
EXPLANATORY NOTES RELATING TO THE DRAFT REGULATIONS AMENDING THE FUEL CHARGE REGULATIONS

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The Honourable William Francis Morneau, P.C., M.P.
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Preface

These explanatory notes describe the proposed *Draft Regulations Amending the Fuel Charge Regulations*. These explanatory notes describe these proposals, clause by clause, for the assistance of Members of Parliament, stakeholders and their professional advisors.

The Honourable William Francis Morneau, P.C., M.P.
Minister of Finance

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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Fuel Charge Regulations

Clause 1

Definitions

Fuel Charge Regulations

1

Section 1 of the *Fuel Charge Regulations* defines the term “Act” to mean the *Greenhouse Gas Pollution Pricing Act* (the Act) in these Regulations.

Section 1 is amended to add the new definitions “eligible greenhouse”, “eligible greenhouse activity”, “export”, “fuel charge system”, “greenhouse operator”, “main electrical network”, “qualifying greenhouse fuel”, “qualifying power plant fuel”, “remote community”, “remote power plant” and “remote power plant operator”.

The new definition “fuel charge system” is deemed to have come into force on January 1, 2019. All other new definitions are deemed to have come into force on April 1, 2019.

eligible greenhouse

The term “eligible greenhouse” means a greenhouse all or substantially all of which is used for the growing of vegetables, fruits, bedding plants, flowers, ornamental plants, tree seedlings, medicinal plants or other plants.

eligible greenhouse activity

The term “eligible greenhouse activity” means the use of a qualifying greenhouse fuel (as newly defined below) to heat an eligible greenhouse or to supplement carbon dioxide in an eligible greenhouse in order to grow or produce plants.

export

The term “export” means export from Canada.

fuel charge system

The term “fuel charge system” has the same meaning as in subsection 168(1) of the Act. That term is defined in subsection 168(1) to mean the system under Part 1 of the Act, Part 1 of Schedule 1 and Schedule 2 to the Act that provides for the payment and collection of charges levied under Part 1 of the Act and of amounts paid as or on account of charges under that Part and the provisions of that Part relating to charges under that Part or to rebates in respect of any such charges, or any such amounts, paid or deemed to be paid.

greenhouse operator

The term “greenhouse operator” means a person that carries on a business of growing vegetables, fruits, bedding plants, flowers, ornamental plants, tree seedlings, medicinal plants or other plants in eligible greenhouses with a reasonable expectation of profit.

main electrical network

The term “main electrical network” means a network for the distribution of electricity that is subject to the standards of the North American Electric Reliability Corporation.

qualifying greenhouse fuel

The term “qualifying greenhouse fuel” means a type of fuel that is marketable natural gas (as defined in Section 3 of the Act) or propane.

qualifying power plant fuel

The term “qualifying power plant fuel” means a type of fuel that is light fuel oil or marketable natural gas (as those terms are defined in Section 3 of the Act).

remote community

The term “remote community” means a geographic area that is not serviced by a main electrical network and that is not serviced by a distribution system (as defined in section 3 of the Act).

remote power plant

The term “remote power plant” means a power plant that generates electricity for general distribution to the public of a remote community. It must also not be connected to a main electrical network and not connected to a distribution system (as defined in section 3 of the Act).

remote power plant operator

The term “remote power plant operator” means a person that operates a remote power plant.

Clauses 2 and 4

Adjustment day

Fuel Charge Regulations

3.1 and 3.2

The definition “adjustment day” in section 3 of the Act includes a day that is prescribed by regulations or that meets conditions prescribed by regulations. If a person holds fuel in a listed province at the beginning of a day that is an adjustment day, that person may have obligations under section 38 of the Act, including an obligation to pay a charge in respect of the fuel held at the beginning of that day.

New section 3.1 of the Regulations prescribes the following days as adjustment days:

- July 1, 2019
- April 1, 2020
- April 1, 2021
- April 1, 2022

Also, new section 3.2 of the Regulations adapts section 38(1) of the Act for the purposes of the fuel charge system and of applying subsection 38(1) of the Act in respect of the adjustment day that is July 1, 2019, except if section 10 or 16 of the Regulations applies (see commentary below for those sections). Under new section 3.2, the amount under element B in subsection 38(1) is zero if the listed province is Yukon or Nunavut.

These sections are deemed to come into force on April 1, 2019.

