

Biofuel (Ethanol Content) Regulation 2007

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

Minister for Regional Development

Explanatory note

The object of this Regulation is to make provision for various matters under the *Biofuel (Ethanol Content) Act 2007* ("**the Act**"), including the following:

- (a) expanding the definition of "**primary wholesaler**" to include petrol wholesalers who engage in the blending of petrol and ethanol to produce petrol-ethanol blend,
- (b) record keeping requirements,
- (c) action that constitutes the taking of reasonable steps to comply with the Act's minimum 2% ethanol requirement,
- (d) preventing the publication of certain information in the course of compliance reporting by the Minister,
- (e) circumstances that justify exemption from compliance with the Act's minimum 2% ethanol requirement,
- (f) offences that may be dealt with by penalty notice.

This Regulation is made under the *Biofuel (Ethanol Content) Act 2007*, including the various provisions referred to in the Regulation and section 26 (the general regulation-making power).

1 Name of Regulation

This Regulation is the *Biofuel (Ethanol Content) Regulation 2007*.

2 Commencement

This Regulation commences on 1 October 2007.

3 Definition

- (1) In this Regulation: "**the Act**" means the *Biofuel (Ethanol Content) Act 2007*.
- (2) Notes included in this Regulation do not form part of this Regulation.

4 Primary wholesalers

A petrol 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.

5 Records to include sales records

- (1) Records kept by a primary wholesaler for the purposes of section 8 of the Act are to include a record in respect of each sale of petrol (including petrol-ethanol blend) by the primary wholesaler showing in respect of each sale:
 - (a) the volume of petrol sold, and
 - (b) whether the petrol sold was or was not petrol-ethanol blend, and
 - (c) in the case of a sale of petrol-ethanol blend, the amount of ethanol in the petrol-ethanol blend.
- (2) Records required by this clause may be kept in the form of copies of invoices or other records of sale issued by the primary wholesaler.

6 Retention period for records

Records kept by a primary wholesaler for the purposes of section 8 of the Act in respect of petrol

sold during any relevant period must be retained for not less than 7 years after the end of the relevant period.

7 Reasonable steps for compliance with 2% ethanol requirement

The taking of all the following actions by a primary wholesaler constitutes the taking of reasonable steps to comply with section 6 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 taking of all reasonable action to upgrade the primary wholesaler's infrastructure to enable it to distribute sufficient petrol-ethanol blend to ensure compliance with section 6 of the Act,
- (c) the taking of all reasonable action to ensure the availability of facilities for the sale of petrol-ethanol blend at those petrol stations at which the business of selling petrol is owned or otherwise controlled by the primary wholesaler or at which the person who conducts that business leases or subleases the premises from the primary wholesaler,
- (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.

Section 9 (4) of the Act provides that the regulations do not prevent a primary wholesaler from proving that other actions taken by the primary wholesaler constitute the taking of reasonable steps to comply with section 6 of the Act.

8 Certain information not to be published

Information must not be published under section 11 (Compliance reporting by Minister) of the Act if:

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

9 Grounds for exemption

Each of the following circumstances is prescribed for the purposes of section 12 of the Act as a circumstance that justifies the exemption of a primary wholesaler from compliance with section 6 of the Act:

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

10 Penalty notices

For the purposes of section 25 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.

Schedule 1 Penalty notice offences

(Clause 10)

Column 1	Column 2
Offence	Penalty
	Biofuel (Ethanol Content) Act

	2007
Section 9 (1)	\$1,100
Section 10 (1)	\$1,100
Section 10 (2)	\$1,100

Historical notes

The following abbreviations are used in the Historical notes:

Am	amended	No	number	Schs	Schedules
Cl	clause	p	page	Sec	section
ClI	clauses	pp	pages	Secs	sections
Div	Division	Reg	Regulation	Subdiv	Subdivision
Divs	Divisions	Regs	Regulations	Subdivs	Subdivisions
GG	Government Gazette	Rep	repealed	Subst	substituted
Ins	inserted	Sch	Schedule		

Table of amending instruments *Biofuel (Ethanol Content) Regulation 2007 (492)*. GG No 132 of 28.9.2007, p 7326. Date of commencement, 1.10.2007, cl 2.