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# **EXPLANATORY NOTES RELATING TO THE GREENHOUSE GAS POLLUTION PRICING ACT AND RELATED TEXTS**

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Published by  
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## **Preface**

These explanatory notes describe the proposed *Greenhouse Gas Pollution Pricing Act* and related regulations. These explanatory notes describe these proposals, clause by clause, for the assistance of Members of Parliament, stakeholders and their professional advisors.

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These notes are intended for information purposes only and should not be construed as an official interpretation of the provisions they describe.

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## GREENHOUSE GAS POLLUTION PRICING ACT

### *Preamble*

#### **Preamble**

This new enactment, the *Greenhouse Gas Pollution Pricing Act* (“the Act”), begins with a preamble. The preamble:

- refers to the broad scientific consensus that greenhouse gas emissions resulting from human activities are contributing to global climate change, the alteration of long-term weather patterns;
- states that the recent greenhouse gas emissions levels, which are at their highest in history, present a risk to the environment, to human health and safety and to economic prosperity;
- indicates that Canada and Canadians, particularly Indigenous peoples, northern, coastal and remote communities and low-income citizens, are already experiencing the impacts of climate change, such as coastal erosion, thawing permafrost, increases in heat waves, droughts and flooding, which result in risks to critical infrastructures and food security;
- recognizes the present generation’s responsibility of minimizing the impacts of climate change on future generations;
- states that climate change is a global concern that disregards geographic boundaries;
- indicates that Canada is a Party to the United Nations Framework Convention on Climate Change (UNFCCC), the purpose of which is stabilizing greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous interference from human activities with the climate system. The UNFCCC also provides a framework for international cooperation for coping with impacts of climate change;
- states that Canada is also a Party to the Paris Agreement, the goal of which is to hold the increase in the global average temperature below 2°C above pre-industrial levels and pursuing efforts to limit this increase to 1.5°C above those levels;
- emphasizes the federal government’s commitment to achieving the Paris Agreement’s Nationally Determined Contribution and increasing it over time, by reducing emissions of greenhouse gases across all sectors of the economy, accelerating clean economic growth and building resilience to the impacts of climate change;
- states that Pan-Canadian Framework on Clean Growth and Climate Change recognizes that climate change is a national problem that requires that all governments, industries, non-government organizations and individuals in Canada take immediate action;
- states that the pricing of greenhouse gas emissions is a core element of the Pan-Canadian Framework on Clean Growth and Climate Change;

- states that changes in behaviour are necessary for effective action against climate change, as they lead to increased energy efficiency, the use of cleaner energy, the adoption of cleaner technologies and practices and innovation;
- states that putting a price, that increases over time, on greenhouse gas emissions is an appropriate and efficient way to prompt changes in behaviour;
- states that the pricing of greenhouse gas emissions reflects the “polluter pays” principle;
- recognizes that some provinces and territories have implemented pricing systems for greenhouse gas emissions, or are currently developing these systems;
- states that the absence of pricing of greenhouse gas emissions in a province or territory or the lack of stringency of a provincial or territorial greenhouse gas pricing system could contribute to the negative effects of climate change on the environment, human health and the economic prosperity; and
- emphasizes the necessity of putting in place a federal mechanism ensuring the broad application in Canada of a price on greenhouse gases emissions that would take into account existing provincial and territorial systems.

### ***Short Title***

#### **Section 1 – Short Title**

This section makes the short title of the Act the *Greenhouse Gas Pollution Pricing Act*.

Although the term ‘carbon pricing’ is often used, the aim of the Act is to put a price all greenhouse gases that play a significant role in trapping heat in the atmosphere.

### ***Her Majesty***

#### **Section 2 – Her Majesty**

This section states that the Act is binding on her Majesty in right of Canada or a province which means that all the requirements in the Act, including requirements that would be made in regulations made under the Act, may apply to federal, provincial, and territorial governments.

**PART 1  
FUEL CHARGE**

**DIVISION 1  
INTERPRETATION AND GENERAL RULES OF APPLICATION**

*Interpretation*

**Section 3 – Definitions**

The definitions in section 3 apply to Part 1 and to Schedules 1 and 2 to the Act.

**“adjustment day”**

The term “adjustment day” means any of the following days: the commencement day (see commentary for the definition “commencement day”), January 1, 2019, January 1, 2020, January 1, 2021, January 1, 2022 and a day that is prescribed by regulations or that meets conditions prescribed by regulations. At this time, no day or condition is proposed to be prescribed by regulations.

**“aircraft”**

The term “aircraft” means any conveyance that is suitable for the transportation of individuals or goods by air (e.g., fixed-wing aircraft, helicopter).

**“assessment”**

The term “assessment” means an assessment or reassessment made under this Part. The Minister of National Revenue may make an assessment of any charge, interest or other amount payable by any person under this Part. The Minister of National Revenue may also make an assessment of the amount of a rebate payable to a person.

**“aviation gasoline”**

The term “aviation gasoline” means a substance that is suitable for generating power in an aircraft engine that is not a turbine engine.

**“aviation turbo fuel”**

The term “aviation turbo fuel” means a substance that is suitable for generating power in an aircraft engine that is an aircraft’s turbine engine.

**“bank”**

The term “bank” means a bank as defined in section 2 of the *Bank Act* or an authorized foreign bank, as defined in that section, that is not subject to the restrictions and requirements referred to in subsection 524(2) of the *Bank Act*.

**“biodiesel”**

The term “biodiesel” means a particular substance that is made up of mono-alkyl esters of long chain fatty acids derived entirely from biological matter available on a renewable or recurring

basis or is made from plant or animal matter using a hydrogenation process. The particular substance may contain other substances, material or things if those substances, materials or things do not exceed 1.5% of the particular substance. The particular substance must be suitable for generating power by way of a diesel engine or can be used in a furnace, boiler or open flame burner when used on its own, after being blended with a light fuel oil or after being blended with light fuel oil-like blendstock to produce light fuel oil.

The term “biodiesel” can also mean a substance, material or thing that is prescribed by regulations. At this time, no substance, material or thing is proposed to be prescribed by regulations.

### **“biogasoline”**

The term “biogasoline” means a particular substance that derived entirely from biological matter available on a renewable or recurring basis. The particular substance may contain water, if the proportion of water does not exceed 1% of the particular substance. The particular substance may also contain other substances, materials or things if those substances, materials or things do not exceed 6% of the particular substance. The particular substance must be suitable for generating power by means of an internal combustion engine other than a diesel engine when used on its own, after being blended with gasoline or after being blended with a gasoline-like blendstock to produce gasoline.

The term “biogasoline” can also mean a substance, material or thing that is prescribed by regulations. At this time, no substance, material or thing is proposed to be prescribed by regulations.

### **“biomethane”**

The term “biomethane” means a substance that is primarily methane and that is derived entirely from biological matter available on a renewable or recurring basis. Biomethane can also be a substance, material or thing that is prescribed by regulations. At this time, no substance, material or thing is proposed to be prescribed by regulations.

### **“coke”**

The term “coke” means a solid carbonaceous residue that satisfies two criteria. First, it is derived from low-ash, low-sulfur bituminous coal from which the volatile parts have been baked off in an oven, resulting in the fixed carbon and residual ash being fused together. Second, it is suitable for use as a source of energy.

### **“coke oven gas”**

The term “coke oven gas” means gas that is recovered from the carbonization of coal in a coke oven and that to be suitable as a source of energy.

### **“combustible waste”**

The term “combustible waste” means tires or asphalt shingles, in whole or in part (e.g., shredded tires) when used as a fuel. Combustible waste can also be a substance, material or thing that has been prescribed by regulations. At this time, no substance, material or thing is proposed to be prescribed by regulations.

**“commencement day”**

The term “commencement day” means the earliest day that any of sections 17 to 26 may apply in a listed province.

**“Commissioner”**

The term “Commissioner” means (other than in sections 95, 96 and 164) the Commissioner of Revenue appointed under section 25 of the *Canada Revenue Agency Act*.

**“confirmed delivery service”**

The term “confirmed delivery service” means a delivery service that provides a record that the notice or document has been sent or delivered. This includes certified or registered mail or, for example, private courier services that provide such a record.

**“covered air journey”**

The term “covered air journey” means a journey that is either between two locations in a listed province or a journey prescribed by regulations or a journey that meets conditions prescribed by regulations. At this time, no journey or condition is proposed to be prescribed by regulations.

**“covered facility”**

The term “covered facility” means a facility or property that meets either of two conditions.

First, under paragraph (a) of the definition, the facility or property is a covered facility if it is a *covered facility* within the meaning of section 169 that is registered by the Minister of the Environment under section 171 other than a facility or property that is prescribed by regulations, a facility or property that is part of a class of facilities or properties prescribed by regulations or a facility or property that meets conditions prescribed by regulations. At this time, no facility or property, class of facility or property or condition is proposed to be prescribed by regulations under paragraph (a) of the definition.

Second, under paragraph (b), the facility or property is a covered facility if it is a facility or property that is prescribed by regulations, a facility or property that is part of a class of facilities or properties prescribed by regulations or a facility or property that meets conditions prescribed by regulations. At this time, no facility or property, class of facility or property or condition is proposed to be prescribed by regulations under paragraph (b) of the definition.

A covered facility will generally be subject to the Output-Based Pricing System under Part 2 of the Act.

**“covered marine journey”**

The term “covered marine journey” means a journey by vessel that is between two locations in a listed province. The term can also mean a journey that is prescribed by regulations or a journey that meets conditions prescribed by regulations. At this time, no journey or condition is proposed to be prescribed by regulations.

**“delivery”**

The term “delivery” is defined, in respect of fuel or in respect of a substance, material or thing, to include making a fuel, substance, material or thing available. This definition does not apply for the purposes of the definition “confirmed delivery service” (see commentary for the definition “confirmed delivery service”) and for the purposes of Division 6 that includes rules related to the administration and enforcement of the fuel charge under Part 1 of the Act.

**“distribution system”**

The term “distribution system” means a pipe or a system or arrangement of pipes used to deliver or distribute marketable natural gas to the end-consumers or end-users of the gas.

**“eligible farming activity”**

The term “eligible farming activity” means operating eligible farming machinery on a farm for the purpose of farming (see commentary for the definitions “eligible farming machinery” and “farming”). It also means operating eligible farming machinery for the purpose of transiting from one location at a farm to another location at a farm. The term also includes an activity prescribed by regulations. At this time, no activity is proposed to be prescribed by regulations.

**“eligible farming machinery”**

The term “eligible farming machinery” means property that is primarily used for farming and that is a farm truck, a tractor, a vehicle that is not licensed for operation on a public road, an industrial machine or a stationary or portable engine if the property is not excluded by one of the exceptions described below. The term also means property that is primarily used for farming and that is prescribed by regulations (at this time, no property is proposed to be added to the definition by regulations). However, eligible farming machinery does not include an automobile (as defined in subsection 248(1) of the *Income Tax Act*), property that is used to heat or cool a building (or a structure similar to a building such as an inflatable dome) or other property that is prescribed by regulations. At this time, no property is proposed to be excluded from the definition by regulations.

**“excluded air journey”**

The term “excluded air journey” means a journey by aircraft that begins or ends in a listed province, but that is not a covered air journey (see commentary for the definition “covered air journey”), a journey prescribed by regulations or a journey that meets conditions prescribed by regulations (at this time, no journey or condition is proposed to be prescribed by regulations). The term can also mean a journey by aircraft that is prescribed by regulations or a journey that meets conditions prescribed by regulations, regardless of where the journey originates or terminates. At this time, no journey or condition is proposed to be prescribed by regulations.

**“excluded marine journey”**

The term “excluded marine journey” means a journey by vessel that begins or ends in a listed province, but that is not a covered marine journey (see commentary for the definition “covered marine journey”), a journey prescribed by regulations or a journey that meets conditions prescribed by regulations (at this time, no journey or condition is proposed to be prescribed by regulations). The term can also mean a journey by vessel that is prescribed by regulations or a

journey that meets conditions prescribed by regulations, regardless of where the journey originates or terminates. At this time, no journey or condition is proposed to be prescribed by regulations.

#### **“farmer”**

The term “farmer” means a person that carries on the business of farming (see commentary for the definition “farming”) with a reasonable expectation of profit.

#### **“farming”**

Subject to the exception described below, the term “farming” includes the following activities:

- the tillage of soil;
- the raising or exhibiting of livestock;
- the maintenance of horses for racing;
- the raising of poultry;
- fur farming;
- dairy farming;
- growing fruit; and
- the keeping of bees.

However, farming does not include an office or employment under a person engaged in the business of farming.

#### **“fuel”**

The term “fuel” means a substance, material or thing set out in column 2 of any table in Schedule 2 to the Act other than combustible waste, a substance, material or thing that is prepackaged in a factory sealed container of 10 litres or less or a substance, material or thing that is prescribed by regulations for the purpose of subparagraph (a)(iii) of the definition. The term also means a substance, material or thing that is prescribed by regulations for the purposes of paragraph (b) of the definition. At this time, no substance, material or thing is proposed to be prescribed by regulations. Column 2 of the tables in Schedule 2 to the Act identifies the following items: aviation gasoline, aviation turbo fuel, butane, ethane, gas liquids, gasoline, heavy fuel oil, kerosene, light fuel oil, methanol, naphtha, petroleum coke, pentanes plus, propane, coke oven gas, marketable natural gas, non-marketable natural gas, still gas, coke, high heat value coal, low heat value coal and combustible waste (combustible waste being specifically excluded from the definition “fuel”).

#### **“gas liquids”**

The term “gas liquid” means a mixture of liquid or gaseous fuel that consists of two or more of ethane, propane, butane or pentanes plus if the mixture meets each of the following three

conditions. First, the mixture must have been separated, as a result of processing, from natural gas or crude oil for the first time. Second, the mixture must not have been analyzed to assess composition, or processed into separate identifiable fuels. Third, the mixture cannot be a mixture of ethane, propane, butane or pentanes plus created after the ethane, propane, butane or pentanes plus have been processed into separate identifiable fuels and subsequently remixed into a blend of one or more of the fuels.

#### **“gasoline”**

The term “gasoline” means a substance (including biogasoline) that is suitable for generating power by means of an internal combustion engine (other than a diesel engine) and that is not another type of fuel.

#### **“heavy fuel oil”**

The term “heavy fuel oil” means a substance other than petroleum coke that is made up of a distillate or a residual of crude oil that has a viscosity of greater than 14 centistokes at 50°C.

#### **“high heat value coal”**

The term “high heat value coal” means coal with a heating value of greater than 27,000 kJ/kg.

#### **“import”**

The term “import” means import into Canada.

#### **“interjurisdictional air carrier”**

The term “interjurisdictional air carrier” in respect of a type of fuel means a person that, in the ordinary course of business, uses fuel of that type in the ordinary course of providing a commercial service of transporting individuals or goods by aircraft in excluded air journeys.

#### **“interjurisdictional marine carrier”**

The term “interjurisdictional marine carrier” in respect of a type of fuel means a person that, in the ordinary course of business, uses fuel of that type in the ordinary course of providing a commercial service of transporting individuals or goods by vessel in excluded marine journeys.

#### **“interjurisdictional rail carrier”**

The term “interjurisdictional rail carrier” in respect of a type of fuel means a person that, in the ordinary course of business, uses fuel of that type in a listed province in the course of providing a commercial service of transporting individuals or goods by rail between provinces or between a place inside Canada and a place outside Canada.

#### **“journey”**

The term “journey” means the transportation of individuals or goods by aircraft or vessel from one location to another where one of the following activities occurs at one location and one of the following activities occurs at the other location: individuals embark or disembark the aircraft or vessel; goods are loaded onto or unloaded from the aircraft or vessel; or the aircraft or vessel is stopped to allow for fuelling, servicing or for safety purposes.

**“judge”**

The term “judge” applies in respect of any matter and means a judge of the Federal Court or a superior court having jurisdiction in the province where a matter under this Part is to be dealt with.

**“kerosene”**

The term “kerosene” means a light petroleum distillate that meets the requirements set out in National Standard of Canada CAN/CGSB-3.3, *Kerosene*, but is not aviation turbo fuel. The definition provides that the requirements of that Standard apply as it may be amended from time to time.

**“light fuel oil”**

The term “light fuel oil” means a substance that satisfies three criteria. First, it must be made up of biodiesel or of a distillate or a residual of crude oil that has a viscosity of not more than 14 centistokes at 50°C. Second, it must be suitable for generating power by means of a diesel engine or for use in a furnace, boiler or open flame burner. Third, it must not be butane, ethane, gas liquids, aviation turbo fuel, kerosene, naphtha, propane, pentanes plus or still gas.

**“listed province”**

The term “listed province” means a province or area (such as an offshore area) that is listed in Part 1 of Schedule 1 to this Act. The fuel charge under this Part will apply in listed provinces and areas.

**“locomotive”**

The term “locomotive” includes railway equipment that is self-propelled and moves on railway track. However, the term does not include a vehicle that is suitable to move on and off lines of railway.

**“low heat value coal”**

The term “low heat value coal” means coal with a heating value of 27,000kJ/kg or less.

**“marketable natural gas”**

The term “marketable natural gas” means natural gas that is at least 90% methane and that meets the specifications for pipeline transmission and sale for general distribution to the public.

**“methanol”**

The term “methanol” is defined to exclude methanol that is made entirely from biological matter available on a renewable or recurring basis.

**“Minister”**

The term “Minister” means the Minister of National Revenue. The Minister of National Revenue is responsible for the administration and enforcement of this Part.

**“mixture”**

The term “mixture” means a substance, material or thing that is a combination of two or more types of fuel (see commentary for the definition “fuel”).

**“naphtha”**

The term “naphtha” means a refined or partially refined petroleum fraction with an approximate boiling point between 50°C and 204°C. The term does not include aviation gasoline, aviation turbo fuel, gasoline, heavy fuel oil, kerosene, light fuel oil or petroleum coke.

**“natural gas”**

The term “natural gas” includes a combination of natural gas and biomethane, but does not include still gas (see commentary for the definition “still gas”).

**“net charge”**

The term “net charge” for the reporting period of a person means the amount determined under subsection 71(2) (see commentary for section 71).

**“non-covered activity”**

The term “non-covered activity” means an activity that satisfies two conditions. First, it is an activity where fuel is used as an input in an industrial process that produces another fuel or a non-fuel substance, material or thing, as a solvent or diluent in the production or transportation of crude bitumen or another substance, material or thing or in circumstances prescribed by regulations (at this time, no circumstance is proposed to be prescribed by regulations). Second, it is an activity where fuel is not put into a fuel system that produces heat or energy and is not burned or flared.

**“non-marketable natural gas”**

The term “non-marketable natural gas” means natural gas other than marketable natural gas (see commentary for the definition “marketable natural gas”).

**“officer”**

The term “officer” means a person who is appointed or employed in the administration or enforcement of this Part or, with respect to imported goods that have not been released under the *Customs Act*, an “officer” as defined in subsection 2(1) of that Act. The term “officer” in the *Customs Act* generally means a person employed in the administration or enforcement of that Act, the *Customs Tariff* or the *Special Import Measures Act* and includes any member of the Royal Canadian Mounted Police. This meaning of the term “officer” does not apply in sections 90, 138 and 160.

**“pentanes plus”**

The term “pentanes plus” means a substance that is obtained from the production or processing of raw gas, condensate or crude oil and that is pentane, hydrocarbons heavier than pentane or a combination of pentane and heavier hydrocarbons.

**“person”**

The term “person” is used to refer to an individual, a partnership, a corporation, the estate or succession of a deceased individual, a trust, a joint venture, a government or a body that is a society, a union, a club, an association, a commission or another organization of any kind.

**“personal representative”**

The term “personal representative” of a deceased individual or the estate or succession of a deceased individual means the executor of a deceased individual’s will, the liquidator of the individual’s succession, the administrator of the estate or any person that is responsible under the appropriate laws for the proper collection, administration, disposition and distribution of the assets of the estate or succession of a deceased individual.

**“petroleum coke”**

The term “petroleum coke” includes a substance that meets one of the following three criteria. First, it means a carbonaceous solid that is produced from an oil refinery coke unit or an oil or bitumen upgrader coker unit. Second, it can also mean a carbonaceous solid that is produced from a cracking process such as coking, fluid coking, flexicoking and delayed coking. Third, it can mean any substance referred to as “green coke” or “fuel grade coke”.

**“prescribed”**

The term “prescribed” means authorized by the Minister of National Revenue when referring to a form or the manner of filing a form, means specified by the Minister of National Revenue when referring to the information to be given on or with a form and means authorized by the Minister of National Revenue when referring to the manner of making or filing an election. In any other case, it means prescribed by regulations or determined in accordance with rules prescribed by regulations.

**“produce”**

The term “produce” in respect of fuel means to obtain fuel or bring fuel into existence by any method or process, including by: mining, extracting, removing or otherwise obtaining from the earth; manufacturing, synthesizing, refining or blending; or using any means of altering the chemical or physical properties of a substance, material or thing.

**“qualifying aviation fuel”**

The term “qualifying aviation fuel” means aviation gasoline, aviation turbo fuel or a type of fuel prescribed by regulations. At this time, no type of fuel is proposed to be prescribed by regulations.

**“qualifying farming fuel”**

The term “qualifying farming fuel” means gasoline, light fuel oil or a type of fuel prescribed by regulations. At this time, no type of fuel is proposed to be prescribed by regulations.

**“qualifying marine fuel”**

The term “qualifying marine fuel” means heavy fuel oil, light fuel oil, marketable natural gas or a type of fuel prescribed by regulations. At this time, no type of fuel is proposed to be prescribed by regulations.

**“qualifying motive fuel”**

The term “qualifying motive fuel” means gasoline, light fuel oil, marketable natural gas, propane or a type of fuel prescribed by regulations. At this time, no type of fuel is proposed to be prescribed by regulations.

**“qualifying rail fuel”**

The term “qualifying rail fuel” means light fuel oil, marketable natural gas or a type of fuel prescribed by regulations. At this time, no type of fuel is proposed to be prescribed by regulations.

**“rate”**

The term “rate” in respect of a type of fuel or combustible waste means the rate set out in column 5 of the tables in Schedule 2 of this Act for the type of fuel and a listed province at a particular time. The term “rate” can also mean the rate prescribed by regulations or the rate determined in a manner prescribed by regulations if circumstances prescribed by regulations exist or if conditions prescribed by regulations are met. Such a rate would override a rate set out in column 5 of the applicable table in Schedule 2. At this time, no rate, circumstance or condition is proposed to be prescribed by regulations.

**“record”**

The term “record” means any material on which representations of information or concepts are recorded or marked if these representations are in any form capable of being read or understood by a person or computer system or other device.

**“registered air carrier”**

The term “registered air carrier” in respect of a type of fuel means a person that is registered under Division 4 of this Part as an air carrier in respect of that type of fuel (see commentary for section 60).

**“registered distributor”**

The term “registered distributor” in respect of a type of fuel means a person that is registered under Division 4 of this Part as a distributor in respect of that type of fuel (see commentary for section 55).

**“registered emitter”**

The term “registered emitter” means a person registered under Division 4 of this Part as an emitter (see commentary for section 57).

**“registered importer”**

The term “registered importer” in respect of a type of fuel means a person that is registered under Division 4 of this Part as an importer in respect of that type of fuel (see commentary for section 56).

**“registered marine carrier”**

The term “registered marine carrier” in respect of a type of fuel means a person that is registered under Division 4 of this Part as a marine carrier in respect of that type of fuel (see commentary for section 61).

**“registered rail carrier”**

The term “registered rail carrier” in respect of a type of fuel means a person that is registered under Division 4 of this Part as a rail carrier in respect of that type of fuel (see commentary for section 62).

**“registered road carrier”**

The term “registered road carrier” in respect of a type of fuel means a person that is registered Division 4 of this Part as a road carrier in respect of that type of fuel (see commentary for section 63).

**“registered specified air carrier”**

The term “registered specified air carrier” in respect of a type of fuel means a person that is registered under Division 4 of this Part as a specified air carrier in respect of that type of fuel (see commentary for section 60).

**“registered specified marine carrier”**

The term “registered specified marine carrier” in respect of a type of fuel means a person that is registered under Division 4 of this Part as a specified marine carrier in respect of that type of fuel (see commentary for section 61).

**“registered specified rail carrier”**

The term “registered specified rail carrier” in respect of a type of fuel means a person that is registered under Division 4 of this Part as a specified rail carrier in respect of that type of fuel (see commentary for section 62).

**“registered user”**

The term “registered user” in respect of a type of fuel or for combustible waste means a person that is registered under Division 4 of this Part as a user in respect of that type of fuel or for combustible waste (see commentary for sections 58 and 59).

**“reporting period”**

The term “reporting period” of a person means the period determined under section 68 (see commentary for that section).

**“specified commercial vehicle”**

The term “specified commercial vehicle” means a vehicle that satisfies the following three criteria. First, the vehicle must be used for commercial transportation of individuals or goods by road between provinces or between a place in Canada and a place outside Canada. Second, the vehicle must have two axels and a gross vehicle weight greater than 11,797 kg, three axels regardless of weight or a gross vehicle weight of greater than 11,797 kg with its trailer. Third, the vehicle must not be a recreational vehicle such as a motor home, pickup truck with attached camper or bus if used solely for personal use or enjoyment of a particular individual or for the personal use or enjoyment of another person at the particular individual’s expense.

**“still gas”**

The term “still gas” means a gas that is suitable for use in an oil refinery and that is produced by distillation, cracking, reforming or some other oil refining process.

**“supply tank”**

The term “supply tank” means a receptacle of a vehicle in which fuel is held for use in operating the vehicle, for use in operating an auxiliary component of the vehicle or for use in operating an auxiliary component of another vehicle attached to the vehicle such as a trailer.

**“use”**

The term “use” is defined to include flaring but not to include venting.

**“vehicle”**

The term “vehicle” means any conveyance that is suitable for the transportation of individuals or goods by water, land or air.

**“vessel”**

The term “vessel” means any conveyance that is suitable for the transportation of individuals or goods by water.

**Section 4 – Meaning of administration or enforcement of this Part**

The purpose of subsection 4(1) is to ensure that the phrase administration and enforcement of this Part, wherever it is used in this Part, is read as including the collection of any amount payable under this Part.

The purpose of subsection 4(2) is to ensure that the phrase “this Part” is read, in any of section 3, subsection 4(1) or sections 5 to 167, as including any regulations made under this Part.

**Section 5 – Covered facility of a person**

Section 5 provides that a covered facility is a covered facility of a person in Part 1 of the Act if the Minister of the Environment has issued a covered facility certificate to the person in respect of the covered facility under section 170 or that the person is a person prescribed by regulations, a person of a class of persons prescribed by regulations or a person satisfying

conditions prescribed by regulations, in respect of the covered facility. At this time, no person, class of persons or condition is proposed to be prescribed by regulations.

### **Section 6 – Arm’s length**

Subsection 6(1) provides that, for the purposes of Part 1 of the Act, related persons are considered not to be dealing at arm’s length with each other and that it is a question of fact whether at a particular time unrelated persons are dealing at arm’s length. Subsection 6(2) provides that persons are related to each other if they are related persons within the meaning of subsection 6(2) of the *Excise Act, 2001*.

### **Section 7 – Exclusive economic zone and continental shelf**

This section clarifies that an area may include all or part of the exclusive economic zone of Canada or the continental shelf of Canada.

## ***General Rules of Application***

### **Section 8 – Determining quantities**

This section outlines standard reference conditions for measuring fuels under Part 1 of the Act.

Subsection 8(1) provides that if the rate in respect of a type of fuel is expressed in \$/litre, then the quantity of that type of fuel is the number of litres of that type of fuel measured at the reference temperature of 15°C, unless subsection 8(5), (6) or (8) applies.

Subsection 8(2) provides that if the rate in respect of a type of fuel is expressed in \$/cubic metre, then the quantity of that type of fuel is the number of cubic metres of that type of fuel measured at the reference temperature of 15°C and at the reference pressure of 101.325 kPa, unless subsection 8(7) or (8) applies.

Paragraph 8(3)(a) provides that a quantity of high heat value coal is the weight of that coal normalized to 7.7% moisture by weight, unless subsection 8(8) applies. Similarly, paragraph 8(3)(b) provides that a quantity of low heat value coal is the weight of that coal normalized to 19% moisture by weight, unless subsection 8(8) applies.

Subsection 8(4) provides that, unless subsection 8(8) applies, a quantity of coke is that weight of coke measured in tonnes and, if a moisture content is prescribed by regulations, normalized to a moisture content prescribed by regulations. At this time, no moisture content is proposed to be prescribed by regulations.

Subsection 8(5) describes, unless subsection 8(8) applies, how to determine a quantity of gasoline when it is blended with biogasoline, and that biogasoline accounts for more than 10% of the blend. In such a case, the quantity of gasoline (measured in litres at a temperature of 15°C) is deemed to be the number of litres calculated by dividing the proportion of gasoline in the blend (i.e., 100% minus the proportion of biogasoline in the blend) by 95%. This adjustment is made because the rates for gasoline in Schedule 2 to the Act have already been reduced by 5% to reflect federal renewable fuel content requirements.

Section 8(6) describes, unless subsection 8(8) applies, how to determine a quantity of light fuel oil when it is blended with biodiesel and the biodiesel accounts for more than 5% of the blend. In

such a case, the quantity of light fuel oil (measured in litres at a temperature of 15°C) is deemed to be the number of litres calculated by dividing the proportion of light fuel oil in the blend by 98%. This adjustment is made because the rates for light fuel oil in Schedule 2 to the Act have already been reduced by 2% to reflect federal renewable fuel content requirements.

Subsection 8(7) describes, unless subsection 8(8) applies, how to determine a quantity of marketable natural gas or non-marketable natural gas when it is blended with biomethane. In such a case, the quantity of marketable natural gas or non-marketable natural gas (normalized at 15°C and at 101.325kPa) is calculated by multiplying the total amount of the blend by the result of 100% minus the proportion of biomethane.

Subsection 8(8) provides that a quantity of a type of fuel prescribed by regulations is to be determined in a manner prescribed by regulations if conditions prescribed by regulations are met. At this time, no fuel, manner of determination or condition is proposed to be prescribed by regulations.

### **Section 9 – Determining quantities**

This section provides that any determination of a quantity of fuel under this Part must be made in a manner satisfactory to the Minister of National Revenue.

### **Section 10 – Fuel brought into a listed province**

Subsection 10(1) provides that if a person is transporting fuel for another person and the fuel is brought into a listed province in the course of being transported, it is the other person that is deemed to have brought the fuel into the listed province.

Subsection 10(2), on the other hand, provides that if a person is transporting fuel for another person and the fuel is removed from a listed province in the course of being transported, it is the other person that is deemed to have removed the fuel from the listed province.

### **Section 11 – Fuel in transit through a listed province**

This section provides that fuel brought into a listed province en route to another location outside the listed province is deemed not to have been brought into the listed province if three conditions are met. First, the fuel is brought into the listed province in the course of being transported to another place that is outside the listed province. Second, the fuel is not stored in the listed province except in a manner solely incidental to the transportation. Third, the person that brings the fuel into the listed province is registered under Division 4 of this Part (otherwise than only as a road carrier) in respect of that type of fuel or is a registered emitter.

### **Section 12 – Fuel imported in a listed province**

This section provides that fuel imported at a location in a listed province en route to a location outside the listed province is deemed not to have been imported at a location in the listed province if three conditions are met. First, the fuel is imported at a location in the listed province in the course of being transported to a place outside the listed province. Second, the fuel is not stored in the listed province except in a manner solely incidental to the transportation. Third, the person that imports the fuel into the listed province is registered under Division 4 of this Part (otherwise than only as a road carrier) in respect of the type of fuel or is a registered emitter.

### **Section 13 – Importer**

This section clarifies that, for the purposes of this Part, the person that imports fuel is the importer, owner or other person that is liable to pay a duty levied under section 20 of the *Customs Tariff* on the fuel or that would be so liable if the fuel were subject to that duty.