Clause 3

Rebate – fuel exported by non–resident

Fuel Charge Regulations

5

Section 48 of the Act 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. New section 5 of the Regulations sets out rules in respect of such a rebate, for the purposes of section 48.

New subsection 5(1) applies if at a particular time a quantity of fuel is exported by a person that is not resident in Canada and not registered for purposes of Part 1 of the Act and if the quantity of fuel was delivered at an earlier time to the person in a listed province by a registered distributor in respect of that type of fuel. In such a case, the Minister must pay a rebate to the registered distributor in respect of the quantity of fuel, the listed province and the reporting period of the registered distributor that includes the particular time if the following conditions are met:

- a charge under section 17 of the Act was payable by the registered distributor at the earlier time in respect of the quantity of fuel and the listed province and that charge was taken into account in the determination of the net charge for the reporting period of the registered distributor that includes the earlier time;
- during the period that begins at the earlier time and ends at the particular time, the quantity of the fuel is not further processed, transformed or altered in Canada except to the extent reasonably necessary or incidental to its transportation; and
- the person provides to the registered distributor, and the registered distributor retains, evidence satisfactory to the Minister of the exportation of the quantity of fuel by the person.

New subsection 5(2) provides that the amount of the rebate payable under subsection (1) is equal to the amount of charge referred to in paragraph (1)(a) that applied in respect of the quantity of fuel exported.

New subsections 5(3) and 5(4) set out circumstances in which the rebate under subsection (1) is not payable. Subsection (3) provides that a rebate under subsection (1) is not payable to the extent that the fuel is exported in the supply tank of a vehicle. Subsection (4) provides that a rebate under subsection (1) is not payable if the quantity of fuel that is exported otherwise than in the supply tank of a vehicle is gasoline, kerosene, light fuel oil or propane and the quantity of the fuel does not exceed 1000 L.

This section is deemed to come into force on April 1, 2019.

Prescribed listed provinces – fishers

Fuel Charge Regulations

6

Subsection 17(1) of the Act generally 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. Subsection 17(2) of the Act describes circumstances under which a charge under subsection (1) is not payable. Under subsection (2), no charge applies if the fuel is delivered to another person that is a fisher, the fuel is a qualifying fishing fuel (i.e. gasoline and light fuel oil), an exemption certificate applies in respect of the delivery and the fuel is delivered in a prescribed listed province.

New section 6 of the Regulations prescribes all of the listed provinces, for purposes of the application of the exemption for fishers under subsection 17(2) of the Act, namely Ontario, New Brunswick, Manitoba, and Saskatchewan as of April 1, 2019 and Yukon and Nunavut as of July 1, 2019.

Charge – diversion by greenhouse operator

Fuel Charge Regulations

7

Section 26 of the Act 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. New section 7 of the Regulations sets out rules that impose a charge on a person that is a greenhouse operator in respect of qualifying greenhouse fuel (i.e. marketable natural gas and propane) in the following circumstances:

- the person uses the fuel otherwise than in eligible greenhouse activities;
- the person delivers the fuel to another person; or
- the person holds the fuel at a time when it ceases to be a greenhouse operator.

For more information on the charge that is payable when fuel is initially delivered to greenhouse operators, see the commentary under new section 9 of the Regulations.

New subsection 7(1) applies if, at any time, fuel that is qualifying greenhouse fuel is delivered in a listed province by a registered distributor in respect of that type of fuel to a particular person that is a greenhouse operator and an exemption certificate referred to in subsection 9(1) of the Regulations applies in respect of the delivery in accordance with section 36 of the Act (see commentary for that subsection below). In such cases, the particular person must pay a charge in respect of the fuel and the listed province to the extent that, at a later time, the fuel is diverted. The fuel is diverted if the fuel is used by the particular person in the listed province otherwise than in eligible greenhouse activities. Alternatively, the fuel is also diverted if it is delivered by the particular person to another person, unless the other person is a registered distributor in respect of that type of fuel and an exemption certificate applies in respect of the delivery in accordance with section 36 of the Act. The amount of the charge is determined under subsection 7(6) (see commentary for that subsection below).

New subsection 7(2) provides that the charge under subsection (1) becomes payable at the later time referred to in subsection (1) (i.e. at the time the fuel is diverted).

