



**ADOPT INTERIM ADMINISTRATIVE RULES  
IMPLEMENTING CHAPTER 16.60 (MOTOR VEHICLE FUELS)**

Pursuant to Subsection 16.60.015.C.3 of the Code of the City of Portland, I adopt the attached Interim Administrative Rules. The Interim Administrative Rules are effective on and after May 15, 2024.

The Bureau of Planning and Sustainability (BPS) has determined that the prior administrative rules, adopted on September 19, 2023 with an effective date of May 15, 2024, are infeasible due to technical circumstances in the management of Portland's fuel supply chain. Accordingly, an additional compliance option and other clarifications are necessary to ensure covered entities are able to comply with Chapter 16.60 by May 15, 2024. Failure to act promptly would result in serious prejudice to the covered entities.

2/28/2024

Donnie Oliveira, BPS Director

Date



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Effective Date: May 15, 2024

Bureau of Planning and Sustainability  
Innovation. Collaboration. Practical Solutions.

## INTERIM ADMINISTRATIVE RULES Renewable Fuel Standard Implementing Title 16.60 Motor Vehicle Fuels

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## **1.0 Authority.**

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

## **2.0 Purpose and Scope.**

- A.** The purpose of PCC Chapter 16.60, as identified in Ordinances No. 180313, (passed by the City Council on July 12, 2006), and as subsequently amended by Ordinance No. 180671 (passed by the City Council on December 13, 2006), Ordinance No. 1898290 (passed by the City Council on December 18, 2020, and Ordinance No. 191100 (passed by the City Council on December 7, 2022) is to promote the use of biofuels, stimulate further development of the biofuels industry, and provide consumer and environmental protection in this emerging industry.

These administrative rules are intended to provide further detail and specificity regarding the requirements of PCC Chapter 16.60. Fuel distributors, resellers, retailers, nonretail dealers, and wholesale purchaser-consumers who have ownership of finished fuel products below the rack for sale in the City of Portland or who transport a finished fuel product into the City of Portland are directly regulated by PCC Chapter 16.60 and referred to in these rules as “covered entities.”

- B.** These rules apply to fuel for on-road motor vehicles. Fuels used for the following purposes are not covered by these rules:
  - 1) Railroad locomotives, watercraft, aircraft, and emergency equipment;
  - 2) Dyed diesel for off-road vehicles;
  - 3) Dyed diesel for furnaces, boilers, generators; and
  - 4) Propane and liquefied natural gas for vehicles.
- C.** These rules do not apply to fuel sold in the City of Portland for subsequent delivery outside the City limits.
- D.** Until July 1, 2030, these rules do not apply to any retailer offering a renewable diesel blend of 99 percent (R99 fuel) if such retailer, as of January 1, 2023, has: (1) a minimum of 120,000 gallons of onsite storage; and (2) a minimum of nine truck fueling lanes. Such retailer may also offer, on the same site or a contiguous site, diesel fuel that does not contain biofuels.

- E.** These rules do not apply to any fuel used for vehicle test operations.
- F.** These rules do not apply to Portland-based vehicle manufacturing operations until July 15, 2030. On and after July 15, 2030, all Portland-based vehicle manufacturing operations must meet the requirements of this Chapter. “Portland-based vehicle manufacturing operations” means the operation of a manufacturing facility located within the City of Portland that produces complete or finished motor vehicles. It does not include the manufacture of vehicle components or parts.
- G.** These rules are not intended to limit production, sale, or use of fuel for flex fueled vehicles using up to 85 percent ethanol blends.

### **3.0 Definitions.**

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

- A.** In any references in these administrative rules to the Oregon Revised Statutes or to the Oregon Administrative Rules, that statute or administrative rule is incorporated in the form in which it exists at the time these administrative rules were adopted on September 19, 2023.
- B.** All terms defined in PCC Chapter 16.60.010 apply to these rules and in addition, the following terms shall be defined as provided in this section:
  - 1) “Absolute CI value” means that all qualifying renewable fuel has an Oregon Clean Fuels program (CFP) fuel pathway at or below the Carbon Intensity (CI) Standard. Fuel with a CI value above the Carbon Intensity Standard may not be used to meet the requirements of PCC Chapter 16.60.
  - 2) “Above the rack” means sales of transportation fuel at pipeline origin points, pipeline batches in transit, barge loads in transit, and at terminal tanks before the transportation fuel has been loaded into trucks.