### **Section 14 – Delivery of marketable natural gas – distribution system**

This section identifies the person that is considered to deliver marketable natural gas by way of a distribution system. Foremost, paragraph 14(b) provides that the person that delivers marketable natural gas by means of a distribution system is, if circumstances prescribed by regulations exist or conditions prescribed by regulations are met, a person prescribed by regulations, a person of a class of persons prescribed by regulations or a person meeting conditions prescribed by regulations. At this time, no person, class, condition or circumstance is proposed to be prescribed by regulations. Paragraph (a) identifies the person that delivers marketable natural gas by means of a distribution system as the person that measures the recipient's consumption or usage for the purpose of billing the recipient or for providing billing information to a third party.

### **Section 15 – Substances marketed as fuel**

This section provides that if a substance, material or thing does not fall within the definition of "fuel" (see commentary for the definition "fuel") but is sold, marketed or represented as a type of fuel, then the substance, material or thing is deemed to be that type of fuel. This deeming rule does not apply if the substance material or thing is prepackaged in a factory sealed container of 10 litres or less, is combustible waste or is a substance, material or thing prescribed by regulations. At this time, no substance, material or thing is proposed to be prescribed by regulations.

### **Section 16 – Mixtures**

Subsection 16(1) provides that a mixture of fuels is deemed to be the type of fuel that is present in the highest proportion in the mixture. However, under subsection 16(2) if conditions prescribed by regulations are met, then the mixture will be deemed to be a type of fuel that is prescribed by regulations. At this time, no condition or types of fuel are proposed to be prescribed by regulations. Subsection 16(3) provides that subsections 16(1) and (2) do not apply to a substance, material or thing that would be a fuel in the absence of those subsections.

## **DIVISION 2 APPLICATION OF CHARGE**

### ***Subdivision a General Application of Charge to Fuel and Combustible Waste***

### **Section 17 – Charge – delivery by registered distributor**

Subsection 17(1) imposes a charge, on a person that is a registered distributor in respect of a type of fuel, in relation to fuel of that type that the person delivers to another person in a listed province. In accordance with the definition "delivery" in section 3, deliver, in respect of fuel, includes making fuel available. The amount of the charge must be determined in accordance with section 40. The charge becomes payable at the time the fuel is delivered by the person.

Subsection 17(2) provides that a charge under subsection (1) in respect of a delivery of fuel is not payable when an exemption certificate applies in respect of the delivery (see commentary for section 36) and a registered distributor delivers the fuel in a listed province to one of the following persons:

- a registered distributor, registered specified air carrier, registered specified marine carrier, registered specified rail carrier or registered user in respect of that type of fuel;
- a registered emitter;
- a farmer, but only if the fuel is qualifying farming fuel (see commentary for definition “qualifying farming fuel”); or
- a person prescribed by regulations, a person of a class of persons prescribed by regulations or a person meeting conditions prescribed by regulations, if circumstances prescribed by regulations exist (at this time, no person, class of persons, condition or circumstance is proposed to be prescribed by regulations).

Subsection 17(3) also provides that a charge under subsection (1) is not payable if the fuel delivered by the registered distributor is designated as ships’ stores under the *Ships’ Stores Regulations* for use on board a conveyance of a class prescribed under those regulations.

### **Section 18 – Charge – use by registered distributor**

Subsection 18(1) imposes a charge on a registered distributor in respect of a type of fuel in relation to fuel of that type that is used by the registered distributor in a listed province. The amount of the charge must be determined in accordance with section 40. The charge becomes payable at the time the fuel is used by the registered distributor.

Subsection 18(2) provides a deeming rule that applies for the purposes of subsection (1). Subsection (2) provides that if a registered distributor in respect of a type of fuel transfers fuel of that type into a supply tank of a vehicle, other than a specified commercial vehicle of the registered distributor, and the transfer occurs at a location in a listed province, the registered distributor is deemed to use the fuel at the time of the transfer and in that listed province. If, however, the transfer occurs at a location outside the listed provinces, the registered distributor is deemed to use the fuel at the time of the transfer otherwise than in a listed province.

Subsection 18(3) provides an exception to the deeming rule in subsection (2). If the registered distributor is also a registered emitter and if the transfer is at a covered facility of the registered distributor, then the fuel is not deemed to be used at the time of the transfer.

Subsection 18(4) provides that a charge under subsection (1) is not payable, in respect of fuel, if the registered distributor is also a registered emitter and the fuel is used at a covered facility of the person (see commentary for the definition “covered facility” and for section 5).

Subsection 18(5) provides that a charge under subsection (1) is not payable, in respect of fuel, if the fuel is used by the person in a non-covered activity (see commentary for the definition “non-covered activity”).

## **Section 19 – Charge – bringing in and importing**

Subsection 19(1) imposes a charge on a person that is, in respect a type of fuel, a registered user, a registered importer, a registered air carrier, a registered marine carrier or a registered rail carrier, or that is a registered emitter, in relation to fuel of that type that the person brings into a listed province from a place in Canada. The amount of the charge must be determined in accordance with section 40. The charge becomes payable at the time at which the fuel is brought into the listed province by the person.

Subsection 19(2) imposes a charge on a person that is, in respect of that type of fuel, a registered user, a registered importer, a registered air carrier, a registered marine carrier or a registered rail carrier, or that is a registered emitter, in relation to fuel of that type that the person imports at a location in a listed province. The amount of the charge must be determined in accordance with section 40. The charge becomes payable at the time at which the fuel is imported by the person.

Subsection 19(3) provides that a charge under subsection (1) or (2), in respect of fuel, is not payable by a person that is a registered distributor in respect of that type of fuel.

Subsection 19(4) provides that a charge under subsection (1) or (2), in respect of fuel, is not payable by a person if the fuel is brought into the listed province, or is imported, in a supply tank of a vehicle and the fuel is for use in the vehicle's operation or in the operation of an auxiliary component of the vehicle (e.g., a heater or air conditioner of the vehicle) or of an attached vehicle (e.g., a heater or air conditioner of a trailer attached to the vehicle).

Subsection 19(5) provides that a supply tank exception in subsection (4) does not apply to a person in respect of fuel that is brought into a listed province or imported at a location in a listed province by the person if one of the following conditions is met:

- the fuel is a type of qualifying motive fuel (see commentary for the definition “qualifying motive fuel”), the fuel is imported or brought into a listed province by the person in a supply tank of a specified commercial vehicle of the person and the person that imports or brings in the fuel is a registered importer or user in respect of the type of fuel or is a registered emitter and is required to be registered as a road carrier in respect of that type of fuel, but is not so registered;
- the person is an interjurisdictional rail carrier in respect of the type of fuel, but is not registered as an air carrier, marine carrier or rail carrier in respect of that type of fuel, and the fuel is brought in or imported in a supply tank of a locomotive;
- the person is an interjurisdictional air carrier in respect of the type of fuel (and is not registered as an air carrier, marine carrier or rail carrier in respect of the type of fuel), but only to the extent that the fuel is brought in or imported in a supply tank of an aircraft for use in a covered air journey; or
- the person is an interjurisdictional marine carrier in respect of the type of fuel (and is not registered as an air carrier, marine carrier or rail carrier in respect of the type of fuel), but only to the extent that the fuel is in a supply tank of a vessel for use in a covered marine journey.

## Section 20 – Charge – bringing in and importing

Section 20 imposes a charge on a person in relation to fuel that is either brought into a listed province by the person or imported at a location in a listed province by the person.

Subsection 20(1) provides that section 20 does not apply to a person, in respect of a type of fuel, if the person is, in respect of that type of fuel, a registered distributor, a registered importer, a registered specified air carrier, a registered air carrier, a registered specified marine carrier, a registered marine carrier, a registered specified rail carrier, a registered rail carrier or a registered user. Subsection 20(1) also provides that section 20 does not apply to a person that is a registered emitter. As a result, section 20 will generally only apply to a person in respect of a type of fuel if the person is not registered under Division 4 in respect of that type of fuel or if the person is only registered, in respect of that type of fuel, as a road carrier.

Subsection 20(2) imposes a charge on such a person in relation to fuel that the person brings into a listed province from a place in Canada. The amount of the charge must be determined in accordance with section 40. The charge becomes payable at the time the fuel is brought into the listed province by the person.

Subsection 20(3) imposes a charge on such a person in relation to fuel that the person imports at a location in a listed province. The amount of the charge must be determined in accordance with section 40. The charge becomes payable at the time the fuel is imported by the person.

Subsection 20(4) provides that the charge under subsection (3) in respect of imported fuel is to be paid and collected under the *Customs Act*, and any interest or penalties are to be imposed, calculated, paid and collected under that Act, as if the charge were a customs duty levied on the fuel under the *Customs Tariff*. For these purposes, subsection (3) further provides that the *Customs Act* applies with any modifications that the circumstances require.

Subsections 20(5) provides that a charge under subsection (2) or (3) is not payable, in respect of fuel, if the fuel is brought into the listed province or imported otherwise than in a supply tank of a vehicle, the fuel is gasoline, kerosene, light fuel oil or propane and the quantity of the fuel does not exceed 200 litres.

Subsections 20(6) provides that a charge under subsection (2) or (3) is not payable, in respect of fuel, if the fuel is brought into the listed province or imported in a supply tank of a vehicle and the fuel is for use in the vehicle's operation or in the operation of an auxiliary component (e.g., a heater or air conditioner of the vehicle) of the vehicle or of an auxiliary component of an attached vehicle (e.g., a heater or air conditioner on a trailer attached to the vehicle).

Subsection 20(7) provides that a supply tank exception in subsection (6) does not apply to a person in respect of fuel that is brought into a listed province or imported at a location in a listed province by the person if one of the following conditions is met:

- the person is required to be registered under Division 4 of this Part as a specified air carrier or air carrier in respect of that type of fuel, but is not so registered;
- the person is required to be registered under Division 4 of this Part as a specified marine carrier or marine carrier in respect of that type of fuel, but is not so registered;

- the person is required to be registered under Division 4 of this Part as a specified rail carrier or rail carrier in respect of that type of fuel, but is not so registered;
- the person is required to be registered under Division 4 of this Part as a registered road carrier in respect of that type of fuel but is not so registered and the fuel is brought in or imported in a supply tank of a specified commercial vehicle;
- the person is an interjurisdictional rail carrier in respect of the fuel and the fuel is brought in or imported in a supply tank of a locomotive;
- the person is an interjurisdictional air carrier in respect of the type of fuel, but only to the extent that the fuel is brought in or imported in a supply tank of an aircraft for use in a covered air journey; or
- the person is an interjurisdictional marine carrier in respect of the type of fuel, but only to the extent that the fuel is brought in or imported in a supply tank of a vessel for use in a covered marine journey.

### **Section 21 – Charge – production**

Subsection 21(1) imposes a charge on a person in relation to fuel that the person produces in a listed province. The charge under subsection (1) applies to a person in respect of fuel that the person produces unless the person is registered as a distributor, specified air carrier, specified marine carrier or specified rail carrier in respect of that type of fuel, or is a person prescribed by regulations, a person of a class of persons prescribed by regulations or a person meeting conditions prescribed by regulations (at this time, no person, class of persons or condition is proposed to be prescribed by regulations). The amount of the charge must be determined in accordance with section 40.

Subsection 21(2) provides that the charge under subsection (1) becomes payable at the time the fuel is produced by the person.

### **Section 22 – Charge – diversion from covered facility**

Subsections 22(1) to (3) impose a charge on a person in relation to fuel that the person removes from a covered facility of the person in a listed province or that was intended for use at a covered facility of the person that the person uses otherwise than at a covered facility of the person or delivers to another person (see commentary for the definition “covered facility” and for section 5).

A charge under subsection 22(1) becomes payable at the time the person removes the fuel from the covered facility if the fuel had previously been delivered to the person by a registered distributor in respect of that type of fuel and a charge did not become payable by the registered distributor upon that delivery by application of an exemption certificate.

A charge under subsection 22(2) becomes payable at the time the person uses fuel otherwise than at a covered facility of the person or at the time the person delivers fuel to another person (that is not a registered distributor in respect of the type of fuel) if three conditions are met. First, the fuel was previously delivered to the person by a registered distributor in respect of that type of fuel at a location that is not a covered facility of the person. Second, an exemption certificate applies in respect of the previous delivery. Third, that the certificate included a declaration in

accordance with subparagraph 36(1)(b)(v) (i.e., that the person is a registered emitter and the fuel is for use at a covered facility of the person).

A charge under subsection 22(3) becomes payable at the time the person removes the fuel from the covered facility if the person had previously brought the fuel to a covered facility of the person in the listed province and a rebate under section 44 became payable to the person in respect of the fuel.

The amount of a charge under subsection 22(1) to (3) must be determined in accordance with section 40. Subsection 22(5) provides that a charge under subsection (1) to (3), in respect of fuel, is not payable by a person in respect of fuel if one of the following conditions is met:

- the person removes the fuel from the covered facility, the person delivers the fuel to another person that is a registered distributor in respect of that type of fuel and an exemption certificate applies in respect of the delivery;
- the person removes the fuel from the covered facility and brings it to another covered facility of the person in the listed province;
- the person is not a registered emitter at the time the person removes the fuel from the covered facility (instead, a charge under subsection 22(9) or (10) may apply when the person ceases to be registered as an emitter);
- the person is a registered distributor in respect of that type of fuel at the time the fuel is removed from the covered facility; or
- circumstances prescribed by regulations exist or conditions prescribed by regulations are met (at this time, no circumstance or condition is proposed to be prescribed by regulations).

Subsections 22(6) and (7) impose a charge on a person in relation to fuel that is held by the person at a facility or property of the person, or that is in transit to such a facility or property, at a time at which the facility or property ceases to be a covered facility of the person.

A charge under subsection 22(6) becomes payable at the time the facility or property ceases to be a covered facility of the person if the fuel had previously been delivered to the person by a registered distributor in respect of that type of fuel and a charge did not become payable by the registered distributor upon that delivery by application of an exemption certificate.

A charge under subsection 22(7) becomes payable at the time at which the facility or property ceases to be a covered facility of the person if the person had previously brought the fuel to a covered facility of the person in the listed province and a rebate under section 44 became payable to the person in respect of the fuel.

The amount of a charge under subsection 22(6) or (7) must be determined in accordance with section 40.

Subsection 22(8) provides that a charge under subsection (6) or (7) is not payable by a person in respect of fuel if one of the following conditions is met:

- the person is not a registered emitter at the time the facility or property ceases to be a covered facility of the person (instead, a charge under subsection (9) or (10) may apply when the person ceases to be registered as an emitter);
- the person is a registered distributor in respect of that type of fuel at the time the facility or property ceases to be a covered facility of the person; or
- circumstances prescribed by regulations exist or conditions prescribed by regulations are met (at this time, no circumstance or condition is proposed to be prescribed by regulations).

Subsections 22(9) and (10) impose a charge on a person in relation to fuel that either is held by the person at a covered facility of the person, or that is in transit to a covered facility of the person, at a time when the Minister of National Revenue cancels the person's registration as an emitter.

A charge under subsection 22(9) becomes payable at the time the Minister of National Revenue cancels the person's registration as an emitter if the fuel had previously been delivered to the person by a registered distributor in respect of that type of fuel and a charge did not become payable by the registered distributor upon that delivery by application of an exemption certificate.

A charge under subsection 22(10) becomes payable at the time the Minister of National Revenue cancels the person's registration as an emitter if the person had previously brought the fuel to a covered facility of the person in the listed province and a rebate under section 44 became payable to the person in respect of the fuel.

The amount of a charge under subsection 22(9) or (10) must be determined in accordance with section 40.

Subsection 22(11) provides that a charge under subsection (9) or (10), in respect of fuel, is not payable by a person in respect of fuel if one of the following conditions is met:

- the person is a registered distributor in respect of that type of fuel at the time the Minister of National Revenue cancels the person's registration as an emitter; or
- circumstances prescribed by regulations exist or conditions prescribed by regulations are met (at this time, no circumstance or condition is proposed to be prescribed by regulations).

Subsection 22(12) provides that a charge under subsection (1), (2), (6) or (9) is not payable by a person in respect of fuel if a charge in respect of the fuel is payable by the person under section 37. A charge under section 37 becomes payable by a person in respect of fuel if the person provides an exemption certificate that contains a false declaration to a registered distributor that delivers fuel to the person.

### **Section 23 – Charge – diversion by registered user**

Subsection 23(1) imposes a charge on a person that is a registered user in respect of a type of fuel in relation to fuel of that type that the person uses otherwise than in a non-covered activity or that the person delivers to another person (see commentary for the definition “non-covered activity”), unless that other person is a registered distributor in respect of that type of fuel that provides an exemption certificate to the person.

A charge under subsection 23(1) becomes payable if the fuel had previously been delivered to the person by a registered distributor in respect of that type of fuel and a charge did not become payable by the registered distributor upon that delivery by application of an exemption certificate. The amount of the charge under subsection (1) must be determined in accordance with section 40.

Subsection 23(2) provides that a charge under subsection (1) becomes payable at the time the person uses the fuel or delivers the fuel to another person.

Subsection 23(3) provides that a charge under subsection (1) is not payable by a person in respect of fuel if one of the following conditions is met:

- the person is no longer registered as a user in respect of that type of fuel when the charge becomes payable;
- the person was required to pay a charge under section 37 because the person gave an exemption certificate containing a false declaration to the registered distributor that delivered the fuel to the person; or
- circumstances prescribed by regulations exist or conditions prescribed by regulations are met (at this time, no circumstance or condition is proposed to be prescribed by regulations).

Subsection 23(4) imposes a charge on a person in relation to fuel that the person holds at a time when the Minister of National Revenue cancels the person’s registration as a user in respect of that type of fuel.

A charge under subsection 23(4) becomes payable, in respect of fuel, at the time the Minister of National Revenue cancels the person’s registration as a user in respect of that type of fuel if the fuel had previously been delivered to the person by a registered distributor in respect of that type of fuel and a charge did not become payable by the registered distributor upon that delivery by application of an exemption certificate. The amount of the charge under subsection (4) in respect of fuel must be determined in accordance with section 40.

Subsection 23(5) provides that a charge under subsection (4) is not payable by a person in respect of fuel if one of the following conditions is met:

- at the time of cancellation by the Minister of National Revenue of the person’s registration as a registered user in respect of that type of fuel, the Minister of National Revenue registers the person, in respect of that type of fuel, as a distributor, a specified air carrier, a specified marine carrier or a specified rail carrier;

- at the time of cancellation by the Minister of National Revenue of the person's registration as a registered user in respect of that type of fuel, the person is a registered emitter and the fuel is held at, or in transit to, a covered facility of the person;
- the person was required to pay a charge under section 37 because the person gave an exemption certificate containing a false declaration to the registered distributor that delivered the fuel to the person; or
- circumstances prescribed by regulations exist or conditions prescribed by regulations are met (at this time, no circumstance or condition is proposed to be prescribed by regulations).

### **Section 24 – Charge – diversion by a farmer**

Subsection 24(1) imposes a charge on a person that is a farmer (see commentary for the definition "farmer") in relation to fuel that the person, at any time, uses otherwise than in an eligible farming activity or delivers to another person (unless the other person is a registered distributor in respect of that type of fuel that provides an exemption certificate to the person).

A charge under subsection 24(1) becomes payable if the fuel had previously been delivered to the person by a registered distributor in respect of that type of fuel and a charge did not become payable by the registered distributor upon that delivery by application of an exemption certificate. The amount of the charge under subsection (1) must be determined in accordance with section 40.

Subsection 24(2) provides that a charge under subsection (1) becomes payable at the time the person uses the fuel or delivers the fuel to another person.

Subsection 24(3) provides that a charge under subsection (1) is not payable by a person in respect of fuel if one of the following conditions is met:

- at the time the fuel is used or delivered by the person, the person is no longer a farmer (instead, a charge under subsection 24(4) may apply when the person ceases to be a farmer);
- the person was required to pay a charge under section 37 because the person gave an exemption certificate containing a false declaration to the registered distributor that delivered the fuel to the person; or
- circumstances prescribed by regulations exist or conditions prescribed by regulations are met (at this time, no circumstance or condition is proposed to be prescribed by regulations).

Subsection 24(4) imposes a charge on a person in relation to fuel the person holds at a time when the person ceases to be a farmer.

A charge under subsection 24(4) becomes payable at the time the person ceases to be a farmer if the fuel had previously been delivered to the person by a registered distributor in respect of that type of fuel and a charge did not become payable by the registered distributor upon that delivery by application of an exemption certificate. The amount of the charge under subsection (4) must be determined in accordance with section 40.

Subsection 24(5) provides that a charge under subsection (4) is not payable by a person in respect of fuel if one of the following conditions is met:

- at the time the person ceases to be a farmer, the person is registered as a distributor in respect of that type of fuel;
- at the time the person ceases to be a farmer, the person is registered as an emitter and the fuel is held at, or in transit to, a covered facility of the person;
- the person was required to pay a charge under section 37 because the person gave an exemption certificate containing a false declaration to the registered distributor that delivered the fuel to the person; or
- circumstances prescribed by regulations exist or conditions prescribed by regulations are met (at this time, no circumstance or condition is proposed to be prescribed by regulations).

### **Section 25 – Charge – combustible waste**

Section 25 imposes a charge on a person in relation to combustible waste (see commentary for the definition “combustible waste”) that the person burns in a listed province for the purpose of producing heat or energy. The amount of the charge must be determined in accordance with section 41. The charge becomes payable at the time the combustible waste is burned by the person.

### **Section 26 – Charge – regulations**

Section 26 imposes a charge on a person prescribed by regulations, a person of a class of persons prescribed by regulations or a person meeting conditions prescribed by regulations in relation to fuel or combustible waste if circumstances prescribed by regulations exist or if conditions prescribed by regulations are met. The charge, the amount of which is to be determined in a manner prescribed by regulations, becomes payable at the time prescribed by regulations. At this time, no person, class of persons, condition, circumstance, manner of determining an amount or time an amount becomes payable is proposed to be prescribed by regulations.

### **Section 27 – Charge not payable – regulations**

Section 27 relieves a charge that would otherwise become payable under this Part in respect of a type of fuel or combustible waste. Such a charge is not payable by a person prescribed by regulations, a person belonging to a class of persons prescribed by regulations or a person meeting conditions prescribed by regulations, or if circumstances prescribed by regulations exist or if conditions prescribed by regulations are met. At this time, no person, class of persons, circumstance or condition is proposed to be prescribed by regulations.

**Subdivision b**  
**Application of Charge to Air, Marine, Rail and Road Carriers**

**Section 28 – Net fuel quantity – registered specified air or marine carrier**

Section 28 applies to a person that is a registered specified air carrier or registered specified marine carrier in respect of a type of fuel (see commentary for the definitions “registered specified air carrier” and “registered specified marine carrier”).

A person that is a registered specified air carrier or registered specified marine carrier in respect of a type of fuel is required to determine, under section 28, a net fuel quantity for each listed province in relation to each type of fuel in respect of which the person is a registered specified air carrier or a registered specified marine carrier. The requirement applies for each reporting period of the person.

Under section 28, the net fuel quantity of a person for a reporting period of the person, for a type of fuel in respect of which the person is a registered specified air carrier or registered specified marine carrier and for a listed province is the amount that is the total of the following quantities:

- the quantity of fuel of that type that is used by the person in the listed province during the reporting period, other than fuel used in a journey by an aircraft or vessel, in a locomotive, in a specified commercial vehicle, or if the person is a registered user in respect of that type of fuel, in a non-covered activity;
- the quantity of fuel of that type that is used by the person in a covered air journey or covered marine journey in respect of the listed province during the reporting period;
- the quantity of fuel of that type that is used by the person in the listed province during the reporting period in a locomotive or specified commercial vehicle;
- the quantity of fuel of that type that the person delivers to another person in the listed province during the reporting period, other than fuel delivered to a registered distributor in respect of that type of fuel, to a registered specified air carrier in respect of that type of fuel if the person is a registered specified air carrier in respect of that type of fuel or to a registered specified marine carrier in respect of that type of fuel if the person is a registered specified marine carrier in respect of that type of fuel, provided that in each case an exemption certificate applies in accordance with section 36; and
- the quantity of fuel of that type that is, for the reporting period and the listed province, prescribed by regulations or determined in manner prescribed by regulations (at this time, no fuel or manner of determination is proposed to be prescribed by regulations);

less the total of all quantities of fuel of that type that are, for the reporting period and the listed province, prescribed by regulations or determined in a manner prescribed by regulations (at this time, no fuel or manner of determination is proposed to be prescribed by regulations).

If a net fuel quantity of a person for a reporting period of the person, for a type of fuel and for a listed province is a positive amount, the person must pay to Her Majesty in right of Canada a charge under section 34. If a net fuel quantity of a person for a reporting period of the person, for a type of fuel and for a listed province is a negative amount, the person may be eligible for a rebate under section 46.

## **Section 29 – Net fuel quantity – registered specified rail carrier**

Section 29 applies to a person that is a registered specified rail carrier in respect of a type of fuel (see commentary for the definition “registered specified rail carrier”).

A person that is a registered specified rail carrier in respect of a type of fuel is required to determine, under section 29, a net fuel quantity for each listed province in relation to each type of fuel in respect of which the person is a registered specified rail carrier. The requirement applies for each reporting period of the person.

Under section 29, the net fuel quantity of a person for a reporting period of the person, for a type of fuel in respect of which the person is a registered specified rail carrier and for a listed province is the amount that is the total of the following quantities:

- the quantity of fuel of that type that is used by the person in the listed province during the reporting period in a locomotive as estimated by the person in a manner satisfactory to the Minister of National Revenue;
- the quantity of fuel of that type that is used by the person in the listed province during the reporting period, other than fuel used in a journey by aircraft or vessel, in a locomotive, in a specified commercial vehicle, or if the person is a registered user in respect of that type of fuel, in a non-covered activity;
- the quantity of fuel of that type that is used by the person in a covered air journey or covered marine journey in respect of the listed province during the reporting period;
- the quantity of fuel of that type that is used by the person in the listed province during the reporting period in a specified commercial vehicle;
- the quantity of fuel of that type that the person delivers to another person in the listed province during the reporting period, other than fuel delivered to a registered distributor in respect of that type of fuel or to a registered specified rail carrier in respect of that type of fuel, provided that in each case an exemption certificate applies in accordance with section 36; and
- the quantity of fuel of that type that is, for the reporting period and the listed province, prescribed by regulations or determined in manner prescribed by regulations (at this time, no fuel or manner of determination is proposed to be prescribed by regulations);

less the total of all quantities of fuel of that type that are, for the reporting period and the listed province, prescribed by regulations or determined in a manner prescribed by regulations (at this time, no fuel or manner of determination is proposed to be prescribed by regulations).

If a net fuel quantity of a person for a reporting period of the person, for a type of fuel and for a listed province is a positive amount, the person must pay to Her Majesty in right of Canada a charge under section 34. If a net fuel quantity of a person for a reporting period of the person, for a type of fuel and for a listed province is a negative amount, the person may be eligible for a rebate under section 46.

### **Section 30 – Net fuel quantity – registered air or marine carrier**

Section 30 applies to a person that is a registered air carrier or registered marine carrier in respect of a type of fuel (see commentary for the definitions “registered air carrier” and “registered marine carrier”).

A person that is a registered air carrier or registered marine carrier in respect of a type of fuel is required to determine, under section 30, a net fuel quantity for each listed province in relation to each type of fuel in respect of which the person is a registered air carrier or registered marine carrier. The requirement applies for each reporting period of the person.

Under section 30, the net fuel quantity of a person for a reporting period of the person, for a type of fuel in respect of which the person is a registered air carrier or registered marine carrier and for a listed province is the amount that is the total of the following quantities:

- the quantity of fuel of that type that is used by the person in a covered air journey or covered marine journey in respect of the listed province during the reporting period;
- the quantity of fuel of that type that is used by the person in the listed province during the reporting period in a locomotive or a specified commercial vehicle in a listed province;
- the quantity of fuel of that type that is removed from a supply tank of an aircraft, vessel, locomotive or specified commercial vehicle of the person at a location in the listed province during the reporting period; and
- the quantity of fuel of that type that is, for the reporting period and the listed province, prescribed by regulations or determined in a manner prescribed by regulations (at this time, no fuel or manner of determination is proposed to be prescribed by regulations);

less the total of the following quantities:

- the quantity of fuel of that type that is transferred into a supply tank of an aircraft, vessel, locomotive or specified commercial vehicle of the person at a location in a listed province during the reporting period; and
- the quantity of fuel of that type that is, for the reporting period and the listed province, prescribed by regulations or determined in a manner prescribed by regulations (at this time, no fuel or manner of determination is proposed to be prescribed by regulations).

If a net fuel quantity of a person for a reporting period of the person, for a type of fuel and for a listed province is a positive amount, the person must pay to Her Majesty in right of Canada a charge under section 34. If a net fuel quantity of a person for a reporting period of the person, for a type of fuel and for a listed province is a negative amount, the person may be eligible for a rebate under section 46.

### **Section 31 – Net fuel quantity – registered rail carrier**

Section 31 applies to a person that is a registered rail carrier in respect of a type of fuel (see commentary for the definition “registered rail carrier”).

A person that is a registered rail carrier in respect of a type of fuel is required to determine, under section 31, a net fuel quantity for each listed province in relation to each type of fuel in respect of which the person is a registered rail carrier. The requirement applies for each reporting period of the person.

Under section 31, the net fuel quantity of a person for a reporting period of the person, for a type of fuel in respect of which the person is a registered rail carrier and for a listed province is the amount that is the total of the following quantities:

- the quantity of fuel of that type that is used by the person in the listed province during the reporting period in a locomotive as estimated in a manner satisfactory to the Minister of National Revenue;
- the quantity of fuel of that type that is used by the person in a covered air journey or covered marine journey in respect of the listed province during the reporting period;
- the quantity of fuel of that type that is used by the person in the listed province during the reporting period in a specified commercial vehicle;
- the quantity of fuel of that type that is removed from a supply tank of an aircraft, vessel, locomotive or specified commercial vehicle of the person at a location in the listed province during the reporting period; and
- the quantity of fuel of that type that is, for the reporting period and the listed province, prescribed by regulations or determined in a manner prescribed by regulations (at this time, no fuel or manner of determination is proposed to be prescribed by regulations);

less the total of the following quantities:

- the quantity of fuel of that type that is transferred, at a location in a listed province during the reporting period, into a supply tank of an aircraft, vessel, locomotive or specified commercial vehicle of the person; and
- the quantity of fuel of that type that is, for the reporting period and the listed province, prescribed by regulations or determined in a manner prescribed by regulations (at this time, no fuel or manner of determination is proposed to be prescribed by regulations).

If a net fuel quantity of a person for a reporting period of the person, for a type of fuel and for a listed province is a positive amount, the person must pay to Her Majesty in right of Canada a charge under section 34. If a net fuel quantity of a person for a reporting period of the person, for a type of fuel and for a listed province is a negative amount, the person may be eligible for a rebate under section 46.

### **Section 32 – Net fuel quantity – registered road carrier**

Section 32 applies to a person that is a registered road carrier in respect of a type of fuel (see commentary for the definition “registered road carrier”).

A person that is a registered road carrier in respect of a type of fuel is required to determine, under section 32, a net fuel quantity for each listed province in relation to each type of fuel in

respect of which the person is a registered road carrier. The requirement applies for each reporting period of the person.

Under section 32, the net fuel quantity of a person for a reporting period of the person, for a type of fuel in respect of which the person is a registered road carrier and for a listed province is the amount that is the total of the following quantities:

- the quantity of fuel of that type that is used by the person in a specified commercial vehicle (but not used at a covered facility if the person is a registered emitter) in the listed province during the reporting period;
- the quantity of fuel of that type that is removed from a supply tank of a specified commercial vehicle of the person at a location in the listed province during the reporting period; and
- the quantity of fuel of that type that is, for the reporting period and the listed province, prescribed by regulations or determined in a manner prescribed by regulations (at this time, no fuel or manner of determination is proposed to be prescribed by regulations);

less the total of the following quantities:

- the quantity of fuel of that type that is transferred, at a location in a listed province during the reporting period, into a supply tank of a specified commercial vehicle (but not transferred at a covered facility if the person is a registered emitter) of the person; and
- the quantity of fuel of that type that is, for the reporting period and the listed province, prescribed by regulations or determined in a manner prescribed by regulations (at this time, no fuel or manner of determination is proposed to be prescribed by regulations).