Section 27 of the Act provides that a charge that would otherwise become payable under Part 1 of the Act in respect of fuel 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. New subsection 7(3) sets out circumstances under which a charge that would otherwise be payable under subsection (1) is not payable.

Under subsection (3), the charge under subsection (1) is not payable if the particular person is not, at the later time referred to in subsection (1) (i.e. the time of diversion), a greenhouse operator or if a charge is payable under section 37 of the Act (i.e. a charge payable in respect of a false declaration in an exemption certificate) in respect of the fuel.

New subsection 7(4) sets out additional circumstances, for the purposes of section 26 of the Act, in which a charge becomes payable. New subsection (4) applies if, at any time, fuel that is qualifying greenhouse fuel is delivered in a listed province by a registered distributor in respect of that type of fuel to a particular person that is a greenhouse operator and an exemption certificate referred to in subsection 9(1) of the Regulations applies in respect of the delivery in accordance with section 36 of the Act. In such cases, if the particular person ceases, at a later time, to be a greenhouse operator, the particular person must pay a charge in respect of the fuel and the listed province to the extent that, at the later time, the fuel is held in the listed province by the particular person. The charge becomes payable at the later time (i.e. the time when the particular person ceased to be a greenhouse operator). The amount of the charge is determined under subsection 7(6) (see commentary for that subsection below).

New subsection 7(5) sets out circumstances, for the purposes of section 27 of the Act, in which the charge under subsection (4) is not payable. The charge under subsection (4) is not payable if any of the following circumstances exist:

- at the later time referred to in subsection (4), the particular person is registered as a distributor in respect of that type of fuel;

- at the later time referred to in subsection (4), the particular person is a registered emitter, but only to the extent that, at the later time, the fuel is held at, or in transit to, a covered facility of the particular person; or
- a charge is payable under section 37 of the Act (i.e. a charge payable in respect of a false declaration in an exemption certificate) in respect of the fuel.

New subsection 7(6) provides that, for the purposes of section 26 of the Act, the amount of the charge payable under subsection (1) or (4) in respect of the fuel and the listed province is equal to the amount determined by the formula:

$$A \times B \times 0.8$$

In this formula, element A is the quantity of the fuel in respect of which the charge becomes payable. Element B is the rate in respect of fuel of that type for the listed province applicable at the time the charge becomes payable.

This section is deemed to come into force on April 1, 2019.

Exemption certificate – greenhouse operator

Fuel Charge Regulations

8

Section 36 of the Act sets out the circumstances in which an exemption certificate applies in respect of a delivery of fuel to a particular person from another person. One of the requirements under that section is that the certificate must include a declaration by the particular person that meets certain conditions, which includes that the particular 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. New section 8 of the Regulations prescribes persons and circumstances that may be specified in a declaration of an exemption certificate in order to have the certificate apply to a delivery of fuel.

New section 8 provides that, for the purposes of subparagraph 36(1)(b)(viii) of the Act, a greenhouse operator is a person prescribed by regulations and the circumstances prescribed by regulations are that the fuel is for use exclusively in eligible greenhouse activities. As a result, if fuel is delivered to a person that is a greenhouse operator, the person may provide an exemption certificate to the registered distributor that includes a declaration that the person is a greenhouse operator and that the fuel is for use exclusively in eligible greenhouse activities. If the other conditions of section 36 are met, then the exemption certificate will apply to the delivery and the registered distributor will be required to pay a charge in the amount determined by the formula in section 9 of the Regulations (see commentary below for section 9), rather than the formula in subsection 40(1) of the Act.

This section is deemed to come into force on April 1, 2019.

Delivery to greenhouse operator – amount of charge

Fuel Charge Regulations

9

Subsection 40(1) of the Act sets out the general rule for determining the amount of a charge payable under Part 1 of the Act. However, subsection 40(3) sets out an exception to the formula under subsection (1) and provides that if circumstances prescribed by regulations exist or conditions prescribed by regulations are met, the amount of a charge payable in respect of fuel and a listed province under Division 2 of Part 1 of the Act is equal to the amount determined in the manner prescribed by regulations. New section 9 of the Regulations sets out a prescribed manner for determining the amount of a charge in respect of fuel and a listed province and the circumstances in which that manner is required to be used.

