - (b) contain the name of the reporting utility and the amount specified in the order under subsection (1).

**Interaction with other enactments**

- 27
- (1) Despite any other enactment, a reporting utility may implement an initiative plan and take other actions for the purposes of this Part.
  - (2) Without limiting subsection (1), the following provisions do not apply in relation to expenditures under section 24 (2) [*initiative fund*]:
    - (a) section 25 [*general prohibition against assistance to business*] of the *Community Charter*;
    - (b) section 153 [*exceptional grants only upon assent of electors*] of the *Vancouver Charter*;
    - (c) section 273 [*general prohibition against assistance to business*] of the *Local Government Act*.
  - (3) The *Utilities Commission Act* does not apply in relation to anything done by a reporting utility for the purposes of this Part.

## **PART 6 – REPORTS AND ASSESSMENTS**

### **Division 1 – Reports**

#### **Compliance reports**

- 28** (1) A person must submit a report for a compliance period if, in the period, the person
- (a) markets fuel,
  - (b) reportably exports fuel, or
  - (c) allocates responsibility for a type A fuel under an allocation agreement other than an inter-refiner agreement.
- (2) If required by the regulations, a person must submit a report for a compliance period if, in the period, the person
- (a) supplies fuel in British Columbia,
  - (b) allocates responsibility for a type B fuel under an allocation agreement,
  - (c) is party to an agreement under section 15 [*initiative agreements*] with the director, or
  - (d) is a reporting utility or has an initiative fund under section 24 [*initiative fund*].
- (3) A person may submit a report for a compliance period for the purposes of section 14 [*sequestration of greenhouse gas*].
- (4) A report under this section must be submitted to the director
- (a) by the compliance date for the compliance period, and
  - (b) in the form and manner required by the director.
- (5) A report under this section must
- (a) be prepared in accordance with, and contain the information required by, the regulations of the minister, and
  - (b) if required by the regulations of the minister, be verified in accordance with those regulations.

#### **Supplementary reports**

- 29** (1) A person must submit a supplementary report within 30 days after the person becomes aware that
- (a) information in a previous report under this Division did not completely and accurately disclose the information required to be included in the report, or
  - (b) information reported in a previous report has changed.

- (2) Subsection (1) does not apply in relation to inaccuracies, omissions or changes that are considered under the regulations of the minister to be immaterial.
- (3) A supplementary report under this section must be submitted to the director in the form and manner required by the director.
- (4) A supplementary report under this section must
  - (a) be prepared in accordance with, and contain the information required by, the regulations of the minister, and
  - (b) if required by the regulations of the minister, be verified in accordance with those regulations.

## **Division 2 – Assessments**

### **Assessment by director**

- 30** (1) On receipt of a report under section 28 (1) (a) or (b) or (3) [*compliance reports*] of a person in relation to a compliance period, the director must serve on the person a notice of assessment that sets out the following, as applicable:
- (a) a statement of whether the person has met the renewable fuel targets set under section 9 [*renewable fuel target*];
  - (b) the amount of eligible renewable fuel that the director assesses as having been notionally transferred away by the person under section 10 (1) [*notional transfer, retention and deferral*], on or before the compliance date, that has not previously been assessed as transferred;
  - (c) the amount of eligible renewable fuel that the director assesses as having been notionally received by the person under section 10 (1), on or before the compliance date for the period, that has not been previously assessed as transferred;
  - (d) the amount of eligible fuel that the director assesses as having been notionally retained under section 10 (2) by the person;
  - (e) the portion of the renewable fuel target under section 9 that the director assesses as having been deferred under section 10 (3) by the person;
  - (f) a statement of whether the person has met the low carbon fuel target set under section 12 [*low carbon fuel target*];
  - (g) subject to subsection (2) of this section, the balance of the person at the end of the compliance date for the period;
  - (h) the number of credits that the director assesses as having been transferred away by the person under section 16 [*transfer of credits*], on or before the compliance date for the period, that have not been previously assessed as transferred;

