

Biofuels Exemption Guideline (DNRME)

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1 Background

1.1 Purpose

This guideline is designed to assist fuel sellers to understand how the Minister (or her/his delegate) may apply the exemption provisions of the Act when making exemption decisions; however it neither limits nor expands the range of circumstances which may justify the grant of an exemption under section 35G of the Act. This guideline provides information on the approach that will *generally* be taken in relation to exemption applications but each application for an exemption will be considered individually on its own facts and circumstances.

1.2 Introduction

From 1 January 2017, the *Liquid Fuel Supply Act 1984* (the Act) will require fuel sellers to sell a minimum amount of sustainable biofuel (biobased petrol and/or biobased diesel).

The Minister for Natural Resources, Mines and Energy (or her/his delegate pursuant to section 7 of the Act) can issue exemptions to fuel sellers who apply for an exemption and meet the criteria.

1.3 Not all petrol retailers need to sell the minimum amount of biobased petrol

Liable petrol retailers are those who own or operate 10 or more standard service stations or sell more than 500,000 litres of petrol fuel in any calendar quarter at any one of the standard service stations the fuel retailer owns or operates. Note that section 5 defines a standard service station. Service stations that sell low-aromatic unleaded fuel are not standard petrol stations and therefore do not need to sell a minimum amount of biobased petrol.

Example scenario

In a calendar quarter, a petrol retailer sells 280,000 litres of regular unleaded petrol (RULP), 140,000 litres of E10 and 180,000 litres of premium unleaded petrol (PULP) from the single service station that s/he owns and operates. Total sales = 600,000 litres for the quarter, which means this petrol retailer is above the threshold and needs to sell the minimum amount of biobased petrol.

The minimum amount of biobased petrol the petrol retailer needs to sell is 3% of regular unleaded plus regular unleaded blends (3% of 420,000 litres). In practice, this means that 126,000 litres of E10 needs to be sold in order to meet the mandate. This fuel seller has sold more than the minimum amount so complies with the mandate.

1.4 Compliance options

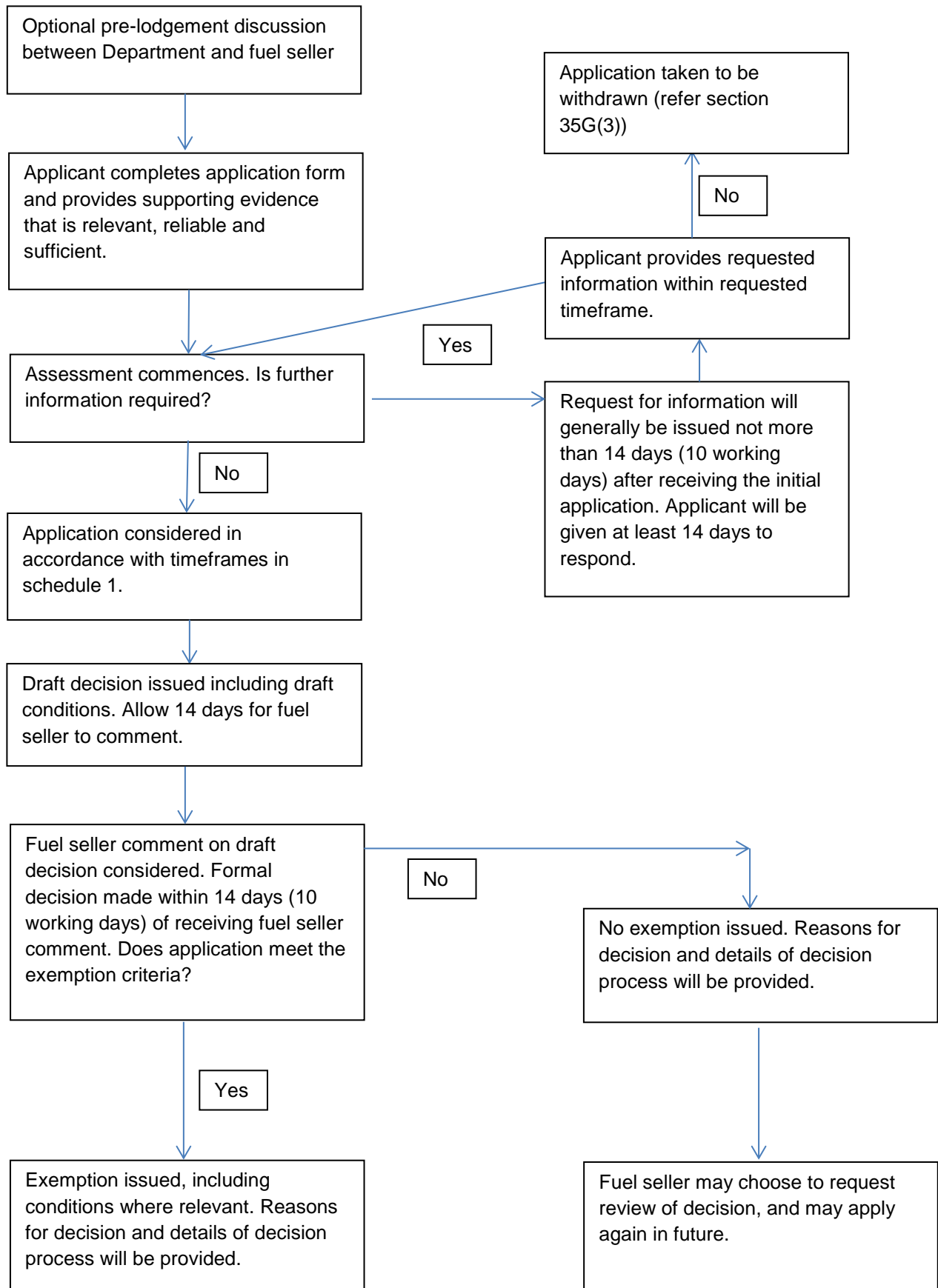
Sections 35B and 35C of the Act require fuel sellers to sell a minimum amount (%) of sustainable biobased fuel. Broadly, to ensure they do not breach s35B or s35C of the Act, a liable fuel seller needs to do one of the following:

- 1) Sell the minimum amount of biofuel

- 2) Fail to sell the minimum amount but take all reasonable steps to prevent the offence (section 35D of the Act details the defences for s35B and S35C)
- 3) Hold an exemption.

Sellers will need to analyse their own circumstances and make a decision about whether or not to apply for an exemption, however a fuel seller should not necessarily expect that an exemption is the first and most appropriate option for achieving compliance with the mandate.

1.5 General approach to processing applications



1.6 Types of exemptions

Under the Act, exemptions can only be issued if an application is submitted using the Approved Form and the fuel seller's circumstances fall into at least one of the following categories:

Supply exemption—The fuel seller cannot get enough sustainable biofuel or sustainable biofuel blend to comply with the requirement because of a shortage in the supply of the biofuel or blend (Act, s 35G(1)(a)).

Other extraordinary circumstances exemption—There are other extraordinary circumstances justifying the grant of the exemption (Act, section 35G(1)(c)).

Threat to business viability exemption—Complying with the requirement would threaten the viability of the fuel seller's business (Act, s 35G(1)(b)).

Each of these categories is discussed in more detail below in parts 2 to 4 of this Guideline.

The Minister or her/his delegate may consult with a person or entity with relevant expertise in government and industry, arrange for an audit of the fuel seller's business before deciding whether or not to grant an exemption, or ask the fuel seller to give further information relevant to the application (refer section 35G(2) of the Act).

An exemption granted by the Minister (or her/his delegate) may contain conditions. It is an offence not to comply with conditions of an exemption (Act, section 35H).

Note: Exemptions are issued at the fuel seller level, not at the fuel facility level. Nevertheless, an exemption may contain conditions which only apply to a particular fuel facility (site) or group of fuel facilities owned or operated by the fuel seller.

A fuel seller with multiple fuel facilities may submit an exemption application even if only a small number of sites in the portfolio can demonstrate extraordinary circumstances. The assessment of exemption applications is ultimately at the fuel seller level, not at the site level, but site-specific circumstances will contribute to the overall circumstances of the fuel seller, and are therefore relevant to determining whether the fuel seller's circumstances justify the grant of an exemption.

Example of how exemptions may apply at the fuel seller level

An exemption issued to a fuel seller that owns and operates 10 sites could include conditions for eight sites that mean the sales volumes from those eight sites are included when calculating the minimum amount of biofuel that the fuel seller needs to sell, but that the sales volumes from the remaining two sites are not included when calculating the minimum amount.