New subsection 9(1) provides that the amount of a charge in respect of fuel and a listed province payable under subsection 17(1) of the Act is to be determined in accordance with new subsection 9(2) if certain conditions are met. Generally, under subsection 17(1) of the Act, if a registered distributor delivers fuel to another person in a listed province at a particular time, the registered distributor must pay a charge in respect of the fuel and the listed province. The amount of such a charge will be determined under new subsection 9 if

- the fuel is a qualifying greenhouse fuel (i.e. marketable natural gas and propane);
- the other person (i.e. the person to which the fuel was delivered) is a greenhouse operator at the particular time;
- an exemption certificate applies in respect of the delivery in accordance with section 36 of the Act; and
- that exemption certificate includes a declaration by the other person that the other person is a greenhouse operator and that the fuel is for use exclusively in eligible greenhouse activities (see commentary for section 8).

If these circumstances exist, then new subsection 9(2) provides that the amount of the charge in respect of the fuel and the listed province that is payable by the registered distributor must be determined by the formula:

$$A \times B \times 0.2$$

In this formula, A is the quantity of the fuel in respect of which the charge becomes payable. B is the rate in respect of fuel of that type for the listed province applicable at the time the charge becomes payable.

This section is deemed to come into force on April 1, 2019.

Amount of charge – adjustment day

Fuel Charge Regulations

10

Section 38 of the Act imposes a charge on a person in respect of a quantity of fuel that the person holds in a listed province at the beginning of an adjustment day, if certain conditions are met. The amount of the charge is determined by the formula set out in subsection 38(1) of the Act. New section 10 of the Regulations adapts that formula for the purposes of the fuel charge system and of applying subsection 38(1) in respect of fuel that is a qualifying greenhouse fuel and that is held at the beginning of an adjustment day in a listed province by a person that is a greenhouse operator. If these conditions are met, then subsection 38(1) of the Act is adapted to state that the person must pay to Her Majesty in right of Canada a charge in respect of the quantity of fuel and the listed province in the amount determined by the following formula:

$$[A - (0.8 \times B)] \times (C - D)$$

In this formula, element A is the quantity of the fuel that is held at the beginning of the adjustment day in the listed province by the person. Element B is the quantity of that fuel that was delivered to the person by a registered distributor in respect of that type of fuel and in respect of which an exemption certificate referred to in subsection 9(1) of the Regulations applies in respect of the delivery in accordance with section 36 of the Act. Element C is the rate in respect of fuel of that type for the listed province applicable on the adjustment day. Element D is equal to zero if the adjustment day is commencement day (i.e. April 1, 2019) or if the adjustment day is July 1, 2019 and the listed province is Yukon or Nunavut. If neither of those conditions are met, element D is the rate in respect of fuel of that type for the listed province applicable on the day before the adjustment day.

This section is deemed to come into force on April 1, 2019.

Registration – delivery to greenhouse operator

Fuel Charge Regulations

11

Subsection 55(3) of the Act describes circumstances in which a person that is not required under subsection 55(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. Paragraph 55(3)(c) provides that a person may 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 of persons prescribed by regulations or a person meeting conditions prescribed by regulations. New section 11 of the Regulations prescribes such a person for the purposes of paragraph 55(3)(c).

New section 11 provides that a person may apply to be registered as a distributor in respect of a type of fuel that is a qualifying greenhouse fuel (i.e. marketable natural gas or propane) if the person carries on the business of selling, delivering or distributing fuel of that type and, in the ordinary course of that business, delivers fuel of that type in a listed province to a greenhouse operator.

This section is deemed to come into force on April 1, 2019.

Charge not payable – remote power plant operator

Fuel Charge Regulations

12

Subsection 17(1) of the Act generally imposes a charge on a registered distributor in respect of a type of fuel in relation to fuel of that type that the registered distributor delivers to another person in a listed province. The charge becomes payable at the time the fuel is delivered. Subsection 17(2) describes circumstances under which a charge under subsection (1) is not payable. Those circumstances include, under subparagraph 17(2)(a)(iv) when the fuel is delivered to another person that is 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. New section 12 of the Regulations sets out circumstances under which a charge under subsection 17(1) of the Act is not payable.

New section 12 states that a charge under subsection 17(1) of the Act is not payable in respect of fuel that is a qualifying power plant fuel (i.e. marketable natural gas or light fuel oil) if the fuel is delivered by a registered distributor in respect of that type of fuel to a remote power plant operator and an exemption certificate applies in respect of the delivery in accordance with section 36 of the Act. See the commentary on new section 15 of the Regulations for more information on the exemption certificate requirements for a remote power plant operator.