- 3) "Accredited laboratory" means a laboratory that is currently accredited by an independent laboratory accrediting body for analyzing motor vehicle fuels using ASTM International test procedures and specifications.
- 4) "ASTM" means ASTM International, the national voluntary consensus standards organization formed for the development of standards on characteristics and performance of materials, products, systems, and services; and the promotion of related knowledge.
- 5) "Average CI value" means that qualifying renewable fuel used to meet the requirements of PCC Chapter 16.60 may be averaged over the compliance period. Renewable fuel above the Carbon Intensity Standard may be used to meet the requirements, provided a sufficient volume of fuel below the Carbon Intensity Standard was also used such that their weighted average yields a CI value at or below the Carbon Intensity Standard over the compliance period.
- 6) "Below the rack" means the distribution or sale of clear or blended gasoline or diesel fuel products when the fuel is transferred from storage tanks at a fuel terminal and offloaded from a fuel loading rack for sale as a finished fuel product for use in motor vehicles.
- 7) "Book and claim" means a compliance mechanism for PCC Chapter 16.60. Specifically, covered entities may use book and claim exclusively for compliance with the biofuel carbon intensity requirements in PCC Section 16.60.025. Book and claim is an accounting approach that decouples the environmental attributes, in this case CI value, from the physical product, thus allowing the environmental attributes to be tracked and reported separately for the purposes of compliance. Book and claim allows covered entities to comply with PCC Chapter 16.60 by demonstrating that they have imported into Oregon a sufficient volume of renewable diesel, biodiesel, or a blend thereof that is compliant with the CI standard to satisfy the proportion of fuel products sold in the City of Portland, regardless of where the compliant fuel product is sold. Book and claim, in this context, does not allow for the banking, trading or other marketable mechanism to exchange environmental attributes. Because there is no biofuel production located within the City of Portland, this compliance mechanism does not diminish or reduce any local environmental benefits provided by PCC Chapter 16.60. The lifecycle carbon intensity benefits of low carbon biofuels will still occur upstream in biofuel production and supply chains, even as the gallons of fuel may be sold elsewhere in Oregon.
- 8) "Bulk facility" also referred to as a "fuel terminal" means a facility, including pipeline terminals, refinery terminals, rail and barge terminals, and associated underground and above ground tanks connected or separate, from which motor vehicle fuels are withdrawn

from bulk and delivered to retail, wholesale or non-retail facilities or into a cargo tank or barge used to transport products used to comply with PCC Chapter 16.60 or these rules.

- 9) "Compliance period" means over the course of the calendar year or as defined by the Director.
- 10) "Covered entity" means any entity regulated by PCC Chapter 16.60. This includes but is not limited to fuel distributors, resellers, retailers, nonretail dealers, and wholesale purchaser-consumers. PCC Chapter 16.60 regulates the sale of motor vehicle fuel to end users and may therefore implicate other entities engaged in the sale of motor vehicle fuels.
- 11) "Director" means the Director of the Bureau of Planning and Sustainability or a duly authorized representative of the Director.
- 12) "Emergency equipment" means a vehicle that is equipped with lights and sirens and that is either: (1) operated by public police, fire, or airport security agencies; or (2) designated as an emergency vehicle by a federal agency.
- 13) "End user" means the person consuming fuel for the purpose of operating motor vehicles on public roadways.
- 14) "Export" means to transport fuel from locations within Oregon to locations outside of the state, by any means of transport, other than in the fuel tank of a vehicle for the purpose of propelling the vehicle.
- 15) "Fuel pathway" means a detailed description of all stages of fuel production and use for any transportation fuel, including feedstock generation or extraction, production, distribution, and combustion of the fuel by the end user. The fuel pathway is used to calculate the lifecycle carbon intensity value of each transportation fuel.
- 16) "Fuel pathway code" or "FPC" means the identifier used by Oregon Department of Environmental Quality (DEQ) in the Oregon Fuels Reporting System that applies to a specific fuel pathway as approved or issued under Oregon Administrative Rules 340-253-0400 through 0470.
- 17) "Fuel pathway holder" means the entity that has applied for and received a FPC from DEQ, or who has a FPC from the California Air Resources Board that has been approved for use in Oregon by DEQ.
- 18) "Fuel vendor" is any retail dealer, nonretail dealer or wholesale purchaser consumer located in the City of Portland selling or dispensing fuel to an end user.