Because the exemption is issued to the fuel seller, if an entity or site owner/operator changes (typically if the ABN changes) then the exemption would stay with the entity that the exemption was originally issued to. It is not transferrable, however the new fuel seller would be entitled to apply for an exemption, and if the material circumstances remain the same, it is likely that a similar exemption would be issued to the new fuel seller.

2 Supply exemption—Act, s 35G(1)(a)

2.1 General

The Minister or her/his delegate may grant an application for an exemption if s/he is satisfied that the applicant retailer (in the case of petrol), or in the case of diesel, the applicant wholesaler, cannot obtain sufficient supply of sustainable biobased fuel because of a shortage in the supply of the biofuel or biofuel blend.

2.2 Supply

This category is concerned with the volume of sustainable biofuel or sustainable biofuel blend available for purchase by the fuel seller.

If sufficient supply is available but not through the existing supplier, the applicant would generally be expected to show that all reasonable efforts have been made to seek supply from another source, in order to satisfy the Minister or her/his delegate that the fuel seller cannot get sufficient sustainable biofuel or sustainable biofuel blend. If the fuel seller's supply contracts are exclusive supply contracts, it is recommended the fuel seller provide information to support such a claim. Information could include, for example, a copy of the contract or relevant correspondence.

Fuel sellers entering into supply contracts after the initial publication of this Guideline should take into account the obligations under sections 35B and 35C of the Act and consider the implications of those obligations for new exclusive supply contracts.

2.3 Blending

Blending of biobased fuel is expected to take place at terminals and at other points in the supply chain where reasonable.

Petrol retailers are NOT expected to undertake their own blending of biobased petrol.

It is expected that diesel wholesalers that own or operate a terminal will either source pre-blended product, or unblended biobased diesel which the wholesaler then blends to achieve the appropriate/desired blend. A supply based exemption is likely to be issued for a diesel terminal where BOTH the following apply:

- The fuel seller cannot obtain a sufficient quantity of pre-blended sustainable biobased diesel
- The fuel seller cannot obtain a sufficient quantity of unblended sustainable biobased diesel.

The reason for expecting blending to occur at terminals is that terminals are the most appropriate point in the supply chain for blending of fuels and inclusion of additives.

2.4 Supply - Information to support an exemption application

Applications for exemption based on lack of sufficient supply should be supported by information which is relevant, reliable and sufficient to support an informed decision.

Generally, it is expected that this may include information about each of the supply options explored by the fuel seller (for example, the name of the suppliers approached, the dates they were

approached and their responses) and an explanation of why each of those options would not result in the fuel seller obtaining a sufficient supply of sustainable biofuel.

2.5 Supply – possible exemption conditions

Supply exemptions are likely to have some conditions applied. One of the most likely conditions is that the fuel seller must report any stated trigger events. Stated trigger events could include, for example, the commencement of a new biobased fuel supply option.

3 ‘Other extraordinary circumstances’ exemption

3.1 General

The Minister or her/his delegate may grant an application for an exemption if s/he is satisfied that the applicant fuel seller is experiencing ‘other extraordinary circumstances justifying the grant of the exemption’ (section 35G(1)(c)).

Not all extraordinary circumstances are foreseeable. For this reason, the guidance in relation to ‘other extraordinary circumstances’ is presented in terms of guiding principles, supported by some specific examples. It is not, and is not intended to be, a complete statement of all possible types of extraordinary circumstances.

3.2 Principles for ‘other extraordinary circumstances’ applications

‘Other extraordinary circumstances’ applications may be approved if they align with AT LEAST ONE of the following principles:

- 1) The circumstances giving rise to the application are unusual and make it unusually difficult for the fuel seller to comply with the requirement to sell a minimum amount of biofuel.
- 2) Compliance with the mandate is not reasonable, given that an alternative (unusual) compliance approach is available which achieves the same level of biobased fuel sales as required by section 35B or 35C.
- 3) The fuel seller has taken all reasonable steps but has not been able to comply with the requirement to sell a minimum amount of biofuel.