- (i) the number of credits that the director assesses as having been received by the person under section 16, on or before the compliance date for the period, that have not been previously assessed as transferred;
- (j) the number of compliance units that the director previously issued to the person in relation to the period under each of the following provisions:
  - (i) section 13 (2) [*supply of fuel*];
  - (ii) section 14 (3) [*sequestration of greenhouse gas*];
  - (iii) section 15 (2) [*initiative agreements*];
  - (iv) section 17 (2) [*export of fuel*];
- (k) the number of compliance units that the director issues to the person in relation to the period under each of the following provisions:
  - (i) section 13 (2);
  - (ii) section 14 (3);
  - (iii) section 17 (2);
- (l) the number of compliance units that are added to or subtracted from the balance of the person under section 32 [*adjustments on assessment and on reassessment*];
- (m) if the person has not met a renewable fuel target set under section 9, a statement
  - (i) notifying the person that section 37 (1) [*automatic administrative penalties*] applies, and
  - (ii) specifying the amount of the administrative penalty determined under section 37 (1);
- (n) if the person has not met the low carbon fuel target set under section 12, a statement
  - (i) notifying the person that section 37 (2) applies, and
  - (ii) specifying the amount of the administrative penalty determined under section 37 (2);
- (o) if the person is a reporting utility, the number of compliance units referred to in paragraph (k) (i) that are issued in relation to each of the following:
  - (i) electricity described in section 22 (2) (a) [*legacy electricity – small residential buildings*];
  - (ii) electricity described in section 22 (2) (b) [*legacy electricity – trains*];
  - (iii) electricity described in section 22 (2) (c) [*legacy electricity – trolley buses*];
  - (iv) electricity other than electricity referred to in subparagraphs (i) to (iii).

- (2) An issuance or adjustment referred to in subsection (1) (k) or (l) takes effect on the compliance date for the reported compliance period.
- (3) If a person who is required under section 28 (1) (a) or (b) to submit a report fails to do so, the director may serve on the person a notice of assessment under subsection (1) of this section.

**Reassessment by director**

- 31 (1) The director may conduct a reassessment of any of the latest 7 compliance periods.
- (2) If a reassessment of a compliance period differs from the initial assessment or a previous reassessment under this section, the director must serve on the person reassessed a notice of reassessment that sets out the information, for the compliance period and each subsequent compliance period, that is required to be set out in a notice of assessment.

**Adjustments on assessment and on reassessment**

- 32 (1) On assessment and on reassessment, the director may adjust the balance, including adjustments to below zero, of the person.
- (2) For certainty, an adjustment of the balance of a person on the basis that a credit ought not to have been issued does not affect the balance of another person to whom the credit has been transferred under section 16 [*transfer of credits*].

**Division 3 – General**

**Information requests**

- 33 On request by the director, a person who submits a report under Division 1 [*Reports*] must provide additional information or records in support of the report within the period of time specified by the director.

**Audits of reports**

- 34 If required by the director, a person who submits a report under Division 1 must have the report audited
  - (a) within the period of time specified by the director, and
  - (b) in accordance with the regulations of the minister, if applicable, and any directions of the director.

**Record-keeping requirements**

- 35** (1) A person must maintain the following records:
- (a) records sufficient to verify the following information, as applicable:
    - (i) information the person is required to report under section 28 [*compliance reports*] or does report under any provision of Division 1 [*Reports*];
    - (ii) information the person provides to the director under section 33 [*information requests*];
  - (b) if the person enters into an agreement with the director under section 15 [*initiative agreements*], records sufficient to demonstrate
    - (i) the status of the action proposed in the agreement, and
    - (ii) whether the action, or a stage of the action, has been completed;
  - (c) if the person applies under section 20 (1) [*determining carbon intensity – publication*] to have a carbon intensity published for a fuel,
    - (i) records sufficient to verify the information referred to in section 20 (2) (b), and
    - (ii) in the case that a carbon intensity is published, records sufficient to identify any changes to the carbon intensity;
  - (d) if the person is a reporting utility, records sufficient to verify the following information, as applicable:
    - (i) offers and sales made by the person for the purposes of section 25 (2) [*sale of credits*];
    - (ii) actions taken by the person to implement an initiative plan;
    - (iii) the amounts of expenditures from the person’s initiative fund, and the dates on which and the purposes, actions, programs or other matters in relation to which the expenditures were made;
  - (e) records sufficient to verify any information the person provides to the director for the purposes of section 47 [*reconsiderations*];
  - (f) prescribed records.
- (2) The records required under subsection (1) must be retained for the following period of time, as applicable:
- (a) in the case of records referred to in subsection (1) (a), 6 years after the compliance date for the compliance period to which the records relate;
  - (b) in the case of records referred to in subsection (1) (b), 6 years after the later of
    - (i) the date on which the agreement is entered into, and
    - (ii) the date on which credits are last issued under section 15 in relation to the agreement;



- (c) in the case of records referred to in subsection (1) (c), 6 years after the later of
    - (i) the date of the application, and
    - (ii) if applicable, the date on which the published carbon intensity ceases to apply;
  - (d) in the case of records referred to in subsection (1) (d), 6 years after the offer, sale, action or expenditure, as applicable, to which the records relate;
  - (e) in the case of records referred to in subsection (1) (e), 6 years after the date on which the written reasons for the reconsideration are served;
  - (f) in the case of records referred to in subsection (1) (f), the prescribed period of time.
- (3) The recording, maintenance and retention of records must be done in accordance with any requirements established by regulation.