- 19) "Import" means to have ownership title to transportation fuel at the time it is brought into Oregon from outside the state by any means of transport other than in the fuel tank of a motor vehicle for the purpose of propelling that motor vehicle.
- 20) "Fuel importer" means any person that brings a fuel product into Oregon from outside of the state. Including any person owning fuel from locations outside of Oregon at the time fuel is brought into the state by any means of transport, other than fuel brought into the state in the fuel tank of a vehicle used to propel the vehicle.
- 21) "Marketer" means any person engaged in the business of distributing or reselling fuel to a Fuel Vendor, including wholesale dealers and fuel distributors, used to comply with the requirements of PCC Chapter 16.60 or these rules.
- 22) "Person" means a natural person, joint venture, joint-stock company, partnership, association, club, company, corporation, business trust, organization, and/or the manager, lessee, agent, servant, officer, or employee of any of them.
- 23) "Portland City Code" or "PCC" means ordinances adopted by the City Council, as codified by the City Auditor.
- 24) "Position holder" means any person that has an ownership interest in a specific amount of fuel in the inventory of a fuel distribution terminal operator. This does not include inventory held outside of a terminal, retail establishment, or other fuel suppliers not holding inventory at a fuel terminal.
- 25) "Rack" means a loading rack designed to transfer fuel from storage tanks at a fuel terminal into the compartments of a tank truck, rail car, or any other means of fuel transport, other than fuel transported in the fuel tank of a vehicle used to propel the vehicle.
- 26) "Retailer" means any person who owns, leases, operates, controls, or supervises an establishment located within the City of Portland at which motor vehicle fuel is sold or offered for sale to the public.
- 27) "Reporting period" means a period of three calendar months ending on March 31, June 30, September 30, or December 31, or as defined by the Director.
- 28) "Wholesale dealer" means any person who sells fuel if the seller knows or has reason to believe that the buyer intends to resell the fuel in the same or an altered form to a retail dealer, non-retail dealer, or another wholesale dealer.

#### **4.0 Minimum Biofuel Content Requirements.**

- A. Biodiesel and Renewable Diesel Requirements.** See PCC 16.60.020.A.
- B. Ethanol Requirements.** See PCC Chapter 16.60.020.B
- C.** Fuel retailers are required to conspicuously place signage denoting the type of biofuel mixture available for sale by the fuel retailer in accordance with the labeling specifications established by the Federal Trade Commission (16 CFR 306 (Automotive Fuel Ratings, Certification and Posting)) or the Oregon Department of Agriculture.
- D.** Minimum biofuel content requirements cannot be averaged. Retailers may sell biofuel blends that are higher than those required by PCC Section 16.60.020. Enforcement will be based on whether actual biofuel blends sold to end users meet the minimum biofuel content requirements.

#### **5.0 Carbon Intensity Standard.**

- A. Carbon Intensity Standard Requirements.** See PCC Chapter 16.60.025.
  - 1) For the purposes of these rules, fuel CI values will be based on Oregon DEQ certified values, including temporary CI values and those established by other States with modifications as needed for certification by Oregon DEQ for use in Oregon.
  - 2) CI values are documented using the Oregon DEQ Clean Fuels Program Fuel Pathway Code (FPC).