3.3 ‘Other extraordinary circumstances’ – unusual circumstances

This exemption category is for when circumstances are unusual and make it unusually difficult for the fuel seller to comply with the requirement to sell a minimum amount of biobased fuel. Some examples of these types of circumstances are included in parts 3.3.1 to 3.3.8 below.

3.3.1 Lease terms

Lease terms may provide grounds for an ‘other extraordinary circumstances’ exemption application if the terms of a lease may make it unusually difficult for a fuel seller to comply with the mandate. For example, if a site is approaching end of lease then it may not be reasonable to require conversion to E10. Similarly, the Minister or her/his delegate may be satisfied that an exemption is justified if the

fuel seller's application shows the fuel seller is unlikely to be able to pay for the costs of infrastructure changes during the remaining term of the lease.

Evidence, such as copies of leases, should be provided to support an application for exemption based on lease terms.

Where an 'other extraordinary circumstances' exemption is granted because lease terms make it unusually difficult for a fuel seller to comply with the mandate, the exemption may be granted subject a condition that the exemption will expire on the expiry of the lease and the fuel seller will have to reapply for any further exemption.

Fuel sellers entering into leases after the initial publication of this Guideline should take into account the obligations under sections 35B and 35C of the Act and consider the implications of those obligations for new leases.

3.3.2 Site constraints

A fuel seller may be able to demonstrate 'other extraordinary circumstances' if a site requires additional infrastructure in order to be able to sell biobased fuel, but there are site constraints such as a bona fide engineering or safety reason which makes the essential infrastructure impractical. An example may include where the site would not be able to achieve appropriate separation distances for flammable and combustible liquid storage.

3.3.3 Demand

If customer demand for biofuels at a particular fuel facility or for a particular fuel seller is unusually low and cannot be addressed by efforts to promote sales, this may constitute 'other extraordinary circumstances'.

For example, if a petrol retailer is located at a marina and sells primarily to boat users, the fuel seller may choose to apply for an exemption due to 'other extraordinary circumstances'. There can be issues with using E10 in some boats, which is likely to impact on consumer demand for E10 in a marina setting. As with all exemption applications, evidence which is relevant, reliable and sufficient would be required in order to support an informed exemption decision.

3.3.4 Logistics

Logistical issues associated with fuel transport on unsealed roads in the wet season in the north of Queensland may provide grounds for an 'other extraordinary circumstances' exemption. Because the storage properties of biobased diesel and biobased petrol can be different to their mineral counterparts, exemptions associated with wet season logistics and the need for prolonged storage in a humid environment may be issued if supported by evidence that is relevant, reliable and sufficient to support an informed exemption decision.

3.3.5 Lead times

Contractor or materials lead times may make compliance difficult for some fuel sellers, particularly in the first few compliance quarters when there may be a significant number of fuel retailers requiring the same service from a limited pool of suitably qualified and experienced contractors.

Fuel sellers will need to ensure that any infrastructure changes are undertaken in a safe manner by suitably qualified and experienced persons, which could lead to some delays in completion of works.

The Queensland Government does not want fuel sellers to commission infrastructure works that may pose unacceptable safety or environmental risks. Fuel sellers who need to undertake

infrastructure changes are encouraged to apply for an exemption if they consider additional time is needed to ensure the works are completed safely and appropriately by qualified contractors. As with all exemption applications, supporting evidence should be relevant, reliable and sufficient to support an informed exemption decision. Supporting evidence may include a declaration from the fuel seller as to why a particular supplier has been chosen (e.g. provide documentation that demonstrate that the chosen contractor has gone through a competitive procurement process and won or, alternatively, that the contractor is the only appropriately qualified contractor servicing the geographical area) along with bona fide declarations from the chosen contractor stating that they have a full schedule (or another legitimate reason for delay) and are unable to complete the work until a specified date.

3.3.6 Unexpected sales

If a service station normally sells less than the threshold amount of petrol and does not sell biobased petrol, but for a single quarter has unexpected sales which put the site above the threshold, this may provide grounds for an 'other extraordinary circumstances' exemption application.

An example which may be determined to meet the definition of 'other extraordinary circumstances' is as follows:

A fuel seller has a sales history of eight quarters or more, and the mean petrol sales (total petrol including PULP) from the eight preceding quarters (24 months) for the service station is equal to or lower than the threshold amount. In addition, only two of the previous four quarters had sales above the threshold.

