



New South Wales

Biofuels Regulation 2016

under the

Biofuels Act 2007

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Biofuels Act 2007*.

VICTOR DOMINELLO, MP
Minister for Innovation and Better Regulation

Explanatory note

The object of this Regulation is to replace the *Biofuels Regulation 2007*, which is repealed on 1 September 2016 by section 10 (2) of the *Subordinate Legislation Act 1989*.

The Regulation makes provision for the following:

- (a) the prescription of a biofuel sustainability standard for the purposes of the *Biofuels Act 2007* (***the Act***),
- (b) expanding the definition of primary wholesaler to include fuel wholesalers who engage in blending to produce petrol-ethanol blends or biodiesel-diesel blends,
- (c) record keeping requirements,
- (d) action that constitutes the taking of reasonable steps to comply with the Act's minimum biofuel requirements,
- (e) preventing the publication of certain information in the course of compliance reporting by the Minister,
- (f) circumstances that justify exemption from compliance with the Act's minimum biofuel requirements,
- (g) the registration of volume fuel sellers,
- (h) applications for exemptions from minimum biofuel requirements,
- (i) offences that may be dealt with by penalty notice.

This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely matters of a machinery nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

This Regulation is made under the *Biofuels Act 2007*, including sections 3, 4, 10, 12, 14, 15, 29 and 30 (the general regulation-making power).

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Biofuels Regulation 2016

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Biofuels Act 2007

1 Name of Regulation

This Regulation is the *Biofuels Regulation 2016*.

2 Commencement

This Regulation commences on 1 September 2016 and is required to be published on the NSW legislation website.

Note. This Regulation replaces the *Biofuels Regulation 2007*, which is repealed on 1 September 2016 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definition

- (1) In this Regulation:

the Act means the *Biofuels Act 2007*.

Note. The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

- (2) Notes included in this Regulation do not form part of this Regulation.

4 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.

5 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.

6 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.

7 Retention period for records

Records kept by a volume fuel seller for the purposes of section 12 of the Act in respect of petrol and diesel fuel sold during any relevant period must be retained for not less than 7 years after the end of the relevant period.

8 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,
- (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,
- (f) the taking of all reasonable action (on a continuing basis) to ensure that all E10 sold by the volume fuel seller contains at least 9% ethanol.

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).

9 Certain information not to be published

Information must not be published under section 14 of the Act if:

- (a) the information will reveal or is capable of revealing the total volume of petrol, ethanol, diesel fuel or biodiesel sold by a volume fuel seller during any period, or
- (b) the Minister is of the opinion that the information is otherwise commercially sensitive.

10 Grounds for exemption

Each of the following circumstances is prescribed for the purposes of section 15 of the Act:

- (a) compliance may result in a risk to public health or safety,
- (b) other extraordinary circumstances demonstrated by the person.

11 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: 100 penalty units.
- (2) A person may make an application to the Secretary to be registered as a volume fuel seller.
- (3) An application for registration must be in the form approved by the Secretary.
- (4) The Secretary 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 Secretary may from time to time notify in writing to the holder of the registration.
- (6) A person must not contravene a condition of registration.
Maximum penalty: 100 penalty units.
- (7) The Secretary may from time to time vary or revoke any condition of registration by notice in writing served on the holder of the registration.
- (8) Registration as a volume fuel seller remains in force until it is surrendered, cancelled or otherwise expires.
- (9) The Secretary may suspend or cancel the registration of a volume fuel seller by notice in writing served on the holder of the registration.
- (10) Registration as a volume fuel seller has no effect during any period of suspension.
- (11) The Secretary is to keep a register of volume fuel sellers, in such manner and form as the Secretary 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 Secretary thinks appropriate.

12 Applications for exemptions

- (1) An application for an exemption under section 15 of the Act:
 - (a) is to be made in the manner and form approved by the Secretary, and
 - (b) is to be accompanied by the documents specified by the Secretary.
- (2) Nothing in this clause prevents the Minister granting an exemption in the absence of an application.

13 Penalty notices

For the purposes of section 29 of the Act:

- (a) each offence arising under a provision specified in Column 1 of Schedule 1 is prescribed as a penalty notice offence, and

- (b) the prescribed penalty for such an offence is the amount specified in relation to the offence in Column 2 of Schedule 1.

14 Transitional provision for registration as volume fuel seller

A person who was registered as a volume fuel seller under the *Biofuels Regulation 2007* immediately before the commencement of this Regulation will be taken to have been registered as a volume fuel seller under clause 11.

Schedule 1 Penalty notice offences

(Clause 13)

Column 1	Column 2
Offence	Penalty
Biofuels Act 2007	
Section 10 (1)	\$5,500
Section 13 (1)	\$5,500
Section 13 (2)	\$5,500
Biofuels Regulation 2016	
Clause 11 (1)	\$1,100
Clause 11 (6)	\$1,100