#### **6.0 Carbon Intensity Standard Compliance.**

- A. Definition of CI value.** Covered entities will need to comply with the Carbon Intensity Standard through use of either Absolute CI Value or an Average CI Value.
  - 1) Absolute CI Value. The absolute CI value means the value assigned to the fuel by the Oregon Clean Fuels Program fuel pathway.
  - 2) Average CI Value. The average CI value means the weighted average of CI values from multiple Oregon Clean Fuel Program fuel pathways. This allows covered entities to use fuel from multiple fuel pathways to meet the City's requirements as long as the weighted average of different renewable fuels are equal to or less than the Carbon Intensity Standard over the compliance period. Use of this definition requires Book and Claim or Delivered Fuel Summary compliance, see 6.C.1 and 3.
- B. Determination and Designation of Absolute or Average CI Value.** Covered entities may determine the appropriate approach given their business practices. Designation of the approach taken must be documented and attested by covered entities for each Compliance period, as described under 6.D below.



- C. Carbon Intensity Standard Compliance Options.** Covered entities have three Carbon Intensity Standard compliance options available over the course of the Compliance Period, one calendar year. For the remaining calendar year following the policy effective date, the carbon intensity standard Compliance period is 6 months, from July 1, 2024 through December 31, 2024. There is no carbon intensity standard compliance obligation from May 15, 2024 to June 30, 2024.

CI Compliance options include:

- 1) **Book and Claim.** The term “book and claim” is an accounting approach that decouples the environmental attributes from the physical product, thus allowing the environmental attributes to be transferred separately from the product itself. Book and claim only applies to compliance with PCC 16.60.025 (Carbon Intensity Standard). Covered entities are required to meet the blend requirements of PCC 16.60.020 without averaging or the option to book and claim. There is no banking, credit generation or otherwise marketable allowances associated with this compliance option.
  - a) Book and claim compliance requires covered entities to have a fuel importer who accepts responsibility for compliance reporting for each compliance period.
  - b) Fuel importers may take responsibility for complying with the requirements on behalf of fuel retailers, resellers, distributors, or wholesale purchase consumers.
  - c) To use this compliance option, fuel importers must demonstrate that on average they have imported into Oregon a sufficient volume of renewable diesel, biodiesel, or a blend thereof that is compliant with the CI standard to satisfy the proportion of renewable fuel sold in Portland, regardless of where the compliant fuel is sold.
- 2) **Product Transfer Document.** Product transfer documents (PTDs) is the general term for the paper trail that documents the transfer of ownership of fuel from one entity to the next. The Oregon DEQ, in ORS 340-253-0600, requires that the CFP fuel pathway (FPC) be included on all PTDs for renewable fuels at the Terminal. Covered entities selecting this compliance option must include a FPC on at least one PTD through sale to the fuel retailer or wholesale purchase consumer. Under this compliance option, fuel distributors, resellers, retailers, nonretail dealers, or wholesale purchase consumers will need to obtain and maintain the FPC, originating from the fuel pathway holder, on at least one PTD associated with each fuel delivery . Fuel retailers and wholesale purchase consumers will need to keep at their place of business the PTD’s with an FPC as required

by Section 9 of these rules. No reporting required.

Wholesale purchase-consumers, in lieu of documenting the FPC on PTD, may submit a valid contract with their fuel supplier with terms requiring delivered products must meet the requirements of PCC Section 16.60.020 and 16.60.025. Contracts must be submitted to BPS when compliance options are selected and when contracts have been updated by the signed parties, see 6.D below.

- 3) **Delivered Fuel Summary.** Covered entities may maintain a quarterly summary report of the FPC associated with each fuel delivery, in lieu of maintaining the FPC on a PTD from each delivery. Covered entities may average the CI over the quarter, like book and claim compliance. More information about summary report content can be found below under 6.E.3.

**D. Registration and Compliance Options Selection.** Covered entities must register with BPS and select a Carbon Intensity Standard compliance option for each compliance period.