## **PART 7 – COMPLIANCE AND ENFORCEMENT**

### **Division 1 – Inspections**

#### **Inspections**

- 36** (1) For the purposes of ensuring compliance with this Act and the regulations,
- (a) the director may designate persons or classes of persons as inspectors and issue identification to those inspectors, and
  - (b) an inspector designated under paragraph (a) may do one or more of the following:
    - (i) at any reasonable time enter land or premises, other than premises or a part of premises used solely as a private residence;
    - (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.
- (2) An inspector who enters land or premises in accordance with this section
- (a) may take along the persons and equipment that the inspector considers may be necessary for the purposes of the inspection, and
  - (b) on request, must provide proof of identity to a person present on the land or premises entered.

- (3) A person who is the subject of an inspection under this section, or who is or was a director, receiver, receiver manager, officer, employee, banker, auditor or agent of a person who is the subject of an inspection under this section, on request of an inspector, must, without charge or unreasonable delay,
  - (a) produce for examination by the inspector any record relating to requirements under this Act, and
  - (b) provide the inspector with information relevant to the purposes of the inspection.
- (4) Section 112 [*seizures and prevention orders*], other than subsections (1) (a) and (4), of the *Environmental Management Act* applies for the purposes of this Act, and for that application
  - (a) a reference in that section to the *Environmental Management Act* is to be read as a reference to this Act,
  - (b) a reference in that section to the regulations under the *Environmental Management Act* is to be read as a reference to the regulations under this Act,
  - (c) a reference in that section to an officer is to be read as a reference to an inspector under this Act, and
  - (d) a reference in that section to an inspection is to be read as a reference to an inspection under this Act.

## **Division 2 – Administrative Penalties**

### **Automatic administrative penalties**

- 37**
- (1) If a person fails to meet a renewable fuel target under section 9 [*renewable fuel target*], the person is subject to an administrative penalty in an amount equal to the product of
    - (a) the shortfall, expressed in litres, and
    - (b) the prescribed penalty rate.
  - (2) If a person fails to meet a low carbon fuel target under section 12 [*low carbon fuel target*],
    - (a) the person is subject to an administrative penalty in an amount equal to the product of
      - (i) the amount of the person's balance below zero, expressed as a positive number, and
      - (ii) the prescribed penalty rate, and
    - (b) the person's balance is increased by a number of compliance units equal to the amount referred to in paragraph (a) (i).
  - (3) An administrative penalty under this section must be paid to the government on the compliance date for the compliance period to which the penalty relates.

- (4) If the director is satisfied that a failure for which a penalty is imposed under this section on a person is the result of an officially induced error or that the person exercised due diligence to prevent the failure, the director may, in accordance with the regulations, waive all or part of the penalty and, in the case of a penalty under subsection (2) (a), subsection (2) (b) applies despite the waiver.

**Discretionary administrative penalties**

- 38** (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
- (a) has contravened a prescribed provision of this Act or the regulations, or
  - (b) has provided false or misleading information
    - (i) in an application under section 13 (1) (b), 14 (2) (b) or 17 (1) (b) [*early issuance applications*],
    - (ii) for the purpose of obtaining an agreement under section 15 [*initiative agreements*] or in a record the person is required under an agreement under that section to provide to the director,
    - (iii) in a carbon intensity record under section 18 (1) or (3) [*carbon intensity record*],
    - (iv) in an application under section 20 (2) [*application for published carbon intensity*],
    - (v) in a report under Division 1 [*Reports*] of Part 6,
    - (vi) in response to a request under section 33 [*information requests*],
    - (vii) under section 36 (3) [*inspections*], or
    - (viii) for the purposes of section 47 [*reconsiderations*].
- (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 an administrative penalty in the amount specified in the notice.

**Requirement to pay administrative penalties**

- 39** (1) In this section, “**determination**” means a determination by the director, as set out in an administrative penalty notice under section 38, of non-compliance, the extent of the non-compliance or the amount of an administrative penalty.