If a net fuel quantity of a person for a reporting period of the person, for a type of fuel and for a listed province is a positive amount, the person must pay to Her Majesty in right of Canada a charge under section 34. If a net fuel quantity of a person for a reporting period of the person, for a type of fuel and for a listed province is a negative amount, the person may be eligible for a rebate under section 46.

### **Section 33 – Annual net fuel adjustment – rail carrier**

Section 33 applies to a person in respect of a calendar year if the person was, at any time in the calendar year, a specified registered rail carrier or registered rail carrier in respect of a type of fuel (see commentary for the definitions “specified registered rail carrier” and “registered rail carrier”).

Sections 29 and 31 allow a person that is a registered specified rail carrier or registered rail carrier in respect of a type of fuel to determine a net fuel quantity of the person in respect of that type of fuel based on an estimate (in a manner satisfactory to the Minister of National Revenue) of the quantity of fuel of that type that is used by the person in a locomotive in a listed province during a reporting period in a calendar year. The annual net fuel adjustment is an adjustment that corrects this estimate to reflect the actual quantity of fuel of that type used by the person in a locomotive in the listed province during each reporting period in the calendar year.

A person that is a specified registered rail carrier or registered rail carrier in respect of a type of fuel is required to determine, under section 33, an annual net fuel adjustment for each listed province in relation to each type of fuel in respect of which the person is a specified registered rail carrier or registered rail carrier. The requirement applies for a calendar year.

Under section 33, the annual net fuel adjustment of a person for a calendar year, for a type of fuel and for a listed province is the amount that is the total of the following quantities:

- the quantity of fuel of that type that is used by the person in the listed province during the calendar year in a locomotive at any time when the person is a specified registered rail carrier or registered rail carrier in respect of that type of fuel; and
- the quantity of fuel of that type that is, for the reporting period and the listed province, prescribed by regulations or determined in a manner prescribed by regulations (at this time, no fuel or manner of determination is proposed to be prescribed by regulations);

less the total of the following quantities:

- the quantity of fuel of that type that the person estimated as having been used in a locomotive in the listed province during a reporting period of the person in the calendar year; and
- the quantity of fuel of that type that is, for the reporting period and the listed province, prescribed by regulations or determined in a manner prescribed by regulations (at this time, no fuel or manner of determination is proposed to be prescribed by regulations).

If an annual net fuel adjustment of a person for a calendar year, for a type of fuel and for a listed province is a positive amount, the person must pay to Her Majesty in right of Canada a charge under section 35. If an annual net fuel adjustment of a person for a calendar year, for a type of fuel and for a listed province is a negative amount, the person may be eligible for a rebate under section 47.

#### **Section 34 – Charge – net fuel quantity**

A net fuel quantity of a person for a reporting period of the person, for a type of fuel and for a listed province, as determined under any of sections 28 to 32, may be a positive or negative amount. Section 34 provides that if a net fuel quantity is a positive amount, the person must pay to Her Majesty in right of Canada a charge, the amount of which is to be determined in accordance with section 40. The charge becomes payable on the last day of the reporting period of the person. If a net fuel quantity of a person for a reporting period of the person, for a type of fuel and for a listed province is a negative amount, section 46 provides for a rebate.

#### **Section 35 – Charge – annual net fuel adjustment**

An annual net fuel adjustment of a person for a calendar year, for a type of fuel and for a listed province, as determined under section 33, may be a positive or negative amount. Section 35 provides that if an annual net fuel adjustment is a positive amount, the person must pay to Her Majesty in right of Canada a charge, the amount of which is to be determined in accordance with section 40. The charge becomes payable on June 30 of the following calendar year. If an annual net fuel adjustment of a person for a calendar year, for a type of fuel and for a listed province is a negative amount, section 47 provides for a rebate.

***Subdivision c***  
***Exemption Certificate***

**Section 36 – Exemption certificate**

Section 36 sets out rules in respect of exemption certificates. If an exemption certificate applies in respect of a delivery of fuel, a charge in respect of the fuel may not be payable under section 17, 22, 23 or 24 if all criteria for relief in the relevant section are met (see commentary for those sections). In other cases, an exemption certificate may change the manner in which the delivery of the fuel is accounted for in determining a net fuel quantity in section 28 or 29 (see commentary for those sections). An exemption certificate may also alter a person's obligation to pay a charge, under section 38, in respect of fuel held on an adjustment day (see commentary for that section).

Subsection 36(1) provides that an exemption certificate applies in respect of fuel delivered to a person by another person if four requirements are met.

The first requirement is that the certificate must be made in the form authorized by the Minister of National Revenue and contain information specified by the Minister of National Revenue.

The second requirement is that the certificate must contain a declaration by the person

- that the person is a registered distributor in respect of that type of fuel;
- that the person is a registered specified air carrier in respect of that type of fuel;
- that the person is a registered specified marine carrier in respect of that type of fuel;
- that the person is a registered specified rail carrier in respect of that type of fuel;
- that the person is a registered emitter and that the fuel is for use at a covered facility of the person;
- that the person is a registered user in respect of that type of fuel and that the fuel is for use in a non-covered activity;
- that the person is a farmer, that the location at which the fuel is delivered is a farm, that the fuel is for use exclusively in the operation of eligible farming machinery or of an auxiliary component of eligible farming machinery and that all or substantially all of the fuel is for use in the course of eligible farming activities; or
- that the person is a person prescribed by regulations, a person of a class of persons prescribed by regulations or a person meeting conditions prescribed by regulations and that circumstances prescribed by regulations exist (at this time, no person, class of persons, condition or circumstance is proposed to be prescribed by regulations).

The third requirement is that the person must provide the certificate to the other person in respect of the delivery in a manner satisfactory to the Minister of National Revenue.

The fourth requirement is that the other person retains the certificate and indicates to the person, in a manner satisfactory to the Minister of National Revenue, that the delivery is subject to the certificate.

Subsection 36(2) provides that, despite the requirements set out in subsection (1), if circumstances prescribed by regulations exist or if conditions prescribed by regulations are met, then an exemption certificate will apply to a delivery in accordance with rules prescribed by regulations. At this time, no circumstance, condition or rule is proposed to be prescribed by regulations.

### **Section 37 – Charge – false declaration**

For an exemption certificate to apply in respect of a delivery of fuel made in a listed province it must meet the requirements of subsection 36(1) (see commentary for that section). One of the requirements of subsection 36(1) is that the certificate must contain one of the declarations set out in paragraph 36(1)(b). Section 37 describes the consequences that apply if a certificate contains a false declaration.

Subsection 37(1) provides that if an exemption certificate applies to a delivery of fuel made in a listed province and if it contains a declaration that is, at the time the fuel is delivered, false, then the person to whom the fuel is delivered must pay a charge in respect of the fuel and the listed province in the amount determined under section 40. The person is also liable to pay, in addition to any other penalty under this Part, a penalty equal to 25% of the amount of that charge.

Furthermore, paragraph 37(1)(c) provides that if the person that delivered the fuel knew or ought to have known, at the time the fuel was delivered, that the declaration was false, then that person is jointly and severally, or solidarily, liable with the person to whom the fuel is delivered for the charge and penalty under section 37 and to any related interest and penalties.

Subsection 37(2) stipulates that the charge and penalty under subsection (1) are payable at the time the fuel is delivered.

If a charge is payable under section 37 by a person in respect of fuel that is delivered to the person, the fuel will not be subject to a charge under section 22, 23 or 24, subject to the conditions of those sections (see commentary for those sections) and this Part.

### ***Subdivision d*** ***Application of Charge in Special Circumstances***

### **Section 38 – Charge – fuel held on adjustment day**

Section 38 imposes a charge on a person in respect of a quantity of a type of fuel that the person holds in a listed province at the beginning of an adjustment day (see commentary for the definition “adjustment day”). Because the definition of adjustment day includes commencement day (see commentary for the definition “commencement day”), a charge will become payable under this section by a person that meets the conditions of this section on commencement day.

Subsection 38(1) provides that the amount of the charge in respect of a quantity of fuel held by a person on an adjustment day is the difference between element A and element B of the formula described in this subsection. Element A is equal to the amount that would be the amount of a charge in respect of the quantity of the fuel and the listed province determined

under section 40 (see commentary for that section) if that charge had become payable on the adjustment day. In cases where the adjustment date is commencement day (see commentary for the definition “commencement day”), element B is equal to zero. In any other case, element B is equal to the amount that would be the amount of a charge in respect of the quantity of the fuel and the listed province determined under section 40 if that charge had become payable on the day before the adjustment day.

Subsection 38(2) provides that subsection (1) does not apply to a quantity of fuel held by a person if it was delivered to the person by a registered distributor in respect of that type of fuel and one of the following conditions is met:

- the person is a registered emitter and the fuel is held at, or is in transit to, a covered facility of the person;
- the person is a registered user in respect of that type of fuel and an exemption certificate applies in respect of the delivery in accordance with section 36; or
- the person is a farmer, the fuel is a qualifying farming fuel and an exemption certificate applies in respect of the delivery in accordance with section 36.

Subsection 38(3) provides that the charge under subsection (1) is payable on the adjustment day.

Subsection 38(4) describes circumstances in which the charge under subsection (1) is not payable in respect of fuel held by the person. Paragraph (a) provides that the charge is not payable if the person is, in respect of that type of fuel, a registered distributor, a registered specified air carrier, a registered specified marine carrier or a registered specified rail carrier. Paragraph (b) provides that the charge is not payable if the fuel is, in accordance with the *Ships' Stores Regulations*, designated as ships' stores for use on board a conveyance of a class prescribed under those regulations. Paragraph (c) provides that the charge is not payable if the amount of the charge in respect of the fuel of that type is less than \$1,000.

The determination of the amount of charge imposed under this section on fuel held at the beginning of an adjustment day requires a person to determine how much fuel is held at that time. Subsection 38(5) requires a person that holds fuel (other than in a supply tank of a vehicle) in a listed province at that time to determine the quantity of fuel held at that time if the person is, or that can reasonably be expected to be, liable to pay a charge under this section.

### **Section 39 – Charge – ceasing to be registered**

Section 39 imposes a charge on a person in respect of fuel held at a time the Minister of National Revenue cancels that person's registration as a distributor, specified air carrier, specified marine carrier or specified rail carrier for the particular type of fuel.

Subsection 39(1) is invoked, when the Minister of National Revenue, at a particular time, cancels a person's registration as a distributor, specified air carrier, specified marine carrier or specified rail carrier in respect of a particular type of fuel. The person must pay a charge, if they meet the conditions set out in subsection (1). The first condition is that the person must hold, at the particular time, a quantity of fuel of the particular type in a listed province. The second condition is that the person must have been, immediately before the particular time, registered as a distributor, specified air carrier, specified marine carrier or specified rail carrier in respect of

the particular type of fuel. The amount of the charge in respect of the fuel and the listed province is the amount determined under section 40 (see commentary for that section).

Subsection 39(1), however, also provides an exception to the charge. The charge in subsection (1) will not apply if the Minister of National Revenue registers the person as a distributor, specified air carrier, specified marine carrier or specified rail carrier in respect of the particular type of fuel at the same time (i.e., the particular time) that the Minister of National Revenue cancels the person's previous registration.

Subsection 39(2) provides another exception to the charge imposed under subsection (1). Subsection (1) does not apply if the person is a registered emitter at the particular time, but only to the extent that the fuel is, at the particular time, held by the person at, or in transit to, a covered facility of the person. For example, consider a person that is, immediately before a particular time, a registered emitter and a registered distributor in respect of light fuel oil who holds a particular quantity of light fuel oil at a covered facility and another quantity of light fuel oil at another facility that is not a covered facility. If, at the particular time, the Minister of National Revenue cancels the person registration as a registered distributor in respect of light fuel oil, the person will not be required to pay a charge in respect of the particular quantity of light fuel oil held at the covered facility, but the person will be required to pay a charge in respect of the other quantity of fuel held at the other facility.

Subsection 39(3) provides that the charge under subsection (1) is payable at the time when the Minister of National Revenue cancels the person's registration as a distributor, specified air carrier, specified marine carrier or specified rail carrier for the particular type of fuel.

### ***Subdivision e*** ***Amount of Charge***

#### **Section 40 – Charge amount – fuel**

Section 40 sets out the manner for determining the amount of a charge in respect of a type of fuel or in respect of certain mixtures. However, this section does not apply for purposes of determining the amount of a charge under section 38 in respect of fuel held in a listed province on an adjustment day. In that case, the amount of the charge in respect of fuel is determined under subsection 38(1).

Subsection 40(1) sets out the manner for determining the amount of a charge payable in respect of fuel and a listed province. The formula in subsection (1) provides that the amount of the charge is equal to the result of the multiplication of elements A and B. The amounts to be used for these two elements vary depending on the section under which the charge becomes payable.

If the charge becomes payable under section 34, element A is equal to the net fuel quantity in respect of which the charge is payable (see commentary for that section). In that case, element B is equal to the rate in respect of fuel of that type for the listed province applicable at the time the charge becomes payable. If the charge becomes payable under section 35, element A is equal to the annual net fuel adjustment in respect of which the charge is payable (see commentary for that section). In that case, element B is equal to the rate (see commentary for the definition "rate") in respect of fuel of that type for the listed province applicable on December 31 of the calendar year that precedes the calendar year that includes the time at which the charge becomes payable. If the charge is payable under any other section, element A is equal

to the quantity of fuel in respect of which the charge is payable and element B is equal to the rate in respect of fuel of that type for the listed province applicable at the time the charge becomes payable.

Subsection 40(2), which applies despite subsection (1), provides that the amount of a charge in respect of a mixture that is deemed to be fuel of a type prescribed by regulations under subsection 16(2) is equal to the amount determined in the manner prescribed by regulations. At this time, no mixtures are proposed to be prescribed by regulations under subsection 16(2) and no manner of determining a charge for a mixture is proposed to be prescribed by regulations under this section.

Subsection 40(3), which applies despite subsection (1), provides that if circumstances prescribed by regulations exist or conditions prescribed by regulations are met, the amount of a charge payable under this Division in respect of fuel and a listed province is equal to the amount determined in the manner prescribed by regulations. At this time, no circumstance, condition or manner of determining an amount is proposed to be prescribed by regulations.

### **Section 41 – Charge amount – combustible waste**

Section 41 sets out the manner for determining the amount of a charge in respect of combustible waste (see commentary for the definition “combustible waste”) and a listed province that becomes payable under section 25.

The formula in subsection 41(1) provides that the amount of the charge is equal to the result of the multiplication of elements A and B. Element A is equal to the quantity, expressed as a weight measured in tonnes, of the combustible waste. Element B is equal to the rate for combustible waste for the listed province applicable at the time the charge becomes payable.

Subsection 41(2), which applies despite subsection (1), provides that if circumstances prescribed by regulations exist or conditions prescribed by regulations are met, the amount of a charge payable in respect of combustible waste for a listed province is equal to the amount determined in the manner prescribed by regulations. At this time, no circumstance, condition or matter of determining an amount is proposed to be prescribed by regulations.

## **DIVISION 3 REBATES**

### **Section 42 – Statutory recovery rights**

Section 42 provides that, except as specifically provided under this Part, the *Customs Act*, or the *Financial Administration Act*, no person has a right to recover any money paid to Her Majesty in right of Canada as or on account of, or that has been taken into account by Her Majesty in right of Canada as, an amount payable under this Part.

### **Section 43 – Rebate – fuel removed from listed province**

Section 43 provides for a rebate to be paid to certain persons that remove fuel from a listed province if certain conditions are met. The rebate under this section is only available to a person that is, at the time of removal from the listed province, a registered emitter or that is, in respect of a type of fuel, a registered user, registered importer, registered air carrier, registered marine

carrier or registered rail carrier. See also the commentary for section 11 in respect of the treatment of fuel that is in transit through a listed province.

Subsection 43(1) applies if, at a particular time, such a person removes a quantity of fuel of that type from a listed province. Subsection (1) provides that the Minister of National Revenue must pay to the person a rebate in respect of the quantity of fuel, the listed province and the reporting period of the person that includes the particular time. The rebate must only be paid if the person meets one of the sets of conditions set out in paragraphs (a) to (c).

The first set of conditions is described in paragraph 43(1)(a). Paragraph (a) requires that the person, at an earlier time in a particular reporting period, brought the quantity of fuel into the listed province from a place in Canada or imported the fuel at a location in the listed province. Paragraph (a) also requires that a charge under section 19 or 20 (see commentary for those sections) was payable by the person at the earlier time in respect of the quantity fuel and the listed province. Paragraph (a) further requires, if the charge was payable under section 19 or subsection 20(2), that charge to have been taken into account in the determination of the net charge for the particular reporting period of the person (see commentary for section 71). Alternatively, if the charge was payable under subsection 20(3), paragraph (a) requires that charge to have been paid in accordance with subsection 20(4).

The second set of conditions is described in paragraph 43(1)(b). Paragraph (b) requires that the person, at an earlier time in a particular reporting period, removed the quantity of fuel from a covered facility of the person in the listed province. Paragraph (b) also requires that a charge under subsection 22(1) or (2) was payable by the person at the earlier time in respect of the quantity of the fuel and the listed province (see commentary for section 22). Paragraph (b) further requires that the charge under subsection 22(1) or (2) was taken into account in the determination of the net charge for the particular reporting period of the person (see commentary for section 71).

The third set of conditions is described in paragraph 43(1)(c). Paragraph (c) requires that the person, at an earlier time in a particular reporting period, held the quantity of fuel at, or the quantity of fuel was in transit to, a facility or property of the person in the listed province that ceased, at the earlier time, to be a covered facility of the person. Paragraph (c) also requires that a charge under subsection 22(4) or (5) became payable by the person at the earlier time in respect of the quantity of fuel and the listed province. Paragraph (c) further requires that the charge under subsection 22(4) or (5) was taken into account in the determination of the net charge for the particular reporting period of the person.

Subsection 43(2) provides that the amount of the rebate under subsection (1) is equal to the amount of the charge referred to in whichever of paragraphs (1)(a) to (c) applies.

#### **Section 44 – Rebate – fuel brought to covered facility**

Section 44 provides for a rebate to be paid to a person that is a registered emitter that brings fuel to a covered facility of the person if certain conditions are met.

Subsection 44(1) applies if, at a particular time, a person brings a quantity of fuel to a covered facility of the person. Subsection (1) provides that the Minister of National Revenue must pay to the person a rebate in respect of the quantity of fuel, the listed province and the reporting period of the person that includes the particular time. The rebate must only be paid if the person meets one of the sets of conditions set out in paragraphs (a) to (c).

The first set of conditions is described in paragraph 44(1)(a). Paragraph (a) requires that the person, at an earlier time in a particular reporting period, brought the quantity of fuel into the listed province from a place in Canada or imported the fuel at a location in the listed province. Paragraph (a) also requires that a charge under section 19 or 20 (see commentary for those sections) was payable by the person at the earlier time in respect of the quantity fuel and the listed province. Paragraph (a) further requires, if the charge was payable under section 19 or subsection 20(2), that charge to have been taken into account in the determination of the net charge for the particular reporting period of the person (see commentary for section 71). Alternatively, if the charge was payable under subsection 20(3), paragraph (a) requires that charge to have been paid in accordance with subsection 20(4).

The second set of conditions is described in paragraph 44(1)(b). Paragraph (b) requires that the person, at an earlier time in a particular reporting period, removed the quantity of fuel from a covered facility of the person in the listed province. Paragraph (b) also requires that a charge under subsection 22(1) or (2) was payable by the person at the earlier time in respect of the quantity of the fuel and the listed province (see commentary for section 22). Paragraph (b) further requires that the charge under subsection 22(1) or (2) was taken into account in the determination of the net charge for the particular reporting period of the person (see commentary for section 71).

The third set of conditions is described in paragraph 44(1)(c). Paragraph (c) requires that the person, at an earlier time in a particular reporting period, held the quantity of fuel at, or the quantity of fuel was in transit to, a facility or property of the person in the listed province that ceased, at the earlier time, to be a covered facility of the person. Paragraph (c) also requires that a charge under subsection 22(4) or (5) became payable by the person at the earlier time in respect of the quantity of fuel and the listed province. Paragraph (c) further requires that the charge under subsection 22(4) or (5) was taken into account in the determination of the net charge for the particular reporting period of the person.

Subsection 44(2) provides that the amount of the rebate under subsection (1) is equal to the amount of the charge referred to in whichever of paragraphs (1)(a) to (c) applies.

### **Section 45 – Rebate – fuel used in non-covered activity**

Section 45 provides for a rebate to be paid to a person that is a registered user that uses fuel in a non-covered activity if certain conditions are met (see commentary for the definition “non-covered activity”).

Subsection 45(1) applies if a person, at a particular time in a reporting period of the person, uses fuel in a non-covered activity. Subsection (1) provides that the Minister of National Revenue must pay to the person a rebate in respect of the quantity of fuel, the listed province and the reporting period of the person that includes the particular time if the person is a registered user in respect of a type of fuel and the person meets all of the conditions set out in paragraphs (a) to (c).

The first condition is described in paragraph (a). Paragraph (a) requires that the person, at an earlier time in a particular reporting period of the person, brought the quantity of fuel into the listed province from a place in Canada or imported the fuel at a location in the listed province.

The second condition is described in paragraph (b). Paragraph (b) requires that a charge under section 19 or 20 (see commentary for those sections) was payable by the person at the earlier

time in respect of the quantity fuel and the listed province. Paragraph (b) also requires, if the charge was payable under section 19 or subsection 20(2), that charge to have been taken into account in the determination of the net charge for the particular reporting period of the person (see commentary for section 71). Alternatively, if the charge was payable under subsection 20(3), paragraph (b) requires that charge to have been paid in accordance with subsection 20(4).

The third condition is described in paragraph (c). Paragraph (c) requires that the fuel be used at a location that is not a covered facility of the person (see commentary for the definition “covered facility”).

Subsection 45(2) provides that the amount of the rebate under subsection (1) is equal to the amount of the charge referred to in paragraph (b).

### **Section 46 – Rebate – net fuel quantity**

Section 46 provides for a rebate for certain persons that must determine a net fuel quantity under any of sections 28 to 32. Those sections provide that, in certain circumstances, a net fuel quantity of a person must be determined for a reporting period of the person, for a type of fuel and for a listed province (see commentary for those sections). If the net fuel quantity is a positive number, the person will be required to pay a charge under section 34 (see commentary for that section). On the other hand, if the net fuel quantity is a negative number, subsection 46(1) requires that the Minister of National Revenue pay to the person a rebate in respect of the net fuel quantity.

Subsection 46(2) sets out the manner for determining the amount of the rebate payable under subsection (1). The formula in subsection (2) provides that the amount of the rebate is equal to the result of the multiplication of elements A and B. Element A is equal to the net fuel quantity of the person for the reporting period, for that type of fuel and for the listed province. Element B is equal to the rate (see commentary for the definition “rate”) in respect of fuel of that type for the listed province applicable on the last day of the reporting period.

Subsection 46(3), which applies despite subsection (1), provides that if circumstances prescribed by regulations exist or conditions prescribed by regulations are met, the amount of a charge payable under this section is equal to the amount determined in the manner prescribed by regulations. At this time, no circumstance, condition or matter of determining an amount is proposed to be prescribed by regulations.

### **Section 47 – Rebate – annual net fuel adjustment**

Section 47 provides for a rebate for certain persons that must determine an annual net fuel adjustment under section 33 (see commentary for that section). Section 33 provides that, in certain circumstances, an annual net fuel adjustment of a person must be determined for a calendar year, for a type of fuel and for a listed province. If the annual net fuel adjustment is a positive number, the person will be required to pay a charge under section 35 (see commentary for that section). On the other hand, if the annual net fuel adjustment is a negative number, subsection 47(1) requires that the Minister of National Revenue must pay to the person a rebate in respect of the annual net fuel adjustment.

Subsection 47(2) sets out the manner for determining the amount of the rebate payable under subsection (1). The formula in subsection (2) provides that the amount of the rebate is equal to

the result of the multiplication of elements A and B. Element A is equal to the annual net fuel adjustment of the person for the calendar year, for that type of fuel and for the listed province. Element B is equal to the rate (see commentary for the definition “rate”) in respect of fuel of that type for the listed province applicable on the December 31 of the calendar year.

Subsection 47(3) provides that if circumstances prescribed by regulations exist or conditions prescribed by regulations are met, the amount of a charge payable under this section is equal to the amount determined in the manner prescribed by regulations. At this time, no condition, circumstance or manner of determining an amount is proposed to be prescribed by regulations.

### **Section 48 – Rebate – regulations**

Section 48 provides that the Minister of National Revenue must pay a rebate if circumstances prescribed by regulations exist or conditions prescribed by regulations are met. In such a case, the Minister of National Revenue must pay the rebate to a person prescribed by regulations, a person of a class of persons prescribed by regulations or a person meeting conditions prescribed by regulations. The amount of such a rebate is to be determined in the manner prescribed by regulations. At this time, no person, class of persons, circumstances, conditions or manner of determining a rebate is proposed to be prescribed.

### **Section 49 – Rebate – payment in error**

Subsection 49 describes the circumstances in which a person that pays an amount under this Part that is in fact not payable may apply for a rebate of the amount.

Subsection 49(1) provides that the Minister of National Revenue must pay a rebate to a person if the person paid an amount in excess of the amount that was payable by that person under this Part. The Minister of National Revenue must pay the rebate whether the amount was paid by mistake or otherwise. Subsection (2) provides that the amount of the rebate is equal to the amount of the excess.

Subsection 49(3) sets out restrictions, under paragraphs (a) and (b) for the payment of a rebate under subsection (1) in respect of an excess amount paid by a person. Paragraph (a) stipulates that a rebate in respect of an amount must not be paid to a person to the extent that the amount was taken into account as an amount required to be paid by the person in respect of a reporting period of the person and the Minister of National Revenue has assessed the person for that reporting period under section 108. Paragraph (b) stipulates that a rebate in respect of an amount must not be paid to a person to the extent that the amount was an amount assessed under section 108.

Subsection 49(4) provides that a rebate under this section in respect of an amount is not to be paid to a person unless an application for the rebate satisfies the conditions of paragraph (a) and (b). Paragraph (a) requires that the application is made in the form authorized by the Minister of National Revenue containing information specified by the Minister of National Revenue. Paragraph (b) is a timing rule that stipulates when an application for a rebate under this section is required to be made. Paragraph (b) provides that a rebate in respect of an amount is not to be paid unless the application is filed with the Minister of National Revenue in the manner authorized by the Minister of National Revenue within two years after the earlier of the day that the amount was taken into account in determining the net charge for a reporting period of the person and the day that the amount was paid to the Receiver General.

Subsection 49(5) provides that not more than one application for a rebate under this section may be made by a person in a calendar month.

#### **Section 50 – Restriction on rebate**

Section 50 provides that a rebate is not to be paid to a person under Division 3 in certain circumstances. Paragraph (a) provides that the rebate is not to be paid to the extent that it can reasonably be regarded that the person has obtained or is entitled to obtain a rebate, refund or remission of the amount under any other section of the Act or under any other Act of Parliament. Paragraph (b) provides that the rebate is not to be paid if circumstances prescribed by regulations exist or conditions prescribed by regulations are met. At this time, no circumstances or conditions are proposed to be prescribed by regulations.

#### **Section 51 – Restriction on rebate**

Section 51 provides that a rebate under Division 3 is not to be paid to a person at any time unless all returns of which the Minister of National Revenue has knowledge and that are required to be filed at or before that time by the person under this Part, the *Excise Tax Act*, the *Income Tax Act*, the *Excise Act, 2001* and the *Air Travellers Security Charge Act* have been filed with the Minister of National Revenue.

#### **Section 52 – Application for rebate**

Section 52 provides that a rebate under Division 3 (other than section 49) in respect of a particular reporting period of a person is not to be paid unless an application is made in accordance with the conditions set out in paragraphs (a) to (c). The conditions under paragraph (c) apply only if the rebate is a rebate payable under section 47 in respect of an annual net fuel adjustment. In any other case, the conditions under paragraph (b) apply.

The condition under paragraph 52(a) applies in all cases and provides that the application must be made in the form authorized by the Minister of National Revenue and containing information specified by the Minister of National Revenue.

If paragraph 52(b) applies, the application must be filed with the Minister of National Revenue in the manner authorized by the Minister of National Revenue and must meet the conditions of subparagraphs (i) and (ii). Subparagraph (i) requires that the application must be filed with the Minister of National Revenue on or before the day on or before which the return under section 69 is required to be filed for the last reporting period of the person that ends within two years after the end of the particular reporting period. Subparagraph (ii) requires that the application be filed with the Minister of National Revenue with the return in respect of the reporting period in which the amount of the rebate is taken into account in determining the net charge for the reporting period.

If the rebate is payable under section 47 in respect of an annual net fuel adjustment for a particular calendar year, then paragraph 52(c) applies and the application must be filed with the Minister of National Revenue in the manner authorized by the Minister of National Revenue and must meet the conditions of subparagraphs (i) and (ii). Subparagraph (i) requires that the application must be filed on or before the day on which the return under section 69 is required to be filed for the reporting period of the person that includes June 30 of the year following the particular calendar year. Subparagraph (ii) requires that the application be filed with the Minister

of National Revenue with the return in respect of the reporting period that includes June 30 of the year following the particular calendar year.

### **Section 53 – Single application**

Section 53 provides that only one application may be made under Division 3 for a rebate with respect to any matter.

### **Section 54 – Restriction – bankruptcy**

Section 54 provides rules that apply if a trustee is appointed under the *Bankruptcy and Insolvency Act* to act in the administration of the estate or succession of a bankrupt. In that case, a rebate under this Part that the bankrupt was entitled to claim before the appointment must not be paid after the appointment unless the conditions of this section are met. The first condition is that all returns required under this Part, the *Excise Tax Act*, the *Income Tax Act*, the *Excise Act, 2001* and the *Air Travellers Security Charge Act* to be filed for reporting periods of the bankrupt ending before the appointment have been filed. The second condition is that all amounts required under this Part, the *Excise Tax Act*, the *Income Tax Act*, the *Excise Act, 2001* and the *Air Travellers Security Charge Act* to be paid by the bankrupt in respect of those reporting periods have been paid.

## **DIVISION 4 REGISTRATION, REPORTING PERIOD, RETURNS AND PAYMENTS**

### ***Subdivision a Registration***

Subdivision a of Division 4 sets out the registration requirements that apply to persons in respect of different types of fuel and in respect of combustible waste.

One or more registration types may be applicable to a person in respect of different types of fuel. The registration types applicable to a person in respect of a particular type of fuel depend on the person's dealings with the particular type of fuel. Registration types in respect of a type of fuel include registration, in respect of that type of fuel, as a distributor, importer, user, specified air carrier, air carrier, specified marine carrier, marine carrier, specified rail carrier, rail carrier or road carrier. A person's registration status with respect to a type of fuel will affect the person's obligations and entitlements under Part 1 with respect to that type of fuel.

A person may also become registered as an emitter if the person is responsible for a covered facility (see commentary for the definition "covered facility"). Unlike the other registration types, registration of a person as an emitter applies in respect of all types of fuel.

There is only one registration type (user) in the case of combustible waste.

### **Section 55 – Distributors**

Section 55 sets out the rules regarding registration of a person as a distributor in respect of a type of fuel.

Subsection 55(1) describes when a person must be registered as a distributor in respect of a type of fuel.

Under paragraph 55(1)(a), registration of a person as a distributor in respect of both marketable natural gas and non-marketable natural gas is mandatory if:

- the person produces either marketable natural gas or non-marketable natural gas in a listed province;
- the person imports either marketable natural gas or non-marketable natural gas at a location in a listed province otherwise than in a supply tank of a vehicle;
- the person brings either marketable natural gas or non-marketable natural gas into a listed province from a place in Canada otherwise than in a supply tank of a vehicle;
- the person delivers either marketable natural gas or non-marketable natural gas to another person in a listed province;
- the person measures, on a regular basis and for the purpose of billing another person or providing the other person's billing information to a third party, the other person's consumption or usage of marketable natural gas that is delivered by means of a distribution system;
- the person is a person prescribed by regulations, a person of a class of persons prescribed by regulations or a person meeting conditions prescribed by regulations (at this time, no person, class of persons or condition is proposed to be prescribed by regulations); or
- circumstances that are prescribed by regulations exist or conditions that are prescribed by regulations are met (at this time, no circumstance or condition is proposed to be prescribed by regulations).

