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Bureau of Planning and Sustainability
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ADMINISTRATIVE RULES
Renewable Fuel Standard
Implementing Title 16.60 Motor Vehicle Fuels
- PROPOSED -

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1.0 Authority.

- A.** Portland City Code (“PCC”) Chapter 16.60, Motor Vehicle Fuels, authorizes the Director of Planning and Sustainability to administer and enforce the provisions of PCC Chapter 16.60, including adoption, amendment, and repeal of rules, procedures and forms to implement and enforce renewable fuel standard regulations. The Director may, upon request, issue written interpretations of how PCC Chapter 16.60 and these rules apply in general or to specific circumstances.

2.0 Purpose and Scope.

- A.** The purpose of PCC Chapter 16.60, as identified in Ordinances No. 180313, (passed by the City Council on July 12, 2006), and as subsequently amended by Ordinance No. 180671 (passed by the City Council on December 13, 2006), Ordinance No. 1898290 (passed by the City Council on December 18, 2020, and Ordinance No. 191100 (passed by the City Council on December 7, 2022) is to promote the use of biofuels, stimulate further development of the biofuels industry, and provide consumer and environmental protection in this emerging industry. These administrative rules are intended to provide further detail and specificity regarding the requirements of PCC Chapter 16.60. Fuel distributors, resellers, retailers, nonretail dealers, and wholesale purchaser-consumers are directly regulated by PCC Chapter 16.60 and referred to in these rules as “covered entities.”
- B.** These rules apply to fuel for on-road motor vehicles. Fuels used for the following purposes are not covered by these rules:
 - 1) Railroad locomotives, watercraft, aircraft, and emergency equipment;
 - 2) Dyed diesel for off-road vehicles;
 - 3) Dyed diesel for furnaces, boilers, generators; and
 - 4) Propane and liquefied natural gas for vehicles.
- C.** These rules do not apply to fuel sold in the City of Portland for subsequent delivery outside the City limits.
- D.** Until July 1, 2030, these rules do not apply to any retailer offering a renewable diesel blend of 99 percent (R99 fuel) if such retailer, as of January 1, 2023, has: (1) a minimum of 120,000 gallons of onsite storage; and (2) a minimum of nine truck fueling lanes. Such retailer may also offer, on the same site or a contiguous site, diesel fuel that does not contain biofuels.
- E.** These rules do not apply to any fuel used for vehicle test operations.
- F.** These rules do not apply to Portland-based vehicle manufacturing operations. On and after July 15, 2030, all Portland-based vehicle manufacturing operations must meet the requirements of this Chapter.

- G. These rules are not intended to limit production, sale, or use of fuel for flex fueled vehicles using up to 85 percent ethanol blends.

3.0 Definitions.

Titles, captions and section headings used in these rules are for the convenience of the reader, and shall not be read to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of any of these administrative regulations. The following words and phrases whenever used in these regulations shall be construed as defined in this Section unless from the context a different meaning is intended, or unless a different meaning is specifically defined and more particularly directed to the use of such words or phrases. Words and phrases used in these regulations and not specifically defined shall be construed according to the context and approved usage of the language. Words used in the singular include the plural and the plural includes the singular. Words used in one tense include any other tenses as the context may require.

- A. In any references in these administrative rules to the Oregon Revised Statutes or to the Oregon Administrative Rules, that statute or administrative rule is incorporated in the form in which it exists at the time these administrative rules were adopted on _____.
- B. All terms defined in PCC Chapter 16.60.010 apply to these rules and in addition, the following terms shall be defined as provided in this section:
 - 1) "Absolute CI value" means that all qualifying renewable fuel has a CFP fuel pathway at or below the Carbon Intensity Standard. Fuel with a CI value above the Carbon Intensity Standard may not be used to meet the requirements of PCC Chapter 16.60.
 - 2) "Accredited Laboratory" means a laboratory that is currently accredited by an independent laboratory accrediting body for analyzing motor fuels using American Society of Testing and Materials (ASTM) test procedures and specifications.
 - 3) "ASTM" means ASTM International, the national voluntary consensus standards organization formed for the development of standards on characteristics and performance of materials, products, systems, and services; and the promotion of related knowledge.
 - 4) "Average CI value" means that qualifying renewable fuel used to meet the requirements of PCC Chapter 16.60 may be averaged over the compliance period. Renewable fuel above the Carbon Intensity Standard may be used to meet the requirements, provided a sufficient volume of fuel below the Carbon Intensity Standard was also used such that their weighted average yields a CI value at or

below the Carbon Intensity Standard over the compliance period.