Unexpected sales exemptions are an example where an exemption may need to be retrospective.

3.3.7 Extraordinary and unreasonable cost of compliance

Where a liable fuel seller does not currently offer a biobased fuel option for sale and needs to do so in order to comply with the mandate, it is possible that the cost of essential infrastructure changes may not be so great as to threaten the viability of the business overall, but nevertheless be extraordinary and unreasonable. In this situation, the fuel seller may be eligible for an exemption on the basis of 'other extraordinary circumstances'.

Where a fuel seller applies for an exemption based on the cost of essential works being extraordinary and unreasonable, this could be measured in number of ways. Two options are outlined below:

- 1) The cost of essential works relative to fuel volumes sold at the site and by the business; or
- 2) The cost of essential works relative to the fuel seller's earnings (Earnings Before Interest, Tax, Depreciation and Amortisation - EBITDA) at the site and for the business.

Below is an example of how this could apply:

Example – Cost of essential works relative to fuel volumes sold

A fuel retailer owns a single site that sells about 4 million litres per annum (total fuel including diesel). The essential works in order to sell E10 have been quoted at \$66,000. The ratio between litres of fuel sold and cost of essential works is about \$16,500 per million litres sold in a year. This is likely to be considered an unreasonable cost of compliance for a site with this sales volume. The fuel seller that owns this site is likely to receive an exemption in relation to these works.

Fuel retailers with lower cost ratios may be *less likely* to receive an exemption. In these circumstances, the fuel seller may need to provide further information before an exemption decision could be made. For example, the fuel seller may choose to include EBITDA data to support the exemption application, since an application containing EBITDA data, sales volumes and quotes for essential works is more likely to contain sufficient information to support an informed exemption decision than an application that only contains sales volumes and quotes for essential works.

An application for an exemption on the grounds that the cost of compliance is extraordinary and unreasonable should be supported by an explanation of options explored in order to be able to sell the minimum amount, details of the preferred path and rationale for the choice of preferred path to comply with the requirement to sell a minimum amount of biobased fuel. Quotations for essential works should also be provided. The fuel seller may also choose to submit EBITDA data for the site and business in order to improve the level of information submitted and thereby reduce the risk that the application does not contain sufficient information to support an informed assessment.

3.3.8 Access to finance

Where a fuel seller submits evidence that the fuel seller cannot obtain sufficient finance to fund works that are essential to achieving mandate compliance, this may provide grounds for an exemption. Generally, the fuel seller should provide details of the finance sought for essential works, supported by evidence from more than one reputable finance provider indicating that the finance application has been rejected.

3.4 Alternative compliance proposal

Where a fuel wholesaler (in particular a terminal) requires new infrastructure in order to sell biobased diesel, there is an expectation that the wholesaler will either install the required infrastructure or achieve an equivalent outcome through another means. If a fuel wholesaler submits an exemption application based on the argument that installing blending infrastructure is unreasonable because an alternative approach could achieve the same outcome more efficiently, the fuel wholesaler may be able to satisfy the Minister or her/his delegate that there are other extraordinary circumstances justifying an exemption. An example of an alternative compliance approach that may be sufficient to justify granting an exemption for 'other extraordinary circumstances' is outlined in the example box below.

Example alternative compliance

- Wholesaler A (a fuel terminal) needs to sell 3 megalitres of biobased diesel in a quarter to meet the mandate, but does not sell any.
- Wholesaler B (another fuel terminal) also needs to sell 3 megalitres of biobased diesel in the same quarter to meet the mandate, but sells 6 megalitres.
- Wholesaler C is a small wholesaler who purchases diesel from Wholesaler A and sells it to a range of bulk users and retailers.
- Wholesaler A purchases the right to claim 3 megalitres of biobased diesel sales from Wholesaler B for sales relating to the same quarter.

The overall mandate outcome is achieved without the need for Wholesaler A to invest in biodiesel blending infrastructure.

Wholesaler B achieves a higher utilisation use of its biodiesel blending infrastructure, as well as an improved return on investment due to it being able to sell the right to claim sales of biobased diesel to Wholesaler A for compliance purposes.