This section is deemed to come into force on April 1, 2019.

Charge – diversion by remote power plant operator

Fuel Charge Regulations

13

Section 26 of the Act 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. New section 13 of the Regulations sets out rules that impose a charge on a person that is a remote power plant operator in respect of qualifying power plant fuel (i.e. marketable natural gas or light fuel oil) in the following circumstances:

- the person uses the fuel otherwise than in the operation of a remote power plant or otherwise than at the location of a remote power plant;
- the person delivers the fuel to another person; or
- the person holds the fuel at a time when it ceases to be a remote power plant operator.

New subsection 13(1) applies if, at any time, fuel that is qualifying power plant fuel is delivered in a listed province by a registered distributor in respect of that type of fuel to a particular person that is a remote power plant operator and an exemption certificate applies in respect of the delivery in accordance

with section 36 of the Act. In such cases, the particular person must pay a charge in respect of the fuel and the listed province to the extent that, at a later time, the fuel is diverted. The fuel is diverted if the fuel is used by the particular person in the listed province otherwise than in the operation of a remote power plant or otherwise than at the location of a remote power plant. Alternatively, the fuel is also diverted if it is delivered by the particular person to another person, unless the other person is a registered distributor in respect of that type of fuel and an exemption certificate applies in respect of the delivery in accordance with section 36 of the Act. The amount of the charge is determined under section 40 of the Act.

New subsection 13(2) provides that the charge under subsection (1) becomes payable at the later time referred to in subsection (1) (i.e. at the time the fuel is diverted).

Section 27 of the Act provides that a charge that would otherwise become payable under Part 1 of the Act in respect of fuel 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. New subsection 13(3) sets out circumstances under which a charge that would otherwise be payable under subsection (1) is not payable. Under subsection (3), the charge under subsection (1) is not payable if the particular person is not, at the later time referred to in subsection (1) (i.e. the time of diversion), a remote power plant operator or if a charge is payable under section 37 of the Act (i.e. a charge payable in respect of a false declaration in an exemption certificate) in respect of the fuel.

New subsection 13(4) sets out additional circumstances, for the purposes of section 26 of the Act, in which a charge becomes payable. New subsection (4) applies if, at any time, fuel that is qualifying power plant fuel is delivered in a listed province by a registered distributor in respect of that type of fuel to a particular person that is a remote power plant operator and an exemption certificate applies in respect of the delivery in accordance with section 36 of the Act. In such cases, if the particular person ceases, at a later time, to be a remote power plant operator, the particular person must pay a charge in respect of the fuel and the listed province to the extent that, at the later time, the fuel is held in the listed province by the particular person. The charge becomes payable at the later time (i.e. the time when the particular person ceased to be a remote power plant operator). The amount of the charge is determined under section 40 of the Act.

New subsection 13(5) sets out circumstances, for the purposes of section 27 of the Act, in which the charge under subsection (4) is not payable. The charge under subsection (4) is not payable if any of the following circumstances exist:

- at the later time referred to in subsection (4), the particular person is registered as a distributor in respect of that type of fuel;
- at the later time referred to in subsection (4), the particular person is a registered emitter, but only to the extent that, at the later time, the fuel is held at, or in transit to, a covered facility of the particular person; or
- a charge is payable under section 37 of the Act (i.e. a charge payable in respect of a false declaration in an exemption certificate) in respect of the fuel.

This section is deemed to come into force on April 1, 2019.

Charge not payable – remote power plant operator

Fuel Charge Regulations

14

Section 27 of the Act provides that a charge that would otherwise become payable under Part 1 of the Act in respect of fuel 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. New section 14 of the Regulations sets out circumstances under which a charge that would otherwise be payable under subsection 18(1) of the Act is not payable.

Under subsection 18(1), a registered distributor in respect of a type of fuel must pay a charge in respect of fuel of that type that is used by the registered distributor in a listed province. New section 14 provides that no such charge is payable if the registered distributor is a remote power plant operator, the fuel is a qualifying power plant fuel (i.e. marketable natural gas or light fuel oil), the fuel is used at the location of a remote power plant and the fuel is used in the operation of the remote power plant.

This section is deemed to come into force on April 1, 2019.