- 1) BPS will use registration information to communicate with covered entities via the RFS compliance email list and to manage compliance with the carbon intensity standard. BPS will give covered entities access to a list of registered entities to review and to facilitate any coordination required to comply with the carbon intensity standard.
- 2) For the first year following the effective date, covered entities must register by May 1, 2024, using a form BPS will post on its website beginning March 1, 2024. If a covered entity has a change in ownership, the entity must update its registration within one month from the change in ownership. Any new covered entities must register with BPS before distributing or selling fuel in the City.
- 3) Annually, BPS will provide notification to covered entities by October 31<sup>st</sup> of each year giving the option to select or change a compliance option. For the first compliance period following the policy effective date, BPS will provide notification to covered entities by May 31, 2024 for the compliance period beginning July 1, 2024. There is no carbon intensity standard compliance obligation from May 15, 2024 to June 30, 2024. To receive notification, covered entities must enroll in the RFS compliance email list found on the program website.
- 4) Covered entities must select a compliance option before the beginning of the compliance period. Compliance option selections will be made through a form available on the program website.
- 5) Compliance option selection may be changed at any time during the compliance period, up to and including December 31<sup>st</sup>, after

consulting with BPS. If a covered entity decides to change the compliance option during the compliance period, they are responsible for compliance under the new option for the full compliance period.

- 6) If a covered entity does not select a compliance option for a given year, enforcement will be based on the most recent compliance option selected for prior compliance periods.
- 7) Selection of the book and claim compliance option requires designation of a fuel importer that will accept responsibility for each of the four reporting periods within the associated annual compliance period.
- 8) Covered entities who opt to report compliance through book and claim are required to submit a written agreement with a fuel importer or other covered entities who accept responsibility for quarterly and annual compliance reporting on behalf of one or more covered entities. The position holder may report the fuel carbon intensity and other biofuel attributes under book and claim compliance when an agreement between the fuel importer and the position holder has been made.
- 9) Written agreements must be fully executed and uploaded to the RFS program website before the start of the compliance period. Written agreements must include:
  - a) A commitment to submit true, accurate and timely compliance reports to BPS, as required by Section 6.E.1 of these rules.
  - b) A clear understanding of how parties will manage audits and any issues of non-compliance.
  - c) A contact (including a full name and contact information) for each party who is authorized to respond to compliance and reporting issues.
  - d) Physical site addresses covered by the agreement where motor vehicle fuels are stored, transferred, or sold.
  - e) A signature from an individual from each party who is authorized to enter into agreements for their entity.

#### **E. Compliance Option Reporting Requirements.**

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

- a) Fuel importers must report and attest:
- (i) Importer's total volume of diesel fuel imported into Oregon in a given time period excluding all exports.
  - (ii) Percent of diesel fuel sold in Portland.
  - (iii) Percent of minimum biofuel content required by PCC Chapter 16.60.
  - (iv) Book and claim compliance volume.
- b) **Book and claim compliance volume calculation.** Fuel importers will report to the city using the following calculation for the number of gallons of complaint renewable fuel required:

Volume imported to Oregon (excluding exports) x Percent sold in Portland x Minimum percent renewable = compliance volume

Example:

1,000,000 gallons x 20% x 15% = 30,000 gallons

In the example, the fuel importer brought 1,000,000 gallons of diesel fuel into Oregon, 20% of which were sold in Portland. In this period, the RFS required that 15% of diesel fuel meets the CI Standard. Fuel importer would be required to show through documentation that it imported at least 30,000 gallons (1,000,000 x 20% x 15%) renewable fuel at CI of 40 g CO<sub>2</sub>e/MJ or lower.

For compliance periods 2026 and 2030, where blend requirements change July 1<sup>st</sup>, the following calculations will be used to average the minimum percent renewable blend requirement over the compliance period:

- (i) For 2026:  $(6 \text{ months} \times 15\% + 6 \text{ months} \times 50\%) / 12 = 32.5\%$  average minimum percent renewable for compliance period.
  - (ii) For 2030:  $(6 \text{ months} \times 50\% + 6 \text{ months} \times 99\%) / 12 = 74.5\%$  average minimum percent renewable for compliance period.
- c) **Determining volume sold in City of Portland.** Fuel importers are encouraged to work with resellers, distributors, nonretail dealers, and retailers to track the volume of fuel delivered to retail stations or wholesale purchase consumers in the City of Portland. If fuel importers choose not to track fuel sold in Portland, the importer will use a deemed value. The deemed value assumes the volume of diesel fuel sold in Portland is comparable to that sold in the rest of the State on a per capita basis. The calculation required for the deemed value is based on Portland's share of the State's

population. Example: 15.1% in 2021 (Portland population 641,162 / Oregon population 4.246m). Approved deemed values will be provided by BPS on Book and Claim reporting forms.