This would be a transitional arrangement only, while the biobased diesel mandate level remains relatively low. If the biobased diesel mandate increases towards 5%, the capacity for diesel wholesalers to sell biobased diesel above and beyond the minimum amount is likely to decrease, unless a renewable diesel option is available which meets the mineral diesel fuel quality standard.

It is not anticipated that the Queensland Government would be party to commercial negotiations between wholesalers in order to achieve this outcome.

All volumes sold by Wholesaler A, including those purchased by Wholesaler C, would be deemed to contain a particular percentage (most likely the minimum amount of half a per cent) biobased diesel. This would also allow Wholesaler C to meet the mandate without actually selling any biobased diesel.

Alternative compliance approaches must be consistent with the biofuels mandate under the Act. For example, an approach that relied on deeming or trading of biobased fuel sales at retail level may not satisfy the Minister or her/his delegate that an exemption is justified, given the potential for such an approach to undermine consumer demand for, or availability of, biobased petrol.

3.5 ‘Other extraordinary circumstance’ – the Minister (or her/his delegate) is satisfied that all reasonable steps are being taken but the fuel seller is unable to sell the minimum amount

A fuel seller who is unable to comply with the requirement to sell a minimum amount of biofuel may be eligible for an exemption if the fuel seller applies under section 35G and is able to satisfy the Minister or her/his delegate that the fuel seller is taking all reasonable steps to comply.

An application for exemption based on all reasonable steps being taken should be supported by information which is relevant, reliable and sufficient to support an informed decision.

In making an exemption decision based on all reasonable steps being taken, the Minister (or her/his delegate) may, consistent with section 35D(2) of the Act, consider the following matters:

- a) efforts the person made to secure enough supply of a sustainable biofuel blend
- b) efforts the person made to promote the sale of a sustainable biofuel blend
- c) any upgrade of infrastructure the person arranged to enable enough sales of a sustainable biofuel blend
- d) facilities the person made available for the sale of a sustainable biofuel blend.

In assessing an application for exemption based on all reasonable steps being taken, the Minister will consider which steps are available to the fuel seller, based on the fuel seller’s specific circumstances.

3.6 Risk assessment

Where relevant to the ‘Other extraordinary circumstances’ exemption application, the fuel seller may choose to submit a risk assessment for essential infrastructure changes. Such a risk assessment may include (for example) risks associated with particular practices (e.g. entering confined spaces) or construction activities (e.g. encountering contaminated soil).

3.7 Other extraordinary circumstances – Information to support an exemption application

Information submitted to support an exemption application should be relevant, reliable and sufficient to support an informed exemption decision. Where the information available to the decision maker is less relevant, less reliable, and/or less sufficient, an exemption is less likely to be issued.

4 Threat to business viability exemption

4.1 General

There are some scenarios where compliance with the requirement to sell a minimum amount of biofuel could threaten the viability of a fuel seller’s business, for example:

- If a fuel seller requires infrastructure upgrades at one or more of their sites in order to sell biobased fuel, and the cost of the infrastructure upgrade could threaten the viability of the business; or

- If selling the minimum amount of biobased fuel could impact the fuel seller's profits (or other key financial metrics) to the point where business viability is threatened.

In cases where an exemption application relates to the cost of essential works in order to sell a biobased fuel option, fuel sellers may find the 'extraordinary and unreasonable cost of compliance' section under 'other extraordinary circumstances' more appropriate than the business viability assessment. Information about 'other extraordinary circumstances' exemption applications is provided earlier in this document.

An exemption application based on threat to business viability would generally be determined based on an analysis of the fuel seller's business with respect to the following parameters:

- Liquidity (ability to meet short-term financial obligations)
- Solvency (ability to meet long-term financial obligations)
- Profitability (ability to generate a profit).

The analysis would consider the financial viability of the business before any changes are made and would also consider a forecast of what the financial viability of the business may be if changes are made in order to comply with the requirement to sell a minimum amount of biobased fuel.

Generally, there are three parts to the assessment of threat to business viability:

- 1) Risk assessment
- 2) Assessment of overall financial standing
- 3) Further analysis.

Any of these assessments may be sufficient to satisfy the Minister or her/his delegate of a threat to the viability of an applicant's business.