- (2) A person served with an administrative penalty notice under section 38 is subject to an administrative penalty as follows:
- (a) if the person admits, in writing, the determinations set out in the notice, the penalty indicated in the notice is imposed at the time of that admission;
  - (b) if the time for appealing under section 48 [*Appeals to Environmental Appeal Board*] the determination set out in the notice 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 one or more of the determinations set out in the notice 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.
- (3) An administrative penalty under this section must be paid to the government in accordance with the regulations.

#### **Recovery of administrative penalties**

- 40** (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) must
- (a) be signed by the director, and
  - (b) contain the following information:
    - (i) the name of the person who is liable for the penalty;
    - (ii) the contravention, failure or other action in relation to which the penalty is imposed;
    - (iii) the amount of the penalty.

### **Division 3 – Offences**

#### **Offences and penalties**

- 41** (1) A person who contravenes any of the following provisions commits an offence:
- (a) section 11 [*renewable fuel labelling*];
  - (b) section 18 (1) or (3) [*carbon intensity record*];
  - (c) section 28 [*compliance reports*];
  - (d) section 29 (1) [*supplementary reports*];
  - (e) section 33 [*information requests*];

- (f) section 34 [*audits of reports*];
  - (g) section 35 [*record-keeping requirements*];
  - (h) section 50 (2) [*confidentiality*];
  - (i) a provision of the regulations the contravention of which is prescribed to be an offence.
- (2) A person who does either of the following commits an offence:
- (a) obstructs or resists 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 an inspector.
- (3) A person convicted of an offence under subsection (1) (b), (c), (d), (e), (f) or (g) or (2) 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.
- (4) A person convicted of an offence under subsection (1) (a), (h) or (i) 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**

- 42** (1) This section applies in relation to information that is provided
- (a) in an application under section 13 (1) (b), 14 (2) (b) or 17 (1) (b) [*early issuance applications*],
  - (b) in a carbon intensity record under section 18 (1) or (3) [*carbon intensity record*],
  - (c) in an application under section 20 (2) [*application for published carbon intensity*],
  - (d) in a report under Division 1 [*Reports*] of Part 6,
  - (e) in response to a request under section 33 [*information requests*],
  - (f) under section 36 (3) [*inspections*], or
  - (g) for the purposes of section 47 [*reconsiderations*].
- (2) 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.
- (3) A person who provides false or misleading information when required under this Act to provide information, other than a person described in subsection (2), 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.

- (4) A person does not commit an offence under subsection (3) if, at the time the information was provided, the person, with the exercise of reasonable diligence, could not have known that the information was false or misleading.

**Continuing offences**

- 43 If an offence under section 41 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.

**Corporate liability**

- 44 (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, whether or not the corporation is prosecuted or convicted.
- (2) If an employee, officer, director or agent of a corporation commits an offence under this Act while acting on behalf of the corporation, the corporation also commits the offence, whether or not the employee, officer, director or agent is identified, prosecuted or convicted.
- (3) For the purposes of subsection (2), a corporation has the burden of proving that an employee, officer, director or agent of the corporation was not acting on behalf of the corporation at the time the employee, officer, director or agent committed an offence referred to in that subsection.

**Relationship between administrative penalties and offences**

- 45 (1) A person may be prosecuted under this Act for a contravention 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 in relation to which the person has been convicted of an offence under this Act.

**Other provisions relating to offences**

- 46 (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 8 – RECONSIDERATIONS AND APPEALS**

### **Reconsiderations**

- 47** (1) In this section, “**decision**” means any of the following:
- (a) an assessment;
  - (b) a reassessment;
  - (c) a decision referred to in section 20 (5) [*determining carbon intensity – publication*];
  - (d) a decision referred to in section 21 (4) [*determining carbon intensity – lifecycle analysis*];
  - (e) a prescribed decision.
- (2) A person who is served with any of the following may request the director to reconsider the applicable decision:
- (a) a notice of assessment;
  - (b) a notice of reassessment;
  - (c) reasons referred to in section 20 (5);
  - (d) reasons referred to in section 21 (4);
  - (e) a document evidencing a decision referred to in subsection (1) (e) of this section.
- (3) A request under subsection (2) must be made within the prescribed time limits and in accordance with the regulations, if any.
- (4) On request under subsection (2) to reconsider a decision, the director must
- (a) reconsider the decision within the prescribed time limits and in accordance with the regulations, if any, and
  - (b) serve written reasons on the person who made the request.

