

Liquid Fuel Supply Regulation 2016

Explanatory notes for SL 2016 No. 203

made under the

Liquid Fuel Supply Act 1984

General Outline

Short title

Liquid Fuel Supply Regulation 2016.

Authorising law

Sections 35A and 57(1)(c) and Schedule 1 of the *Liquid Fuel Supply Act 1984*.

Policy objectives and the reasons for them

The *Liquid Fuel Supply (Ethanol and Other Biofuels Mandate) Amendment Act 2015* (the Amendment Act) introduced a 3 percent biobased petrol mandate, and a 0.5 percent biobased diesel mandate (the “biofuels mandate”). The biofuels mandate will commence on 1 January 2017.

Sections 35B and 35C of the Amendment Act place minimum requirements on certain fuel retailers and wholesalers for the sale of sustainable biobased petrol and sustainable biobased diesel, respectively (the sustainable biofuel requirement). Section 5 of the Amendment Act defines *sustainable biobased petrol* and *sustainable biobased diesel* by reference to sustainability criteria prescribed by regulation.

Importantly, fuel sellers and wholesalers who are liable under the mandate will be required to demonstrate that the biofuel component of the fuel being sold has been produced in compliance with the sustainability criteria as specified in this regulation.

Section 35A provides that the biofuels mandate will only apply to fuel retailers who:

- own or operate 10 or more standard service stations, or
- sell more than a threshold amount of petrol fuel in a calendar quarter at any one of their service stations.

Under section 35A(5), the default threshold amount is 250,000 litres. However, this can be varied by regulation.

The overarching objectives of the *Liquid Fuel Supply Regulation 2016* (the Regulation) are to prescribe sustainability criteria for biobased petrol and biobased diesel (biofuels) sold under the *Liquid Fuel Supply Act 1984* and to increase the threshold amount of petrol a fuel retailer with 9 or fewer service stations must sell at any one of their service stations before the biofuels mandate applies.

Sustainability criteria

The policy objectives of the Regulation are to prescribe sustainability criteria that:

- define what sustainability means for Queensland's biofuels industry;
- set environmental performance standards for the biofuels production process; and
- reduce the risk of unintended environmental impacts due to increased biofuel production under the biofuels mandate.

The policy behind the sustainability criteria themselves is based on addressing environmental risks that may be posed by increased biofuel production, including risks to:

- biodiversity and, ecosystems and areas of high conservation value;
- surface and groundwater resources;
- soil quality and soil degradation; and
- the water quality of the Great Barrier Reef due to increased nutrient and sediment runoff.

Threshold amount

The policy objective of increasing the threshold amount of petrol that must be sold by a fuel retailer with 9 or fewer service stations at any one of their service stations before the biofuels mandate applies, is to support small independent service stations.

The current default threshold amount in s35A of the Amendment Act would impose an unnecessary regulatory burden on fuel retailers with lower sales volumes.

At the time the amending Act was passed, there was insufficient industry data available to Government to set a threshold amount. Data received since reporting requirements in the Amendment Act commenced indicates that for a threshold of 250,000 litres per quarter, approximately 1,000 retail fuel sites in Queensland are captured by the mandate. This represents approximately 97 percent of retail petrol sales.

This places an unnecessary level of coverage in the context of the mandate implementation burden for the fuel industry. Increasing the threshold to 500,000 litres per calendar quarter will reduce the number of retail sites which need to comply with the mandate by around 100 sites without significantly impacting the volume of Regular Unleaded Petrol (RULP) and RULP blends (including ethanol blended petrol) effected by the mandate.

Increasing the threshold will significantly reduce the burden on a number of small independent service stations while having a minor impact on the overall sales volumes of biofuel.

Achievement of policy objectives

The objectives are achieved by:

- requiring biofuels sold under the mandate to demonstrate a net greenhouse gas benefit;
- requiring biofuels sold under the mandate to be produced in compliance with a broader environmental standard specific to the relevant feedstock (unless the fuel is produced from a waste feedstock);
- inserting transitional arrangements to provide existing facilities with a reasonable timeframe for obtaining accreditation or certification under the feedstock specific standards;
- prescribing sustainability criteria that address the most immediate environmental risks posed by increased biofuel production in Queensland; and
- prescribing 500,000 litres as the threshold amount of petrol fuel to be sold at a standard service station owned or operated by a fuel retailer with 9 or fewer standard service stations before the biofuels mandate applies.