- 5) "Bulk Facility" means a facility, including pipeline terminals, refinery terminals, rail and barge terminals, and associated underground and above ground tanks connected or separate, from which motor vehicle fuels are withdrawn from bulk and delivered to retail, wholesale or non retail facilities or into a cargo tank or barge used to transport products used to comply with PCC Chapter 16.60 or these rules.
- 6) "Compliance Period" means over the course of the calendar year or as defined by the Director.
- 7) "Director" means the Director of the Bureau of Planning and Sustainability or a duly authorized representative of the Director.
- 8) "End User" means the person consuming fuel for the purpose of operating motor vehicles on public roadways.
- 9) "Fuel pathway" means a detailed description of all stages of fuel production and use for any transportation fuel, including feedstock generation or extraction, production, distribution, and combustion of the fuel by the consumer. The fuel pathway is used to calculate the lifecycle carbon intensity value of each transportation fuel.
- 10) "Fuel pathway code" or "FPC" means the identifier used by DEQ in the Oregon Fuels Reporting System that applies to a specific fuel pathway as approved or issued under Oregon Administrative Rules 340-253-0400 through 0470.
- 11) "Fuel pathway holder" means the entity that has applied for and received a FPC from DEQ, or who has a FPC from the California Air Resources Board that has been approved for use in Oregon by DEQ.
- 12) "Fuel Vendor" is any retail dealer, nonretail dealer or wholesale purchaser consumer located in the City of Portland selling or dispensing fuel to an end user.
- 13) "Import" means to have ownership title to transportation fuel at the time it is brought into Oregon from outside the state by any means of transport other than in the fuel tank of a motor vehicle for the purpose of propelling that motor vehicle.
- 14) "Importer" means the person who imports motor vehicle fuel to Oregon, including the person or company who owns the fuel either physically transported into Oregon or injected into a pipeline located outside of Oregon and contractually delivered for use in Oregon through a book and claim accounting methodology.
- 15) "Marketer" means any person engaged in the business of distributing

or reselling fuel to a Fuel Vendor, including wholesale dealers and fuel distributors, used to comply with the requirements of PCC Chapter 16.60 or these rules.

- 16) "Person" means a natural person, joint venture, joint-stock company, partnership, association, club, company, corporation, business trust, organization, and/or the manager, lessee, agent, servant, officer, or employee of any of them.
- 17) "Portland City Code or PCC" means ordinances adopted by the City Council, as codified by the City Auditor.
- 18) "Retail Dealer" means any person who owns, operates controls or supervises an establishment located within the City of Portland at which motor vehicle fuel is offered for sale to the public.
- 19) "Reporting period" means a period of three calendar months ending on March 31, June 30, September 30, or December 31, or as defined by the Director.
- 20) "Wholesale Dealer" means any person who sells fuel if the seller knows or has reason to believe that the buyer intends to resell the fuel in the same or an altered form to a retail dealer, non-retail dealer, or another wholesale dealer.

4.0 Biofuel Requirements.

- A. Biodiesel and Renewable Diesel Requirements.** See PCC Chapter 16.60.020.A.
- B. Ethanol Requirements.** See PCC Chapter 16.60.020.B
- C.** Biodiesel produced from a feedstock of virgin or recycled palm oil may not be used to satisfy the requirements of PCC Chapter 16.60.
- D.** Biodiesel used to meet the requirements of PCC Chapter 16.60 must not exceed 20 percent in any final diesel fuel blends. The foregoing does not limit voluntary sales of higher blends of biodiesel, as long as those blends are properly labeled in accordance with state or federal guidelines.
- E.** Fuel retailers are required to conspicuously place signage denoting the type of biofuel mixture available for sale by the fuel retailer in accordance with the labeling guidelines or rules established by the Oregon Department of Agriculture or by the administrative rules adopted by the Director.