Exemption certificate – remote power plant operator

Fuel Charge Regulations

15

Section 36 of the Act sets out the circumstances in which an exemption certificate applies in respect of a delivery of fuel to a particular person from another person. One of the requirements under that section is that the certificate must include a declaration by the particular person that meets certain conditions, which includes that the particular 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. New section 15 of the Regulations prescribes persons and circumstances that may be specified in a declaration of an exemption certificate in order to have the certificate apply to a delivery of fuel.

New section 15 provides that, for the purposes of subparagraph 36(1)(b)(viii) of the Act a remote power plant operator is a person prescribed by regulations and the circumstances prescribed by regulations are that the fuel is for use exclusively at the location of a remote power plant in the operation of the remote power plant. As a result, if fuel is delivered to a person that is a remote power plant operator, the person may provide an exemption certificate to the registered distributor that includes a declaration that the person is a remote power plant operator and that the fuel is for use exclusively at the location of a remote power plant in the operation of the remote power plant. If the other conditions of section 36 are met, then the exemption certificate will apply to the delivery and the registered distributor will not be required to pay a charge in respect of the fuel if the conditions of subsection 17(2) are met (also see the commentary above on section 12 of the Regulations).

This section is deemed to come into force on April 1, 2019.

Amount of charge – adjustment day

Fuel Charge Regulations

16

Section 38 of the Act imposes a charge on a person in respect of a quantity of fuel that the person holds in a listed province at the beginning of an adjustment day, if certain conditions are met. The amount of the charge is determined by the formula set out in subsection 38(1) of the Act. New section 16 of the Regulations adapts that formula for the purposes of the fuel charge system and of applying subsection 38(1) in respect of fuel that is a qualifying power plant fuel and that is held at the beginning of an adjustment day in a listed province by a person that is a remote power plant operator.

New section 16 applies in respect of fuel that is a qualifying power plant fuel and that is held at the beginning of an adjustment day in a listed province by a person that is a remote power plant operator. If these conditions are met, then subsection 38(1) of the Act is adapted to state that the person must pay to Her Majesty in right of Canada a charge in respect of the quantity of fuel and the listed province in the amount determined by the following formula:

$$(A - B) \times (C - D)$$

In this formula, element A is the quantity of the fuel that is held at the beginning of the adjustment day in the listed province by the person. Element B is the quantity of that fuel that was delivered to the person by a registered distributor in respect of that type of fuel and in respect of which an exemption certificate applies in respect of the delivery in accordance with section 36 of the Act. If all of the fuel held at the beginning of an adjustment day meets the conditions of element B, no charge would be payable. Element C is the rate in respect of fuel of that type for the listed province applicable on the adjustment day. Element D is equal to zero if the adjustment day is commencement day or if the adjustment day is July 1, 2019 and the listed province is Yukon or Nunavut. If neither of those conditions are met, element D is the rate in respect of fuel of that type for the listed province applicable on the day before the adjustment day.

This section is deemed to come into force on April 1, 2019.

Registration – delivery to remote power plant operator

Fuel Charge Regulations

17

Subsection 55(3) of the Act describes circumstances in which a person that is not required under subsection 55(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. Paragraph 55(3)(c) provides that a person may 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 of persons prescribed by regulations or a person meeting conditions prescribed by regulations. New section 17 of the Regulations prescribes such a person for the purposes of paragraph 55(3)(c).

New section 17 provides that a person may apply to be registered as a distributor in respect of a type of fuel that is a qualifying power plant fuel if the person carries on the business of selling, delivering or

distributing fuel of that type and, in the ordinary course of that business, delivers fuel of that type in a listed province to a remote power plant operator.

This section is deemed to come into force on April 1, 2019.

Travel between farms and cardlock facilities

Fuel Charge Regulations

18

The definition “eligible farming activity” in section 3 of the Act includes activities that are prescribed by regulations. New section 18 of the Regulations prescribes the operation of eligible farming machinery for the purposes of travelling between a farm and a cardlock facility to obtain qualifying farming fuel. Consider, for example, a farmer that drives a combine from a farm to a cardlock facility, refuels the combine and drives it back to the farm. In such a case, the fuel used while driving to and from the cardlock facility would be considered to be used in an eligible farming activity and, if all applicable conditions are met, a diversion charge under section 24 of the Act would not apply in respect of that use of the fuel.

This section is deemed to come into force on April 1, 2019.

