



New South Wales

Biofuel (Ethanol Content) Amendment Regulation 2009

under the

Biofuel (Ethanol Content) Act 2007

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Biofuel (Ethanol Content) Act 2007*.

ANTHONY KELLY, MLC
Minister for Lands

Explanatory note

The object of this Regulation is to make further provision in respect of minimum biofuel content requirements for petrol and diesel fuel sold in New South Wales as a consequence of amendments made to the *Biofuel (Ethanol Content) Act 2007* by the *Biofuel (Ethanol Content) Amendment Act 2009*. In particular, this Regulation:

- (a) prescribes the *Global Principles and Criteria for Sustainable Biofuels Production* published by the Roundtable on Sustainable Biofuels as a biofuel sustainability standard with which ethanol and biodiesel must comply in order to be counted towards the minimum content requirements, and
- (b) expands the definition of *primary wholesaler* to include fuel wholesalers who engage in the blending of petrol and ethanol and biodiesel and diesel fuel (but only in respect of the primary wholesaling of petrol or diesel fuel, respectively), and
- (c) makes further provision in respect of record keeping requirements and the circumstances that justify exemption from minimum ethanol and biodiesel requirements, and
- (d) provides for the registration of volume fuel sellers.

This Regulation is made under the *Biofuel (Ethanol Content) Act 2007*, including sections 3, 4, 4A, 12, 13, 23, 25 and 30 (the general regulation-making power).

2009 No 335

Clause 1 Biofuel (Ethanol Content) Amendment Regulation 2009

Biofuel (Ethanol Content) Amendment Regulation 2009

under the

Biofuel (Ethanol Content) Act 2007

1 Name of Regulation

This Regulation is the *Biofuel (Ethanol Content) Amendment Regulation 2009*.

2 Commencement

This Regulation commences on 1 October 2009 and is required to be published on the NSW legislation website.

Schedule 1 Amendment of Biofuel (Ethanol Content) Regulation 2007

[1] Clause 1 Name of Regulation

Omit “*Biofuel (Ethanol Content) Regulation 2007*”.

Insert instead “*Biofuels Regulation 2007*”.

[2] Clause 3 Definition

Omit “*Biofuel (Ethanol Content) Act 2007*” from the definition of *the Act* in clause 3 (1).

Insert instead “*Biofuels Act 2007*”.

[3] Clause 3A

Insert after clause 3:

3A Biofuel sustainability standard

For the purposes of the definition of *biofuel sustainability standard* in section 3 (1) of the Act, the document entitled *Global Principles and Criteria For Sustainable Biofuels Production—Version Zero*, published by the Roundtable on Sustainable Biofuels on 13 August 2008, is prescribed as a standard in respect of the sustainable manufacture of ethanol or biodiesel.

Note. The *Global Principles and Criteria For Sustainable Biofuels Production—Version Zero* is available on the internet at <http://cgse.epfl.ch/page79931.html>.

[4] Clauses 4 and 5

Omit the clauses. Insert instead:

4 Primary wholesalers

- (1) A fuel wholesaler who engages in the blending of ethanol with petrol (whether or not in New South Wales) to produce petrol-ethanol blend is included in the definition of *primary wholesaler* in section 4 of the Act, but only in respect of the primary wholesaling of petrol.
- (2) A fuel wholesaler who engages in the blending of biodiesel with diesel fuel (whether or not in New South Wales) to produce biodiesel blend is included in the definition of *primary wholesaler* in section 4 of the Act, but only in respect of the primary wholesaling of diesel fuel.

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5 Records to include sales records

- (1) Records kept by a volume fuel seller for the purposes of section 12 of the Act are to include a record in respect of each sale of petrol (including petrol-ethanol blend) and diesel fuel (including biodiesel blend) by the volume fuel seller showing in respect of each sale:
 - (a) the volume of petrol and diesel fuel sold, and
 - (b) whether the petrol sold was or was not petrol-ethanol blend, and
 - (c) whether the diesel fuel sold was or was not biodiesel blend, and
 - (d) in the case of a sale of petrol-ethanol blend, the amount of ethanol in the petrol-ethanol blend, and
 - (e) in the case of a sale of biodiesel blend, the amount of biodiesel in the biodiesel blend, and
 - (f) whether the petrol-ethanol blend or biodiesel blend sold complies with a biofuel sustainability standard, including details of any relevant certification.
- (2) Records required by this clause may be kept in the form of copies of invoices or other records of sale issued by the volume fuel seller.