Under paragraph 55(1)(b), registration of a person as a distributor in respect of a type of fuel (other than marketable natural gas or non-marketable natural gas) is mandatory if:

- the person produces that type of fuel in a listed province;
- the person is a person prescribed by regulations, a person of a class of persons prescribed by regulations or a person meeting conditions prescribed by regulations (at this time, no person, class of persons or condition is proposed to be prescribed by regulations); or
- prescribed circumstances exist or prescribed conditions are met (at this time, no circumstance or condition is proposed to be prescribed by regulations).

Subsection 55(2) provides that a person required to be registered as a distributor in respect of a type of fuel under subsection (1) must make an application for registration to the Minister of National Revenue and sets out when that application is required to be filed.

Subparagraph 55(2)(a)(i) provides that a person required to be registered as a distributor in respect of marketable natural gas and non-marketable natural gas must apply for registration

before the later of commencement day (see commentary for the definition “commencement day”) and the day that is the earliest of the following days:

- the day on which the person first produces marketable natural gas or non-marketable natural gas in a listed province;
- the day on which the person first imports marketable natural gas or non-marketable natural gas at a location in a listed province otherwise than in a supply tank of a vehicle;
- the day on which the person first brings marketable natural gas or non-marketable natural gas into a listed province from a place in Canada otherwise than in a supply tank of a vehicle;
- the day on which the person first delivers marketable natural gas or non-marketable natural gas to another person in a listed province; and
- the day on which the person first measures another person’s consumption or usage of marketable natural gas that is delivered by means of the distribution system for the purpose of billing the person or providing the person’s billing information to a third party.

Subparagraph 55(2)(a)(ii) provides that a person required to be registered as a distributor in respect of a type of fuel other than marketable natural gas or non-marketable natural gas must apply for registration before the later of commencement day and the day on which the person first produces fuel of that type in a listed province.

Paragraph 55(2)(b), which applies despite paragraph (2)(a), provides that a person that is prescribed by regulations under either subparagraph 55(1)(a)(vi) or (b)(ii), a person of a class of persons prescribed by regulations under either of those subparagraphs or a person meeting conditions prescribed under either of those subparagraphs, must apply for registration before the time prescribed by regulations. At this time, no person, class of persons or condition is proposed to be prescribed by regulations under either subparagraph 55(1)(a)(vi) or (b)(ii).

Paragraph 55(2)(c), which applies despite paragraph (2)(a), provides that if circumstances prescribed by regulations exist or if conditions prescribed by regulations are met, a person required to be registered as a distributor in respect of a type of fuel, must apply for registration before the time prescribed by regulations. At this time, no circumstance or condition is proposed to be prescribed by regulations.

Subsection 55(3) describes when a person that is not required under subsection (1) to be registered as a distributor in respect of a type of fuel (other than marketable natural gas or non-marketable natural gas) is nevertheless permitted to apply to be registered as a distributor in respect of that type of fuel. A person may apply to be registered as a distributor in respect of a type of fuel if the person carries on the business of selling, delivering or distributing that type of fuel and if, in the ordinary course of that business, the person delivers that type of fuel in a listed province to:

- another person for the purpose of resale, in the ordinary course of business, by the other person;
- a registered distributor in respect of that type of fuel;

- a farmer at a farm if the fuel is qualifying farm fuel;
- a registered specified air carrier in respect of that type of fuel if the fuel is qualifying aviation fuel;
- a registered specified marine carrier in respect of that type of fuel if the fuel is qualifying marine fuel;
- a registered specified rail carrier in respect of that type of fuel if the fuel is qualifying rail fuel;
- a registered emitter at a covered facility of the registered emitter;
- a registered user in respect of that type of fuel; or
- another person if the fuel is, in accordance with the *Ships' Stores Regulations*, designated as ships' stores for use on board a conveyance of a class prescribed under those regulations.

A person is also permitted, under subsection 55(3), to apply to be registered as a distributor in respect of a type of fuel if the person carries on the business of selling, delivering or distributing that type of fuel and if, in the ordinary course of that business, the person removes fuel of that type from the listed province.

Further, a person is permitted, under subsection 55(3), to apply to be registered as a distributor in respect of a type of fuel if the person is a person prescribed by regulations, a person of a class prescribed by regulations or a person meeting conditions prescribed by regulations, or if circumstances prescribed by regulations exist or if conditions prescribed by regulations are met. At this time, no person, class of persons, circumstance or condition is proposed to be prescribed by regulations.

Subsection 55(4) provides that certain persons may not be registered as a distributor in respect of a type of fuel under either subsection (1) or (3). A person cannot be registered as a distributor in respect of a type of fuel if:

- the person is, or is required to be, registered, in respect of that type of fuel, as a specified air carrier, an air carrier, a specified marine carrier, a marine carrier, a specified rail carrier or a rail carrier; or
- the person is a person prescribed by regulations, a person of a class prescribed by regulations or a person meeting conditions prescribed by regulations, or if circumstances prescribed by regulations exist or if conditions prescribed by regulations are met (at this time, no person, class of persons, circumstance or condition is proposed to be prescribed by regulations).

## **Section 56 – Importers**

Section 56 sets out the rules regarding registration of a person as an importer in respect of a type of fuel.

Subsection 56(1) describes when a person must be registered as an importer in respect of a type of fuel. Registration of a person as an importer in respect of a type of fuel is mandatory if:

- the person imports fuel of that type at a location in a listed province, other than fuel that is imported in a supply tank of a vehicle or that is a quantity of gasoline, kerosene, light fuel oil or propane that does not exceed 200 litres;
- the person brings fuel of that type into a listed province, other than fuel that is brought into the listed province in a supply tank of a vehicle or that is a quantity of gasoline, kerosene, light fuel oil or propane that does not exceed 200 litres; or
- the person is a person prescribed by regulations, a person of a class of persons prescribed by regulations or a person meeting conditions prescribed by regulations, or if circumstances prescribed by regulations exist or if conditions prescribed by regulations are met (at this time, no person, class of persons, circumstance or condition is proposed to be prescribed by regulations).

Subsection 56(2) provides that a person required to be registered as an importer in respect of a type of fuel under subsection (1) must make an application for registration to the Minister of National Revenue and sets out when that application is required to be filed.

Paragraph 56(2)(a) provides that a person required to be registered as an importer in respect of a type of fuel must apply for registration before the later of commencement day and the day that is the earlier of the following days:

- the day on which the person first imports fuel of that type at a location in a listed province, other than fuel that is imported in a supply tank of a vehicle or fuel that is gasoline, kerosene, light fuel oil or propane in a quantity that does not exceed 200 litres; and
- the day on which the person first brings fuel of that type into a listed province from a place in Canada, other than fuel that is brought in a supply tank of a vehicle or fuel that is gasoline, kerosene, light fuel oil or propane in a quantity that does not exceed 200 litres.

Paragraph 56(2)(b), which applies despite paragraph 56(2)(a), provides that a person that is prescribed under paragraph 56(1)(c), a person of a class of persons prescribed under that paragraph or a person meeting conditions prescribed under that paragraph, must apply for registration as an importer in respect of a type of fuel before the time prescribed by regulations. At this time, no person, class of persons or condition is proposed to be prescribed by regulations under paragraph 56(1)(c).

Paragraph 56(2)(c), which applies despite paragraph 56(2)(a), provides that if circumstances prescribed by regulations exist or if conditions prescribed by regulations are met, a person required to be registered as an importer in respect of a type of fuel, must apply for registration before the time prescribed by regulations. At this time, no circumstance or condition is proposed to be prescribed by regulations.

Subsection 56(3) describes when a person that is not required under subsection (1) to be registered as an importer in respect of a type of fuel is nevertheless permitted to apply to be registered as an importer in respect of that type of fuel. A person may apply to be registered as

an importer under paragraph 56(3)(a) in respect of a type of fuel if two conditions are met. First, the person must be an interjurisdictional rail carrier in respect of the type of fuel and the person must, in the ordinary course of business and in the supply tank of a locomotive, bring fuel of that type into a listed province, import fuel of that type at a location in a listed province, or remove fuel of that type from a listed province. Second, the person must not be required to be registered as a specified air carrier, air carrier, specified marine carrier, marine carrier, specified rail carrier or rail carrier in respect of the type of fuel.

Further, a person is permitted, under paragraphs 56(3)(b) and (c), to apply to be registered as an importer in respect of a type of fuel if the person is a person prescribed by regulations, a person of a class of persons prescribed by regulations or a person meeting conditions prescribed by regulations, or if circumstances prescribed by regulations exist or if conditions prescribed by regulations are met. At this time, no person, class of persons, circumstance or condition is proposed to be prescribed by regulations.

Subsection 56(4) provides that certain persons may not be registered as an importer in respect of a type of fuel under either subsection (1) or (3). A person cannot be registered as an importer in respect of a type of fuel if:

- the person is, or is required to be, registered as a distributor in respect of that type of fuel;
- the person is, or is required to be, registered as a specified air carrier or air carrier in respect of that type of fuel;
- the person is, or is required to be, registered as a specified marine carrier or marine carrier in respect of that type of fuel;
- the person is, or is required to be, registered as a specified rail carrier or rail carrier in respect of that type of fuel; or
- the person is a person prescribed by regulations, a person of a class of persons prescribed by regulations or a person meeting conditions prescribed by regulations, or if circumstances prescribed by regulations exist or if conditions prescribed by regulations are met (at this time, no person, class of persons, circumstance or condition is proposed to be prescribed by regulations).

## **Section 57 – Emitters**

Section 57 sets out the rules regarding registration as an emitter.

Subsection 57(1) provides that a person is permitted to apply to be registered as an emitter if one of three conditions is met:

- the person is, for the purposes of Part 2 of the Act, a person responsible for a covered facility (for which the person has been issued a covered facility certificate for that facility by the Minister of the Environment under section 171) and the person is not a person prescribed by regulations, a person of a class of persons prescribed by regulations or a person meeting conditions prescribed by regulations (at this time, no person, class of persons or condition is proposed to be prescribed by regulations);

- the person is a person prescribed by regulations, a person of a class of persons prescribed by regulations or a person meeting conditions prescribed by regulations, in respect of a prescribed facility or property, a facility or property of a prescribed class or a facility or property meeting prescribed conditions (at this time, no person, class of persons, facility, property, class of facility or property or condition is proposed to be prescribed by regulations); or
- circumstances prescribed by regulations exist or conditions prescribed by regulations are met (at this time, no circumstance or condition is proposed to be prescribed by regulations).

Subsection 57(2) provides that a person cannot be registered as an emitter if the person is a person prescribed by regulations, a person of a class of persons prescribed by regulations or a person meeting conditions prescribed by regulations, or if circumstances prescribed by regulations exist or conditions prescribed by regulations are met. At this time, no person, class of persons, circumstance or condition is proposed to be prescribed by regulations.

### **Section 58 – Users of fuel**

Section 58 sets out the rules regarding registration as a user in respect of a type of fuel.

Subsection 58(1) provides that a person is permitted to apply to be registered as a user in respect of a type of fuel if the person uses that type of fuel in a non-covered activity in a listed province in the ordinary course of business of the person.

Further, a person is permitted, under subsection 58(1), to apply to be registered as a user in respect of a type of fuel if the person is a person prescribed by regulations, a person of a class of persons prescribed by regulations or a person meeting conditions prescribed by regulations, or if circumstances prescribed by regulations exist or if conditions prescribed by regulations are met. At this time, no person, class of persons, circumstance or condition is proposed to be prescribed by regulations.

Subsection 58(2) provides that a person cannot be registered as a user if the person is a person prescribed by regulations, a person of a class of persons prescribed by regulations or a person meeting conditions prescribed by regulations, or if circumstances prescribed by regulations exist or conditions prescribed by regulations are met. At this time, no person, class of persons, circumstance or condition is proposed to be prescribed by regulations.

### **Section 59 – Users of combustible waste**

Section 59 sets out the rules regarding registration as a user of combustible waste (see commentary for the definition “combustible waste”).

Subsection 59(1) provides that a person must be registered as a user of combustible waste if the person burns combustible waste in a listed province in order to produce heat or energy. Further, a person must register as a user of combustible waste if the person is a person prescribed by regulations, a person of a class of persons prescribed by regulations or a person meeting conditions prescribed by regulations, or if circumstances prescribed by regulations exist or if conditions prescribed by regulations are met. At this time, no person, class of persons, circumstance or condition is proposed to be prescribed by regulations.

Subsection 59(2) provides that a person required to be registered as a user in respect of combustible waste under subsection (1) must make an application for registration to the Minister of National Revenue and sets out when that application is required to be filed.

Paragraph 59(2)(a) provides that a person required to be registered as a user in respect of combustible waste must apply for registration before the later of commencement day and the day the person first burns combustible waste in a listed province in order to produce heat or energy.

Paragraph 59(2)(b), which applies despite paragraph 59(2)(a), provides that if circumstances prescribed by regulations exist or if conditions prescribed by regulations are met, a person required to be registered as a user in respect of a type of fuel, must apply for registration before the time prescribed by regulations. At this time, no circumstance or condition is proposed to be prescribed by regulations.

Subsection 59(3) provides that a person cannot be registered as a user in respect of combustible waste if the person is a person prescribed by regulations, a person of a class of persons prescribed by regulations or a person meeting conditions prescribed by regulations, or if circumstances prescribed by regulations exist or if conditions prescribed by regulations are met. At this time, no person, class of persons, circumstance or condition is proposed to be prescribed by regulations.

### **Section 60 – Air carriers**

Section 60 sets out the rules regarding registration as a specified air carrier or air carrier in respect of a type of fuel.

Subsection 60(1) describes when a person that is an interjurisdictional air carrier in respect of a type of qualifying aviation fuel must be registered as a specified air carrier or air carrier in respect of that type of fuel (see commentary for the definition “interjurisdictional air carrier”). Subsection (1) does not apply to a person that is registered as an emitter.

Under paragraph 60(1)(a), registration of a person as an air carrier in respect of a type of qualifying aviation fuel is mandatory at a particular time if:

- the person is an interjurisdictional air carrier in respect of that type of fuel at the particular time; and
- it can reasonably be expected that, during the calendar year that includes the particular time, all or substantially all of the fuel of that type used by the person will be used in vehicles and the greatest proportion of the fuel used in vehicles will be used in aircraft.

Paragraph 60(1)(b), which applies despite paragraph 60(1)(a), provides that a person is required to be registered as either a specified air carrier or an air carrier in respect of a type of qualifying aviation fuel at a particular time if:

- the person is an interjurisdictional air carrier in respect of that type of fuel at the particular time;

- during the calendar year that includes the particular time, all or substantially all of the fuel of that type used by the person is used in vehicles and the greatest proportion of the fuel used in vehicles is used in aircraft; and
- if the person is a qualifying interjurisdictional air carrier in respect of that type of fuel throughout the calendar year that includes the particular time (as determined under subsection 60(2) or (3)).

Subsections 60(2) and (3) set out rules to determine whether a person is a qualifying interjurisdictional air carrier in respect of a type of fuel throughout a calendar year.

Under subsection 60(2) a person that is an interjurisdictional air carrier in respect of a type of qualifying aviation fuel will be a qualifying interjurisdictional air carrier in respect of that type of fuel for a particular calendar year if:

- the person completed journeys by aircraft in the calendar year that precedes the particular calendar year; and
- at least 50% of the fuel of that type used in covered air journeys or excluded air journeys during the calendar year that precedes the particular calendar year was used in excluded air journeys (see commentary for the definitions “covered air journey” and “excluded air journey”).

Under subsection 60(3) a person that is an interjurisdictional air carrier in respect of a type of qualifying aviation fuel will be a qualifying interjurisdictional air carrier in respect of that type of fuel for a particular calendar year if:

- the person did not complete journeys by aircraft in the calendar year that precedes the particular calendar year; and
- at least 50% of the fuel of that type that can reasonably be expected to be used in covered air journeys or excluded air journeys during the particular calendar year is expected to be used in excluded air journeys.

Subsections 60(4) and (5) set out rules to determine whether a person must or may register as a specified air carrier or an air carrier in respect of a type of fuel.

Under subsection 60(4), a person is required to register as a specified air carrier or an air carrier, respectively, in respect of a type of fuel if the person is a person prescribed by regulations, a person of a class of persons prescribed by regulations or a person meeting conditions prescribed by regulations, or if circumstances prescribed by regulations exist or if conditions prescribed by regulations are met. At this time, no person, class of persons, circumstance or condition is proposed to be prescribed by regulations.

Under subsection 60(5), a person may apply to the Minister of National Revenue to be registered as a specified air carrier or an air carrier, respectively, in respect of a type of fuel if the person is a person prescribed by regulations, a person of a class of persons prescribed by regulations or a person meeting conditions prescribed by regulations, or if circumstances prescribed by regulations exist or if conditions prescribed by regulations are met. At this time, no person, class of persons, circumstance or condition is proposed to be prescribed by regulations.

Subsection 60(6) provides that a person required to be registered as a specified air carrier or air carrier in respect of a type of fuel under this section must make an application for registration to the Minister of National Revenue and sets out when that application is required to be filed.

Paragraph 60(6)(a) provides that a person required to be registered as a specified air carrier or air carrier in respect of a type of fuel must apply for registration before the later of commencement day and the day the person first meets the conditions under subsection 60(1).

Paragraph 60(6)(b), which applies despite paragraph 60(6)(a), provides that if circumstances prescribed by regulations exist or if conditions prescribed by regulations are met, a person required to be registered as a specified air carrier or air carrier in respect of a type of fuel, must apply for registration before the time prescribed by regulations. At this time, no circumstance or condition is proposed to be prescribed by regulations.

Subsection 60(7) provides that a person cannot be registered as a specified air carrier or air carrier in respect of a type of fuel if the person is a person prescribed by regulations, a person of a class of persons prescribed by regulations or a person meeting conditions prescribed by regulations, or if circumstances prescribed by regulations exist or if conditions prescribed by regulations are met. At this time, no person, class of persons, circumstance or condition is proposed to be prescribed by regulations.

### **Section 61 – Marine carriers**

Section 61 sets out the rules regarding registration as a specified marine carrier or marine carrier in respect of a type of fuel.

Subsection 61(1) describes when a person that is an interjurisdictional marine carrier in respect of a type of qualifying marine fuel must be registered as a specified marine carrier or marine carrier in respect of that type of fuel (see commentary for the definition “interjurisdictional marine carrier”). Subsection (1) does not apply to a person that is registered as an emitter.

Under paragraph 61(1)(a), registration of a person as an marine carrier in respect of a type of qualifying marine fuel is mandatory at a particular time if:

- the person is an interjurisdictional marine carrier in respect of that type of fuel at the particular time; and
- it can reasonably be expected that, during the calendar year that includes the particular time, all or substantially all of the fuel of that type used by the person will be used in vehicles and the greatest proportion of the fuel used in vehicles will be used in vessels.

Paragraph 61(1)(b), which applies despite paragraph 61(1)(a), provides that a person is required to be registered as either a specified marine carrier or a marine carrier in respect of a type of qualifying marine fuel at a particular time if:

- the person is an interjurisdictional marine carrier in respect of that type of fuel at the particular time;
- during the calendar year that includes the particular time, all or substantially all of the fuel of that type used by the person is used in vehicles and the greatest proportion of the fuel used in vehicles is used in vessels; and

- the person is a qualifying interjurisdictional marine carrier in respect of that type of fuel throughout the calendar year that includes the particular time (as determined under subsection 61(2) or (3)).

Subsections 61(2) and (3) set out rules to determine whether a person is a qualifying interjurisdictional marine carrier in respect of that type of fuel throughout a calendar year.

Under subsection 61(2) a person that is an interjurisdictional marine carrier in respect of a type of qualifying marine fuel will be a qualifying interjurisdictional marine carrier in respect of that type of fuel for a particular calendar year if:

- the person completed journeys by vessel in the calendar year that precedes the particular calendar year; and
- at least 50% of the fuel of that type used in covered marine journeys or excluded marine journeys during the calendar year that precedes the particular calendar year was used in excluded marine journeys (see commentary for the definitions “covered marine journey” and “excluded marine journey”).

Under subsection 61(3) a person that is an interjurisdictional marine carrier in respect of a type of qualifying marine fuel will be a qualifying interjurisdictional marine carrier in respect of that type of fuel for a particular calendar year if:

- the person did not complete journeys by vessel in the calendar year that precedes the particular calendar year; and
- at least 50% of the fuel of that type that can reasonably be expected to be used in covered marine journeys or excluded marine journeys during the particular calendar year is expected to be used in excluded marine journeys.

Subsections 61(4) and (5) set out rules to determine whether a person must or may register as a specified marine carrier or marine carrier in respect of a type of fuel.

Under subsection 61(4), a person is required to register as a specified marine carrier or marine carrier, respectively, in respect of a type of fuel if the person is a person prescribed by regulations, a person of a class of persons prescribed by regulations or a person meeting conditions prescribed by regulations, or if circumstances prescribed by regulations exist or if conditions prescribed by regulations are met. At this time, no person, class of persons, circumstance or condition is proposed to be prescribed by regulations.

Under subsection 61(5), a person may apply to the Minister of National Revenue to be registered as a specified marine carrier or marine carrier, respectively, in respect of a type of fuel if the person is a person prescribed by regulations, a person of a class of persons prescribed by regulations or a person meeting conditions prescribed by regulations, or if circumstances prescribed by regulations exist or if conditions prescribed by regulations are met. At this time, no person, class of persons, circumstance or condition is proposed to be prescribed by regulations.

Subsection 61(6) provides that a person required to be registered as a specified marine carrier or marine carrier in respect of a type of fuel under this section must make an application for

registration to the Minister of National Revenue and sets out when that application is required to be filed.

Paragraph 61(6)(a) provides that a person required to be registered as a specified marine carrier or marine carrier in respect of a type of fuel must apply for registration before the later of commencement day and the day the person first meets the conditions under subsection 61(1).

Paragraph 61(6)(b), which applies despite paragraph 61(6)(a), provides that if circumstances prescribed by regulations exist or if conditions prescribed by regulations are met, a person required to be registered as a specified marine carrier or marine carrier in respect of a type of fuel, must apply for registration before the time prescribed by regulations. At this time, no circumstance or condition is proposed to be prescribed by regulations.

Subsection 61(7) provides that a person cannot be registered as a specified marine carrier or marine carrier in respect of a type of fuel if the person is a person prescribed by regulations, a person of a class of persons prescribed by regulations or a person meeting conditions prescribed by regulations, or if circumstances prescribed by regulations exist or if conditions prescribed by regulations are met. At this time, no person, class of persons, circumstance or condition is proposed to be prescribed by regulations.

## **Section 62 – Rail carriers**

Section 62 sets out the rules regarding registration as a specified rail carrier or rail carrier in respect of a type of fuel.

Subsection 62(1) describes when a person that is an interjurisdictional rail carrier in respect of a type of qualifying rail fuel must be registered as a specified rail carrier or rail carrier in respect of that type of fuel (see commentary for the definition “interjurisdictional rail carrier”). Subsection (1) does not apply to a person that is registered as an emitter.

Under subsection 62(1), registration of a person as a rail carrier in respect of a type of qualifying rail fuel is mandatory at a particular time if the person is an interjurisdictional rail carrier in respect of that type of fuel at the particular time and if it can reasonably be expected that, during the calendar year that includes the particular time, all or substantially all of the fuel of that type used by the person will be used in vehicles and the greatest proportion of the fuel used in vehicles will be used in locomotives. However, if the person is a person prescribed by regulations made under paragraph 62(1)(b), a person of a class prescribed by regulations made under that paragraph or a person meeting conditions prescribed by regulations made under that paragraph, the person may instead apply to be registered as a specified rail carrier in respect of that type of fuel.

Subsections 62(2) and (3) set out rules to determine whether a person must or may register as a specified rail carrier or rail carrier in respect of a type of fuel.

Under subsection 62(2), a person is required to register as a specified rail carrier or rail carrier, respectively, in respect of a type of fuel if the person is a person prescribed by regulations, a person of a class of persons prescribed by regulations or a person meeting conditions prescribed by regulations, or if circumstances prescribed by regulations exist or if conditions prescribed by regulations are met. At this time, no person, class of persons, circumstance or condition is proposed to be prescribed by regulations.

Under subsection 62(3), a person may apply to the Minister of National Revenue to be registered as a specified rail carrier or rail carrier, respectively, in respect of a type of fuel if the person is a person prescribed by regulations, a person of a class of persons prescribed by regulations or a person meeting conditions prescribed by regulations, or if circumstances prescribed by regulations exist or if conditions prescribed by regulations are met. At this time, no person, class of persons, circumstance or condition is proposed to be prescribed by regulations.

Subsection 62(4) provides that a person required to be registered as a specified rail carrier or rail carrier in respect of a type of fuel under subsection 62(1) must make an application for registration to the Minister of National Revenue and sets out when that application is required to be filed.

Paragraph 62(4)(a) provides that a person required to be registered as a specified rail carrier or rail carrier in respect of a type of fuel must apply for registration before the later of commencement day and the day the person first meets the conditions under this section.

Paragraph 62(4)(b), which applies despite paragraph 62(4)(a), provides that if circumstances prescribed by regulations exist or if conditions prescribed by regulations are met, a person required to be registered as a specified rail carrier or rail carrier in respect of a type of fuel, must apply for registration before the time prescribed by regulations. At this time, no circumstance or condition is proposed to be prescribed by regulations.

Subsection 62(5) provides that a person cannot be registered as a specified rail carrier or rail carrier in respect of a type of fuel if the person is a person prescribed by regulations, a person of a class of persons prescribed by regulations or a person meeting conditions prescribed by regulations, or if circumstances prescribed by regulations exist or if conditions prescribed by regulations are met. At this time, no person, class of persons, circumstance or condition is proposed to be prescribed by regulations.

### **Section 63 – Road carriers**

Section 63 sets out the rules regarding registration as a road carrier in respect of a type of fuel. Subsection 63(1) provides that a person must be registered as a road carrier in respect of a type of fuel that is a qualifying motive fuel if the person uses that type of fuel in a specified commercial vehicle (see commentary for the definition “specified commercial vehicle”) in a listed province. However, this requirement to be registered as a road carrier in respect of a type of fuel does not apply if the person is, or is required to be, registered as:

- a distributor in respect of that type of fuel;
- a specified air carrier or air carrier in respect of that type of fuel;
- a specified marine carrier or marine carrier in respect of that type of fuel; or
- a specified rail carrier or rail carrier in respect of that type of fuel.

Subsections 62(2) and (3) set out rules to determine whether a person must or may register as a road carrier in respect of a type of fuel.

Under subsection 62(2), a person is required to register as a road carrier in respect of a type of fuel if the person is a person prescribed by regulations, a person of a class of persons

prescribed by regulations or a person meeting conditions prescribed by regulations, or if circumstances prescribed by regulations exist or if conditions prescribed by regulations are met. At this time, no person, class of persons, circumstance or condition is proposed to be prescribed by regulations.

Under subsection 62(3), a person may apply to the Minister of National Revenue to be registered as a road carrier in respect of a type of fuel if the person is a person prescribed by regulations, a person of a class of persons prescribed by regulations or a person meeting conditions prescribed by regulations, or if circumstances prescribed by regulations exist or if conditions prescribed by regulations are met. At this time, no person, class of persons, circumstance or condition is proposed to be prescribed by regulations.

Subsection 63(4) provides that a person that is required to be registered as a road carrier in respect of a type of fuel under this section must make an application for registration to the Minister of National Revenue and sets out when that application is required to be filed.

Paragraph 63(4)(a) provides that a person required to be registered as a road carrier in respect of a type of fuel must apply for registration before the later of commencement day and the day on which the person first uses fuel of that type in a specified commercial vehicle in a listed province.

Paragraph 63(4)(b), which applies despite paragraph 63(4)(a), provides that if circumstances prescribed by regulations exist or if conditions prescribed by regulations are met, a person required to be registered as a road carrier in respect of a type of fuel, must apply for registration before the time prescribed by regulations. At this time, no circumstance or condition is proposed to be prescribed by regulations.

Subsection 63(5) provides that a person cannot be registered as a road carrier in respect of a type of fuel if the person is a person prescribed by regulations, a person of a class of persons prescribed by regulations or a person meeting conditions prescribed by regulations, or if circumstances prescribed by regulations exist or if conditions prescribed by regulations are met. At this time, no person, class of persons, circumstance or condition is proposed to be prescribed by regulations.

#### **Section 64 – Application for registration**

Subsection 64(1) provides that an application for registration is to be made in the form authorized by the Minister of National Revenue, containing information specified by the Minister of National Revenue and filed with the Minister of National Revenue in the manner authorized by the Minister of National Revenue.

Subsection 64(2) provides authority to the Minister of National Revenue to register a person applying for registration under Division 4. It also provides the authority to the Minister of National Revenue to issue a registration number to an applicant identifying the person as a person being registered, along with written confirmation of the effective date of the registration.

#### **Section 65 – Cancellation of registration**

Section 65 sets out rules regarding the cancellation of a registration of a person.

Subsection 65(1) provides authority to the Minister of National Revenue to cancel a registration of a person if the Minister of National Revenue determines that the registration is not required and gives the person reasonable written notice in advance of the cancellation.

Subsection 65(2) provides that the Minister of National Revenue must cancel a registration of a person if the person files with the Minister of National Revenue, in a manner authorized by the Minister of National Revenue, a request, in a form authorized by the Minister of National Revenue containing information specified by the Minister of National Revenue, to have the registration cancelled and the Minister of National Revenue is satisfied that the registration is not required.

Subsection 65(3) provides that the Minister of National Revenue must cancel a registration if circumstances prescribed by regulations exist. At this time, no circumstances are proposed to be prescribed by regulations.

Subsection 65(4) provides that if the Minister of National Revenue cancels a registration of a person, then the Minister of National Revenue must notify the person of the cancellation and the effective date of the cancellation.

Subsections 65(5) to (9) set out additional circumstances under which the Minister of National Revenue must cancel a registration of a person.

Subsection 65(5) provides that when registering a person as a specified air carrier, air carrier, specified marine carrier, marine carrier, specified rail carrier or rail carrier in respect of a type of fuel, the Minister of National Revenue must cancel the person's registration (if any) as a distributor in respect of that type of fuel.

Subsection 65(6) provides that when registering a person as a distributor, specified air carrier, air carrier, specified marine carrier, marine carrier, specified rail carrier, rail carrier or user in respect of a type of fuel, the Minister of National Revenue must cancel the person's registration (if any) as an importer in respect of that type of fuel. It also provides that when registering a person as an emitter, the Minister of National Revenue must cancel every registration of the person as an importer in respect of a type of fuel.

Subsection 65(7) provides that when registering a person as a distributor in respect of a type of fuel, the Minister of National Revenue must cancel the person's registration (if any) as a user in respect of that type of fuel.

Subsection 65(8) provides that when registering a person as a distributor, specified air carrier, air carrier, specified marine carrier, marine carrier, specified rail carrier or rail carrier in respect of a type of fuel, the Minister of National Revenue must cancel the person's registration (if any) as a road carrier in respect of that type of fuel.

Subsection 65(9) provides that when registering a person as a specified air carrier, air carrier, specified marine carrier, marine carrier, specified rail carrier or rail carrier in respect of a type of fuel, the Minister of National Revenue must, unless conditions prescribed by regulations are met, cancel the person's existing registration (if any) as a specified air carrier, air carrier, specified marine carrier, marine carrier, specified rail carrier or rail carrier in respect of that type of fuel. It also provides that when registering a person as an emitter, the Minister of National Revenue must cancel any registration that the person may have as a specified air carrier, air

carrier, specified marine carrier, marine carrier, specified rail carrier or rail carrier in respect of a type of fuel. At this time, no condition is proposed to be prescribed by regulations.

### **Section 66 – Security**

Subsection 66(1) provides that a person that applies to the Minister of National Revenue for registration (or that must apply to the Minister of National Revenue for registration) may be required to post and maintain security in an amount and form satisfactory to the Minister of National Revenue.