Exemption certificate – delivery at cardlock facilities

Fuel Charge Regulations

19

Section 36 of the Act sets out the circumstances in which an exemption certificate applies in respect of a delivery of fuel to a particular person from another person. One of the requirements under that section is that the certificate must include a declaration by the particular person that meets certain conditions. Subparagraph 36(1)(b)(viii) of the Act sets out one of the ways in which those conditions can be met, namely that the declaration includes that the particular 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. New section 19 of the Regulations prescribes persons and circumstances that may be specified in a declaration of an exemption certificate in order to have the certificate apply to a delivery of fuel.

New section 19 provides that, for the purposes of subparagraph 36(1)(b)(viii), a farmer is a person prescribed by regulations and the circumstances prescribed by regulations are that

- the location at which the fuel is delivered is a cardlock facility;
- the fuel is for use exclusively in the operation of eligible farming machinery or of an auxiliary component of eligible farming machinery; and
- all or substantially all of the fuel is for use in the course of eligible farming activities.

As a result, if fuel is delivered to a farmer at a cardlock by a registered distributor, the farmer may provide an exemption certificate to the registered distributor that includes a declaration in respect of the

circumstances described above. If the other conditions of section 36 are met, then the exemption certificate will apply to the delivery and the registered distributor will not be required to pay a charge in respect of the fuel if the conditions of subsection 17(2) of the Act are met, including that the fuel is a qualifying farming fuel (i.e. gasoline or light fuel oil).

This section is deemed to come into force on April 1, 2019.

Registration – delivery to farmer at cardlock facilities

Fuel Charge Regulations

20

Subsection 55(3) of the Act describes circumstances in which a person that is not required under subsection 55(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. Paragraph 55(3)(c) provides that a person may 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 of persons prescribed by regulations or a person meeting conditions prescribed by regulations. New section 20 of the Regulations prescribes such a person for the purposes of paragraph 55(3)(c).

New section 20 of the Regulations provides that a person may apply to be registered as a distributor in respect of a type of fuel that is a qualifying farming fuel if the person carries on the business of selling, delivering or distributing fuel of that type and, in the ordinary course of that business, delivers fuel of that type in a listed province to a farmer at cardlock facility.

This section is deemed to come into force on April 1, 2019.

Definition of specified year

Fuel Charge Regulations

21

New section 21 of the Regulations defines the term “specified year” for the purposes of sections 33, 35, 40, 47 and 52 of the Act, as adapted by new section 22 of the Regulations (see commentary for that section), to mean a period of 12 months beginning on the first day of April.

This section is deemed to come into force on April 1, 2019.

Annual Net Fuel Adjustment – timing of adjustment

Fuel Charge Regulations

22

New section 22 adapts various provisions of the Act for purposes of the fuel charge system. These adaptations are made to sections 33, 35, 40, 47 and 52 of the Act to adjust timing rules in respect of the annual net fuel adjustments applicable to registered rail carriers and registered specified rail carriers related to the commencement day of April 1, 2019 as opposed to January 1, 2019.

This section is deemed to come into force on April 1, 2019.

Person responsible for a facility

Fuel Charge Regulations

23

New section 23 of the Regulations provides that, for the purposes of Part 9 of the Regulations, the person responsible for a facility is a person referred to in paragraph 24(c) of the Regulations (see commentary for section 24 of the Regulations) in respect of the facility.

This section is deemed to come into force on January 1, 2019.

Prescribed covered facility in Saskatchewan

Fuel Charge Regulations

24

The term “covered facility” means, under the paragraph (b) of the definition of the term in Section 3 of the Act, a facility or property that 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. New section 24 of the Regulations sets out circumstances under which a facility would be a covered facility for purposes of paragraph (b) of the definition covered facility in section 3 of the Act.

New section 24 provides that one or more sites including structures and equipment situated at those sites (referred to in Part 9 of the Regulations as a “facility”) is a facility prescribed by regulations if the following conditions are met:

- the facility is located in Saskatchewan (paragraph 24(a));
- all parts of the facility function as a single integrated site (paragraph 24(b));
- all parts of the facility have at least one owner or operator in common (paragraph 24(c));
- the facility is subject to a provincial output-based performance standards system relating to a provincial pricing mechanism for greenhouse gas emissions (paragraph 24(d)); and
- a statement referred to in subsection 25(2) of the Regulations (see commentary for this subsection below) has been issued confirming that the condition described in paragraph 24(d) in respect of the facility is met and no subsequent statement referred to in subsection 25(6) (see commentary for this subsection below) has been issued indicating that this condition is no longer met (paragraph 24(e)).