[5] Clause 6 Retention period for records

Omit “primary wholesaler for the purposes of section 8 of the Act in respect of petrol”.

Insert instead “volume fuel seller for the purposes of section 12 of the Act in respect of petrol and diesel fuel”.

[6] Clause 7

Omit the clause. Insert instead:

7 Reasonable steps for compliance with volumetric biofuel requirement

The taking of all the following actions by a volume fuel seller constitutes the taking of reasonable steps to comply with section 6 or 7 of the Act:

- (a) the making of all reasonable efforts (on a continuing basis) to secure sufficient supplies of ethanol or petrol-ethanol blend to ensure compliance with section 6 of the Act,

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- (b) the making of all reasonable efforts (on a continuing basis) to secure sufficient supplies of diesel or biodiesel blend to ensure compliance with section 7 of the Act,
 - (c) the taking of all reasonable action to upgrade a volume fuel seller's infrastructure to enable it to distribute sufficient petrol-ethanol blend or biodiesel blend to ensure compliance with section 6 or 7, as the case requires, of the Act,
 - (d) the taking of all reasonable action to ensure the availability of facilities for the sale of petrol-ethanol blend or biodiesel blend at those service stations at which the business of selling petrol or diesel fuel is controlled by the volume fuel seller or at which the person who conducts that business leases or subleases the premises from the volume fuel seller,
 - (e) the taking of all reasonable action (on a continuing basis) to market petrol-ethanol blend or biodiesel blend to ensure compliance with section 6 or 7, as the case requires, of the Act.

Note. Section 10 (4) of the Act provides that the regulations do not prevent a volume fuel seller from proving that other actions taken by the volume fuel seller constitute the taking of reasonable steps to comply with a minimum biofuel requirement (which includes a requirement imposed by section 6 or 7 of the Act).

[7] Clause 8 Certain information not to be published

Omit "section 11". Insert instead "section 14".

[8] Clause 8 (a)

Omit "petrol or ethanol sold by a primary wholesaler".

Insert instead "petrol, ethanol, diesel fuel or biodiesel sold by a volume fuel seller".

[9] Clause 9 Grounds for exemption

Omit "section 12 of the Act as a circumstance that justifies the exemption of a primary wholesaler from compliance with section 6 of the Act".

Insert instead "section 15 of the Act as a circumstance that justifies the exemption of a person from compliance with a minimum biofuel requirement".

[10] Clause 9 (b)

Omit "primary wholesaler". Insert instead "person".

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[11] Clause 9A

Insert after clause 9:

9A Registration of volume fuel sellers

- (1) A person must not engage in the business of a volume fuel seller unless the person is registered as a volume fuel seller in accordance with this clause.
Maximum penalty: 10 penalty units.
- (2) A person may make an application to the Director-General to be registered as a volume fuel seller.
- (3) An application for registration must be in the form approved by the Director-General.
- (4) The Director-General may, by notice in writing served on the applicant, grant or refuse the application.
- (5) Registration as a volume fuel seller is subject to such conditions as may be specified in the notice referred to in subclause (4) and to such further conditions as the Director-General may from time to time notify in writing to the holder of the registration.
- (6) The Director-General may from time to time vary or revoke any condition of registration by notice in writing served on the holder of the registration.
- (7) Registration as a volume fuel seller remains in force until it is surrendered, cancelled or otherwise expires.
- (8) The Director-General may suspend or cancel the registration of a volume fuel seller by notice in writing served on the holder of the registration.
- (9) Registration as a volume fuel seller has no effect during any period of suspension.
- (10) The Director-General is to keep a register of volume fuel sellers, in such manner and form as the Director-General thinks appropriate, in which are to be recorded:
 - (a) the names and contact details of persons who are registered as volume fuel sellers, and
 - (b) particulars of any conditions imposed under this clause, and
 - (c) such additional particulars as the Director-General thinks appropriate.

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Amendment of Biofuel (Ethanol Content) Regulation 2007

Schedule 1

[12] Clause 10 Penalty notices

Omit “section 25”. Insert instead “section 29”.

[13] Schedule 1

Omit the Schedule. Insert instead:

Schedule 1 Penalty notice offences

(Clause 10)

Column 1	Column 2
Offence	Penalty
Biofuels Act 2007	
Section 10 (1)	\$1,100
Section 13 (1)	\$1,100
Section 13 (2)	\$1,100