### **Appeals to Environmental Appeal Board**

- 48** (1) In this section, “**decision**” means any of the following:
- (a) a determination by the director, as set out in an administrative penalty notice under section 38 [*discretionary administrative penalties*], of non-compliance, the extent of the non-compliance or the amount of an administrative penalty;
  - (b) a reconsideration under section 47.

- (2) A person who is served with any of the following may appeal the applicable decision to the appeal board:
  - (a) an administrative penalty notice under section 38;
  - (b) reasons referred to in section 47 (4) (b).
- (3) The following provisions of the *Environmental Management Act* apply in relation to an appeal under this section:
  - (a) Division 1 [*Environmental Appeal Board*] of Part 8 [*Appeals*];
  - (b) section 101 [*time limit for commencing appeal*];
  - (c) section 102 (2) [*procedure on appeals – new hearing*];
  - (d) section 103 [*powers of appeal board in deciding appeal*].

## **PART 9 – GENERAL**

### **Division 1 – General**

#### **Notice and service under this Act**

- 49** (1) A notice or other document that is required to be served on a person under this Act is deemed to have been served if it is
- (a) sent by ordinary mail or registered mail to the person’s address for service,
  - (b) transmitted by email to the person at the email address provided as part of the person’s address for service, or
  - (c) sent, transmitted or delivered by any prescribed method of service.
- (2) If service is by ordinary mail or registered mail, the notice or other document is deemed to have been served 14 days after it is mailed.
- (3) If service is by email, the notice or other document is deemed to have been served 3 days after it is transmitted.
- (4) If service is by a prescribed method of service, the notice or other document is deemed to have been served the prescribed number of days after it is sent, transmitted or delivered, as the case may be.

#### **Confidentiality**

- 50** (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) an application under section 13 (1) (b), 14 (2) (b) or 17 (1) (b) [*early issuance applications*],
  - (b) a notice under section 16 (1) (b) [*transfers of credits*],
  - (c) an application under section 20 (2) [*application for published carbon intensity*],
  - (d) a report under Division 1 [*Reports*] of Part 6,
  - (e) a request under section 33 [*information requests*],
  - (f) a report or statement required under this Act in relation to
    - (i) a verification under section 20 (3) (b),
    - (ii) a verification under section 28 (5) (b) or 29 (4) (b) [*verifications of reports*], or
    - (iii) an audit under section 34 [*audits of reports*],
  - (g) an inspection under section 36 [*inspections*],
  - (h) a request under section 47 (2) [*reconsiderations*], or
  - (i) an information-sharing agreement under section 51 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) the failure of a person to meet a renewable fuel target under section 9 [*renewable fuel target*] for a compliance period and the shortfall referred to in section 37 (1) (a) [*automatic administrative penalty*];
  - (c) the failure of a person to meet a low carbon fuel target under section 12 [*low carbon fuel target*] for a compliance period and the number of credits issued to the person under section 37 (2) (b) in relation to that failure;
  - (d) the category of a fuel and the facts and reasons on which the categorization of the fuel is based;

- (e) information about the carbon intensity of a fuel, including, without limitation, any of the following:
    - (i) a carbon intensity record for the fuel;
    - (ii) a determination under section 20 (1) [*determining carbon intensity – publication*] in relation to the fuel;
    - (iii) an alternative method accepted under section 21 (3) (b) (ii) [*determining carbon intensity – lifecycle analysis*] in relation to the fuel;
  - (f) 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 51 of this Act;
  - (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**

- 51** (1) For the purposes of this section, “**information-sharing agreement**” means a data-matching or other agreement to provide or exchange information related to any of the following:
- (a) the administration or enforcement of this Act or a prescribed enactment of British Columbia or another jurisdiction in Canada;
  - (b) reducing greenhouse gas emissions into the atmosphere.
- (2) Subject to subsection (3), with the prior approval of the Lieutenant Governor in Council, the minister may enter into an information-sharing agreement with any of the following:
- (a) the government of another jurisdiction in or outside Canada or an agent of that government;
  - (b) a public body as defined in the *Freedom of Information and Protection of Privacy Act*.
- (3) The minister may enter into an information-sharing agreement with another ministry of the government.