This section is deemed to come into force on January 1, 2019.

Statement in writing – facility in Saskatchewan

Fuel Charge Regulations

25

New Subsection 25(1) of the Regulations provides that a person responsible for a facility may apply to the Minister of the Environment for a determination of whether the condition in paragraph 24(d) of the Regulations is met in respect of the facility (see commentary for this section above). The person must provide to that Minister the information in respect of the facility necessary for that Minister to determine if the condition in paragraph 24(d) is met in respect of the facility. The person must also provide to that Minister any other information in respect of the facility that that Minister considers relevant for the purposes of Part 9 of the Regulations.

Subsection 25(2) states that, upon receipt of the application referred to in subsection (1), the Minister of the Environment must, with all due dispatch, examine the application and issue a statement in writing to the person. The statement must confirm whether or not the condition in paragraph 24(d) is met in respect of the facility for the purposes of the fuel charge system.

Subsection 25(3) states that, if a statement referred to in subsection (2) confirming that the condition in paragraph 24(d) is met in respect of a facility has been issued to a person, the person must notify in writing the Minister of the Environment without delay when the person ceases to be a person responsible for the facility.

Under subsection 25(4), certain persons must provide certain information to the Minister of the Environment if certain conditions are met. This subsection applies to a person if a statement has been issued to the person under subsection (2) confirming that the condition in paragraph 24(d) is met in respect of a facility and no subsequent statement referred to in subsection (6) has been issued indicating that this condition is no longer met. Such a person must provide information to that Minister if there is a change in respect of the facility that could materially affect either the boundary of any site of the facility or a new determination under subsection (2) in respect of the facility if such a determination were made. In that case, the person must provide in writing, without delay, to the Minister of the Environment updated information in respect of that change and any other information in respect of the facility that that Minister considers relevant for the purposes of this Part.

Subsection 25(5) states that a person to which a statement was issued under subsection (2) confirming that the condition in paragraph 24(d) is met in respect of a facility and to which no subsequent statement referred to in subsection (6) has been issued indicating that this condition is no longer met must provide in writing, without delay, any information in respect of the facility that is relevant for the purposes of this Part to the Minister of the Environment, upon request by that Minister.

Subsection 25(6) requires that, if a facility in respect of which a statement has been issued to a person under subsection (2) confirming that the condition in paragraph 24(d) is met no longer meets that condition, the Minister of the Environment must, with all due dispatch, issue to the person a statement in writing stating that that condition is no longer met.

This section is deemed to come into force on January 1, 2019.

Covered facility of a person

Fuel Charge Regulations

26

Paragraph 5(b) of the Act provides that a covered facility is a covered facility of a person for the purposes of Part 1 of the Act if 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.

New section 26 of the Regulations states that, for the purposes of paragraph 5(b) of the Act, a person meets conditions prescribed by regulations in respect of a covered facility if the facility is a facility prescribed by regulations under section 24 of the Regulations and a statement referred to in subsection 25(2) of the Regulations has been issued to the person in respect of the facility (see the commentary above on those provisions).

This section is deemed to come into force on January 1, 2019.

Emitter – registration permitted

Fuel Charge Regulations

27

Subsection 57 of the Act describes circumstances in which a person is permitted to apply to be registered as an emitter for the purposes of Part 1 of the Act. Paragraph 57(1)(b) provides that a person may apply to 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, in respect of a prescribed facility or property, a facility or property of a class of facilities or properties prescribed by regulations or a facility or property meeting prescribed conditions. New section 27 of the Regulations prescribes such a person for the purposes of paragraph 57(1)(b).

New section 27 provides that a facility is a facility prescribed by regulations and a person is a person prescribed by regulations in respect of the facility if the facility is a prescribed facility under section 27 and a statement referred to in subsection 25(2) has been issued to the person in respect of the facility

As a result of this Part of the Regulations, if a person is prescribed by regulations and the facility is prescribed by regulations, the person can become a registered emitter and an exemption certificate can apply to fuel that is delivered to the person, if all required conditions are met. This will allow a registered distributor to deliver fuel to that person without the charge applying if that fuel is for use at the facility and all other applicable conditions are met.

This section is deemed to come into force on January 1, 2019.