If a person does not post and maintain security in an amount satisfactory to the Minister of National Revenue, then subsection 66(2) provides that the Minister of National Revenue may withhold as security an amount from any amount that is paid or that will become payable to the person. The amount is not to exceed the difference between what the person should have posted or maintained as security and any amount that the person did post or maintain as security.

Subsection 66(3) clarifies that an amount retained under subsection (2) is deemed to be given from the Minister of National Revenue to the person, and then immediately posted by the person as security as required by subsection (1).

### **Section 67 – Registration not statutory instrument**

Section 67 clarifies that any registration issued under this Part is not a statutory instrument for the purposes of the *Statutory Instruments Act*. This provision ensures that registrations may be issued without meeting the requirements of the *Statutory Instruments Act*, such as pre-publication.

## ***Subdivision b*** ***Reporting Periods, Returns and Requirement to Pay***

### **Section 68 – Reporting periods**

Section 68 sets out rules regarding reporting periods of a person.

Subsection 68(2) provides that the reporting period of a person is a calendar month. However, if a person is registered as a road carrier in respect of one or more types of fuel, but is not otherwise registered or required to be registered under Division 4, then the reporting period of the person is a calendar quarter. Subsection (1) provides that, for purposes of this section, a calendar quarter is the three-month period beginning on the first day of January, April, July or October of each calendar year. Further, paragraph 68(2)(c) provides that a reporting period will be a period prescribed by regulations if the person is a person prescribed by regulations, a person of a class of persons prescribed by regulations or a person meeting conditions prescribed by regulations or if circumstances prescribed by regulations exist. At this time, no person, class of persons, condition or circumstance is proposed to be prescribed by regulations.

Subsection 68(3) provides special rules with respect to the reporting period of a person if the Minister of National Revenue registers the person or cancels a registration of the person. Under these rules, a reporting period of a person ends on the day on which the Minister of National Revenue registers the person or cancels a registration of the person and a new reporting period of the person begins on the following day. The new reporting period ends on the last day of the

calendar month that includes that following day. However, if the person is registered as a road carrier in respect of any type of fuel and is not otherwise registered or required to be registered under Division 4, the new reporting period ends on the last day of the calendar quarter that includes that following day.

### **Section 69 – Filing required**

Subsection 69(1) provides that every person that is registered or that is required to be registered under Division 4 must file a return with the Minister of National Revenue for each reporting period of the person (see commentary for section 68). The deadline for filing a return is the last day of the first month following the reporting period of the person.

Subsection 69(2) provides that, in the case of a person that is neither registered nor required to be registered under Division 4, a return must be filed for each reporting period of the person in which a charge, other than a charge under subsection 20(3), becomes payable by the person. The deadline for filing a return is the last day of the first month following the reporting period.

Subsection 69(3) applies if circumstances prescribed by regulations exist or if conditions prescribed by regulations are met. In such cases, a return for a reporting period prescribed by regulations or a reporting period meeting conditions prescribed by regulations must be filed in accordance with prescribed rules, despite the rules provided in subsections (1) and (2). At this time, no circumstances, conditions, reporting periods or rules are proposed to be prescribed by regulations.

Subsection 69(4) applies if circumstances prescribed by regulations exist or if conditions prescribed by regulations are met. In such cases, a return for a reporting period prescribed by regulations or a reporting period meeting conditions prescribed by regulations is not required to be filed, despite the rules provided in subsections (1) and (2). At this time, no circumstances, conditions or reporting periods are proposed to be prescribed by regulations.

### **Section 70 – Form and content**

Section 70 requires that a return required to be filed under section 69 be made in the form authorized by the Minister of National Revenue, containing information specified by the Minister of National Revenue and be filed in the manner authorized by the Minister of National Revenue.

### **Section 71 – Net charge**

Subsection 71(1) provides that every person required to file a return under section 69 must determine, in the return, the net charge for the reporting period of the person for which the return is required to be filed.

Subsection 71(2) sets out the formula for the net charge for a reporting period of a person. The first step is to determine, under element A, an amount for each listed province for the reporting period. The amount to be included in element A for a listed province for the reporting period is the difference between elements C and D for that listed province for that reporting period. This difference may be a negative amount.

Element C comprises the following amounts:

- the total of all charges in respect of fuel and the listed province that became payable by the person in the reporting period, other than a charge under subsection 20(3);
- the total of all charges in respect of combustible waste and the listed province that became payable by the person in the reporting period; and
- the total of all amounts prescribed by regulations, and amounts determined in a manner prescribed by regulations, in respect of the listed province required to be added in determining the net charge for the reporting period of the person (at this time, no amount or manner is proposed to be prescribed by regulations).

Element D comprises the following amounts:

- the total of all rebates (other than a rebate under section 49 or a net charge rebate under subsection (4)) in respect of the listed province payable by the Minister in respect of a reporting period and that are claimed by the person in the return under section 69 for the reporting period; and
- the total of all amounts prescribed by regulations, and amounts determined in a manner prescribed by regulations, in respect of the listed province that may be deducted in determining the net charge for the reporting period of the person (at this time, no amount or manner is proposed to be prescribed by regulations).

Next, a total must be determined for element B. Element B is the total of all amounts, each of which is a positive or negative amount prescribed by regulations, or an amount determined in a manner prescribed by regulations, for the reporting period of the person. If element B is a positive amount, then it is to be added to the total determined for element A. If element B is a negative amount, then the absolute value of that amount is to be subtracted from A. At this time, no amount or manner of determining an amount is proposed to be prescribed by regulations.

The result of this calculation is the net charge for the reporting period of the person. The net charge may be a positive or a negative amount.

Subsection 71(3) provides that if a net charge for a reporting period of a person is a positive amount, then the person must pay that amount to the Receiver General on or before the day on or before which the return for the reporting period of the person is required to be filed under section 69.

Subsection 71(4) provides that if a net charge for a reporting period of a person is a negative amount, then the person may claim the absolute value of that amount as a net charge rebate in the return required to be filed under section 69. The Minister of National Revenue must pay the net charge rebate to the person with all due dispatch.

Subsection 71(5) provides the authority for the Minister of National Revenue to refuse to pay a net charge rebate to a person if the Minister of National Revenue is not satisfied that all information (e.g., contact information, information related to the identification and business activities of the person) required to be given by the person on an application made by the person for registration has been provided and is accurate.

Subsection 71(6) provides that interest at the rate prescribed by regulations is to be paid on a net charge rebate beginning on the day that is 30 days after the later of the day the return in which the net charge rebate is claimed is filed with the Minister of National Revenue and the day following the last day of the reporting period and ending on the day the net charge rebate is paid by the Minister of National Revenue.

### **Section 72 – Overpayment of rebate or interest**

Section 72 provides that if an overpayment of a rebate or of interest is paid to a person or applied as a liability of a person, the person is required to repay this overpayment to the Receiver General on the day the amount is paid to, or applied as a liability of, the person.

### **Section 73 – Reportable amount**

Subsection 73(1) provides that a person required to file a return for a reporting period of the person must report in that return the amount determined for each listed province that is included in the determination of element A in the net charge formula in subsection 71(2) for the reporting period (see commentary for section 71). In general, this amount would be equal to the total of all charges that became payable by the person in the reporting period in respect of the listed province in respect of either a type of fuel or combustible waste, as well as any amounts prescribed by regulations, less the total of all rebates in respect of the listed province payable by the Minister of National Revenue in respect of the reporting period and amounts prescribed by regulations. Subsection (1) also requires the person to report in that return any amounts prescribed by regulations and any amount determined in a manner prescribed by regulations. At this time, no amount or manner is proposed to be prescribed by regulations.

Subsection 73(2) imposes a penalty on a person that is required to report an amount under subsection 73(1) in a return for a reporting period of the person. It applies to a person that fails to report or misstates such an amount. The penalty is imposed for each such failure or misstatement, and is equal to 5% of the difference between the amount that was required to be reported and zero, in the case of a failure to report, or the amount reported in the return in the case of a misstatement.

## **DIVISION 5 MISCELLANEOUS**

### ***Subdivision a Trustees, Receivers and Personal Representatives***

#### **Section 74 – Bankruptcies**

A bankrupt's trustee in bankruptcy is liable, to the extent of the bankrupt's property, for the payment of the bankrupt's debts that become payable under this Part after the day of the trustee's appointment. Where, on the day of bankruptcy, a bankrupt is registered under this Part, the registration continues to apply in all respects as if the trustee in bankruptcy were the registrant and not the bankrupt. The trustee is required to file returns subsequent to the bankruptcy as well as any returns that were not filed prior to the bankruptcy.

A receiver appointed to manage or wind up a person's business or property, or to care for a person's assets, is jointly and severally or solidarily liable with the person in receivership for payment of amounts owing under this Part, whether they arose before or after the receiver's

appointment. However, as regards the payment of amounts that were payable prior to the receiver's appointment, the receiver is liable only to the extent of those assets of the person that are under the management of the receiver after the payment of specified claims. The receiver is required to file relevant returns from the beginning of the receivership and any relevant returns that were not filed before that time.

A receiver or representative (i.e., a person, other than a receiver or trustee in bankruptcy, who is controlling any property, business or estate) may not distribute the property they are authorized to control until they have received a certificate from the Minister of National Revenue regarding payment of duty and other amounts. The certificate attests that all amounts payable or expected to become payable under this Part for the current and previous reporting periods have been paid, or that security has been provided. A receiver or representative who distributes property without obtaining a certificate is personally liable, to the extent of the value of the property distributed, for the payment of any amount payable or becoming payable.

### **Section 75 – Estate or succession of deceased individual**

Section 75 provides that, with certain exceptions, provisions of this Part apply to the estate or succession of a deceased individual as though the estate or succession were the individual and the individual had not died. Section 75 is subject to subsections 74(4) and (5) (certificates for receivers and representatives) and sections 76 (trustee's liability) and 77 (distribution by trust).

Despite other sections in this Part, subsection 75(2) provides that the terminal return for the individual (for the reporting period that ends on the day the individual died) is not required to be filed earlier than three months after the month during which the individual died. Any amounts payable by the individual are also payable to the Receiver General at that time.

### **Section 76 – Trustee's liability**

Section 76 sets out rules to clarify the treatment of the on-going operations of both testamentary and *inter vivos* trusts for the purposes of this Part.

To avoid repetition, a reference in sections 76 or 77 to a "trust" also includes a reference to an estate or succession of a deceased individual. Similarly, a reference in those sections to a "trustee" includes a reference to the personal representative of a deceased individual (see commentary for the definition "personal representative").

Subsection 76(2) clarifies the obligations imposed on trustees (including personal representatives) of a deceased individual. Each trustee is liable to satisfy an obligation such as the requirement to file. However, the satisfaction of that obligation by one trustee removes the liability of the other trustees.

Subsection 76(3) clarifies the extent of joint and several, or solidary, liability imposed on a trustee with the trust (or on a personal representative with the estate or succession). Such a liability exists for all amounts payable or remittable by the trust while the trustee acts as a trustee of the trust. The liability extends to periods before the trustee began acting as a trustee of the trust, but only to the extent of the property and money under the control of the trustee. Also, the joint, or solidary, liability is discharged to the extent of the amount that either the trust or trustee pays or remits in respect of the liability.

Subsection 76(4) provides the Minister of National Revenue with the authority to waive the requirement for a personal representative of a deceased individual to file a return for a reporting period of the individual ending on or before the day the individual died. This removes the burden on the representative to file a return where, for example, the representative has insufficient information with which to prepare a return.

For greater certainty, subsection 76(5) provides that anything done by a person in their capacity as a trustee of a trust is considered to have been done by the trust.

### **Section 77 – Distribution by trust**

Section 77 provides that where a trustee of a trust distributes fuel of the trust to one of more persons, the distribution of the fuel is deemed to be a delivery at the time and location of the distribution.

### ***Subdivision b Amalgamation and Winding-up***

### **Section 78 – Amalgamations**

Subsection 78(1) provides that where two or more corporations amalgamate or merge, the general rule for the purposes of this Part is that the new corporation is deemed to be the same as, and a continuation of, the predecessor corporations that formed it. However, for purposes prescribed by regulations, the new corporation may be regarded as separate from each of its predecessor corporations. At this time, no purpose is proposed to be prescribed by regulations.

Subsection 78(2) provides that if the registration of a predecessor corporation is not compatible under Division 4 with the registration of another predecessor corporation, then the new corporation must apply for registration or for cancellation of a registration under Division 4.

Subsection 78(3) describes the reporting periods of the predecessor corporations and new corporation when the predecessors merge or amalgamate. Paragraph 78(3)(a) provides that the reporting periods of the predecessor corporations end on the day that the predecessors merge or amalgamate. Paragraph (b) provides that the reporting period of the new corporation begins on the day after the particular day that the predecessors merge or amalgamate and ends on the last day of the reporting period of the new corporation, if the period were determined without this subsection, that includes the particular day.

### **Section 79 – Winding-up**

Subsection 79(1) provides that where a subsidiary corporation is wound up into another corporation owning at least 90% of the issued shares of each class of the capital stock of the subsidiary, the general rule for the purposes of this Part is that the other corporation is deemed to be the same as, and a continuation of, the subsidiary corporation. However, for purposes prescribed by regulations, the other corporation may be regarded as separate from the subsidiary corporation. At this time, no purpose is proposed to be prescribed by regulations.

Subsection 79(2) provides that if the registration of a subsidiary corporation is not compatible under Division 4 with the registration of the other corporation, then the other corporation must apply for registration or for cancellation of a registration under Division 4.

Subsection 79(3) describes the reporting periods of the subsidiary corporation and the other corporation when the subsidiary is wound up. Paragraph 79(3)(a) provides that the reporting period of the subsidiary corporation ends on the day that the subsidiary is wound up. Paragraph (b) provides that the reporting period of the other corporation begins on the day after the particular day that the subsidiary is wound up and ends on the last day of the reporting period of the other corporation, if the period were determined without this subsection, that includes the particular day.

### ***Subdivision c*** ***Partnerships and Joint Ventures***

#### **Section 80 – Partnerships**

Subsection 80(1) provides that where a person engages in an activity as a member of a partnership, that activity is treated as an activity of the partnership rather than of the member. As a result, partners are not required to register separately for purposes of this Part.

Subsection 80(2) specifies the extent of joint and several, or solidary, liability imposed on a person that is a partner or former partner (other than a limited partner who is not a general partner). Such a liability exists for all amounts that become payable by the partnership before or during the period in which the person is a member of the partnership. Where the person was a member at the time of the dissolution of the partnership, the joint and several, or solidary, liability also extends to amounts that become payable after the dissolution. The liability of a person for amounts that became payable before the person became a partner is limited to the property and money of the partnership. Also, in all cases, the joint, or solidary, liability is discharged to the extent of the amount that any partner pays in respect of the liability.

Such partners and former partners are also jointly and severally, or solidarily, liable with the partnership for all other obligations for which the partnership is liable, such as filing returns.

#### **Section 81 – Joint ventures**

Subsection 81(1) provides that activities done by a participant or operator of a joint venture are deemed to be the activities of the joint venture and not the activities of the participant or operator to the extent the activities are within the scope of the activities contemplated in the joint venture agreement.

Subsection 81(2) specifies the extent of joint and several, or solidary, liability imposed on a joint venture and each person that is a participant or operator of a joint venture (each a “member” of the joint venture). A member of a joint venture is jointly and severally, or solidarily, liable for all amounts payable by the joint venture or other obligations of the joint venture, whether the amount or obligation arose before or during the time when the person is a member.

### ***Subdivision d*** ***Anti-avoidance***

#### **Section 82 – General anti-avoidance provision**

This section introduces a general anti-avoidance rule that is intended to prevent abusive avoidance transactions or arrangements without interfering with legitimate commercial transactions.

Subsection 82(2) sets out the general anti-avoidance rule. Where a transaction is an avoidance transaction (see commentary below), the consequences are to be determined as is reasonable in the circumstances in order to deny the benefit resulting from the transaction or the series of transactions that includes that transaction.

Subsection 82(3) defines the expression “avoidance transaction” for the purposes of the general rule in subsection (2). An avoidance transaction is a transaction that alone, or as part of a series of transactions, cannot reasonably be considered as having been undertaken or arranged primarily for *bona fide* purposes other than to obtain a benefit and that would, but for section 82, result, directly or indirectly, in a benefit.

Subsection 82(4) is a limitation to the general rule in subsection (2). Even where a transaction results, directly or indirectly, in a benefit and has been carried out primarily for purposes related to charges under this Part, subsection (2) does not apply if it may reasonably be considered that the transaction would not result directly or indirectly in a misuse of the provisions of this Part or an abuse having regard to the provisions of this Part read as a whole. This measure is intended to apply where it is established that a transaction carried out primarily for purposes related to charges under this Part does not, nonetheless, constitute an abuse of this Part.

Subsection 82(4) recognizes that the provisions of this Part are intended to apply to transactions with real economic substance, not to transactions intended to exploit, misuse or frustrate those provisions so as to avoid a charge. It also recognizes, however, that benefits expressly provided for in the legislation should not be neutralized by this section in non-abusive situations.

Where the general anti-avoidance rule applies, the consequences to a person are to be determined so as to deny the benefit on a basis that is reasonable in the circumstances. To that end, subsection 82(5) provides the following examples of possible results:

- all or any part of a rebate or any deduction in computing the net charge payable may be disallowed or allocated to any person;
- a payment or other amount may be recharacterized; and
- the effects that would otherwise result from the application of other provisions of this Part may be ignored.

Subsection 82(6) provides that the Minister of National Revenue may only determine the consequences resulting from the application of this section through an assessment, reassessment or additional assessment.

### **Section 83 – Rate change – transactions**

Section 83 provides a specific anti-avoidance rule to prevent avoidance transactions, between persons that do not deal with each other at arm’s length, where the transaction could be undertaken or arranged not primarily for *bona fide* purposes but to take advantage of a change in the rate of a charge applicable to either fuel or combustible waste.

Subsection 83(2) sets out an anti-avoidance rule and denies a benefit arising from an avoidance transaction, or series of transactions, where that transaction or series is not done primarily for *bona fide* purposes but intended to obtain a benefit from a change in a rate of a charge.

Subsection 83(3) provides that the Minister of National Revenue may only deny a benefit under subsection (2) through an assessment, reassessment or additional assessment.

## **DIVISION 6 ADMINISTRATION AND ENFORCEMENT**

### ***Subdivision a Payments***

#### **Section 84 – Person resident in Canada**

Section 84 deals with the question of residence for fuel charge purposes. The determination of residential status ordinarily depends on criteria established by jurisprudence that has developed over the years. However, section 84 sets out certain special rules for particular circumstances.

Under this section, a corporation is treated as being a resident of Canada if it is incorporated or continued in Canada and not continued elsewhere. A partnership or other unincorporated body is resident in Canada where a majority of its members having management and control reside in Canada. A labour union carrying on union activities in Canada and having a local union or branch in Canada is also considered to be resident in Canada under this subsection.

Under paragraph 84(d), those individuals who are deemed to be resident in Canada under subsection 250(1) of the *Income Tax Act*, other than sojourners deemed resident by virtue of paragraph (a) of that subsection, to be resident in Canada for fuel charge purposes.

#### **Section 85 – Set-off of rebates**

This section allows rebates of charges paid in error that are due to a person to be deducted from the amount payable in that person's return. To be deductible, the rebates must be due to the person at the time the person files the return and must be claimed in that return or another return or in a separate application filed with that return. In such a case, the person is deemed to have paid and the Minister of National Revenue is deemed to have rebated an amount equal to the lesser of the amount payable by the person and the amount of the rebate.

#### **Section 86 – Large payments**

Every person required under this Part to pay \$50,000 or more in a single payment to the Receiver General is required to remit the amount at a financial institution.

#### **Section 87 – Small amounts owing**

If the total amount payable by a person does not exceed \$2.00, then it is deemed to be nil. Similarly, if the total of the amount payable to a person by the Minister of National Revenue does not exceed \$2.00, then the Minister of National Revenue is not required to pay it. The Minister of National Revenue may, however, deduct this amount from any amount payable by the person.

#### **Section 88 – Authority for separate returns**

If a person carries on business by way of separate branches or divisions, the person may seek permission from the Minister of National Revenue to file separate returns for the person's

separate branches or divisions. To qualify, a branch or division must be separate in terms of its location or operations and it must have separate books and records as well as a separate accounting system.

The Minister of National Revenue may revoke an authorization where the person fails to comply with this Part or any condition imposed in respect of the authorization, the person no longer meets the requirements for authorization or the authorization is no longer required.

### **Section 89 – Electronic filing of return**

Subsection 89(2) provides that a person that is required to file returns under this Part and that meets the criteria specified by the Minister of National Revenue for electronic filing may use electronic media for filing the returns. A return filed electronically is deemed to be a return when the Minister of National Revenue acknowledges acceptance of it.

Subsection 89(3) provides that a person must file a return electronically for a reporting period and in a manner authorized by the Minister of National Revenue if, in respect of the reporting period, the person is prescribed by regulations, if the person is of a class of persons prescribed by regulations or if the person meets conditions prescribed by regulations. At this time, no person, class of persons or condition is proposed to be prescribed by regulations.

### **Section 90 – Execution of returns, etc.**

This section specifies how a return (other than a return filed electronically), certificate (other than an exemption certificate referred to in section 36) or other document filed is to be signed on behalf of a corporation or other body. Senior officers named in the section are deemed to be duly authorized signing officers.

### **Section 91 – Extension of time**

This section provides that the Minister of National Revenue may extend the time for the filing of a return or for providing any information. This also extends the time on or before which any amount payable that a person is required to report in the return must be paid. Interest and penalties for failing to file a return when required must be calculated based on this extended time,

### **Section 92 – Demand for return**

The Minister of National Revenue may require any person to file a return for any designated period within a reasonable time.

## ***Subdivision b*** ***Administration and Officers***

### **Section 93 – Minister of National Revenue's Duty**

The Minister of National Revenue has responsibility for the administration and enforcement of this Part and the Commissioner may exercise all the powers and perform all the duties of the Minister of National Revenue.

**Section 94 – Staff**

This section provides for the appointment or employment of persons necessary to administer and enforce this Part. The Minister of National Revenue may authorize an officer, agent or class of officers or agents to exercise the powers and duties of the Minister of National Revenue.

**Section 95 – Administration of oaths**

If designated by the Minister of National Revenue, any person employed in connection with the administration or enforcement of this Part may administer oaths and receive affidavits, declarations and affirmations related to the administration or enforcement of this Part.

**Section 96 – Inquiry**

This section establishes a procedure for holding inquiries into matters concerning the administration or enforcement of this Part. The Minister of National Revenue may authorize a person to make any inquiry and where a person is so authorized the Minister of National Revenue shall seek, by application to the Tax Court of Canada, the appointment of a hearing officer. The hearing officer has the powers conferred on a commissioner under sections 4, 5 and 11 of the *Inquiries Act*. The section also specifies the rights of persons giving evidence at an inquiry and of persons being investigated.

***Subdivision c***  
***Interest*****Section 97 – Compound interest on amounts not paid when required**

This section imposes interest at the rate prescribed by regulations on amounts a person has failed to pay under this Part. Interest will be compounded daily at the rate prescribed from the day following that on which the amount was required to be paid until the day the amount is paid. The Minister of National Revenue may serve notice that if payment of an amount due is made by a given future date, interest from the date of notice to the date of payment will be waived.

**Section 98 – Compound interest on amounts owed to Her Majesty**

This section imposes interest on amounts owed by Her Majesty in right of Canada to a person. Interest will be compounded daily at the rate prescribed by regulations from the day following that on which the amount was required to be paid by Her Majesty in right of Canada until the day the amount is paid or is applied against an amount owed by the person to Her Majesty in right of Canada.

**Section 99 – Application of interest provisions if Part amended**

This section clarifies that should this Part be amended by a provision that comes into force before it is assented to, the provisions of this Part relating to interest shall apply as if the amending provision were assented to on the day it came into force.

**Section 100 – Waiving or reducing interest**

The Minister of National Revenue may waive or reduce interest payable under this Part. This section provides the Minister of National Revenue with the discretionary authority to waive

interest where there are extraordinary circumstances beyond a person's control and the person has been prevented from complying with the requirement to pay an amount under this Part.

### **Section 101 – Cancellation of penalties and interest**

If a person pays all amounts for a reporting period and the total of all interest and the penalty for a failure to file a return when required applicable under this Part for the period is less than \$25, the Minister of National Revenue may write off the interest and penalty.

#### ***Subdivision d*** ***Financial Administration Act and Service Fees Act***

### **Section 102 – Dishonoured instruments**

This section incorporates the fee structure currently imposed under the *Financial Administration Act* (FAA) when a financial instrument (e.g., a cheque) becomes dishonoured.

The section deems a charge that becomes payable under the FAA in respect of an instrument used to pay or settle an amount payable under this Part, to also be an amount payable under this Part. Further, the interest and collection provisions under the FAA will not apply to the charge and the debt established by the FAA in respect of the charge is deemed to be extinguished once the charge and applicable interest is paid under this Part. By deeming a charge for a dishonoured instrument to be an amount payable under this Part, the charge becomes subject to the interest and collection provisions under this Part.

### **Section 103 – Service Fees Act**

This section clarifies that the *Service Fees Act* does not apply to any charge or other amount payable under this Part.

#### ***Subdivision e*** ***Records and Information***

### **Section 104 – Keeping records**

Every person that pays or is required to pay a charge, every person that is required to file a return and every person that makes an application for a rebate is required to keep records sufficient to enable a determination to be made of whether they have complied with this Part.

The basic period for retaining records is 6 years after the end of the year to which they relate or any other period that may be prescribed by regulations.

### **Section 105 – Electronic funds transfer**

This section provides, for greater certainty, that information obtained under Part XV.1 of the *Income Tax Act* by the Minister of National Revenue may be used for the purposes of this Part. Part XV.1 of the *Income Tax Act* requires certain financial entities to report international electronic funds transfers of \$10,000 or more to the Minister of National Revenue.

### **Section 106 – Requirement to provide information or record**

The Minister of National Revenue may, by notice, require a person to provide information or records for any purpose relating to the administration or enforcement of this Part. However, court authorization is to be obtained if the information or records sought pertain to one or more unnamed persons. In granting the authorization, the judge may impose any conditions the judge considers appropriate.

### **Section 107 – Provision of confidential information**

This section provides for the confidentiality of information obtained by the Minister of National Revenue in the administration or enforcement of this Act that reveals, directly or indirectly, the identity of a person. This information may not be used or communicated unless specifically authorized under one or more of the exceptions contained in the section.

An official shall not be required to give or produce evidence concerning confidential information in any legal proceeding, except for proceedings concerning the administration or enforcement of this Part, criminal proceedings and certain other proceedings specified in subsection (4) (such as proceedings relating to the administration or enforcement of a federal or provincial duty or tax statute). An order or direction made in connection with the production of confidential information in any legal proceedings may be appealed by the Minister of National Revenue or the person against whom the order or direction is made, and the order or direction is stayed pending the determination of the appeal.

Confidential information may be disclosed if the information is regarded as necessary solely for a purpose relating to the life, health and safety of an individual or to the environment in Canada or any other country. Confidential information may also be disclosed to a person for purposes of the administration or enforcement of this Part, the federal or provincial formulation or evaluation of fiscal policy and various other specified federal or provincial government operations. Measures may be taken to maintain the security of confidential information used in legal proceedings dealing with the supervision, evaluation or discipline of an authorized person. Confidential information may also be released to the person to whom it relates and to other persons with that person's consent.

### ***Subdivision f*** ***Assessments***

### **Section 108 – Assessment**

This section authorizes the Minister of National Revenue to assess or reassess persons for their liabilities under this Part. When assessing a person, the Minister of National Revenue may take into account any overpayment made by the person or rebate owing to the person.

### **Section 109 – Assessment of rebate**

If a person applies for a rebate, the Minister of National Revenue shall consider the application and assess the amount of the rebate owing. To receive a rebate a person must have filed all returns required to be filed under this Part, the *Excise Act, 2001*, the *Excise Tax Act*, the *Air Travellers Security Charge* and the *Income Tax Act*. Interest shall be paid at the rate prescribed by regulations on rebates for the period beginning 30 days after the refund application is filed with the Minister of National Revenue and ending on the day the rebate is paid.

### **Section 110 – Notice of assessment**

This section requires the Minister of National Revenue to provide a notice of assessment to any person that has been assessed under this Part.

### **Section 111 – Limitation period for assessments**

This section sets out the limitation periods for assessing a charge or other amounts payable under this Part. Generally, an assessment of a charge payable shall not be made more than 4 years after it became payable.

Subsection 111(7) provides that an alternative basis or argument may be advanced in support of an assessment of a person or in support of all or any portion of the total amount determined on assessment to be payable by a person under this Part. This would allow, for instance, a reduced liability in relation to one item included in the computation of an assessment to be offset by an increased liability in relation to another item.

Subsection 111(8) sets out a limitation in relation to a reassessment of a person that is made to give effect to an alternative basis or argument in support of a particular assessment of a person advanced by the Minister of National Revenue under subsection (7). Under the limitation rule, if the reassessment of the person is made at any time after the normal reassessment period, then the Minister of National Revenue must not reassess for an amount that is greater than the total amount of the particular assessment.

Subsection 111(9) sets out an exception to the limitation rule in subsection (8). In particular, subsection (9) provides that, if the following condition is met in relation to any portion of an amount determined on reassessment to be payable, subsection (8) does not apply to that portion. The condition to be met is that, if this Part were read without reference to subsection (7), the Minister of National Revenue would be entitled to reassess the portion of the amount after the normal reassessment period under subsection (1) or (2).

### **Section 112 – Payment of rebate and other amounts**

This section provides that, subject to section 165, rebates or other amounts that are to be paid under this Part may be paid out of the Consolidated Revenue Fund at the time and in the manner that the Minister of National Revenue considers appropriate.

## ***Subdivision g*** ***Objections to Assessment***

### **Section 113 – Objection to Assessment**

A person who objects to an assessment may file a notice of objection with the Minister of National Revenue within 90 days from the date of the notice of assessment. The Minister of National Revenue is required to reconsider the assessment and either vacate or confirm the assessment or make a reassessment and notify the person accordingly. However, the Minister of National Revenue may confirm the assessment without reconsidering it if a person that wishes to appeal directly to the Tax Court of Canada requests the Minister of National Revenue to do so.

### **Section 114 – Extension of time by Minister of National Revenue**

If a person does not file a notice of objection under section 113 within the time limit under this Part but wishes to do so, the person may make an application to extend the time for filing and the Minister of National Revenue may grant it. However, the application cannot be granted unless it is made within one year of the expiration of the time for objecting and as soon as circumstances permit. The person must demonstrate that the person was unable to act within the time otherwise limited for objecting and that the person had a *bona fide* intention to object to the assessment within that time. The person must also give the reasons why it would be just and equitable to grant the application.

#### ***Subdivision h Appeal***

### **Section 115 – Extension of time by Tax Court of Canada**

If the Minister of National Revenue refuses an application for an extension of time for filing a notice of objection or does not make a decision within 90 days of receiving the application, a person may apply to the Tax Court of Canada for an extension of time. However, the application cannot be granted unless it is made within 30 days from the day the Minister of National Revenue's decision under subsection 114(5) is sent to the person. The applicant must meet the same conditions as in the case of an application to the Minister of National Revenue for an extension of time.

### **Section 116 – Appeal to Tax Court of Canada**

A person may appeal to the Tax Court of Canada where, in response to a notice of objection, the Minister of National Revenue has confirmed the assessment or made a reassessment, or, where the Minister of National Revenue has not made a decision on the notice of objection, within 180 days of the notice being filed. Where the Minister of National Revenue has confirmed the assessment or reassessed, the appeal is to be made within 90 days of notice of that decision being sent to the person. The Court may permit an appellant to amend an appeal to include any further relevant assessment.

### **Section 117 – Extension of time to appeal**

If an appeal to the Tax Court of Canada under section 116 is not commenced within the allotted time, an application may be made to the Court seeking an extension of the time for appealing. The application must be made within one year following the time allowed for appealing. The person must demonstrate that the person was unable to act within the time otherwise limited under this Part for appealing and that the person had a *bona fide* intention to appeal within that time. The person must also demonstrate that there are just and equitable reasons to grant the application and that there are reasonable grounds for appealing.