5.0 Carbon Intensity Standard.

- A. Carbon Intensity Standard Requirements.** See PCC Chapter 16.60.025.

1) Carbon Intensity Values are documented using the Oregon DEQ Clean Fuels Program Fuel Pathway Code (FPC).

B. Authority. The Director must establish and revise as necessary standards for carbon intensity of biofuels sold in the City and rules for enforcement and reporting procedures.

6.0 Carbon Intensity Standard Compliance.

A. Definition of CI value. Covered entities will need to comply with the Carbon Intensity Standard through use of either Absolute CI Value or an Average CI Value.

1) Absolute CI Value. The absolute CI value means the value assigned to the fuel by the Oregon Clean Fuels Program fuel pathway.

2) Average CI Value. The average CI value means the weighted average of CI values from multiple Oregon Clean Fuel Program fuel pathways. This allows covered entities to use fuel from multiple pathways to meet the City's requirements as long as the weighted average of different renewable fuels are equal to or less than the Carbon Intensity Standard over the compliance period.

B. Determination and Designation of Absolute or Average CI Value. Covered entities may determine the appropriate approach given their business practices. Designation of the approach taken must be documented and attested by covered entities for each Compliance period.

C. Compliance Options. Covered entities have two Carbon Intensity Standard compliance options available over the course of the Compliance Period, one calendar year. Compliance options include:

1) **Book and Claim.** The term "book and claim" is an accounting approach that decouples the environmental attributes from the physical product, thus allowing the environmental attributes to be transferred separately from the product itself.

a) Book and Claim compliance requires covered entities to have a fuel importer who takes responsibility for compliance for each compliance period.

b) Fuel importers may take responsibility for complying with the requirements on behalf of fuel retailers, resellers, or wholesale purchase consumers.

c) To use this compliance option, fuel importers must demonstrate that they have imported into Oregon a sufficient volume of renewable diesel fuel compliant with the CI standard to satisfy the proportion of renewable diesel fuel sold in Portland, regardless of where the compliant fuel is sold.

2) **Product Transfer Document.** Product transfer documents” (PTDs) is the general term for the paper trail that documents the transfer of ownership of fuel from one entity to the next. The Oregon DEQ, in ORS 340-253-0600, requires that the CFP fuel pathway (FPC) be included on all PTDs for renewable fuels at the Terminal. Covered entities selecting this compliance option must include a FPC on all PTDs through sale to the fuel retailer or wholesale purchase consumer. Fuel distributors, resellers, retailers, nonretail dealers, or wholesale purchaser-consumers are directly regulated and required to meet reporting requirements under the PTD compliance option.

D. Compliance Options Selection. Covered entities must select a compliance option for each compliance period. If a covered entity does not select a compliance option for a given year, enforcement will be based on the most recent compliance option selected for prior compliance periods. Covered entities have 90-days after the start of the compliance period to select a compliance option for the full period. Compliance option selections will be made through a form available on the program website. Selection of the book and claim compliance option requires designation of a fuel importer that will accept responsibility for each of the four reporting periods within the associated compliance period.

E. Compliance Option Reporting Requirements.

1) **Book and claim reporting.** Designated fuel importers must report to the City of Portland each reporting period and attest to the accuracy of reported data. Reports and attestations will be submitted through a web form provided on the program website.

a) Fuel importers must report:

(i) Importer’s total volume of diesel fuel imported into Oregon in a given time period.

(ii) Percent of diesel fuel sold in Portland.

(iii) Percent of minimum biofuel content required by PCC Chapter 16.60.

(iv) Book and claim compliance volume.

b) **Book and claim compliance volume calculation.** Fuel importers will report to the city using the following calculation for the number of gallons of complaint renewable fuel required:

Volume imported to Oregon x Percent sold in Portland x
Minimum percent renewable = compliance volume

Example:

100,000 gallons x 20% x 15% = 3,000 gallons

In the example, the fuel importer brought 100,000 gallons of diesel fuel into Oregon, 20% of which were sold in Portland. In this period, the RFS required that 15% of diesel fuel meets the CI Standard. Fuel importer would be required to show through documentation that it imported at least 3,000 gallons (100,000 x 20% x 15%) renewable fuel at CI of 40 g CO₂e/MJ or lower.