## Division 2 – Regulations of Lieutenant Governor in Council

### General regulation-making powers

- 52** (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) respecting any matter for which regulations are contemplated by this Act, other than matters for which regulations are contemplated to be made by the minister;
  - (b) defining a word or expression used but not defined in this Act;
  - (c) without limiting paragraph (b), defining “diesel fuel”, “gasoline” or “jet fuel”, including, without limitation, by reference to the characteristics, origins, uses or intended uses of fuel;
  - (d) prescribing fuels, circumstances, amounts or methods for determining amounts for the purposes of section 2 (2) [*application of Act*];
  - (e) respecting the identification of fuel stored in or taken from a tank in which two or more fuels are stored or deeming that fuel to have the identity of any of them;
  - (f) authorizing or requiring the minister to publish specified information that is obtained under this Act.
- (3) In making a regulation under this Act, the Lieutenant Governor in Council may do any 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 classes of fuels, persons, things, circumstances or other matters;
  - (d) establish different classes of fuels, including, without limitation, by reference to their characteristics, origins, uses or intended uses;
  - (e) adopt by reference, in whole, in part or with any changes considered appropriate, a regulation, code, standard or rule
    - (i) enacted as or under a law of another jurisdiction in or outside Canada, or
    - (ii) set by a provincial, national or international body or any other code, standard or rule-making bodyas 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 responsibility and fuel requirements**

- 53 Without limiting any other provision of this Act, the Lieutenant Governor in Council may make regulations as follows:
- (a) respecting the determination of which equipment is final supply equipment for the purposes of the definition of “final supply equipment” in section 1, including, without limitation, deeming any equipment through which fuel is supplied to be or not to be final supply equipment;
  - (b) identifying persons or classes of persons as responsible for fuel for the purposes of section 6 (3) (b) or (4) (b) [*responsibility for fuel*];
  - (c) respecting allocation agreements, including, without limitation,
    - (i) specifying the form and content of allocation agreements, and
    - (ii) imposing additional restrictions on the allocation of responsibility, including, without limitation, restrictions respecting the parties, fuel, supply of the fuel or timing of the agreement;
  - (d) respecting notional transfer under section 10 (1) [*notional transfer, retention and deferral*] and specifying portions for the purposes of section 10 (2) (a) and (3) (a);
  - (e) authorizing the director, on application, to exempt from section 9 [*renewable fuel target*] or 12 [*low carbon fuel target*] a person who markets less than a specified amount of fuel and providing that sections 13 [*supply of fuel*] and 17 [*export of fuel*] do not apply in relation to a person who is exempted from section 12;
  - (f) respecting removal and sequestration of greenhouse gases for the purposes of section 14 (1) and (3) [*sequestration of greenhouse gases*], including, without limitation,
    - (i) specifying methods that may or may not be used to remove or sequester gas,
    - (ii) requiring the removal or sequestration to have been recognized under another enactment, or
    - (iii) specifying circumstances in which removal or sequestration are not to be counted, including, without limitation, to avoid double counting in relation to an enactment of a jurisdiction in or outside Canada or any other scheme, wherever administered, for regulating greenhouse gases;
  - (g) respecting agreements under section 15 [*initiative agreements*], including, without limitation,
    - (i) specifying matters the director may or must consider in deciding whether to enter into an agreement, and
    - (ii) limiting the agreements into which the director may enter, including, without limitation, by reference to classes of persons or to actions or classes of actions or on any other grounds;

- (h) respecting transfers under section 16 [*transfer of credits*], including, without limitation,
  - (i) respecting registration under section 16 (1) (a) and notices under section 16 (1) (b), and
  - (ii) respecting the grounds on which the director may or must refuse to record a transfer;
- (i) respecting carbon intensity records.

**Regulations in relation to public and local utilities**

- 54** (1) Without limiting any other provisions of this Act, the Lieutenant Governor in Council may make regulations as follows:
- (a) respecting the preparation, approval, amendment or cancellation of plans under section 23 [*initiative plan*];
  - (b) prescribing a rate and manner of calculating interest for the purposes of section 24 (1) (b) [*initiative fund*];
  - (c) respecting expenditures under section 24 (2) (b) (i), including, without limitation,
    - (i) specifying the purposes for or actions, programs or other matters in relation to which expenditures may or must be made, and
    - (ii) specifying amounts or methods for determining amounts that may or must be spent for a purpose, action, program or other matter;
  - (d) respecting offers and sales of credits for the purposes of section 25 (2) [*sale of credits*], including, without limitation,
    - (i) respecting how and to whom the credits may or must be offered for sale, and
    - (ii) specifying the price or the method for determining the price at which credits may or must be offered for sale;
  - (e) respecting payment to the government and removal of money under section 26 (1) [*financial control*].
- (2) Without limiting section 52 (3) (c) [*general regulation-making powers*], regulations under this section may be different for different utilities.