### **Section 118 – Limitation on appeals to the Tax Court of Canada**

An appeal to the Tax Court of Canada may only pertain to an issue specified in the notice of objection to an assessment, as required under section 113, and the relief sought with respect to the issue. These restrictions do not, however, apply if the issue was raised for the first time in the Minister of National Revenue's reconsideration of the assessment. A person cannot appeal

in respect of an issue for which the right of objection or appeal has been waived in writing by the person.

### **Section 119 – Institution of appeals**

Appeals to the Tax Court of Canada are to be instituted in accordance with the *Tax Court of Canada Act* and the related rules.

### **Section 120 – Disposition of appeal**

The Tax Court of Canada may either dismiss an appeal or allow the appeal and either vacate the assessment or refer the assessment back to the Minister of National Revenue for reconsideration and reassessment.

### **Section 121 – References to Tax Court of Canada**

This section allows the Minister of National Revenue and another person to agree to have a question relating to an assessment or proposed assessment determined by the Tax Court of Canada. The time during which a question is being determined is excluded from the limitation periods for issuing assessments and filing notices of objection and appeal.

### **Section 122 – Reference of common questions to Tax Court of Canada**

The Minister of National Revenue may apply to the Tax Court of Canada to determine a question concerning transactions or occurrences that are common to assessments or proposed assessments of two or more persons. The determination of the Court is binding on all parties. It may be appealed to the Federal Court of Appeal. The time during which a question is being determined is excluded from the limitation periods for issuing assessments and filing notices of objection and appeal.

## ***Subdivision i*** ***Penalties***

### **Section 123 – Failure to file a return when required**

This section introduces a penalty where a person fails to file a return for a reporting period as and when required under this Part. The amount of the penalty payable by a person is based on the total of all amounts required to be remitted or paid for a reporting period that were not remitted or paid on or before the day on or before which the return was required to be filed and the number of complete months that the return remains outstanding.

Specifically, the amount of penalty that becomes payable will first be calculated by taking 1% of the total of all amounts, each of which was required to be remitted or paid for the period and which were not remitted or paid on or before the day on or before which the return was required to be filed. To that amount an additional amount will be added, equal to one quarter of the total of all amounts determined above multiplied by the number of complete months, not exceeding 12, that the return remains outstanding.

A person is liable to pay a failure to file penalty if the person misses a due date for filing a return required under this Part. The Minister of National Revenue is not required to first serve the person with a demand for a return.

**Section 124 – Failure to file by electronic transmission**

In addition to the other penalties under this Part, a person that fails to file a return by way of electronic filing as required by subsection 89(3) is liable to pay a penalty equal to an amount determined in the manner prescribed by regulations. At this time, no manner is proposed to be prescribed by regulations.

**Section 125 – Waiving or cancelling penalties**

This section provides a ten-year limitation period in respect of waivers or cancellations of penalties, such that the Minister of National Revenue may, on or before the day that is ten calendar years after the end of a reporting period of a person, waive or cancel penalties payable by the person in respect of that reporting period.

**Section 126 – Failure to register**

This section provides that a person that is required to register under Division 4 but does not do so is liable to pay a penalty of \$2,000.

**Section 127 – General penalty**

This section imposes a \$250 penalty where a person fails to comply with any section of this Part for which no other penalty is specified.

**Section 128 – Failure to answer demand**

This section imposes a penalty of \$500 when a person fails to file a return within the time specified in a demand for a return served by the Minister of National Revenue.

**Section 129 – Failure to provide information**

Failure to provide any information or record as required under this Part may result in a penalty of \$250 for each default unless, in the case of a failure to provide information, a reasonable effort was made by the person to comply.

**Section 130 – Failure to provide information**

Failure to report or provide information prescribed by regulations or misstating an amount in a return, may result in a penalty, in addition to the other penalties under this Part, equal to an amount determined in a prescribed manner for each failure or misstatement.

**Section 131 – False statements or omissions**

A person who, knowingly or under circumstances amounting to gross negligence, is involved in making a false statement or omission in a return or other document is liable to a penalty equal to the greater of \$500 and 25% of the amount by which any amount payable under this Part was reduced, or rebate, or other payment that may be obtained under this Part, was increased, as a result of the false statement or omission.

***Subdivision j***  
***Offences and Punishment***

**Section 132 – Offence for failure to file return or to comply with demand or order**

This section makes it an offence to fail to file or make a return as and when required under this Part, or to fail to comply with an obligation under certain provisions relating to keeping books and records and to inspections and requests for information by the Minister of National Revenue or an official. A person who is found guilty of an offence under this provision is liable on summary conviction to a fine of between \$2,000 and \$40,000 or to a term of imprisonment not exceeding 12 months or to both.

**Section 133 – Offence for false or deceptive statement**

Subsection 133(1) provides that the following activities constitute offences under this section:

- making false or deceptive statements in a return or other record;
- seeking to evade paying any amount payable under this Part or seeking to obtain an improper rebate, by destroying or altering records, or making a false or deceptive entry or omission in a record;
- intentionally evading or attempting to evade compliance with this Part or payment of an amount payable under this Part, interest or other amount imposed under this Part;
- intentionally obtaining or attempting to obtain a rebate to which the person is not entitled; or
- conspiring with any other person to commit an offence listed in the first four points.

Subsection 133(2) provides that a person convicted of an offence under subsection (1) is liable to a fine of not less than 50% and not more than 200% of the amount the person sought to evade (if the amount sought to be evaded cannot be ascertained, a fine of not less than \$2,000 and not more than \$40,000) or imprisonment for a term not exceeding two years or both.

Subsection 133(3) provides that a person charged with an offence under subsection (1) may, on election by the Attorney General of Canada, be prosecuted on indictment. If such an election is made, then the person is liable (in addition to any penalty otherwise provided) to a fine of not less than 100% and not more than 200% of the amount the person sought to evade (if the amount sought to be evaded cannot be ascertained, a fine of not less than \$5,000 and not more than \$100,000) or imprisonment for a term not exceeding five years or both.

**Section 134 – Offence – confidential information**

This section makes it an offence to contravene the confidentiality provisions in section 107 regarding information gathered by the Canada Revenue Agency in the administration or enforcement of this Part. A person found guilty on summary conviction is liable to a fine of up to \$5,000, imprisonment for up to 12 months or both.

**Section 135 – Failure to pay charge**

Every person who intentionally fails to pay a charge as and when required under this Part is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding the aggregate of \$1,000 and an amount equal to 20% of the amount of the charge that should have been paid. This fine may be accompanied by imprisonment for a term not exceeding 6 months.

**Section 136 – General offence**

Every person who contravenes a provision of this Part, the contravention of which is not specified elsewhere in this Part to be an offence, is guilty of an offence. A person found guilty on summary conviction faces a fine of up to \$100,000, imprisonment for up to 12 months or both.

**Section 137 – Compliance orders**

If a person has been convicted for non-compliance with a provision of this Part, the court has the authority to make any order to enforce compliance with the provision.

**Section 138 – Officers of corporations, etc.**

This section provides that where a corporation or other entity or organization is convicted of an offence under this Part, every officer, director and representative of that organization who assented to or participated in the commission of the offence is also guilty of the offence and liable to the punishment provided for the offence.

**Section 139 – Power to decrease punishment**

The court has no authority, in respect of any prosecution or proceeding under this Part, to impose less than the minimum fine specified or to suspend sentence for an offence under this Part.

**Section 140 – Information or complaint**

Any officer of the Canada Revenue Agency, member of the Royal Canadian Mounted Police or person authorized by the Minister of National Revenue may make an information or complaint concerning an offence under this Part. An information or complaint in respect of an offence under this Part may be for one or more offences.

***Subdivision k  
Inspections*****Section 141 – By whom**

A person authorized by the Minister of National Revenue to do so may, for the purposes of the administration or enforcement of this Part, inspect, audit or examine records, property, premises or processes in order to determine whether a person is in compliance with this Part. The person may enter any premises or place of business and require persons to offer reasonable assistance. However, where the premises sought to be entered is a dwelling house, the consent of the occupant or a warrant issued by a judge is required.

### **Section 142 – Compliance order**

On summary application by the Minister of National Revenue, a judge may order a person to provide any access, assistance, information or records sought by the Minister of National Revenue under section 106 (requirement to provide records or information) or 141 (inspections). The judge must be satisfied that the person was required to provide the access, assistance, information or records requested, and did not do so. Five clear days from service of notice must pass before the application is heard. The judge may attach any conditions to the order that are considered appropriate, and may find a person not complying with the order in contempt of court. The order may be appealed to a higher court, without, however, suspending its execution unless so ordered by a judge of the appellate court.

### **Section 143 – Search warrant**

A judge may, on *ex parte* application by the Minister of National Revenue, issue a warrant authorizing a person to enter and search any building, receptacle or place and seize any record or thing that may afford evidence of a contravention of this Part. The judge may issue the warrant if the judge is satisfied that there are reasonable grounds to believe that this Part has been contravened and evidence of the contravention is likely to be found in the building, receptacle or place.

### **Section 144 – Foreign-based information or record**

The Minister of National Revenue may, by notice, require a person resident in Canada or a non-resident carrying on business in Canada to produce information or records located outside Canada. A recipient of a notice may, within 90 days of service, have the notice reviewed by a judge to determine whether the requirement to disclose is unreasonable. A person who fails to comply substantially with a notice will be prohibited from introducing any information covered by the notice as evidence in any civil proceeding under this Part.

### **Section 145 – Copies**

Copies may be made of records seized, inspected, audited, examined or provided under sections 96, 106 and 141 to 143.

### **Section 146 – Compliance**

This section makes it an offence to interfere with, hinder or molest an official who is carrying out the official's duties or functions under this Part. A person must also do everything required to be done under sections 106 and 141 to 145 unless the person is unable to do so.

### **Section 147 – Information respecting non-resident persons**

Every person that is liable at any time during a calendar year to pay an amount under this Part is required to file with the Minister of National Revenue information prescribed by regulations regarding transactions with non-resident persons with which the person did not deal at arm's length during the year. Such information is to be filed within 6 months after the end of the year. At this time, no information is proposed to be prescribed by regulations.

## ***Subdivision I*** ***Collection***

### **Section 148 – Debts to Her Majesty**

A charge debt and other amounts payable under this Part are debts due to Her Majesty in right of Canada and may be recovered through the court process. A proceeding in court to recover a charge debt or other amount payable may only be commenced, in the case of an amount that may be assessed under this Part, if the person has been or may be assessed and generally if not more than ten years have passed since the person became liable to pay the amount.

### **Section 149 – Security**

The Minister of National Revenue may accept security in respect of any amount payable under this Part. On request, the Minister of National Revenue must surrender security to the extent that its value exceeds the amount payable for which the security was furnished.

### **Section 150 – Collection restrictions**

This section restricts the actions the Minister of National Revenue may take to collect amounts from a person until certain time limits for objection or appeal have expired or certain decisions have been made. In particular, no collection actions may be taken in respect of:

- amounts owing under this Part until 90 days from the date of the notice of assessment or penalty;
- amounts involved in objections to assessments until 90 days from the date of notice of the Minister of National Revenue's decision;
- amounts involved in appeals to the Minister of National Revenue against penalties until 90 days from the date of the Minister of National Revenue's decision regarding the penalties;
- amounts involved in appeals to the Tax Court of Canada and the Federal Court, or in requests for questions to be determined by the Tax Court of Canada until the Court's decision has been duly mailed or the appeal has been discontinued, whichever is the earlier; and
- amounts involved in an objection or appeal where there is written agreement to delay proceedings until the decision in a similar case is known until the Minister of National Revenue has duly notified the person of the decision or judgement in the similar case.

The restrictions imposed on the Minister's actions include the Minister of National Revenue not:

- commencing legal proceedings;
- certifying an amount as payable by a person (section 152);
- requiring payment (subsection 153(1) and (2));

- requiring money restorable to a person to be turned over to the Receiver General (subsection 156(1)); and
- taking any action towards the seizure and sale of a person's goods (subsection 157(1)).

Notwithstanding the time restrictions enumerated, if at any time the total of all unpaid amounts that a person has been assessed under this Part exceeds \$1 million, the Minister of National Revenue may collect up to 50% of the total without regard to those restrictions.

### **Section 151 – Over \$10,000,000 – security**

Section 151 provides that the Minister of National Revenue may require a person to furnish security if the unpaid portion of the total of all amounts that the person has been assessed, or of penalties that the person is liable to pay, under this Part is in excess of \$10 million.

Subsection 151(1) sets out the calculation for the amount of security that the Minister of National Revenue may require from a person when the unpaid portion of the total of all amounts that the person has been assessed (e.g., amount payable and interest), or penalties that the person is liable to pay, under this Part is in excess of \$10 million. In general, the amount of security that may be required is the amount, in excess of \$10 million, that is determined by subtracting an amount based on the total of the amounts that the person has paid against the total of all amounts that the person has been assessed, or is liable to pay, under this Part from half of the total of all amounts that the person has been assessed, or is liable to pay, under this Part. The formula generally ensures that the amount of security that may be required is not greater than half of the total of all amounts that the person has been assessed, or is liable to pay, under this Part.

Subsection 151(2) provides that the person has 60 days to furnish the security required by the Minister of National Revenue under subsection (1).

If the security required under subsection 151(1) is not furnished to the Minister of National Revenue as requested, subsection (3) provides that the Minister of National Revenue may collect from the person an amount equivalent to the amount of security that was required. The collection restrictions under subsections 150(1) to (5) do not apply to subsection 151(3).

### **Section 152 – Certificates**

The Minister of National Revenue may certify any amount payable under this Part and register the certificate in the Federal Court. Upon registration, proceedings may be taken to collect the amount certified as if the certificate were a judgment of the Court. The Court may issue a notification or “memorial” that may be recorded in a province to create a charge, lien or priority on, or binding interest in, or for civil law an right in, a property in which the person has an interest. Any property bound by the registration of a certificate or memorial may not be sold or otherwise disposed of without the written consent of the Minister of National Revenue.

### **Section 153 – Garnishment**

Section 153 authorizes the collection of any amount payable under this Part by way of garnishment.

In general, garnishment may be used in respect of amounts owing to a person who is liable to pay or remit an amount under this Part, called a debtor, and also in respect of amounts due to be loaned or advanced to or on behalf of the debtor. Thus, subject only to the *Bankruptcy Act*, where the Minister of National Revenue has knowledge or suspects that a particular person is or will become, within 90 days, liable to make a payment to a debtor or a secured creditor of the debtor, the Minister of National Revenue may require the payment to be made to the Receiver General on account of the liability of the debtor under this Part. The notification of the requirement of a person to pay, to the Receiver General, amounts which would otherwise be payable to the debtor, is to be made by notice in writing to that person. Any such notice shall continue in respect of all periodic payments to be made by the person, without renewal, until the liability under this Part is satisfied. Every person who fails to comply with a garnishment notice is liable to the Crown for the amount not paid over. Any person receiving a garnishment notice may be assessed within 4 years of service on the person of the letter from the Minister of National Revenue requiring the payment. Also, amounts paid in respect of a garnishment notice are deemed to have been paid to or on behalf of the debtor.

#### **Section 154 – Recovery by deduction or set-off**

Where a person is indebted to Her Majesty in right of Canada under this Part, the Minister of National Revenue may require the retention by way of deduction or set-off out of any amount that may be or become payable to such person by Her Majesty in right of Canada.

#### **Section 155 – Acquisition of debtor's property**

The Minister of National Revenue is authorized to acquire and dispose of any interest in property of a person indebted under this Part for the purpose of collecting the debt.

#### **Section 156 – Money seized from debtor**

The Minister of National Revenue may require a person holding money seized in the administration or enforcement of the criminal law of Canada from a debtor under this Part to pay the money to the Receiver General on account of the debtor's indebtedness.

#### **Section 157 – Seizure**

Where a person fails to pay an amount as required under this Part, the Minister of National Revenue may give written notice of the Minister of National Revenue's intention to direct that the person's property be seized. If payment is not made within 30 days as set out in the notice, the Minister of National Revenue may issue a certificate of failure and direct that the person's property be seized. Seized property is to be held for 10 days at the person's expense and, should the default in payment continue, the property may be disposed of as the Minister of National Revenue considers appropriate and the proceeds applied to the amount owing and all expenses. Any net surplus resulting from a disposition is to be paid to the person. Property that is exempt from seizure according to applicable provincial law is exempt from seizure under this section.

#### **Section 158 – Persons leaving Canada or defaulting**

Where the Minister of National Revenue suspects that a person has left or is about to leave Canada in advance of the due date for payment of any amount the person is liable for under this Part, the Minister of National Revenue may by notice demand that the person pay without delay

all amounts for which they are liable or will be liable under this Part. If the person fails to pay the amount demanded, the Minister of National Revenue may direct that the person's property be seized and disposed of as the Minister of National Revenue considers appropriate in accordance with section 157.

### **Section 159 – Authorization to assess and take collection action**

Section 159 outlines the procedure by which the Minister of National Revenue may obtain judicial authorization, by *ex parte* application, to assess and take collection action to recover an amount determined to be remittable by a person. Authorization will be given if there are reasonable grounds to believe that net charge for a reporting period is owing and that collection of any part of the net charge would be jeopardized if there were a delay in its collection.

Subsection 159(3) provides deeming rules with respect to reporting periods, which apply for the purposes of determining when the net charge is due and the treatment of amounts that would have been recoverable by a person. Further, paragraph 159(3)(f) suspends the application of the interest and penalty provisions under subsection 73(2) and sections 97, 123, 129 and 130 as if the net charge were not required to be remitted, and the return not required to be filed, until the limitation period for a judicial review of the application expires.

### **Section 160 – Compliance by unincorporated bodies**

In the case of unincorporated bodies (other than individuals, partnerships, trusts, joint ventures or estates or successions of deceased individuals), the obligations and liabilities under this Part are the joint and several or solidary liability and responsibility of every member of the body holding a senior office, or where there are no senior officers, every member of any management committee, and where there are no senior officers or management committee, every member of the body. The Minister of National Revenue may assess any person liable under this section in respect of an amount owing by an unincorporated body. However, no person may be assessed more than two years after the day the person ceased to be jointly and severally or solidarily liable unless the person was grossly negligent or participated or acquiesced in making an untruthful statement or omission in a return or other document.

### **Section 161 – Charge liability – transfers not at arm's length**

This section provides an anti-avoidance rule for non-arm's length transfers of property by a person liable to make a payment under this Part. Under the section, the transferor and the transferee are jointly and severally or solidarily liable to pay the amount determined under subsection 161(1).

### ***Subdivision m Evidence and Procedure***

### **Section 162 – Service**

This section deals with what constitutes good service in various situations. A notice or other document to be served on or sent to a person that is a partnership, joint venture, union, a body such as a society, club or association or a business not carried on in the person's name may be sent to the name of the partnership, the name of the body or the name under which the business is carried on. In general, a notice is validly served on a person if it is left with an adult person employed at the place of business of the person.

### **Section 163 – Timing of receipt**

This section provides that anything sent by first class mail or confirmed delivery service is deemed to have been received on the day it was mailed or sent, except that an amount payable under this Part to the Receiver General is only considered to have been paid when it is actually received.

### **Section 164 – Proof of service**

This section describes how officers of the Canada Revenue Agency may use duly sworn affidavits as evidence that:

- a request, notice or demand was sent by confirmed delivery service to a named person on a stated day;
- a request, notice or demand was personally served on a named person on a stated day;
- a named person has not made a return, application, statement, or similar filing;
- a named person made a return, application, statement or similar filing on a stated day;
- the nature and contents of an attached document or copy are as they appear to be; or
- a notice of assessment was sent to a named person and that a notice of objection or appeal from the assessment was not received in the time allowed.

Where the Minister of National Revenue mails a notice or demand, the date of mailing is deemed to be the date of the notice or demand.

## **DIVISION 7 DISTRIBUTION OF FUEL CHARGE**

### **Section 165 – Distribution**

Section 165 describes how the fuel charge in respect of a province or area is distributed if certain conditions are met.

For the purpose of this section, subsection 165(1) defines “net amount” in respect of a province or area and a period fixed by the Minister of National Revenue as the charges levied under this Part less any amounts rebated, refunded or remitted in respect of the charges under this Part or any other Act of Parliament in that period.

Subsection 165(2) provides that if a province or area is or was a listed province, the Minister of National Revenue must distribute the net amount in respect of that province or area for a stipulated period, if the amount is positive, to the province or to persons prescribed by regulations or to a combination of both.

Subsection 165(3) provides that the Minister of National Revenue is not authorized to distribute an amount to a province if any of the collection restriction described in subsection 150(1) of this Act applies in respect of that amount.

Subsection 165(4) provides that any distribution of a net amount is to be calculated in the manner determined by the Minister of National Revenue and may, subject to subsection 165(8), be paid by the Minister of National Revenue out of the Consolidated Revenue Fund at the times and in the manner that the Minister of National Revenue considers appropriate.

Subsections 165(5) to (7) describe a recovery process. If the total amount of distribution made under subsection 165(2) in respect of a province or area is more than the total of all net amounts in respect of that province or area, then the Minister of National Revenue may recover the excess amount. If the distribution was made to the province, then the excess amount may be recovered from any payment payable to that province under this Act or the *Federal-Provincial Fiscal Arrangements Act*. If the distribution was made to a prescribed person, then the excess amount may be recovered from any sum of money that may be due or payable by Her Majesty in right of Canada to that person under this Act or any other Act of Parliament. If the distribution was made to more than one person, then the excess amount is to be recovered from any of those persons in a manner proportional to distributions to those persons.

The amount of recovery is to be calculated in a manner determined by the Minister of National Revenue.

Subsection 165(8) provides the Governor in Council with the authority to make regulations prescribing the time and manner of paying any distribution under subsection 165(2) and carrying out the purpose of this section in general.

## **DIVISION 8 REGULATIONS**

### **Section 166 – Regulations**

This section provides authority to the Governor in Council to make regulations to carry out the purposes and provisions of this Part.

Under subsection 166(1), the Governor in Council is authorized to make regulations:

- prescribing anything that is to be prescribed or is to be determined or regulated by regulations under Part 1;
- requiring persons to provide information as to their name, address, registration number or any information relating to Part 2 that may be required to comply with Part 1, to any class of persons required to make a return containing that information;
- requiring persons to provide the Minister of National Revenue with their Social Insurance Number;
- requiring any class of persons to make returns respecting any class of information required in connection with the administration or enforcement of Part 1;
- distinguishing among any class of persons, provinces, areas, facilities, properties, activities, fuels, substances, materials or things; and
- carrying out the purposes and provisions of Part 1.

Subsections 166(2) to (4) provide the Governor in Council the authority to amend Part 1 of Schedule 1, taking into account any factors that the Governor in Council considers appropriate, and Schedule 2 by regulation.

Subsection 166(5) provides that a regulation made under Part 1 is to have effect from the date of publication in the *Canada Gazette* or at such time thereafter as may be specified in the regulation. In certain cases, where the regulation so provides, it may have effect from an earlier date, if the regulation:

- has a non-tightening effect only;
- corrects an ambiguity or deficiency that was not in accordance with the objects of Part 1;
- is consequential to an amendment of Part 1 that is applicable to a time prior to publication;
- is in respect of elections that may be made by persons under Part 1; or
- gives effects to a public announcement as of, generally, the time of the announcement.

#### **Section 167 – Incorporation by reference – limitation removed**

This section provides that the timing limitation relating to incorporating a document by reference (as set out in paragraph 18.1(2)(a) of the *Statutory Instruments Act*) does not apply to the regulation making authority under this Part.

#### **Section 168 – Fuel charge system regulations**

This section provides the Governor in Council the authority to make regulations pertaining to the fuel charge system.

For the purpose of this section, subsection 168(1) defines “fuel charge system” as the system under this Part, Part 1 of Schedule 1 and Schedule 2 providing for the payment and collection of charges levied under this Part, as well as the amounts paid as or on account of charges under this Part. The system also covers the provisions of this Part relating to charges under this Part or to rebates in respect of any such charges, or any such amounts, paid or deemed to be paid.

Subsection 168(2) provides that, in relation to the fuel charge system, the Governor in Council has the authority to make regulation:

- prescribing rules in respect of any aspect of the application of the fuel charge system;
- prescribing rules in respect of any aspect of a rate change to a fuel for a province or area as set out in Schedule 2;
- prescribing rules in respect of any aspect of changes to the provinces or areas listed in Part 1 of Schedule 1 or referenced in Schedule 2;
- specifying the conditions under which the manner applies if an amount is to be determined in a prescribed manner in relation to the fuel charge system;
- providing for rebates, adjustments or credits in respect of the fuel charge system;

- providing for rules in respect of elections allowing any person to have the provisions of this Part apply in a manner different from the manner in which those provisions would otherwise apply;
- specifying any condition that must be met for the payment of rebates in respect of the fuel charge system;
- prescribing amounts and rates to be used to determine any rebate, adjustment or credit that relates to the fuel charge system;
- respecting information that must be included to facilitate the compliance with the fuel charge system;
- deeming an amount of charge to be payable or to have been paid by a person as a consequence of holding fuel under certain conditions;
- prescribing compliance measures, and
- effecting the transition to and the implementation of any aspect of the fuel charge system.

For the purpose of facilitating the implementation, application, administration and enforcement of the fuel charge system, subsection 168(3) provides that the Governor in Council has the authority to make regulations:

- adapting or modifying any provision of this Part, Part 1 of Schedule 1 or Schedule 2;
- defining, for the purposes of Part 1, words or expressions used in this Part, Part 1 of Schedule 1 or Schedule 2; and
- providing that a provision of this Part, Part 1 of Schedule 1 or Schedule 2, or a part of such a provision, does not apply.

Subsection 168(4) provides that, if a regulation made under this Part in respect of the fuel charge system states that it applies despite any provision of this Part, in the event of a conflict between the regulation and this Part, the regulation prevails to the extent of the conflict.

## **PART 2 INDUSTRIAL GREENHOUSE GAS EMISSIONS**

### **INTERPRETATION**

#### **Section 169 – Definitions**

The definitions in section 169 apply to Part 2 of the Act, which concerns the output-based pricing system (OBPS) for industrial greenhouse gas emissions.

#### **“analyst”**

The term “analyst” is defined as an individual or a member of a class of individuals whom the Minister designates as an analyst under subsection 201(1).

**“compliance period”**

The term “compliance period” means a period of time, the duration of which is specified in the regulations.

**“compliance unit”**

The term “compliance unit” means any of the following:

- a surplus credit that is issued under section 175 or paragraph 178(1)(b);
- a unit or credit that is recognized under the regulations as a compliance unit; or,
- an offset credit that is issued under the regulations.

**“covered facility”**

The term “covered facility” means a facility that:

- is located in a jurisdiction where the federal system applies, known as a backstop jurisdiction (listed in Part 2 of Schedule 1) and meets the criteria set out regulations, or
- is located in a backstop jurisdiction (listed in Part 2 of Schedule 1) and is designated by the Minister under section 172.

The term “facility” will be further clarified in regulations and may include a platform anchored at sea.

**“enforcement officer”**

The term “enforcement officer” means an individual or a member of a class of persons whom the Minister designates as an enforcement officer under subsection 201(1).

**“greenhouse gas”**

The term “greenhouse gas” means a gas that is included on Schedule 3.

**“increased-rate compensation deadline”**

The term “increased-rate compensation deadline” means a date set out in the regulations that establishes a final deadline for regulatees to provide compensation under section 174 for their excess emissions in respect of a compliance period, if they have not yet done so by the regular-rate compensation deadline.

**“Indigenous peoples of Canada”**

The term “Indigenous peoples of Canada” is defined using the same meaning of “aboriginal peoples of Canada” in subsection 35(2) of the *Constitution Act, 1982*.

**“Minister”**

The term “Minister” means the Minister of the Environment, who is currently also known as the Minister of the Environment and Climate Change.

**“organization”**

The term “organization” is defined using the same meaning as in the *Criminal Code*, which is:

- a public body, body corporate, society, company, firm, partnership, trade union or municipality; or
- an association of persons that
  - is created for a common purpose;
  - has an operational structure; and
  - holds itself out to the public as an association of persons.

**“person”**

The term “person” is defined as an individual or an organization and includes Her Majesty in right of Canada or a province.

**“regular-rate compensation deadline”**

The term “regular-rate compensation deadline” is a date set out in the regulations that establishes the first deadline allowing the regulatee to pay the regular rate for any excess emissions for a compliance period (i.e. one compliance unit or the excess emissions charge set out in Schedule 4 for each CO<sub>2</sub>e tonne that was emitted above the applicable emissions limit).

**Section 170 – Conversion into CO<sub>2</sub>e tonnes**

Section 170 sets out how quantities of greenhouse gases are converted into CO<sub>2</sub> equivalent (CO<sub>2</sub>e) quantities for the purpose of this Part of the Act. Specifically, to determine the number of CO<sub>2</sub>e tonnes, the number of tonnes of a greenhouse gas is multiplied by the “global warming potential” for that gas set out in column 2 of Schedule 3.

**DIVISION 1  
PRICING MECHANISM FOR GREENHOUSE GAS EMISSIONS**

***Registration of Covered Facilities***

**Section 171 – Application for registration**

Subsection 171(1) requires those responsible for covered facilities (regulatees) to apply to the Minister of Environment and Climate Change to register their covered facilities.

Subsection 171(2) provides that the Minister must register a covered facility and issue a certificate to the person who makes the application under subsection 171(1), once the Minister is satisfied that:

- the facility is a covered facility;
- the person is responsible for the covered facility; and
- the application contains the information specified by the Minister and has been made in the time and manner specified by the Minister.<sup>1</sup>

Subsection 171(3) provides that the Minister must cancel the registration and its certificate if a facility ceases to be a covered facility or if it was registered in error.

Subsection 171(4) means that a person who meets the criteria that could be established in a notice published by the Minister under subsection 194(1), and who is responsible for a facility that meets the criteria in that same notice, must apply to the Minister for registration, even if the regulations that implement the measures referred to in that notice have not yet been adopted.

If a facility was registered pursuant to subsection 171(4) and the notice issued under subsection 194(1) was subsequently cancelled by the Minister before regulations that implement the measures referred to in that notice are made, subsection 171(5) requires the Minister to cancel the registration and certificate of this facility.

### **Section 172 – Designation of facility as covered facility**

Subsection 172(1) authorizes the Minister of Environment and Climate Change to designate a facility as a covered facility if:

- the facility is located in a backstop jurisdiction;
- a person who is responsible for the facility has made the request; and
- the request is made in the time and manner specified by the Minister and includes all the required information.

Regulations made under section 192, notably paragraph 192(d), may further clarify which facilities can apply to the Minister for designation under section 172.

Subsection 172(2) provides that a facility designated by the Minister as a covered facility must also be registered by the Minister for the purpose of subsection 171(1). This means that the Minister would then issue a certificate for the covered facility.<sup>2</sup>

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<sup>1</sup> Erratum: The following sentence was deleted from a previous version of this document published on April 04, 2018: “The certificate is material evidence that the covered facility in possession of this certificate is exempted from the fuel charge under Part 1 when purchasing fuel to be used at the facility.” Please see notes in Part 1 for information on exemption certificates.

<sup>2</sup> Erratum: The following phrase was deleted from a previous version of this document published on April 04, 2018: “[...] which is material evidence that the covered facility in possession of this certificate is exempted from the fuel charge under Part 1 when purchasing fuel to be used at the facility.” Please see notes in Part 1 for information on exemption certificates.

Subsection 172(3) enables the Minister to cancel the designation of a covered facility, in accordance with the regulations.

### ***Reporting, Compensation and Compliance Units***

#### **Section 173 – Reporting requirement**

Section 173 requires regulatees to provide a report to the Minister of Environment and Climate Change for each compliance period. The report will include the information specified in the regulations related to the greenhouse gas emissions limit applicable to the facility as well as any other information specified in regulations, such as the greenhouse gases emitted by the facility, information concerning activities carried out by the facility, information concerning production at the facility, etc.