- d) **Reporting Schedule.** Covered entities using the book and claim compliance pathway are required to submit reports for each reporting period. Reports will be due 90 days after the end of the previous calendar quarter: June 30th for Q1, September 30th for Q2, January 10th for Q3 of the prior calendar year, and March 31st for Q4 of the prior calendar year.
- 2) **Product Transfer Document Reporting.** Reporting of data is not required for those documenting the FPC on at least one PTD associated with each delivery or wholesale purchase-consumers who submit a valid contract with terms that include the minimum biofuel content requirements and carbon intensity standard. Covered entities are required to attest annually that they are using this compliance option and will comply with these requirements. Attestations are due at the time the Compliance Option is selected and will be made by a simple web form provided on the program website, see 6.D.
  - 3) **Delivered Fuel Summary Reporting.** Covered entities may opt to maintain a quarterly summary report of all fuel delivered to their facility, rather than maintaining the FPC on PTDs. Quarterly summary reports must be maintained on site for inspection and must be completed on the same schedule as Book and Claim reporting, see 6.E.1.d. Covered entities must provide the location where the summary report will be held when selecting a compliance option, see 6.D. Additionally, all summary reports must be uploaded to the BPS website once annually, by March 31<sup>st</sup> for the prior calendar year.

Summary reports must include the retail location address, volume of diesel fuel delivered by date and the associated fuel pathway codes used for compliance. BPS will provide a template for the summary reports. There are two options that can be utilized to convey compliance under Delivered Fuel Summary Reporting:

- a) **CI averaging.** The summary report must also include a calculation showing the weighted average of CI values by volume over the quarter.
- b) **Equivalent volume at compliant CI.** The summary report must include a calculation showing that the volume of biofuel that meets the CI standard delivered in the quarter met or exceeded an equivalent volume as required by the standard as set by PCC Chapter 16.60. For example, in 2024, if 1,000 gallons was delivered over the quarter, 15% would need to meet the CI standard, or 150 gallons of fuel with a carbon intensity at or below 40g CO<sub>2</sub>e/MJ. This increases to 50% in 2026 and 99% in 2030.

## **7.0 Contents of Product Transfer Documents (PTD).**

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

- 1) PTDs must include the type of renewable fuel, including biodiesel, renewable diesel, ethanol, or any blends of these fuels, and declare the volume percent of such renewable fuel.
- 2) PTDs must comply with OAR 603-027-0430 (1) (a) which includes identifying the quantity, the name of the product, the name and address of the seller and buyer, and the date and time of the sale.
- 3) Covered entities using Product Transfer Document compliance must also ensure that FPCs are included on at least one PTD associated with each fuel delivery.

## **8.0 Testing and Inspections.**

### **A. Testing of motor vehicle fuel.**

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

**B. Official Sampling Procedures.**

- 1) The Director will obtain official samples of motor vehicle fuel for testing from:
  - a) The same dispensing device used for sales to customers; or
  - b) Any bulk facility; or
  - c) Any transporter of motor vehicle fuels.
- 2) The official sample will be obtained in accordance with ASTM standards for manual sampling or as determined by the Director.
- 3) Official sampling used for compliance will include split samples, with one sample given to the person in charge of the facility to verify compliance.
- 4) The Director when collecting any sample will provide their full name and contact information to the owner or person in charge of the facility and on the tag or label of each sample that is taken.
- 5) At the time the Director obtains samples, or requests to review copies of books, papers or records, the owner or operator may specify what, if any, information the owner or operator considers to be confidential business information or a trade secret. The Director shall keep any information so specified (including the results of any test) in a separate file marked "confidential." The disclosure of such information shall be governed by the Oregon Public Records Law, ORS 192.410. Nothing in this rule shall be construed to limit the use of such information in any enforcement proceeding by the Director.