**Regulations in relation to administrative penalties**

- 55** Without limiting any other provision of this Division, the Lieutenant Governor in Council may make regulations
- (a) in relation to administrative penalties under section 37 [*automatic administrative penalties*], as follows:
    - (i) prescribing a penalty rate for the purposes of section 37 (1) (b) or (2) (a) (ii) or a method for determining the penalty rate;

- (ii) respecting refunds of overpayments under section 37 (3) and prescribing a rate and manner of calculating interest on amounts payable by or to the government under that section;
- (iii) respecting waivers under section 37 (4), and
- (b) in relation to administrative penalties under section 38 [*discretionary administrative penalties*], as follows:
  - (i) prescribing provisions of this Act and the regulations in relation to which an administrative penalty may be imposed;
  - (ii) prescribing a limitation period for imposing an administrative penalty and evidentiary matters in relation to that period;
  - (iii) prescribing procedures to be applied by the director in making a determination of non-compliance;
  - (iv) prescribing matters that must be considered by the director in imposing an administrative penalty in a particular case;
  - (v) 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;
  - (vi) 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;
  - (vii) 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;
  - (viii) establishing the required content of administrative penalty notices;
  - (ix) 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;
  - (x) authorizing administrative penalties to be imposed on a daily basis for continuing contraventions or failures;
  - (xi) respecting the time limit, manner and process for paying an administrative penalty;
  - (xii) prescribing the consequences of failing to pay an administrative penalty, which may include, but are not limited to, imposing additional administrative penalties under section 38;
  - (xiii) providing for the publication of information respecting the imposition of an administrative penalty.

**Regulations in relation to reconsiderations**

- 56 Without limiting any other provision of this Division, the Lieutenant Governor in Council may make regulations respecting reconsiderations under section 47 [*reconsiderations*].

**Division 3 – Regulations of Minister**

**Regulations of minister**

- 57 (1) The minister may make regulations referred to in section 41 of the *Interpretation Act*.
- (2) Without limiting any other provision of this Act, the minister may make regulations as follows:
- (a) respecting any matter for which regulations are contemplated by this Act to be made by the minister;
  - (b) for the purposes of the definition of “eligible renewable fuel” in section 1 [*definitions*], prescribing, as eligible renewable fuel for a category of fuel, fuel that, in the opinion of the minister, is
    - (i) derived from renewable material, and
    - (ii) suitable for use, alone or in combination with the base fuel for the category, in an internal combustion engine;
  - (c) respecting the determination of whether a fuel is a component of a base fuel for the purposes of section 4 [*components of base fuels*] or deeming a fuel to be or not to be a component of a base fuel for those purposes;
  - (d) respecting the determination of whether a fuel is an alternative to a base fuel for the purposes of section 5 [*alternatives to base fuels*] or deeming a fuel to be or not to be an alternative to a base fuel for those purposes;
  - (e) requiring posting labels and giving notice under section 11 [*renewable fuel labelling*] and respecting the form and content of those labels and notices;
  - (f) respecting applications under section 13 (1) (b), 14 (2) (b) or 17 (1) (b) [*early issuance applications*], including, without limitation,
    - (i) prescribing classes of persons who may apply,
    - (ii) prescribing periods of time to which an application may relate,
    - (iii) respecting the information and verifications required to be included in an application, including, without limitation, anything that may be required under section 28 (5) (a) or (b) [*compliance reports*], and
    - (iv) respecting the grounds on which the director may or must reject an application;

- (g) respecting the determination of carbon intensity under section 21 [*determining carbon intensity – lifecycle analysis*], including, without limitation,
  - (i) prescribing stages in the lifecycle of a fuel, including its feedstock, for the purposes of the definition of “stage” in section 21 (1),
  - (ii) establishing methods for the purposes of section 21 (3) (a), including, without limitation,
    - (A) methods for attributing greenhouse gas emissions to a fuel or a stage in the lifecycle of the fuel, whether the emissions or stage occurs inside or outside British Columbia, and
    - (B) methods authorizing or requiring the use of a computer program or body of data, and
  - (iii) respecting alternative methods for the purposes of section 21 (3) (b), including, without limitation, specifying assumptions or methods that may or must be applied in an alternative method;
- (h) respecting reports under Division 1 [*Reports*] of Part 6;
  - (i) respecting audits under section 34 [*audits of reports*] and verifications under section 20 (3) (b) [*determining carbon intensity – publication*], 28 (5) (b) [*compliance reports*] or 29 (4) (b) [*supplementary reports*], including, without limitation
    - (i) respecting who may conduct audits or verifications,
    - (ii) respecting the conduct of audits or verifications, and
    - (ii) requiring reports or statements in relation to audits or verifications and respecting the form and content of those reports and statements.
- (3) Section 52 (3) [*general regulation-making powers*] applies in relation to a regulation under this section.