- c) **Determining volume sold in City of Portland.** If fuel importers are unable to determine the percentage of fuel sold in Portland, the importer will use a deemed value. The deemed value assumes the volume of diesel fuel sold in Portland is comparable to that sold in the rest of the State on a per capita basis. The calculation required for the deemed value is based on Portland's share of the State's population. Example: 15.1% in 2021 (Portland population 641,162 / Oregon population 4.246m). Approved deemed values will be provided by BPS on Book and Claim reporting forms.
- 2) **Product Transfer Document Reporting.** Reporting of data is not required for those using this compliance pathway. Covered entities are required to attest quarterly that all fuel sold includes the FPC on PTDs. If the covered entity is using the CI averaging definition, it is required to document the percent fuel by volume from each CI on all PTDs, in addition to the associated FPCs. Attestations will be made by a simple web form provided on the program website.
- 3) **Reporting Schedule.** Covered entities are required to report quarterly. Reports will be due no later than 90 days after the end of the previous calendar quarter, such as June 30th for Q1, September 30th for Q2, December 30th for Q3, and March 30th for Q4 of the prior calendar year.

7.0 Contents of Product Transfer Documents (PTD).

An invoice, bill of lading, shipping paper, or other documentation must accompany each fuel delivery in the City of Portland.

- 1) PTDs must include the type of renewable fuel, including biodiesel, renewable diesel, ethanol, or any blends of these fuels, and declare the volume percent of such renewable fuel.
- 2) PTDs must comply with OAR 603-027-0430 (1) (a) which includes identifying the quantity, the name of the product, the name and address of the seller and buyer, and the date and time of the sale.

8.0 Testing and Inspections.

A. Testing of motor vehicle fuel.

- 1) The Director may test motor vehicle fuel for the purpose of inspecting the motor vehicle fuel supply of any service station, business or other establishment that sells or offers for sale, or distributes, transports, hauls, delivers or stores motor vehicle fuel that is subsequently sold or

- offered for sale, for compliance with PCC Chapter 16.60 or these rules.
- 2) The Director will have access during normal business hours to all places where motor vehicle fuel is sold to or by a retail dealer, non-retail dealer or wholesale dealer for the purpose of examination, inspection and investigation of the establishment's motor vehicle fuel supply, will collect or cause to be collected samples of the motor vehicle fuel and shall test or analyze the samples for compliance with PCC Chapter 16.60 or these rules.
 - 3) Before taking any enforcement action under PCC Chapter 16.60.040 or these rules, the Director will cause motor vehicle fuel samples to be tested in accordance with standards, reproducibility limits and procedures that are, in the director's judgment, consistent with ORS and or ASTM standards and procedures.
 - 4) The Director will notify the owner or person in charge of the facility of the sample collection as soon as is practicable after a sample is taken. The volume of the sample taken for testing will be adequate for the tests to be performed and to allow for a portion of the sample to be retained for subsequent testing, if the need arises. A sample with a test result that is outside the test reproducibility limits, when compared to the applicable limits will be properly stored to preserve the sample for at least 90 days.

B. Official Sampling Procedures; Inspections and Record Keeping.

- 1) The Director will obtain official samples of motor vehicle fuel for testing from:
 - a) The same dispensing device used for sales to customers; or
 - b) Any bulk facility; or
 - c) Any transporter of motor vehicle fuels.
- 2) The official sample will be obtained in the following manner:
 - a) The official sample will be collected into a clear or brown glass bottle or a metal container approved for such use;
 - b) The container will be sealed and identified immediately after the official sample has been obtained;
 - c) At the motor vehicle fuel dispenser, the official sample will be collected after at least 2 liters (one-half gallon) has been dispensed. The official sample will be considered representative of the product dispensed.
- 3) At the time the Director obtains samples, or requests to review copies of books, papers or records, the owner or operator may specify what, if any, information the owner or operator considers to be confidential business information or a trade secret. The Director shall keep any information so specified (including the results of any test) in a separate file marked "confidential." The disclosure of such information shall be governed by the Oregon Public Records Law, ORS 192.410. Nothing in this rule shall be construed to limit the use of such information in any enforcement proceeding by the Director.