This section requires that the report submitted to the Minister be verified by an independent third party verifier. Further details and requirements may be provided for in regulations.

#### **Section 174 – Compensation for excess emissions**

Subsection 174(1) requires each regulatee to compensate for all greenhouse gases emitted at a covered facility above the applicable emissions limit. This compensation must occur by the final deadline (i.e. increased-rate compensation deadline) and be provided at the appropriate rate described under subsections 174(3) and (4), depending on when it is provided.

Pursuant to subsection 174(2), a regulatee must provide compensation for the emissions over the limit by remitting compliance units, paying the excess emissions charge, or by a combination of both.

Subsection 174(3) provides the rate for the first compensation deadline (“regular-rate compensation deadline”). For each CO<sub>2</sub>e tonne that was emitted above the applicable emissions limit, the regular rate applicable to compensation made by this deadline is:

- one compliance unit; or
- the relevant excess emissions charge set out in Schedule 4.

Subsection 174(4) provides the rate applicable to regulatees that have not compensated their excess emissions by the regular-rate compensation deadline (i.e. first deadline). This rate is four times the rate for the first deadline. In other words, for each CO<sub>2</sub>e tonne that was emitted above the applicable emissions limit and that was not compensated for by the first deadline, the Act requires compensation of four compliance units or four times the relevant excess emissions charge set out in Schedule 4. Not providing full compensation by the increased-rate deadline, in contravention of subsection 174(1), is an offense under subsection 233(1).

Subsection 174(5) ensures that the excess emissions charge for the last calendar year specified on Schedule 4 will apply as the default price for the subsequent years.

#### **Section 175 – Issuance of surplus credits**

Section 175 provides that if, during a compliance period, a covered facility emits less than the applicable emissions limit, the Minister of Environment and Climate Change must, in

accordance with the regulations issue surplus credits to the regulatee. The number of credits issued by the Minister will be equal to the difference in CO<sub>2</sub>e tonnes between the applicable limit and the covered facility's emissions. (For example, if a covered facility emitted 2 tonnes of CO<sub>2</sub>e less than its limit, it would receive 2 surplus credits).

### **Section 176 – Errors and omissions**

Subsection 176(1) requires the person responsible for a covered facility to notify the Minister of Environment and Climate Change in writing of any error or omission discovered in a report submitted under section 173. This obligation only applies if the error or omission is discovered within 5 years of the submission of the report.

Subsection 176(2) specifies that a person required under subsection 176(1) to notify the Minister of an error or omission may also have to, if required by regulations, submit a corrected report to the Minister and, if required by regulations, cause the corrected report to be verified by a third party. Regulations may provide further details on the content of corrected reports, their submission to the Minister, their verification, etc.

### **Section 177 – Errors and omissions**

Subsection 177(1) states that if the Minister of Environment and Climate Change is of the opinion that there is an error or omission in a report submitted under section 173, the Minister can require the regulatee to submit a corrected report and may require that the corrected report be verified by a third party. The Minister may only do so within 5 years of the submission of the report under section 173.

Subsection 177(2) states that the regulatee must comply with a ministerial request made under subsection 177(1) in accordance with the regulations. Further details regarding corrected reports may be specified in regulations.

### **Section 178 – Change in obligations**

Information provided in a corrected report submitted under section 176 or 177 may impact the level of greenhouse gases emitted by the covered facility during a compliance period or it may impact the emissions limit applicable to the facility. If the difference between the emission levels and the emissions limit of the covered facility changes, subsection 178(1) provides that:

- the regulatee will have to, in accordance with the regulations, provide any compensation determined in the regulations. Compensation could be required if, for example, the corrected report reveals that insufficient compensation was provided as a result of the incorrect information submitted in the first report (paragraph 178(1)(a)); or
- the Minister may, in accordance with the regulations, issue the person a number of surplus credits determined in the regulations. Credits could be issued if, for example, the corrected report reveals that excess compensation was provided due to the incorrect information submitted in the first report (paragraph 178(1)(b)).

Subsection 178(2) limits the rate at which the person responsible for a covered facility will have to provide compensation under paragraph 178(1)(a) to four compliance units for each CO<sub>2</sub>e tonne, or to four times the applicable excess emissions charge in Schedule 4, for each CO<sub>2</sub>e tonne.

### **Section 179 – Retirement of compliance units**

Section 179 prevents compliance units from being used more than once. More specifically, the Minister of Environment and Climate Change must retire a compliance unit when it has been remitted:

- to compensate for the excess emissions of a covered facility under section 174 or paragraph 178(1)(a); or
- to replace an invalid compliance unit under subsection 181(2).

This section also provides that the Minister must retire the compliance unit that he or she has withdrawn under section 182 from the regulatee's account.

Compliance units must be retired by the Minister in accordance with the regulations.

### **Section 180 – Suspension or revocation of compliance units**

Subsection 180(1) provides that, pursuant to relevant regulations, the Minister of Environment and Climate Change may suspend or revoke compliance units.

The OBPS includes a system to track compliance units, excess emissions charge payments, and other transactions, as specified in regulations. Subsection 180(2) provides that if the person who holds an account in that tracking system makes a request in compliance with regulations that a compliance unit be cancelled, then the Minister must cancel the compliance unit.

Subsection 180(3) provides that a person is not entitled to be indemnified in the event of the suspension, cancellation, or revocation of a compliance unit.

### **Section 181 – Issuance error or invalidity**

Subsection 181(1) enables the Minister of Environment and Climate Change to require the replacement of compliance units that were issued in error or are no longer valid. For example, the Minister may exercise this power when a surplus credit has been issued on the basis of false or misleading information.

Subsection 181(2) provides that the regulatee who is required to remit compliance units pursuant to subsection 181(1) must do so by the deadline specified by the Minister.

Subsection 181(3) provides that the regulatee also has the option of paying the excess emissions charge instead of remitting compliance units to replace the ones issued in error or found to be invalid. The excess emissions charge to be paid corresponds to the rate per tonne of CO<sub>2</sub>e set out in Schedule 4 for the calendar year in which the Minister requires the unit to be remitted.

## ***Recovery of Compensation***

### **Section 182 – Ministerial power**

Section 182 enables the Minister of Environment and Climate Change to withdraw, from a covered facility's account in the tracking system, a number of compliance units that represents

the number of CO<sub>2</sub>e tonnes that has not been fully compensated by this facility by the applicable deadline under subsection 174(1) or paragraph 178(1)(a). The Minister may withdraw the compliance units in accordance with the regulations.

### **Section 183 – Debts to Her Majesty**

Subsection 183(1) provides that the monetary value of the outstanding compensation owed, after the applicable deadline under section 174(1) or paragraph 178(1)(a) has passed, in relation to excess greenhouse gas emissions of a covered facility is a debt due to Her Majesty that may be recovered in court. This provision also provides that no debt is owed in relation to an excess emissions of CO<sub>2</sub>e tonnes for which compliance units are withdrawn in accordance with section 182.

Subsection 183(2) provides that proceedings in respect of debts due to Her Majesty described under subsection 183(1) are subject to a five-year limitation period.

### **Section 184 – Certificate**

Subsection 184(1) authorizes the Minister of Environment and Climate Change to issue a certificate that serves as proof of the outstanding amount referred to in subsection 183(1).

Subsection 184(2) provides that the registration in a court of the certificate issued by the Minister under subsection 184(1) has the same effect as a judgement of that court in regards to the debt specified in the certificate as well as any registration costs.

## ***Tracking System***

### **Section 185 – Establishment and maintenance**

Section 185 requires that, if a province, territory or area is set out in Part 2 of Schedule 1, the Minister of Environment and Climate Change must establish and maintain a compliance tracking system for recording and tracking compliance units issued by the Minister and payments of the excess emissions charge under the OBPS. Regulations may specify other transactions that must be tracked by the system.

### **Section 186 – Accounts**

Subsection 186(1) requires a person who is responsible for a covered facility to open and maintain any account in the compliance tracking system required by the regulations. As regulations allow, a person other than a person who is responsible for a covered facility may open and maintain accounts in the compliance tracking system for the purpose of trading compliance units.

Subsection 186(2) allows the Minister of Environment and Climate Change to specify the time and manner for opening or closing of accounts, the information required to open and close an account as well as the conditions of use for accounts.

Subsection 186(3) enables the Minister to close any account in accordance with the regulations.

## ***Records***

### **Section 187 – Keeping records**

Section 187 establishes record-keeping obligations for the purposes of Division 1 of Part 2. Subsection 187(1) sets out the obligation to keep all records that are needed to determine whether or not a regulatee has complied with Division 1 of Part 2. This obligation applies to a person responsible for a covered facility as well as a person who opens and maintains accounts in the tracking system in accordance with section 186.

Subsection 187(2) provides that the Minister of Environment and Climate Change can specify the form and content of the records kept in accordance with subsection 187(1).

Subsection 187(3) sets out rules on the location and the language in which records under are to be kept and retained. More specifically, records must be kept and retained in Canada in accordance with the regulations and in either English or French, unless the Minister authorizes that they be kept in another language.

Subsection 187(4) provides that information stored in an electronic record must be readable for reference during the entire time that the record has to be retained.

Subsection 187(5) states that the period of retention for records is 7 years, unless regulations specify a different period.

Subsection 187(6) enables the Minister to require a regulatee to retain records for a period that the Minister specifies, which may be longer than the one set out under subsection 187(5). The Minister may do so via registered letter or by demand served personally.

Subsection 187(7) provides that the Minister may authorize a regulatee that is required to keep records under subsection 187(1) to dispose of those records before the end of the applicable retention period. This authorization must be provided in writing.

## ***Revenues***

### **Section 188 – Distribution– charge payments**

Section 188(1) requires the Minister of National Revenue to distribute revenues collected from excess emissions charge payments made under section 174 or 178 to either:

- a province or territory in which the covered facilities that made the relevant charge payments are located;
- eligible persons identified in regulations and that meet the criteria set out in the regulations; or
- a combination of those two.

Subsection 188(2) enables the Minister of National Revenue to return revenues collected from payments made under subsection 181(3) in order to replace invalid compliance units. These revenues would be distributed to persons specified in regulations that meet the criteria set out in the regulations.

Subsection 188(3) provides that the amount of a distribution under subsection 188(1) or (2) is calculated in the manner determined by the Minister of National Revenue.

Subsection 188(4) enables the Minister of National Revenue to return the revenues under subsections 188(1) and (2), at times and in the manner that the Minister considers appropriate. This return may be made out of the Consolidated Revenue Fund, in accordance with the regulations.

### ***Orders and Regulations***

#### **Section 189 – Amendments to Part 2 of Schedule 1**

Section 189 provides authority to trigger the application of the OBPS in specific provinces, territories or areas in order to ensure that the Government of Canada's greenhouse gases pricing objectives are met. This section authorizes the Governor in Council to amend Part 2 of Schedule 1 to add, delete or amend the name of provinces and territories and the description of areas. The corresponding authority for Part 1 of Schedule 1 is found in subsection 166(2).

In making an order to apply Part 2 (the OBPS), the Governor in Council may take into account factors it considers appropriate, including the stringency of provincial greenhouse gas emission pricing mechanisms. The corresponding authority for Part 1 of Schedule 1 is found in subsection 166(3).

Geographically, the Governor in Council is granted the authority to apply the OBPS within the exclusive economic zone of Canada or the continental shelf of Canada.

#### **Section 190 – Amendments to Schedule 3**

Section 190 provides authority for the Governor in Council to add or delete a greenhouse gas and its global warming potential from Schedule 3. The Governor in Council may also amend the global warming potential of a greenhouse gas on Schedule 3 through this authority.

In exercising this power, the Governor in Council may take into account factors it considers appropriate, such as reporting requirements under the United Nations Framework Convention on Climate Change.

#### **Section 191 – Amendments to Schedule 4**

Section 191 provides authority for the Governor in Council to amend Schedule 4, which sets out the charge for excess greenhouse gas emissions for a given year. The payment of the excess emission charge is one of the compensation options available to regulatees under section 174 or paragraph 178(1)(a). Through this authority, the Governor in Council may add a year to Schedule 4 and amend the excess emissions charge amount for a given year.

#### **Section 192 – Regulations (OBPS)**

Section 192 provides general authority for the Governor in Council to make regulations for the purpose of Division 1 of Part 2 of the Act regarding an OBPS mechanism for greenhouse gas

emissions. The section specifically identifies the following subjects as areas in which regulations may be made:

- the definition of facility;
- covered facilities, including when facilities cease to be covered facilities;
- clarifying which person(s) is responsible for a facility or covered facility;
- the designation of a facility as a covered facility, and the cancellation of designations, by the Minister of Environment and Climate Change under section 172;
- compliance periods and compensation deadlines;
- regulatees compliance reports required under section 173 or subsection 176(2) or 177(2) and third-party verification of those reports;
- greenhouse gas emissions limits;
- quantification of greenhouse gases emitted by a facility;
- the circumstances under which greenhouse gases are deemed to have been emitted by a facility;
- the methods used to collect information on greenhouse gas emissions and activities related to those emissions;
- compensation to be provided pursuant to sections 174 and 178;
- compliance units, including transfers of compliance units and the recognition of units issued by someone other than the Minister (i.e. from a compatible regime);
- the system for tracking compliance and the accounts in this system;
- user fees;
- rounding of numbers for the different purposes (reporting, compensation for excess emissions, surplus credits);
- retention of records; and
- correcting or updating information related to the OBPS.

### **Section 193 – Transitional measures**

Section 193 enables the Governor in Council to make regulations to address circumstances in which a facility ceases to be a covered facility. This may occur if, for example, the province, territory or area in which the facility is located is no longer listed on Part 2 of Schedule 1. To address such circumstances, the Governor in Council could, for example, make transitional rules in relation to the length of compliance periods, or reporting and compensation obligations.

The Governor in Council also has the authority to make regulations in regards to circumstances under which facilities cease to be covered facilities under paragraph 192(b).

### **Section 194 – Effect**

When the Minister publishes a notice that refers to measures that are subsequently given effect in an order or regulations, subsection 194(1) provides that it is possible for this order or these regulations to take effect before their date of adoption by the Governor in Council. This can apply to an order made under sections 189, 190 or 191 or regulations made under sections 192 or 193. The earliest date that the order or regulations may take effect is the day of the publication of the notice.

Subsection 194(2) clarifies that the Minister's notice published under subsection 194(1) is subject to the requirements of the *Statutory Instruments Act* that apply to regulations only if the notice compels registration of facilities as covered facilities under section 171. Such a notice would compel early registration by setting out criteria respecting facilities and persons. The *Statutory Instruments Act* sets out specific rules and processes concerning how federal regulations and other statutory instruments are made.

### **Section 195 – Regulations – offset credit system**

Regulations may be made by the Governor in Council to establish an offset credit system for projects that prevent greenhouse gases from being emitted or that remove greenhouse gases from the atmosphere. Section 195 specifically identifies the following subjects as areas in which regulations may be made:

- the issuance of offset credits to persons who are responsible for the projects that prevent greenhouse gases from being emitted or that remove greenhouse gases from the atmosphere;
- requirements on those persons;
- the registration and monitoring of the projects;
- the keeping and retention of records; and
- providing for user fees.

### ***Delegation***

### **Section 196 – Delegation**

For the purposes of making the OBPS work, it will probably be necessary that the Minister of Environment and Climate Change delegate to others some powers, duties, and functions. Section 196 authorizes the Minister to delegate his or her powers, duties and functions under Division 1 of Part 2, with the exception of the publication of a notice under subsection 194(1).

## **DIVISION 2 INFORMATION AND SAMPLES**

### **Section 197 – Purposes**

Subsection 197(1) sets out the purposes for which an order concerning information may be adopted by the Minister of Environment and Climate Change. Specifically:

- to assess emission levels in Canada of greenhouse gases or other gases related to climate change;
- to determine appropriate measures to control these emissions; and
- to ensure that necessary information under Division 1 is gathered or provided to the Minister.

Subsection 197(2) provides that the Minister may, by an order, require any person to:

- notify the Minister if they were engaged in activities related to gases specified in the order;
- gather –by using any specified methods or equipment– information on those gases, samples of those gases, or samples of substances or products related to those gases; and
- provide the information or samples mentioned above to the Minister.

Subsection 197(3) provides that the order concerning information may include several requirements, such as requirements concerning the following:

- the method for rounding numbers;
- the verification of information;
- where information and data is to be kept and for how long;
- updating administrative information; and
- how information and samples are to be provided.

Subsection 197(4) specifies that the persons described in the order concerning information must comply with the order and do so within the timeframe specified in the order.

Subsection 197(5) provides that the Minister may extend the time within which a person must comply with an order concerning information, if a request in writing is received.

### **Section 198 – Regulations – information**

Subsection 198(1) authorizes the Governor in Council to make regulations regarding the gathering of information on greenhouse gases or other gases related to climate change, the

emissions of those gases and activities related to those emissions. Regulations may notably be made on the following subjects:

- the methods and equipment used to collect information or to quantify gas emissions;
- the rounding of numbers;
- the form and manner for providing information;
- the verification of the information;
- correcting or updating information; and
- the creation and keeping of records.

Subsection 198(2) enables the Governor in Council to also make regulations regarding the collection and production of samples. Regulations may notably be made on the following subjects:

- sampling methods and equipment used to collect samples; and
- the form and manner for providing samples.

### **Section 199 – Errors and omissions**

Subsection 199(1) states that if the Minister of Environment and Climate Change is of the opinion that there is an error or omission in the information submitted under the order concerning information referred to in section 197 or under the regulations referred to in section 198, the Minister can require the regulatee to submit corrected information and that it be verified by a third party. The Minister may only do so within 5 years of the submission of the information.

Subsection 199(2) states that the regulatee must comply with the ministerial requirement referred to in subsection 199(1) within the deadline specified by the Minister.

## **DIVISION 3 ADMINISTRATION AND ENFORCEMENT**

### *Interpretation*

### **Section 200 – Definitions**

The definitions in section 200 apply to Division 3 of Part 2 of the Act, which concerns the administration and enforcement of Part 2.

#### **“conveyance”**

The term “conveyance” is defined as including “any vehicle, ship or aircraft.” This word is used in the definition of “place” in this section and in subsection 203(5) in relation to stopping and detaining conveyances.

**“dwelling-house”**

The term “dwelling-house” is defined by using the same definition as the one provided in section 2 of the *Criminal Code* and notably includes living quarters on a platform anchored at sea.

**“place”**

The term “place” is defined as including offshore platforms as well as any vehicle, ship or aircraft.

***Designation of Enforcement Officers and Analysts*****Section 201 – Designation**

Subsection 201(1) provides authority for the Minister of Environment and Climate Change to designate two categories of enforcement officials: enforcement officers and analysts.

Subsection 201(2) specifies that to prove their authority under the Act, each enforcement officer and analyst is given a certificate of designation as an enforcement officer or analyst and, when they enter a place as part of their duties, they must produce their certificate if requested to do so.

Subsection 201(3) provides that the enforcement officers entrusted with the enforcement of Part 2 of this Act will have all of the powers of peace officers, which include the power to arrest individuals. However, when the Minister designates an individual or class of individuals as enforcement officers, the Minister may specify limits on their powers.

Subsection 201(4) removes any ambiguity about where enforcement officers and analysts may exercise their powers, as it states that they may exercise their powers in the exclusive economic zone of Canada or in the waters above the continental shelf of Canada.

**Section 202 – Immunity**

Section 202 clarifies that no civil proceeding may be brought against enforcement officers and analysts for their actions or omissions done in good faith while exercising their powers or performing their duties or functions under Part 2 of the Act.

***Powers*****Section 203 – Authority to enter**

Subsection 203(1) provides the authority for an enforcement officer to enter a place for the purpose of verifying compliance with Part 2 of the Act if the enforcement officer has reasonable grounds to believe that anything to which Part 2 applies is located in that place. This section also provides enforcement officers with the authority to require any individual to be present during the inspection.

Subsection 203(2) lists 16 actions enforcement officers may take after entering a place for the purpose of verifying compliance. Collectively, these actions give enforcement officers broad authority to take necessary steps to gather and ascertain information about compliance.

With respect to the action of taking samples to verify compliance, subsection 203(3) clarifies that the enforcement officer may dispose of the samples as they consider appropriate.

Analysts have specific scientific or accounting expertise necessary for the support of enforcement activity. Subsection 203(4) allows analysts to accompany enforcement officers and exercise specific powers, such as examining anything, including data, opening and examining receptacles and packages, taking samples, conducting tests, taking measurements and photographs, and using any system or equipment found in the place. Analysts are not authorized to conduct inspections alone and must be accompanied by an enforcement officer.

To facilitate the work of an enforcement officer when they enter a conveyance (i.e. any vehicle, ship or aircraft), subsection 203(5) provides that the enforcement officer may direct that the conveyance be stopped, moved, or detained as may be reasonably necessary for the enforcement officer to carry out their work of verifying compliance with Part 2.

In the scenario where enforcement officers, and any analyst who accompanies them, travel to a platform anchored at sea to verify compliance with Part 2, subsection 203(6) provides that each enforcement officer and analyst must be provided transport to and from the platform, and with accommodation and food, all without charge. This obligation is due to the remoteness of some offshore operations.

#### **Section 204 – Warrant to enter dwelling-house**

Subsection 204(1) mentions that an enforcement officer requires a warrant to enter dwelling-houses (including living quarters on platforms anchored at sea), unless the occupant consents to the entry.

Subsection 204(2) states that a justice of the peace may issue a warrant for entry into a dwelling-house if the justice of the peace is satisfied, based on sworn information, that the following three conditions are met:

- the dwelling-house is a place that contains anything to which Part 2 of the Act applies or in which an activity regulated under Part 2 is conducted;
- entry to the dwelling-house is necessary for a purpose related to verifying compliance; and,
- entry was refused by the occupant or there are reasonable grounds to believe that entry will be refused by, or that consent to entry cannot be obtained from, the occupant.

The warrant may be issued on an *ex parte* basis, which means the dwelling-house occupant does not have to be given notice.

Subsection 204(3) provides that a warrant to enter a dwelling-house may include conditions on how it is executed.

#### **Section 205 – Production of documents and samples**

Subsection 205(1) provides that by registered mail, or by serving a demand in person, the Minister of Environment and Climate Change may require any person to produce a document or sample of anything to which Part 2 applies. The significance of this section is that it provides an

alternative to site visits for the purpose of verifying compliance with Part 2 of the Act. Site visits may be a costly means of obtaining documents and samples, particularly for remotely located places.

Subsection 205(2) provides that requirements for producing documents and samples must be complied with despite any other law to the contrary.

### ***Assistance to Enforcement Officers and Analysts***

#### **Section 206 – Entry on private property**

Section 206 clarifies that, other than a dwelling-house, enforcement officers, analysts and any persons accompanying them may enter and pass through private property as part of carrying out their duties under Part 2 of the Act. This section may be useful in cases where it is necessary for enforcement officers, analysts and any persons accompanying them to enter or cross private property in order to reach an inspection site.

This section further clarifies that enforcement officers, analysts and any persons accompanying them are not liable for entering and passing through such private property.

#### **Section 207 – Assistance**

Section 207 requires the owner or person in charge of a place that contains anything to which Part 2 of the Act applies or in which an activity regulated under Part 2 is conducted to assist and provide information to enforcement officers and analysts during an inspection or search.

#### **Section 208 – False or misleading statements**

Section 208 prohibits anyone from knowingly making a false or misleading statement to an enforcement officer or analyst that is exercising powers or performing duties and functions under Part 2 of the Act.

#### **Section 209 – Obstruction**

Section 209 prohibits anyone from obstructing or hindering an enforcement officer or analyst who is carrying out their duties under Part 2.

### ***Disposition of Things Seized***

#### **Section 210 – Custody of things seized**

Section 210 provides that the regime under the *Criminal Code* applies when an enforcement officer needs to seize a thing for the purposes of Part 2 of the Act.

This section further specifies that the enforcement officer or a person that they designate, pursuant to the authority given in paragraph 210(1)(b), must keep the thing seized in their custody until the court orders otherwise under section 490 of the *Criminal Code*.

Subsection 210(2) provides that if the lawful owner cannot be identified within 30 days of a thing being seized, the thing or any proceeds of its sale are forfeited to the Crown.

Subsection 210(3) provides that the owner of a seized thing may abandon that object to the Crown.

### **Section 211 – Disposition by Minister**

Section 211 provides that the Minister of Environment and Climate Change has discretion in how to deal with or dispose of things that have been forfeited or abandoned in the course of enforcement of Part 2 of the Act.

### **Section 212 – Liability for costs**

Section 212 provides a liability regime for costs associated with various enforcement actions incurred by the Crown in relation to a thing that has been seized, detained, forfeited or abandoned. Some of these costs may be recovered through disposition of the thing by the Crown. But this provision allows the Crown to recover any costs above and beyond the proceeds of the disposition from the person who is the lawful owner or lawfully entitled to the possession of the thing and who was found guilty of an offence under Part 2 of the Act in relation to the thing. Any person subject to this section would be jointly and severally liable for these costs.

### ***Jurisdiction of Justices and Judges – Exclusive Economic Zone of Canada and Waters Above the Continental Shelf of Canada***

#### **Section 213 – Jurisdiction of justices and judges**

For greater certainty, section 213 provides that justices and judges in any territorial division in Canada have jurisdiction to exercise powers or performing duties or functions under Part 2 of the Act in relation to enforcement actions that take place in the exclusive economic zone of Canada or the waters above the continental shelf of Canada.

### ***Compliance Orders***

#### **Section 214 – Definitions**

Section 214 provides definitions for terms that are used in sections 215 to 223.

#### **“Chief Review Officer”**

The term “Chief Review Officer” refers to the Chief Review Officer appointed under subsection 244(1) of the *Canadian Environmental Protection Act, 1999* and includes any review officer designated under subsection 244(3) of that Act.

#### **“order”**

The term “order” refers to an order that has been issued under section 215.

#### **Section 215 – Order**

Subsection 215(1) provides that enforcement officers may, if they have reason to believe that there is a contravention –or there is likely to be a contravention to Part 2 of the Act– order a person to stop doing something, to take any measure to comply with Part 2 or to mitigate the

effects of noncompliance. The order may impose any measure to assist in complying with the order such as record keeping, regular reporting, and plans for compliance.

Subsection 215(2) provides that orders must be in writing and must include important information such as to who it is directed, which legislative or regulatory provisions are at issue, and what measures must be taken for compliance.

Subsection 215(3) provides that the duration of an order cannot be longer than 180 days.

Subsection 215(4) exempts orders from the *Statutory Instruments Act*.

### **Section 216 – Notice of intent (compliance order)**

Subsection 216(1) provides that before an enforcement officer issues an order they must provide notice to those to whom the order will be directed. Also, an enforcement officer must give the person a reasonable opportunity to make oral representations before an order is issued.

Subsection 216(2) provides the content that must be part of the notice, including why the order will be issued, and a statement that the regulatee has an opportunity to explain their position.

### **Section 217 – Compliance with the order**

Subsection 217(1) requires the person to whom an order under section 215 is directed to comply with the order. This obligation takes effect upon the receipt of the order or a copy of it by the regulatee.

Subsection 217(2) also specifies that the issuance of an order or a regulatee's compliance with an order does not preclude any proceedings in relation to the alleged contravention that gave rise to the order.

### **Section 218 – Intervention by enforcement officer**

Subsection 218(1) provides enforcement officers with the authority to take measures, or to authorize others to take measures, if a person to whom an order is directed does not comply with the order.

Subsection 218(2) clarifies that enforcement officers, or persons authorized by enforcement officers under subsection 218(1), may enter and have access to any place or property, other than a dwelling-house, as part of taking measures to fulfill an order that is not being complied with.

Subsection 218(3) further clarifies that a civil lawsuit cannot be brought against a person authorized under subsection 218(1) in respect of any act or omission committed in good faith while taking measures to fulfill an order that has not been complied with.

### **Section 219 – Recovery of reasonable costs and expenses by Her Majesty**

Section 219 provides that if an enforcement officer took measures in response to a regulatee's failure to comply with an order, the Crown may recover the costs incurred in that action.

Subsection 219(6) allows the Crown to exercise a recourse up to five years from the date on

which the events giving rise to the claims occur or came to the knowledge of the Minister of Environment and Climate Change. The costs that can be recovered are limited to those that were reasonably incurred in the circumstances. The Crown can seek to recover costs from any person to whom the order is directed.

### **Section 220 – Variation or cancellation of order**

Subsection 220(1) authorizes the enforcement officer to change or cancel an order in response to changing circumstances or to simply correct clerical errors. This subsection also authorizes the enforcement officer to extend the duration of the order up to the maximum allowable duration of an order, which is 180 days. The enforcement officer only has these authorities until the time that the person affected requests a review of the order (sections 222 and 223 of this Act address reviews). After that time, only the Chief Review Officer can make changes to or suspend a term or condition of the order.

Subsection 220(2) requires the enforcement officer to give a notice of the intent to change the order. This provision ensures that those who will be subject to the change have the opportunity to make oral representations to the enforcement officer prior to the change being made.

### **Section 221 – Regulations**

Section 221 allows the Minister of Environment and Climate Change to develop regulations with respect to the representations that regulatees have the right to make when the enforcement officer provides notice of intent to issue or change an order.

This section also authorizes the Minister to develop regulations in respect of orders that require regulatees to report periodically to the enforcement officer issued under subparagraph 215(1)(c)(ii).

### **Section 222 – Request for review**

Section 222 gives anyone who is subject to an order under section 215 the right to request a review of the order. Written requests for review are made directly to the Chief Review Officer, an independent decision-maker at arm's length from the Minister of Environment and Climate Change.

A request for review must be made within thirty days of receipt of the order.

Subsection 222(2) specifies that in some cases, the Chief Review Officer may extend the time period within which a request for review may be made, if she or he considers it to be in the public interest.

### **Section 223 – Review of order**

Section 223 specifies that the rules and procedure with respect to reviews of orders under the *Canadian Environmental Protection Act, 1999* apply to reviews of orders issued under Part 2 of the Act with the appropriate adaptations.

## **Section 224 – Immunity**

Section 224 clarifies that a civil lawsuit cannot be brought against review officers for actions that they take or for omissions they make in good faith in the exercise of their powers or the performance of their duties and functions.

### ***Voluntary Reports***

## **Section 225 – Voluntary Reports**

Subsection 225(1) provides that if someone has knowledge that an offence has been committed under Part 2, or that such an offence is likely to be committed, the person can come forward and report any information relating to the offence or potential offence.

Subsection 225(2) allows a person that is reporting an offence to request that their identity, and any information that could reasonably be expected to reveal their identity, be kept confidential.

Subsection 225(3) provides that if confidentiality is requested by a person reporting information about an offence, then that person's identity, or any information that could reasonably be expected to reveal their identity, must not be disclosed unless the person authorizes the disclosure in writing.

Subsection 225(4) provides protection to employees by ensuring that an employer cannot take any action to disadvantage an employee, including disciplining, harassing or firing the employee, if the employee has:

- made a report about an offence under Part 2;
- refused or stated an intention of refusing to take an action that would constitute an offence under Part 2; or
- taken action or stated an intention to take action to comply with Part 2.

### ***Application for Investigation of Offences***

## **Section 226 – Application for investigation by Minister**

Section 226 provides that any resident of Canada who is at least 18 years old may apply to the Minister of Environment and Climate Change for an investigation of an offence they allege has occurred under Part 2 of the Act.

When someone applies for an investigation they must swear or affirm a statement that includes:

- their name and address;
- that they are at least 18 years old and a resident of Canada;
- the details of the allegation and the names of those whom they believe to be involved;  
and
- a statement about the evidence they have for making the allegation.

Subsection 226(3) provides that the Minister may make a regulation that sets out the form in which an application for investigation must be made.

### **Section 227 – Investigation by Minister**

Section 227 provides that within 20 days of receiving an application for investigation under section 226, the Minister of Environment and Climate Change must acknowledge receipt of the application. This section also provides that the Minister must investigate all matters that he or she considers necessary to determine the facts relating to the alleged offence.

### **Section 228 – Progress reports**

Section 228 provides that once the Minister of Environment and Climate Change acknowledges receipt of an application for investigation made under section 226, the Minister must report to the applicant every 90 days on the progress of the investigation. The Minister must include in their progress reports any actions that the Minister has taken or is planning on taking, as well as a time estimate of how long it will take to complete the investigation.

