



New South Wales

Biofuels Regulation (No 2) 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

This Regulation substitutes the current regulations under the *Biofuels Act 2007* (*the Act*) in order to support the amendments to the Act made by Schedule 2 of the *Biofuels Amendment Act 2016*.

The objects of this Regulation are:

- (a) to provide for the threshold for application of the Act as amended to retailers (see the definition of **volume fuel service station** in section 3 (1) of the Act), and
- (b) to provide for the manner in which petrol-ethanol blend must be made available for retail sale for the purposes of the new minimum biofuel requirement in section 8 of the Act, and
- (c) to provide for grounds on which the defendant may prove that it is not economically viable to comply with the new minimum biofuel requirement (see section 9A (2) (c) of the Act), and
- (d) to provide for the maximum period of an exemption that allows a volume fuel retailer time to take steps to comply with a minimum biofuel requirement (see section 9B (5A) (b) of the Act), and
- (e) to provide for details relating to the availability of petrol-ethanol blend as compared to regular unleaded petrol to be included in returns under section 11 of the Act to support the additional minimum biofuel requirement, and
- (f) to provide for the form of applications for registration or exemption under the Act as amended, and
- (g) to update the reference to the biofuel sustainability standard that must be met by ethanol and biodiesel fuel, and
- (h) to update the penalty notice offences, and
- (i) to remake provisions of the current regulations relating to the reasonable steps defence for the existing minimum biofuel requirements, the records to be included in sales records under section 12 of the Act and the retention period for such records.

This Regulation is made under the *Biofuels Act 2007*, including sections 3, 8, 9A, 9B, 11, 12, 29 and 30 (the general regulation-making power).

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1 Name of Regulation

This Regulation is the *Biofuels Regulation (No 2) 2016*.

2 Commencement

This Regulation commences on the day on which Schedule 2 [1] of the *Biofuels Amendment Act 2016* commences and is required to be published on the NSW legislation website.

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 Applications

An application under the Act must be:

- (a) made in the manner and form approved by the Secretary, and
- (b) accompanied by the documents specified by the Secretary.

5 Biofuel sustainability standard (section 3 of Act)

(1) Each of the following is a standard prescribed for the definition of **biofuel sustainability standard** in section 3 (1) of the Act:

- (a) *RSB Principles & Criteria for Sustainable Biofuel Production (Version 2.1)*, published by the Roundtable on Sustainable Biomaterials in March 2011,

Note. The standard is available at:

<http://rsb.org/pdfs/standards/11-03-08%20RSB%20PCs%20Version%202.1.pdf>.

- (b) ISO 13065:2015 *Sustainability criteria for bioenergy*.

Note. The standard is available at:

http://www.iso.org/iso/catalogue_detail?csnumber=52528.

(2) Until 1 January 2018, the standard that was, immediately before the commencement of this clause, the standard prescribed for the definition of **biofuel sustainability standard** in section 3 (1) of the Act continues to be such a standard for ethanol or biodiesel sold at a service station of a volume fuel retailer who was a volume fuel seller under the Act as then in force.

6 Volume fuel service station (section 3 of Act)

For the purposes of paragraph (b) of the definition of *volume fuel service station* in section 3 (1) of the Act, the threshold is met if the total volume of petrol and diesel fuel sold by retail for the fuelling of motor vehicles at the service station (calculated as set out in section 9 of the Act) during the last 2 immediately preceding relevant periods exceeds, in each of those periods, 900,000 litres.

7 Primary wholesaler

Pursuant to section 4 (2) of the Act, each of the following is a class of fuel wholesalers included in the definition of *primary wholesaler*:

- (a) a person who engages in the blending of ethanol with petrol (whether or not in New South Wales) to produce petrol-ethanol blend and who is engaged in the business of selling the blend for resale,
- (b) a person who engages in the blending of biodiesel with diesel fuel (whether or not in New South Wales) to produce biodiesel blend and who is engaged in the business of selling the blend for resale.

8 Availability of petrol-ethanol blend for retail sale (section 8 of Act)

For the purposes of section 8 of the Act, petrol-ethanol blend must be available for sale by retail for the fuelling of motor vehicles in a manner that makes it as accessible to a customer attending the service station for the fuelling of a motor vehicle as any other type of petrol available to a customer for that purpose.