4.2 Risk assessment

The fuel seller may choose to submit a risk assessment for infrastructure changes that are essential works. Such a risk assessment may include (for example) risks associated with particular practices (e.g. entering confined spaces) or construction activities (e.g. encountering contaminated soil).

4.3 Assessment of overall financial standing

The assessment of overall financial standing would consider:

- The overall standing before the changes are made in order to comply with the biofuels mandate; and
- A forecast of overall standing once essential works (infrastructure upgrades) or other necessary changes are made such as offering a different range of fuel grades within existing infrastructure in order to comply with the mandate.

4.4 Further analysis

It is expected that many applications for exemption based on a threat to business viability will be determined by a risk assessment and an assessment of overall financial standing. However, there

may be circumstances in which those two types of assessment are not applicable or, if applicable, do not produce clear evidence of a threat to viability. In these cases, further analysis of the application may be undertaken. This may include the steps detailed in section 35G(2) of the Act: a detailed financial audit of the business; consultation with stakeholders; and/or request for further information relevant to the application.

4.5 Threat to business viability - Information to support an exemption application

Exemption applications should provide information which is relevant, reliable and sufficient to support an informed assessment. Fuel sellers should submit the following information to support their application for an exemption based on compliance threatening the viability of the fuel seller's business (as detailed in the Approved Form):

- Explanation of options explored in order to be able to sell the minimum amount, including quotations for essential works.
 - Note: It is acknowledged that quotations can be costly and time consuming for fuel sellers to obtain. The Minister or her/his delegate may consider quotations or cost estimates that have certain conditions or assumptions attached to them, so long as these conditions and assumptions are clearly documented and do not cause the quote/estimate to be insufficiently relevant or reliable to support an informed assessment of the fuel seller's circumstances.
- Details of preferred path and rationale for the choice of preferred path to comply with the requirement to sell a minimum amount of biobased fuel.
- Financial data for the business. This could include for example, data relating to the two previous financial years, including:
 - Revenue
 - Earnings Before Interest, Tax, Depreciation and Amortisation (EBITDA)
 - Earnings Before Interest and Tax (EBIT)
 - Interest expense
 - Interest income
 - Lease expense

The following balance sheet data as at the end of each of the two preceding financial years:

- Cash and cash equivalents
- Short term marketable investments
- Accounts receivable
- Total current liabilities.

A fuel seller may choose to submit less financial data than indicated above, however an exemption application needs to be supported by information that is relevant, reliable and sufficient to support an informed decision by the Minister or her/his delegate. A fuel seller that does not submit sufficient information may receive a request for further information under section 35G(2).

Finance data would ideally be general purpose audited accounts, however management accounts may be acceptable if supported by a statement from a Director or the Chief Executive Officer/Chairperson of the company declaring that to the best of her/his knowledge, the data provided is a true and accurate representation of the fuel seller's financial circumstances.

In considering applications for exemption based on a threat to business viability, the department may also consider fuel sales volumes for the fuel seller. As the department will already hold information about fuel sales volumes, it is not necessary for fuel sellers to include it in their exemption applications unless they consider it appropriate to do so in their particular circumstances.

4.6 Threat to business viability – possible exemptions conditions

The exemption may contain a condition stating that if any material inaccuracy in the data used to make the exemption decision is subsequently identified, the fuel seller would need to notify the Department of Natural Resources, Mines and Energy, and the exemption may be reviewed by the Minister or her/his delegate.

If an exemption is issued to a fuel seller because compliance would threaten the viability of the fuel seller's business, the exemption may contain a condition which states that the fuel seller must report any stated trigger events. If a stated trigger event is reported, the Minister (or delegate) may review the exemption and if the reasons for the grant of the exemption no longer apply (section 35I(1)(a)), may cancel the exemption.

Note: Before cancelling an exemption, the Minister (or delegate) must give the fuel seller an opportunity to make written submission about the proposed cancellation; and consider any written submissions the fuel seller makes.