Greenhouse gas benefit

A key sustainability criterion is that all biofuels sold under the mandate must deliver a net greenhouse gas benefit compared to regular fuel. This criterion is in keeping with the stated policy objective of the Amendment Act to 'reduce greenhouse gas emissions from motor vehicles'. This criterion is therefore key to maintaining consistency with the policy objectives of the Amendment Act.

The greenhouse gas criterion will be assessed by conducting a lifecycle assessment prepared by a suitably qualified person in accordance with the methodology prescribed in the ISO 14040 and 14044 standards. Alternatively, a lifecycle assessment prepared under the requirements of the Roundtable for Sustainable Biomaterials will be accepted where an entity holds a current certification against that standard.

The intent is that biobased petrol or biobased diesel can be accepted as complying with the greenhouse gas criterion if it can be shown that the biofuel falls within an appropriately prepared lifecycle assessment which demonstrates that the fuel meets the greenhouse gas criterion. This includes a general lifecycle assessment that has been commissioned by the chief executive (EHP) as well as a lifecycle assessment that has been commissioned in respect of a specific supply chain.

Feedstock specific requirements

The second limb of the sustainability criteria is to require compliance with a broader environmental standard that is specific to feedstock from which the biofuel has been produced.

The feedstock specific requirements allow the sustainability criteria to be tailored to environmental risks that may be proposed by specific feedstocks.

Palm oil

The use of products from palm oil poses specific environmental risks. The Roundtable on Sustainable Production of Palm Oil is an internationally recognised standard and associated mechanisms for verification that has been specifically developed to address

the key risks associated with the production of palm oil. The intent is that all biobased petrol and biobased diesel that has palm oil as a component feedstock should be captured by this requirement.

Waste

The policy intent is to encourage the production of biofuels from legally obtained waste streams. Where the biofuel is exclusively produced from waste, only the greenhouse gas criterion applies and must be satisfied.

Waste is intended to have the same meaning as is provided in section 13 of the *Environmental Protection Act 1994*.

Biobased petrol produced from sugarcane feedstock

In Queensland, sugarcane (or its by-product, molasses) is a significant feedstock for biobased petrol production. The majority of Queensland's sugarcane production occurs in Great Barrier Reef catchments. The most immediate environmental risk posed by increased sugarcane production is the risk to the water quality of the Great Barrier Reef due to increased nutrient and sediment runoff.

The intent is to require biobased petrol to be produced from sugarcane that has been produced on farms accredited under the Smartcane Best Management Practice program (Cane BMP). The Cane BMP has been specifically designed to address these risks to water quality in the Great Barrier Reef.

Biobased petrol and biobased diesel produced from other feedstock

The intent is that the production of biobased petrol and biobased diesel from any other source (other than a waste stream) will be subject, at either the facility or the supply chain level, to a certification under a recognised international standard that sets sustainability requirements for the production of biomaterials.

The Roundtable for Sustainable Biomaterials (RSB) and the International Sustainability and Carbon Certification system (ISCC) have been recognised as providing robust benchmarks or standards of environmental performance. Both the RSB and the ISCC include standards, principles and criteria and third party auditing and verification mechanisms.

Transitional arrangements for existing producers

Biobased petrol and biobased diesel produced before 1 January 2017

The intent of this provision is to make it clear that liable fuel retailers and wholesalers are able to count biofuel produced before the mandate commences towards their obligations under the mandate. This provision therefore accounts for any lag time in the supply chain between the time at which feedstock is harvested, biofuel is produced and the time at which biofuel reaches the market.

Biobased petrol produced between 1 January 2017 and 30 June 2018

This transitional arrangement has been inserted for existing producers to provide the established industry with a sufficient period to adjust their practices and obtain full accreditation. The transitional arrangement does not apply to biofuel produced from sugarcane as this is already subject to a separate transitional arrangement.

Biobased petrol produced from sugarcane feedstock between 1 January 2017 and 30 June 2020

The intent is that the prescribed percentage for biobased petrol produced from Cane BMP accredited sugarcane be gradually increased between commencement and 30 June 2020. The gradual increase is to ensure that environmental objectives can be achieved and improved over time, while also enabling sufficient production of eligible biofuels to allow liable fuel sellers to meet their sales obligations under the mandate.

Approval of equivalent standards

The intent is to provide industry with sufficient flexibility to put forward alternative standards that achieve equivalent environmental outcomes to the prescribed standard. For example, an alternative standard may deliver equivalent environmental outcomes whilst also delivering additional benefits, such as increased market penetration.

Consistency with policy objectives of authorising law

The regulation is consistent with the objectives of the *Liquid Fuel Supply Act 1984* and provides for sustainability criteria for biobased petrol and biobased diesel (biofuels) as required by its authorising Act.