C. Inspections.

- 1) For all Biofuel Producers, Bulk Facility Operators, and Marketers that are subject to the requirements of PCC Chapter 16.60 and these rules, the Director may:
 - a) Audit records for biodiesel and renewable diesel;
 - b) Review Certificates of Analysis or other documentation for each production lot or batch of biofuel;
 - c) Verify documentation of Fuel Pathways Codes;
 - d) Review Product Transfer Documents or other documentation identifying the percentage of biodiesel being blended;
 - e) Take sample of biodiesel for testing; and,
 - f) Verify renewable blend ratios of fuels sold.
- 2) For all Fuel Vendors that are subject to the requirements of PCC Chapter 16.60 and these rules, the Director may:
 - a) Review bills of lading or other documentation for the last 3 deliveries of all motor vehicle fuels;
 - b) Verify blend ratios of gasoline-ethanol and biodiesel and renewable diesel blends;
 - c) Take official samples for laboratory testing, by an accredited laboratory for analyzing motor fuels.

9.0 Record Keeping.

- A. Fuel Vendor Documentation.** Fuel vendors, including resellers and operators of the retail, non-retail, and wholesale purchaser consumer dispensers must keep at the person's registered place of business all Product Transfer Documents or other documentation for each product being sold for 1.5 years to comply with PCC Chapter 16.60 or these rules.
- B. Documentation of Volume Sold.** Each operator of a bulk facility and each person who sells motor vehicle fuels to fuel vendors in the City of Portland must keep, for at least 1.5 years, at the person's registered place of business complete and accurate records of any motor vehicle fuels sold if sold or delivered in the City of Portland, for purposes of showing compliance with PCC Chapter 16.60 or these rules.

10.0 Enforcement.

A. Violations.

- 1) The Director may determine that a violation of PCC Chapter 16.60 or these rules has occurred. Upon making the determination that a violation has occurred, the Director will issue a written notice of the violation, which will be sent by certified mail to the covered entity identifying the violation and applicable penalty
- 2) Covered entities will, upon receipt of a notice of violation, correct the violation and pay to the City the stated penalty or appeal the finding of a violation to the Code Hearings Officer within 10 days of receipt of the notice.
- 3) A determination issued pursuant to Chapter 16.60.040.A may be

appealed to the Code Hearings Officer, as provided for in PCC Chapter 22.10.

- 4) In determining the penalty to be assessed against any covered entity, the Director will consider the following criteria:
 - a) The extent and nature of the person's involvement in the violation;
 - b) The benefits, economic, financial or otherwise, accruing or likely to accrue as a result of the violations;
 - c) Whether the violations were repeated and continuous, or isolated and temporary;
 - d) The magnitude and seriousness of the violation;
 - e) The City's costs of investigating the violation and correcting or attempting to correct the violation;
 - f) Whether any criminal charges have been issued against the person; and,
 - g) Any other factors the Director deems to be relevant.
- 5) Fuel Quality Complaints. Upon receipt of a complaint of fuel quality or identification by the Director, the City will forward the complaint to the responsible State regulatory agency.

B. Penalties. Violations of PCC Chapter 16.60 and these rules may be punishable by fines as follows:

- 1) A fine of up to \$10,000 for the first violation; and
- 2) A fine of up to \$15,000 for each subsequent violation.
- 3) It is a separate offense each and every day during any portion of which any violation of any provision of PCC Chapter 16.60 or these administrative regulations is committed or continued by such person and may be punished accordingly.

11.0 Administration.

A. Adoption and Revision of Rules. See PCC Chapter 16.60.015.C.

B. Binding Policy. These rules are binding City policy with in the meaning of PCC Chapter 1.07 and will be on file with the City of Portland's Auditors Office.