9 Defence for failure to comply with minimum biofuel requirements (section 9A of Act)

- (1) For the defence under section 9A (2) (a) of the Act for a prosecution for failure to comply with a minimum biofuel requirement imposed by section 6 of the Act, all of the following steps must be taken by the volume fuel retailer:
 - (a) the taking of all reasonable action to upgrade the volume fuel retailer's infrastructure to enable it to distribute sufficient petrol-ethanol blend to ensure compliance with section 6 of the Act,
 - (b) the taking of all reasonable action to ensure the availability of facilities for the sale of petrol-ethanol blend at those service stations at which the business of selling petrol is controlled by the volume fuel retailer or at which the person who conducts that business leases or subleases the premises from the volume fuel retailer,
 - (c) 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,
 - (d) the taking of all reasonable action (on a continuing basis) to market petrol-ethanol blend to ensure compliance with section 6 of the Act, including, without limitation, by ensuring that, at each service station at which the business of selling petrol is controlled by the volume fuel retailer, or at which the person who conducts that business leases or subleases the premises from the volume fuel retailer, and at which E10 is sold by retail, the price of E10 is conspicuously displayed on a sign alongside the price of other fuels,
 - (e) the taking of all reasonable action (on a continuing basis) to ensure that all E10 sold by the volume fuel retailer contains at least 9% ethanol.
- (2) For the defence under section 9A (2) (a) of the Act for a prosecution for failure to comply with a minimum biofuel requirement imposed by section 7 of the Act, all of the following steps must be taken by the volume fuel retailer:

- (a) the taking of all reasonable action to upgrade the volume fuel retailer's infrastructure to enable it to distribute sufficient biodiesel blend to ensure compliance with section 7 of the Act,
 - (b) the taking of all reasonable action to ensure the availability of facilities for the sale of biodiesel blend at those service stations at which the business of selling diesel fuel is controlled by the volume fuel retailer or at which the person who conducts that business leases or subleases the premises from the volume fuel retailer,
 - (c) 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,
 - (d) the taking of all reasonable action (on a continuing basis) to market biodiesel blend to ensure compliance with section 7 of the Act.
- (3) For the defence under section 9A (2) (c) (iii) of the Act for a prosecution for failure to comply with a minimum biofuel requirement imposed by section 8 of the Act, each of the following is a ground on which the defendant may prove that, at the time of the alleged offence, it was not economically viable for the defendant to comply with the requirement in respect of a service station:
- (a) the defendant had not, despite the defendant's best efforts, been able to secure finance to install or upgrade infrastructure at the service station as necessary to meet the requirement,
 - (b) the capital costs of installing or upgrading infrastructure at the service station or, if the service station is in a remote or regional area, the recurrent costs of transporting petrol-ethanol blend to the service station, as necessary to meet the requirement (or a combination of those costs) were such that it was not economically viable to supply petrol-ethanol blend at the service station, taking into account the price that would have had to be charged for the petrol-ethanol blend to recover the costs.

10 Exemption period for taking steps to comply (section 9B of Act)

The period prescribed for section 9B (5A) (b) is 2 years.

11 Returns (section 11 of Act)

- (1) For the purposes of section 11 (1) of the Act:
- (a) a primary wholesaler and a volume fuel retailer must provide a return to the Secretary within 1 month after the end of each relevant period, and
 - (b) if the Secretary requires an operator of a service station who is not a volume fuel retailer to provide a return for a specified relevant period, the operator must provide the return to the Secretary within 1 month after the end of the specified relevant period, and
 - (c) a return must be in the form notified by the Secretary to primary wholesalers, volume fuel retailers or operators of service stations who are not volume fuel retailers (as the case requires).
- (2) For the purposes of section 11 (2) (e) of the Act, a return of a volume fuel retailer must specify the following information for sales of petrol during the relevant period:
- (a) the number of the retailer's service stations at which petrol-ethanol blend is available, how many of those service stations are volume fuel service stations and how many bowsers and nozzles are available for the delivery of petrol-ethanol blend at each of those service stations,
 - (b) the number of the retailer's service stations at which regular unleaded petrol is available, how many of those service stations are volume fuel service stations

and how many bowsers and nozzles are available for the delivery of regular unleaded petrol at each of those service stations.

12 Records (section 12 of Act)

- (1) For the purposes of section 12 (2) of the Act, the records must include a record of each sale of petrol (including petrol-ethanol blend) or diesel fuel (including biodiesel blend) by the person showing:
 - (a) the volume of petrol or 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) For the purposes of section 12 (3) of the Act:
 - (a) the records may be kept in the form of copies of invoices or other records of sale, and
 - (b) records of petrol or diesel fuel sold during any relevant period must be retained for not less than 7 years after the end of the relevant period.

13 Penalty notice offences and penalties (section 29 of Act)

For the purposes of section 29 of the Act:

- (a) each offence created by a provision specified in Column 1 of Schedule 1 is an offence for which a penalty notice may be served, and
- (b) the penalty prescribed for each such offence is the amount specified opposite the provision in Column 2 of the Schedule.

14 Repeal

The *Biofuels Regulation 2016* is repealed.

Schedule 1 Penalty notice offences and penalties

(Clause 13)

Column 1	Column 2
Provision	Penalty
Offences under the Act	
Section 9A (1)	\$5,500
Section 9B (3A)	\$5,500
Section 13 (1A)	\$1,100
Section 13 (1)	\$5,500
Section 13 (2)	\$5,500