This section provides that the Minister does not have to give a progress report if the investigation lasts less than 90 days.

### **Section 229 – Sending evidence to Attorney General of Canada**

Section 229 clarifies that the Minister of Environment and Climate Change, at any point in an investigation, may share evidence with the Attorney General concerning whether an offence has been or is about to be committed under Part 2.

### **Section 230 – Discontinuation of investigation**

Subsection 230(1) sets out the two grounds upon which the Minister of Environment and Climate Change may end an investigation requested under section 226. The Minister may end an investigation if the Minister is of the opinion that further investigation is not required, or if the allegation is unsubstantiated.

Subsection 230(2) provides that if an investigation is ended, the Minister must prepare a report about the investigation and send it to the person who requested the investigation and to anyone whose conduct was investigated. The report must include a description of the information gathered during the investigation and the reasons why the investigation was ended. Copies of the report that are sent to people who were investigated must not include information that identifies the person who requested the investigation.

## ***Injunctions***

### **Section 231 – Injunctions**

Subsection 231(1) gives the court jurisdiction to issue an injunction for the purpose of stopping or preventing the commission of an offence under Part 2 of the Act. Only the Minister of Environment and Climate Change can apply for an injunction under this subsection.

Subsection 231(2) provides that the party or parties named in the Minister's application for an injunction must receive advance notice of the pending court action, unless doing so would not be in the public interest.

## DIVISION 4 OFFENCES AND PUNISHMENT

### *Offences*

#### **Section 232 – Offences (minimum fines)**

The regime set out in sections 232 and 233 aligns with the fine regime introduced for other federal environmental laws by the *Environmental Enforcement Act* (S.C. 2009, c. 14) in 2009.

Subsection 232(1) provides the list of offences under Part 2 to which the penalty scheme set out in subsections 232(2) to 232(4) applies. Examples of such offences include knowingly providing false or misleading information or samples as well as knowingly destroying records that are required to be kept under Part 2. Such offences are subject to minimum fines, higher maximum fines and, if the offender is an individual, imprisonment.

Paragraph 232(1)(c) makes it an offence for a person to contravene any provision of a regulation designated by regulations made under section 246. Section 246 authorizes the Governor in Council to make regulations for the purposes of paragraph 232(1)(c). The intent behind section 246 is to allow the Governor in Council to identify offences in regulations that would, upon conviction, subject the regulatee to the penalty scheme set out in subsections 232(2) to 232(4). Without a designation in regulations, contraventions of provisions of Part 2 of the Act and its regulations would subject the regulatee, upon conviction, to the penalty scheme provided for in section 233.

Subsections 232(2) to 232(4) provide the penalty scheme for three categories of offenders: individuals, small revenue organizations and other persons. Small revenue organizations are those with gross revenues of no more than \$5 million in the 12 months immediately preceding the subject matter of the contravention (section 234).

	Summary conviction		Indictment	
	Minimum	Maximum	Minimum	Maximum
Individuals – 232(2), first offence	\$5000	\$300 000 or imprisonment for a term of not more than six months, or both	\$15 000	\$1 000 000 or imprisonment for a term of not more than three years, or both
Other persons – 232(3), first offence	\$100 000	\$4 000 000	\$500 000	\$6 000 000
Small revenue organizations – 232(4), first offence	\$25 000	\$2 000 000	\$75 000	\$4 000 000

Subsections 232(2) to 232(4) also specify that second and subsequent offenders are liable to fine ranges that are double of the fine range for first-time offenders. Second and subsequent

offenders are those who had been previously convicted of a substantially similar offence under a federal or provincial law that relates to the control or pricing of greenhouse gases (section 236).

### **Section 233 – Offences (other)**

The regime set out in sections 232 and 233 aligns with the fine regime introduced for other federal environmental laws by the *Environmental Enforcement Act* (S.C. 2009, c. 14) in 2009.

Subsection 233(1) provides the list of offences under Part 2 to which the penalty scheme set out in subsections 233(2) to 233(4) applies. This includes, for example, the contravention of any provision under Part 2 that is not subject to the penalty regime in section 232. For offences under section 233, no minimum fines apply, maximum fines are lower than offences under section 232, and no imprisonment is possible for individual offenders.

As in section 232, subsections 233(2) to 233(4) provide the penalty scheme for three categories of offenders: individuals, small revenue organizations and other persons. Small revenue organizations are those with gross revenues of no more than \$5 million in the 12 months immediately preceding the subject matter of the contravention (section 234).

	Summary conviction		Indictment	
	Minimum	Maximum	Minimum	Maximum
Individuals – 233(2), first offence	-	\$25 000	-	\$100 000
Other persons – 233(3), first offence	-	\$250 000	-	\$500 000
Small revenue organizations – 233(4), first offence	-	\$50 000	-	\$250 000

Subsection 233(5) also provides an additional penalty that must be imposed by the court for an offender that is guilty of failing to compensate for their excess emissions by the increased-rate compensation deadline in accordance with section 174 or by the deadline set out in regulations in accordance with paragraph 178(1)(a). In this situation, the court must, in addition to the penalty imposed as a result of subsections 233(2) to 233(4), order the offender to provide the compensation that is outstanding, at the increased rate provided for in subsection 174(4).

### **Section 234 – Determination of small revenue organization status**

Section 234 provides authority for the court to determine that an organization is a small revenue organization for the purpose of determining its penalty under sections 232 and 233, if the court is satisfied that the organization's gross revenues for the twelve months immediately before the day on which the subject matter of the proceedings arose were not more than \$5 million.

**Section 235 – Relief from minimum fine**

Section 235 provides that in cases of undue financial hardship, a court may set a fine below the minimum levels set out in section 232. If a court imposes a fine lower than what is set out in section 232, it must provide reasons for doing so.

**Section 236 – Deeming – second and subsequent offences**

Section 236 provides that if any offender (person, small revenue organization or other person) who has been previously convicted under any Act of Parliament or of the legislature of a province of an offence related to the control or pricing of greenhouse gas emissions that is substantially similar to the one committed under Part 2 of this Act, then that offender is deemed a “second and subsequent” offender for the purpose of sections 232 and 233.

**Section 237 – Additional fine**

Section 237 provides for an additional fine when the offender acquired any property, benefit or advantage as a result of the commission of an offence. In this situation, the court has an obligation to order the offender to pay an additional fine equal to the court’s estimation of the value of that property, benefit or advantage. This section clarifies that the additional fine may exceed the maximum amount of any fine that may otherwise be imposed under Part 2 of the Act.

**Section 238 – Notice to shareholders**

Section 238 provides that in instances where the convicted offender is a corporation that has shareholders, the court must make an order directing the corporation to notify its shareholders of the facts relating to the commission of the offences and the details of the punishment imposed.

**Section 239 – Limitation period**

Section 239 provides that proceedings by summary conviction in respect of an offence under Part 2 of the Act are subject to a five-year limitation period, unless the prosecutor and the person who is being prosecuted agree otherwise. The five-year limitation period is calculated from the day on which the subject matter of the proceedings arose.

**Section 240 – Offence for each tonne**

Section 240 provides that when a person is convicted for not providing compensation in conformity with subsection 174(1) or paragraph 178(1)(a) of the Act, each tonne of CO<sub>2</sub> equivalent for which no compensation was provided can count as a separate offence.

**Section 241 – Regulations (distribution of proceeds from fines or court orders)**

Section 241 provides the Governor in Council with the authority to make regulations that prescribe the way in which the proceeds from fines or court orders under Part 2 are to be distributed to reimburse the person, government or body that had originally commenced the proceedings and incurred costs in respect of the prosecution.

**Section 242 – Liability of senior officers**

Section 242 provides that an organization's senior officers – who play an important role in the establishment of an organization's policies or are responsible for managing an important aspect of the organization's activities – can be held liable for an organization's offence under Part 2. This is true regardless of whether or not the organization itself has been prosecuted.

**Section 243 – Proof of offence**

Section 243 provides that if it is established that a director, partner, employee, member, agent, mandatary or contractor of an organization committed an offence under Part 2, this is sufficient proof that the organization itself committed the offence. This is true regardless of whether or not the director, partner, employee, member, agent, mandatary or contractor is identified or prosecuted for the offence.

Section 243 does not apply in relation to offences where the intent has to be proven.

**Section 244 – Due Diligence Defence**

Section 244 provides that except in the case of the six specified offences, a person cannot be found guilty of an offence under Part 2 of the Act if they prove to the court that they exercised all due diligence in order to prevent the offence from occurring. This section does not apply in relation to offences where the intent has to be proven.

**Section 245 – Certificate of analyst**

Subsection 245(1) provides that a certificate of an analyst, with respect to statements made about an analysis or examination, may be admitted as evidence without requiring the analyst to attend court.

Subsection 245(2) provides that the defence counsel can request an opportunity to question the analyst on the results submitted.

Subsection 245(3) is intended to ensure that the defense counsel is not surprised by the results of the analysis and examination conducted and admitted as evidence pursuant to subsection 245(1).

**Section 246 – Regulations (designation of offences in regulations)**

Section 246 authorizes the Governor in Council to make regulations to designate provisions of regulations made under Part 2 of the Act to which the penalty scheme set out in section 232 applies. Without such a designation, contraventions of provisions of regulations made under Part 2 are subject to the penalty scheme provided for in section 233.

## **Sentencing**

### **Section 247 – Fundamental purpose**

Section 247 outlines the fundamental purpose of sentencing under Part 2 of the Act, which is to contribute to the respect for laws that price greenhouse gases emissions through the imposition of just sanctions that have as their objectives:

- deterring future unlawful conduct;
- condemning the unlawful conduct; and
- reinforcing the “polluter pays” principle.

This aligns with principles introduced for other federal environmental legislation by the *Environmental Enforcement Act* (S.C. 2009, c. 14) in 2009.

### **Section 248 – Principles**

Subsection 248(1) requires the courts to consider certain principles and aggravating factors when deciding on the appropriate punishment for an offender. In addition to the aggravating factors set out in the *Criminal Code*, the court must consider the following two principles:

- the fine amount should increase to account for every aggravating factor associated with the offence; and
- the fine amount should reflect the gravity of each aggravating factor associated with the offence.

Subsection 248(2) also lists the aggravating factors that the court must consider when deciding on the appropriate punishment for an offender. These include:

- the offender committed the offence intentionally or recklessly;
- the offender failed to take reasonable steps to prevent the commission of the offence despite having the financial means to do so;
- the offender attempted to conceal the commission of the offence; and
- the offender has a history of non-compliance with federal or provincial legislation that relates to the control or pricing of greenhouse gas emissions.

If the court is satisfied that one or more of these aggravating factors are present in a particular case, but nevertheless decides not to increase the amount of the fine because of that factor or factors, the court must give reasons for that decision.

Subsection 248(3) provides that the absence of an aggravating factor is not a mitigating factor.

## Section 249 – Orders of court

Section 249 lists the types of actions that a court can order when an offender has been convicted of an offence under Part 2 of the Act. The types of actions that can be ordered include:

- Prohibition of activities
- Remedial measures
- Audits
- Remitting compliance units
- Prohibiting trading of compliance units for a period of time
- Publication of facts regarding the conviction
- Posting of bond or other monies
- Submission of follow-up information to the Minister of Environment and Climate Change
- Community service
- Payment of compensation to the Minister or any other person
- Payment for research, the work of community groups, scholarships

Subsection 249(2) provides that if an offender fails to comply with an order made under paragraph 249(1)(e), then the Minister may publish the facts about the offence and recover the costs of publishing from the offender.

Subsection 249(3) provides that if a court makes an order under paragraph 249(1)(d) or (i), or if the Minister incurs publication costs under subsection 249(2), the costs may be recovered from the offender in any court of competent jurisdiction.

Subsection 249(4) provides that a party who is to receive money as part of an order at sentencing may enforce that order as if it was a civil judgement. This subsection aims to make efficient use of the court's time by eliminating the need in certain circumstances for a separate civil suit.

Subsection 249(5) provides that if an order is made under paragraph 249(1)(o), then any compliance unit remitted to the Minister in accordance with that order is retired from circulation.

Subsection 249(6) provides that an order made under subsection 249(1) may not remain in force for longer than three years unless the order states otherwise.

### **Section 250 – Suspended sentence**

Section 250 provides that if a court does not impose a sentence to a person despite that person being convicted of an offence, the court may, in addition to probation, make an order under section 249.

This section further provides that a prosecutor may seek an appropriate penalty when an offender who has received a suspended sentence fails to comply with a court order or is convicted of another offence within three years after the order is made. This section serves as a deterrent against subsequent offences when an offender's sentence has been suspended.

### **Section 251 – Application of fines**

Subsection 251(1) provides that, subject to regulations made under section 241, any amounts received by the federal government as a result of the commission of an offence under Part 2 will be directed to the Environmental Damages Fund. Money that is put into the Environmental Damages Fund may be used for protecting, conserving or restoring the environment, and for administering the Fund.

Subsection 251(2) specifies, for greater certainty, that “protecting, conserving or restoring the environment” includes promoting the control or reduction of greenhouse gas emissions.

Subsection 251(3) provides that a court may recommend to the Minister of Environment and Climate Change that money paid into the Environmental Damages Fund be directed to a person or organization, notably to an entity that represents the interests of an Indigenous people of Canada.

## ***Registry***

### **Section 252 – Publication of information about contraventions**

Section 252 provides that the Minister of Environment and Climate Change must keep a publicly accessible registry containing information about all convictions of organizations for offences under Part 2. This registry is intended to promote compliance with Part 2 by publicly naming offenders.

This section provides that information in the registry must be kept for at least five years.

## **DIVISION 5 MISCELLANEOUS**

### ***Agreements Respecting Administration and Enforcement***

#### **Section 253 – Negotiation of agreement**

Section 253 provides authority for the Minister of Environment and Climate Change to negotiate an agreement concerning the administration and enforcement of Part 2 of the Act with another government in Canada, a government outside of Canada at the national or subnational level, an international organization, or any institution of a government or an international organization. Concluding such agreements with other governments and governmental entities may allow for coordination between different jurisdictions, for example with respect to the offset credit system.

Subsection 253(2) provides that for any agreements concluded under subsection 253(1), the Minister must publish them, or give notice of their availability, in the *Canada Gazette*. In addition, the Minister may publish an agreement in other ways, such as a website, that the Minister considers appropriate.

Subsection 253(3) provides that any agreement concluded under this section must not impair the Minister's ability to administer and enforce Part 2.

### ***Confidentiality***

#### **Section 254 – Request for confidentiality**

Section 254 provides that a person who submits information to the Minister of Environment and Climate Change under Part 2 may make a request, in writing and accompanied with supporting reasons, that the information be treated as confidential. There are three grounds on which information may be requested to be treated as confidential:

- the information concerns a trade secret;
- disclosure of the information would likely cause material financial loss to, or prejudice to the competitive position of, the person; or
- the disclosure of the information would likely interfere with contractual or other negotiations being conducted by the person.

The significance of this section is that it permits information to remain confidential in instances when the release of such information would be detrimental to the person who provides it. The instances in which information may be kept confidential are limited and do not impair the overall transparency of Part 2.

#### **Section 255 – Additional justification and Minister's decision**

Section 255 provides a process through which the Minister of Environment and Climate Change may request more information about a request for information to be treated as confidential. Specifically, subsection 255(1) provides that the Minister, after reviewing the request, may require additional justification from the person making the request, and may require that this information be provided within a certain timeframe.

Subsection 255(2) provides that the Minister may decide to accept or a reject a request based on how well-founded the reasons are for the request. The Minister may reject a request, even if it is well-founded, if he or she decides that any adverse financial implications for the person who makes the request are outweighed by the public interest.

Subsection 255(3) specifies that if a request for confidentiality is accepted, the Minister must not disclose the information except in five instances:

- with the written consent of the person who requested confidentiality;
- as may be needed to carry out the administration and enforcement of Part 2;
- the information is communicated to the Canada Revenue Agency;

- the information is communicated to the Minister of Finance to develop GHG pricing policies; or
- under an agreement or arrangement with another government, international organization, institution or other minister, if the other party undertakes to keep the information confidential.

Subsection 255(4) specifies that if a request for confidentiality is rejected, the Minister must advise the person:

- that the request has been rejected;
- that the Minister intends to disclose the information; and
- that the person has a right to ask the Federal Court to review the matter.

Furthermore, this subsection provides that a person whose request is rejected has 30 days from being notified of the rejection to request that the Federal Court review the matter. The Federal Court may grant an extension beyond the 30 days, but the extension must be sought within those.

Subsection 255(5) specifies that if a person asks the Federal Court to review a decision rejecting a confidentiality request, the process for requests for review from third parties reviews under the *Access to Information Act* applies, with any necessary modifications. For instance, sections 45, 46 and 47 of the *Access to Information Act* provide that reviews are heard in a summary way, that the Court may examine any record related to the decision, and that the Court may take precautions against disclosing the information which is the subject of the review.

### **Section 256 – Regulations (request for confidentiality)**

Section 256 provides the authority for the Governor in Council to make regulations specifying the information to be provided in a request for confidentiality. A regulation specifying what information needs to be provided in a request for confidentiality would help clarify and standardize how requests are made and ensure that useful information is provided.

#### ***Regulations (made under Part 2)***

### **Section 257 – Variation**

Section 257 provides that regulations made under Part 2 of the Act may differentiate between provinces, territories, areas, classes of persons, equipment, facilities, activities or greenhouse gas emission sources, including fuels. This section clarifies that, if needed, distinctions may be made between classes in order to target subclasses of regulatees in Part 2.

### **Section 258 – Incorporation by reference – limitation removed**

Section 258 provides that when a document is incorporated by reference as part of regulations made under Part 2 of the Act, the incorporated document does not have to remain static, and may change over time.

### **Section 259 – Regulations not mandatory**

Many of the powers, duties and functions of the Minister of Environment and Climate Change and some requirements under the Act may be exercised or complied with “in accordance with the regulations”. Section 259 however clarifies that the following sections do not require the enactment of regulations to apply:

- designation of a facility as a covered facility under subsection 172(1);
- cancellation of a designation under subsection 172(3);
- issuance of surplus credits under section 175;
- retirement of compliance units under section 179;
- cancellation of compliance units under subsection 180(2);
- withdrawal of compliance units under section 182;
- keeping of records in Canada under subsection 187(3); and
- distribution of revenue under subsections 188(1), (2) and (4).

### ***Service Fees Act***

#### **Section 260 – *Service Fees Act***

Section 260 provides that *Service Fees Act* does not apply to excess emissions charges under Part 2 of the Act.

### ***Review (Enforcement)***

#### **Section 261 – Review**

Section 261 provides that some of the enforcement provisions under Division 3 of Part 2 (sections 232 to 252) of this Act will have to be reviewed at the same time as the enforcement provisions under the *Canadian Environmental Protection Act, 1999*. This will allow for the enforcement provisions under Part 2 of this Act to align with the provisions found in all of the environmental acts.

## **PART 3 APPLICATION OF PROVINCIAL SCHEMES**

#### **Section 262 – Definitions**

The definitions in section 262 apply to Part 3 of the Act, which concerns the application of provincial schemes to matters of federal jurisdiction.

**“federal land”**

The term “federal land” means land that belongs to the federal Crown as well as all waters on and airspace above that land.

**“federal work or undertaking”**

The term “federal work or undertaking” is defined as any work or undertaking that falls under the legislative authority of Parliament. It includes works and undertakings related to:

- navigation and shipping;
- railways, canals, telegraphs or other works or undertakings extending beyond the limits of a province or territory;
- lines of ships extending beyond the limits of a province or territory;
- ferries going beyond the borders of a province or territory;
- airports, aircraft and commercial air services;
- broadcast undertakings;
- banks;
- works and undertakings that have been declared by Parliament to be for the general advantage of Canada or for the advantage of two or more provinces; and,
- works and undertakings outside the exclusive authority of the provinces and territories.

**“Indigenous land”**

The term “Indigenous land” is defined as reserves and other lands set apart for the benefit of a band under the *Indian Act*, all waters on and airspace above those reserves and lands, as well as land that is subject to a comprehensive or specific claim agreement, or a self-government agreement, including all waters on and airspace above those lands, if the title remains with the federal Crown.

**“Indigenous peoples of Canada”**

The term “Indigenous peoples of Canada” has the meaning assigned by the definition of “aboriginal peoples of Canada” in subsection 35(2) of the *Constitution Act, 1982*.

**“provincial law”**

The term “provincial law” means an Act of a province or territory that relates to the control or pricing of greenhouse gas emissions and any regulations made under that Act.

### **Section 263 – Regulations (application of provincial schemes)**

Subsection 263(1) provides that the Governor in Council may make regulations, on the recommendation of the Minister of Environment and Climate Change, to apply a provincial or territorial law that relates to the control or pricing of greenhouse gas emissions to:

- a federal work or undertaking in that province or territory;
- federal land in that province or territory;
- Indigenous land in that province or territory;
- internal waters of Canada in that province or territory; or
- any part of the territorial sea of Canada, the exclusive economic zone of Canada or the continental shelf of Canada that is next to that province or territory.

In other words, this subsection permits the Government of Canada to apply provincial or territorial law concerning greenhouse gas emissions to matters of federal jurisdiction.

Subsection 263(2) provides that a regulation to incorporate a provincial or territorial law that relates to the control or pricing of greenhouse gas emissions may not apply any provision of the provincial or territorial law that imposes a tax.

Subsection 263(3) clarifies that if a regulation is made under the regulation making authorities of subsection 263(1), it may not form the basis for a province or territory to claim expanded jurisdiction over any offshore area to which a regulation may apply or to claim limitation in the application of any federal laws.

### **Section 264 – *Statutory Instruments Act***

Section 264 provides that if a regulation is made to apply a provincial or territorial law related to the control or pricing of greenhouse gas emissions to matters of federal jurisdiction, then the *Statutory Instruments Act* does not apply to any instrument made under the provincial or territorial law that is incorporated. The *Statutory Instruments Act* sets out specific rules and processes concerning how federal regulations and other statutory instruments are made.

### **Section 265 – *Service Fees Act***

Section 265 provides that if a regulation is made to apply a provincial or territorial law related to the control or pricing of greenhouse gas emissions to matters of federal jurisdiction, then the *Service Fees Act* does not apply to any fee, charge or levy set under the provincial or territorial law that is incorporated. The *Service Fees Act* sets out specific rules and performance standards concerning how federal fees, charges or levies are set.

### **Section 266 – *Federal Courts Act***

Subsection 266(1) provides that if a regulation is made to apply a provincial or territorial law related to the control or pricing of greenhouse gas emissions to matters of federal jurisdiction, then a provincial or territorial official or body that exercises a power or performs a duty or function under the provincial or territorial law that is incorporated is not a federal board,

commission or other tribunal for the purposes of the *Federal Courts Act*. The *Federal Courts Act* generally gives the federal courts (i.e. the Federal Court and Federal Court of Appeal) jurisdiction over federal boards, commissions or other tribunals.

Subsection 266(2) clarifies that, if a regulation is made to apply a provincial or territorial law related to the control or pricing of greenhouse gas emissions to matters of federal jurisdiction, and unless the regulation states otherwise, the courts of the province or territory from which the law that is incorporated originates are the proper fora to adjudicate matters under the incorporated law.

#### **Section 267 – Exclusive economic zone and continental shelf**

Section 267 clarifies that if a regulation is made to apply a provincial or territorial law related to the control or pricing of greenhouse gas emissions to matters of federal jurisdiction, then any powers exercised under the provincial and territorial law that is incorporated may be carried out within the exclusive economic zone of Canada or in the waters above the continental shelf of Canada.

#### **Section 268 – Amounts collected**

Section 268 clarifies that if a regulation is made to apply a provincial or territorial law related to the control or pricing of greenhouse gas emissions to matters of federal jurisdiction, and under the provincial or territorial law that is incorporated payments are collected by a provincial or territorial official or body, those payments belong to the province or territory. This section exempts payments collected under such regulations from the *Financial Administration Act*, which sets out detailed rules for the financial administration of the Government of Canada.

#### **Section 269 – Liability for acts and omissions**

Section 269 provides that if a regulation is made to apply a provincial or territorial law related to the control or pricing of greenhouse gas emissions to matters of federal jurisdiction, the federal government is entitled to the same limits on liability as those applying to the provincial or territorial government under the provincial or territorial law. Furthermore, this section clarifies that the same limits on liability apply for any person or body exercising the power or performing the duty or function under the incorporated provincial or territorial law as would be the case if they were doing so under provincial or territorial law.

### **PART 4 REPORT TO PARLIAMENT**

#### **Section 270 – Annual report**

Section 270 provides that the Minister of Environment and Climate Change must annually, starting in the year of the second anniversary of the coming into force of this section, prepare and deliver to the House of Commons and the Senate a report on the administration of the Act.

## FUEL CHARGE REGULATIONS

### Section 1 – Definition of Act

Section 1 provides that a reference to “Act” in these regulations is to be read as a reference to the *Greenhouse Gas Pollution Pricing Act*.

### Sections 2 and 3 – Interest rates

Part 1 of these regulations prescribe the rate of interest imposed under subdivision c of Division 6 of Part 1 of the Act.

The prescribed interest rate is a monthly rate adjusted quarterly and is determined as a function, in various cases, of a basic rate that is based on average yields of 90-day Treasury Bills for the first month of the preceding quarter.

### Section 4 – Registered Specified Rail Carriers

Part 2 of these Regulations identify the prescribed persons that can opt to be prescribed as a registered specified rail carrier (see commentary for the definition “registered specified rail carrier”) in Division 4 of the Act. Section 4 of the Regulations identifies the following persons as being prescribed: Canadian National Railway Company, Canadian Pacific Railway Company and Via Rail Canada Inc.

## CONSEQUENTIAL AMENDMENTS

### Access to Information Act

#### Schedule II – *Access to Information Act*

Consequential to the coming into force of the Act, a reference to “Part 1 of the *Greenhouse Gas Pollution Pricing Act*” is to be added in alphabetical order to the column labelled “Act” in Schedule II of the *Access to Information Act*. A corresponding reference is to be made in that schedule to “section 107 and subsection 255(3)”.

### Tax Court of Canada Act

Amendments to the *Tax Court of Canada Act* are required in light of the proposed new appeals system under Part 1 of the *Greenhouse Gas Pollution Pricing Act*, whereby a person may appeal the Minister of National Revenue’s decision on an objection relating to an assessment to the Tax Court of Canada.

#### Section 12 – *Tax Court of Canada Act*

This section extends the exclusive original jurisdiction of the Court:

- in subsection 12(1) of the *Tax Court of Canada Act* to include references and appeals arising under Part 1 of the *Greenhouse Gas Pollution Pricing Act*,
- in subsection 12(3) to include questions referred to the Court under section 121 or 122 of the *Greenhouse Gas Pollution Pricing Act*, and

- in subsection 12(4) to include applications for extensions of time under section 115 or 117 of the *Greenhouse Gas Pollution Pricing Act*.

#### **Paragraph 18.29(3)(a) – *Tax Court of Canada Act***

Subsection 18.29(3) of the *Tax Court of Canada Act* is amended to add applications for extensions of time under section 115 or 117 of the *Greenhouse Gas Pollution Pricing Act* to those to which the informal procedural rules, referred to in subsection 18.29(1), apply.

#### **Subsection 18.31(2) – *Tax Court of Canada Act***

In subsection 18.31(2) of the *Tax Court of Canada Act*, applications for the determination of questions under section 121 of the *Greenhouse Gas Pollution Pricing Act* are added to those to which the general procedure applies under sections 17.1, 17.2 and 17.4 to 17.8 of the *Tax Court of Canada Act*.

#### **Subsection 18.32(2) – *Tax Court of Canada Act***

In subsection 18.32(2) of the *Tax Court of Canada Act*, applications for the determination of questions under section 122 of the *Greenhouse Gas Pollution Pricing Act* are added to those to which the general procedure applies under sections 17.1, 17.2 and 17.4 to 17.8 of the *Tax Court of Canada Act*, provided that neither the Attorney General of Canada nor a person concerned requests the application of the informal procedure.

### **Canada Revenue Agency Act**

#### **Section 2 – *Canada Revenue Agency Act***

Paragraph (a) of the definition “program legislation” is amended to add a reference to the *Greenhouse Gas Pollution Pricing Act*.

### **Environmental Violations Administrative Monetary Penalties Act**

#### **Long Title – *Environmental Violations Administrative Monetary Penalties Act***

This provision adds the title of the *Greenhouse Gas Pollution Pricing Act* to the long title of *Environmental Violations Administrative Monetary Penalties Act*.

It also corrects an inadvertent error by adding the *Rouge National Urban Park Act* to the long title of *Environmental Violations Administrative Monetary Penalties Act*.

#### **Section 2 – *Environmental Violations Administrative Monetary Penalties Act***

This provision amends the definition of “Environmental Act” and the definition of “Minister” in the *Environmental Violations Administrative Monetary Penalties Act* to include the title of the *Greenhouse Gas Pollution Pricing Act*. This would allow the development of regulations to set out an administrative monetary penalty regime that would apply to Part 2 of the *Greenhouse Gas Pollution Pricing Act*.

### **Subsection 5(3.2) – *Environmental Violations Administrative Monetary Penalties Act***

This new subsection clarifies that the *Environmental Violations Administrative Monetary Penalties Act* would only apply to contraventions related to Part 2 of the *Greenhouse Gas Pollution Pricing Act*.

### **Section 12.1 – *Environmental Violations Administrative Monetary Penalties Act***

This new section provides the authority under the *Environmental Violations Administrative Monetary Penalties Act* to ensure that the failure to provide compensation for excess emissions in contravention of subsection 174(1) or paragraph 178(1)(a) of the *Greenhouse Gas Pollution Pricing Act* would subject the regulatee to an administrative monetary penalty for each CO<sub>2</sub>e tonne for which no compensation was provided.

## **COORDINATING AMENDMENTS**

### **Tax Court of Canada Act**

#### **Subsection 12(1) – *Tax Court of Canada Act***

A coordinating amendment is required to ensure that the consequential amendment in relation to the addition of the *Greenhouse Gas Pollution Pricing Act* to section 12 of the *Tax Court of Canada Act* and the amendment contained in section 11 of the *Disability Tax Credit Promoters Restrictions Act* are both effective at the time that both amendments receive Royal Assent.

## **SCHEDULES**

### **Greenhouse Gas Pollution Pricing Act**

#### **Schedule 1 – Provinces and Areas**

Part 1 of Schedule 1 is referred to in the definition “listed province” and in sections 166 and 168. The list of provinces and areas in Part 1 of the Schedule correspond with the provinces and areas where the fuel charge under Part 1 applies.

Part 2 of Schedule 1 lists the provinces, territories and areas in which the OBPS (Part 2 of the Act) applies. In other words, the OBPS applies to “covered facilities”, which is a term defined in section 169 of the Act, that are located in a province, territory or area listed in Part 2 of this Schedule.

#### **Schedule 2 – Charge Rates**

The tables of Schedule 2 are referred to in the definitions of “fuel” and “rate” in section 3 and in sections 166 and 168. The tables, which generally correspond with a calendar year identify the applicable rate (see commentary for the definition “rate”) in column 5 that corresponds with each province and area in column 4 for each type of fuel in column 2.

#### **Schedule 3 – Greenhouse Gases**

Schedule 3 lists 33 greenhouse gases and their corresponding global warming potentials. This information is provided notably for the purposes of determining the CO<sub>2</sub> equivalent (CO<sub>2</sub>e) value of greenhouse gas emissions in accordance with section 170. Details on which greenhouse

gases listed in Schedule 3 will need to be quantified by regulatees may be provided for in regulations.

#### **Schedule 4 – Excess Emissions Charge**

Schedule 4 sets out the charge for excess greenhouse gas emissions for a given year. Under section 174, the payment of the excess emission charge is one of the compensation options available to regulatees that have emitted greenhouse gases in excess of the applicable emissions limit. The price is established at \$10 per CO<sub>2</sub>e tonne in 2018 and will rise by \$10 annually until it reaches \$50 per CO<sub>2</sub>e tonne in 2022.