**C. Inspections.**

- 1) For all fuel importers, bulk facility operators, and marketers that are subject to the requirements of PCC Chapter 16.60 and these rules, the Director may:
  - a) Audit records for biofuels;
  - b) Review Certificates of Analysis or other documentation for each production lot or batch of biofuel;
  - c) Verify documentation of fuel pathways codes;
  - d) Review product transfer documents or other documentation identifying the percentage of biodiesel being blended;
  - e) Take samples of fuel for testing; and,
  - f) Verify renewable blend ratios of fuels sold.
- 2) For all fuel vendors and wholesale purchase consumers that are subject to the requirements of PCC Chapter 16.60 and these rules, the Director may:
  - a) Review product transfer documents or other documentation for deliveries of all motor vehicle fuels;
  - b) Verify blend ratios of gasoline-ethanol and diesel-biodiesel/renewable diesel blends either through visual inspection of disperser labels, advertisements, review of PTDs and (or) laboratory testing of fuel samples;
  - c) Take official samples for laboratory testing, by an accredited laboratory for analyzing motor fuels.

## 9.0 Record Keeping.

- A. **Fuel Vendor Documentation.** Fuel vendors, including resellers and operators of the retail, non-retail, and wholesale purchaser consumer dispensers must keep at the person's registered place of business all Product Transfer Documents or other documentation for each product being sold for 2 years to comply with PCC Chapter 16.60 or these rules.
- B. **Documentation of Volume Sold.** Each operator of a bulk facility and each person who sells motor vehicle fuels to fuel vendors in the City of Portland must keep, for at least 2 years, at the person's registered place of business complete and accurate records of any motor vehicle fuels sold if sold or delivered in the City of Portland, for purposes of showing compliance with PCC Chapter 16.60 or these rules.
- C. **Storage Location.** Covered entities may opt to store records in a central location in the Portland–Vancouver–Hillsboro Metropolitan Statistical Area if it is more efficient than storing records at the entity's registered place of business. Records, excluding PTD, may also be stored electronically. BPS may request copies of electronic records from covered entities. Covered entities have 30 days to provide a copy of an electronic record to BPS. To maintain records in a central location or to store records electronically, covered entities must inform BPS when selecting a compliance option, see 6.D.

## 10.0 Enforcement.

- A. **Violations.**
  - 1) The Director may determine that a violation of PCC Chapter 16.60 or these rules has occurred. Upon making the determination that a violation has occurred, the Director will issue a written notice of the violation, which will be sent by certified mail to the covered entity identifying the violation and applicable penalty.
  - 2) Covered entities will, upon receipt of a notice of violation, correct the violation and pay to the City the stated penalty or appeal the finding of a violation to the Code Hearings Officer within 10 days of receipt of the notice.
  - 3) A determination issued pursuant to Chapter 16.60.040.A may be appealed to the Code Hearings Officer, as provided for in PCC Chapter 22.10.
  - 4) In determining the penalty to be assessed against any covered entity, the Director will consider the following criteria:
    - a) The extent and nature of the person's involvement in the violation;
    - b) The benefits, economic, financial or otherwise, accruing or likely to accrue as a result of the violations;
    - c) Whether the violations were repeated and continuous, or isolated and temporary;
    - d) The magnitude and seriousness of the violation;
    - e) The City's costs of investigating the violation and correcting or attempting to correct the violation;



- f) Whether any criminal charges have been issued against the person; and,
  - g) Any other factors the Director deems to be relevant.
- 5) Fuel Quality Complaints. Upon receipt of a complaint of fuel quality or identification by the Director, the City will forward the complaint to the responsible State regulatory agency.

**B. Penalties.** Violations of PCC Chapter 16.60 and these rules may be punishable by fines, see PCC Chapter 16.60.050.

- 1) It is a separate offense each and every day during any portion of which any violation of any provision of PCC Chapter 16.60 or these administrative rules is committed or continued by such person and may be punished accordingly, with the exception of violations of PCC Chapter 16.60.025 (Biofuel Carbon Intensity Requirements).
- 2) Violations of PCC Chapter 16.60.025 (Biofuel Carbon Intensity Requirements) will be determined based on the annual compliance period. Subsequent violations of PCC Chapter 16.60.025 may be assessed quarterly until the covered entity demonstrates compliance through quarterly reporting.

#### **11.0 Administration.**

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

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