## **PART 10 – TRANSITIONAL PROVISIONS, REPEALS AND CONSEQUENTIAL AMENDMENTS**

### **Division 1 – Transitional Provisions**

#### **Definitions**

**58** In this Division:

“**former Act**” means the *Greenhouse Gas Reduction (Renewable and Low Carbon Fuel Requirements) Act*, S.B.C. 2008, c. 16;

“**last old compliance period**” means the last compliance period under the former Act that ends before the repeal of that Act.



**Transition – last compliance period under former Act**

- 59** (1) Subject to subsection (2), this Act applies in relation to the last old compliance period and, for that purpose,
- (a) a person is to be considered to market fuel for the purposes of section 13 (2) [*supply of fuel*] if the person is the Part 3 fuel supplier within the meaning of the former Act of the fuel, and
  - (b) the number of compliance units to be issued under section 13 (2) is to be determined in accordance with the formula set out in section 6 (4) [*low carbon fuel requirement*] of the former Act, excluding fuel described in section 6 (3) of that Act.
- (2) The following provisions of this Act do not apply in relation to the last old compliance period:
- (a) section 14 [*sequestration of greenhouse gas*];
  - (b) section 17 [*export of fuel*];
  - (c) section 28 (1) (b) [*compliance reports – reportable exports*];
  - (d) section 30 (1) (j) (ii) and (iv), (k) (ii) and (iii) and (o) [*assessment by director*].
- (3) On assessment of the last old compliance period, the director may adjust the balance of a person under this Act for the purpose of resolving any difficulties arising from the transition from the former Act to this Act.

**Transition – renewable fuel requirements**

- 60** A notional transfer, a notional retention or a deferral under section 5 [*transferring or retaining renewable fuel excess or deficiency*] of the former Act is deemed to be a notional transfer, a notional retention or a deferral, as the case may be, under section 10 [*notional transfer, retention and deferral*] of this Act.

**Transition – low carbon fuel requirements**

- 61** (1) A person who has a balance of validated credits under the former Act immediately before its repeal has a starting balance under this Act that is equal to the amount of those credits, as determined by the director.
- (2) Despite section 16 [*transfer of credits*] of this Act, the director may record under that section a transfer of credits or debits that is proposed under section 8 [*transferring credits and debits*] of the former Act before this section comes into force and, for that purpose, a reference in section 16 of this Act to a notice is to be read as a reference to the proposal.
- (3) A carbon intensity record prepared in accordance with the regulations under the former Act before this section comes into force is deemed to be a carbon intensity record under this Act.

- (4) A carbon intensity published under section 6 (5) [*low carbon fuel requirement*] of the former Act is deemed to be a published carbon intensity under this Act.

**Transition – initiative agreements**

- 62** (1) An agreement under section 8.01 [*Part 3 agreements*] of the former Act is deemed to be an agreement under section 15 [*initiative agreements*] of this Act.
- (2) Section 15 (5) of this Act is to be read, in relation to agreements entered into in the compliance period in which this section comes into force, as though the reference to debits issued under section 13 (2) [*supply of fuel*] were a reference to debits incurred under section 6 (4) [*low carbon fuel requirement*] of the former Act.

**Transition – regulations**

- 63** (1) The Lieutenant Governor in Council may make regulations considered necessary or advisable for the purpose of more effectively bringing this Act into operation and to avoid any transitional difficulties encountered in doing so.
- (2) A regulation under subsection (1) may be made retroactive to the date this section comes into force or a later date.
- (3) If a regulation under subsection (1) conflicts with another enactment, the regulation prevails.
- (4) This section and, unless earlier repealed, any regulations under this section are repealed 3 years after the date this section comes into force.

**Division 2 – Repeals**

**Repeal of former Act**

- 64** The *Greenhouse Gas Reduction (Renewable and Low Carbon Fuel Requirements) Act*, S.B.C. 2008, c. 16, is repealed.

**Division 3 – Consequential Amendments**

*Hydro and Power Authority Act*

- 65** *Section 32 (7) (c.3) of the Hydro and Power Authority Act, R.S.B.C. 1996, c. 212, is repealed and the following substituted:*  
(c.3) the *Low Carbon Fuels Act*; .

**Commencement**

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