Inconsistency with policy objectives of other legislation

The regulation is consistent with the policy objectives of other legislation in Queensland and in other Australian jurisdictions.

Aside from New South Wales, Queensland is the only jurisdiction that currently has a legislated biofuels mandate.

The sustainability criteria prescribed in this Regulation are broadly consistent with the sustainability requirements for biofuels under the *Biofuels Regulation 2016* (NSW).

Alternative ways of achieving policy objectives

There are no alternative ways that would achieve the policy objectives other than the Regulation.

Benefits and costs of implementation

Sustainability criteria

The sustainability criteria are essential to implementing Queensland's biofuels mandate under the *Liquid Fuel Supply Act 2016*. In the absence of sustainability criteria, liable fuel sellers will not be able to satisfy their obligations under the biofuels mandate. It will be

necessary to monitor and audit compliance with the sustainability criteria, with the result that some compliance costs are expected to be incurred. Given that the standards provide for third party accreditation, the compliance costs are expected to be significantly less than would be the case if the department was providing certification. It is also expected that industry will incur costs in obtaining certification or accreditation under the standards. However, this is assessed to be proportionate to the need to address environmental risks.

Threshold amount

Setting the threshold amount under section 35A(3) at 500,000 litres per calendar quarter will reduce the number of small independent retail sellers who need to comply with the mandate while only having a small impact on the volume of Regular Unleaded Petrol (RULP) and RULP blends (including ethanol blended petrol) affected by the mandate.

Increasing the threshold from 250,000 litres per calendar quarter to 500,000 litres per calendar quarter will reduce the number of captured sites by around 100. For retail sites that do not already sell a biobased petrol, the cost of compliance could range from tens of thousands of dollars to a million dollars per site. Costs are dependent on site specific issues, hence cost estimates cannot be provided with a higher degree of confidence in the absence of a detailed assessment of each site.

Increasing the threshold to 500,000 litres per calendar quarter will also reduce compliance costs on small fuel sellers and for government, while only having a small impact on overall policy outcomes, with fuel sales affected by the mandate reducing from 97 percent to 93 percent.

Consistency with fundamental legislative principles

The Regulation has been examined for compliance with the fundamental legislative principles outlined in section 4 of the *Legislative Standards Act 1992*. Other than those potential issues identified below, it is considered to have sufficient regard to the rights and liberties of individuals and the institution of Parliament.

Legislation should have sufficient regard to the institution of Parliament by allowing the delegation of legislative power only in appropriate cases and to appropriate persons – *Legislative Standards Act 1992, section 4(4)(a)*

The incorporation of external documents made by entities outside the framework of government delegates legislative power to the outside entity. This breach is justified as the documents being incorporated, the sustainability standards, are fixed in time so the sustainability criteria will not be altered by any changes that may be made by external entities from time to time, unless the regulation is amended to account for this.

Legislation should have sufficient regard to the rights and liberties of individuals – *Legislative Standards Act 1992, section 4(3)*

The incorporation of external documents also raises the question of whether the documents are reasonably accessible to the public and free of charge. The documents relating to standards prescribed in schedule 1 are reasonably accessible to the public and, with the exception of the ISO 14044 and ISO 14040 standards, are free of charge.

Incorporation of the ISO standards, even though they are not free of charge, is considered justified. A lifecycle assessment under these standards has already been commissioned by the department and the cost of obtaining the standards is not considered unreasonably burdensome. Further, this cost will likely be incorporated into the cost of commissioning a lifecycle assessment from an independent, and appropriately qualified, third party. Further, should the chief executive approve an equivalent standard under the regulation in the future, this may pose an issue if that standard is not reasonably accessible to the public and free of charge.

Consultation

Sustainability criteria

The sustainability criteria in this regulation have been developed in consultation with key government and non-government stakeholders, including producers of sugarcane, grains, mill operators, biofuel producers, fuel wholesalers and retailers and conservation groups. A series of group and one-on-one meetings have occurred since November 2015.

Threshold amount

The possibility of increasing the threshold amount once more data was available was discussed at the time the Amendment Act was being debated in Parliament. Following receipt of the relevant data, the Department of Energy and Water Supply consulted peak bodies on the option of increasing the threshold to 500,000 litres per calendar quarter.

Stakeholders were generally supportive of increasing the threshold, although one of the stakeholders considered that an even greater volume would be reasonable.

Individual Preliminary Impact Assessments for the sustainability criteria and threshold amount were considered by the Office of Best Practice Regulation, who determined that the level of assessment was appropriate for the proposed regulation.