5 Potential exemption conditions

The Minister (or her/his delegate) has the power to place conditions on exemptions. Conditions applied to exemptions will be relevant, reasonable and necessary given the scope and objectives of the biofuels mandate. The particular conditions applied to each exemption will reflect fuel-seller-specific circumstances. However, some examples of potential conditions that may be placed on exemptions are:

- A confidentiality clause preventing fuel sellers from disclosing certain information about their exemption application/exemption decision
- A requirement that the fuel seller implement a specified program of works (a compliance plan) designed to achieve compliance with the mandate at a future point in time.
- A condition that stipulates an alternative minimum amount which applies to the fuel seller, or particular sites that the fuel seller owns/operates

- Conditions around additional reporting, for example, reporting on trigger events, or progress reporting where there is a condition relating to a program of works which are designed to achieve compliance with the mandate at a future point in time
- A condition specifying that if a stated 'trigger event' occurs the exemption may be reviewed subject to section 35I. Examples of 'trigger events' include:
 - Site refurbishment
 - End/renewal/material change to a site lease
 - Change in the availability of supply of biofuels
 - Entry of a new 'drop in' biofuel into the market which means the exemption is no longer required as infrastructure changes are not necessary
 - Change in business ownership/ownership structure.

6 Information to support exemption applications

As detailed earlier in this document, applications for exemption must be made using the Approved Form available on the Department of Natural Resources, Mines and Energy (DNRME) website at www.dnrme.qld.gov.au.

Assessment of exemption applications will primarily rely on evidence provided by the applicant but may in some circumstances consider relevant information from other sources. Information submitted to support an exemption application should be relevant, reliable and sufficient to support an informed exemption decision.

Essential works are those works which are required in order to comply with the mandate. If a fuel seller chooses to undertake additional works beyond those which are essential for mandate compliance, the cost of these works would not generally be considered relevant to assessing the application.

Example of information that may not be relevant

The petrol retailer is applying for an exemption based on the cost of infrastructure changes not being reasonable. The site will be closed for 3 days to allow the work to be completed. While the site is closed the fuel seller will take the opportunity to repaint the inside of the shop. The repainting will not add any time to the shutdown period. The cost of essential works will include site shutdown costs, and the contractor costs to reconfigure the pipework, but the painting is not essential works and is therefore not relevant to the assessment of the exemption application.

Where the Minister (or her/his delegate) relies on information other than that submitted by the applicant in order to make an exemption decision, the information must be directly relevant to the exemption decision (as with all information that is considered by the decision maker) and the applicant will be given the opportunity to verify or challenge the additional information.

Information submitted by an applicant may be subject to a range of verification processes. This may involve a range of data collection methods including accessing data that is not publicly available, and may include sharing data with other regulatory agencies.

7 Compliance plan

Under section 35G(4) of the Act, the Minister or her/his delegate may grant an exemption on stated conditions. The conditions imposed under section 35G(4) may include conditions requiring a fuel seller to undertake particular steps with a view to ensuring the seller will in future be able to comply with the requirement to sell the minimum amount of biobased fuel.

To enable fuel sellers to have input in developing actions plans for their business, they are invited to submit a draft 'compliance plan' with their exemption application, which identifies the steps the fuel sellers propose to implement to improve their ability to comply with the minimum sales requirement.

Fuel sellers should be aware that the inclusion of a draft compliance plan with an exemption application is not a requirement under the Act and it is not mandatory to submit a compliance plan before an exemption application can be considered. It simply provides an opportunity for fuel sellers to work with the decision-maker to ensure any conditions imposed on an exemption relating to compliance in future are appropriately adapted to the fuel seller's individual circumstances.

It is anticipated that in many cases where a draft compliance plan is submitted together with an exemption application and the exemption is granted, implementation of the compliance plan (as modified during the application process by discussions between the decision-maker and the applicant) may be a condition of the grant of the exemption.

8 Timeframes

8.1 Exemption duration

The minimum period for an exemption is one calendar quarter. The maximum period for an exemption is not limited by the Act, and will be considered on a case-by-case basis. Where an exemption is issued based on a set of circumstances which are unlikely to change for a number of years, an exemption may be issued for a commensurate period of time.

8.2 Application timing

DNRME requests that exemption applications for sellers who own or operate up to 20 sites be submitted at least 8 weeks (preferably longer) before the commencement of the quarter for which the exemption is sought. Longer lead times are preferred, since this will give applicants greater opportunity to respond comprehensively to any requests for additional information (if necessary) without the need for a retrospective exemption.

For fuel sellers who own or operate more than 20 sites, DNMRE requests applications be submitted at least 10 weeks before the commencement of the quarter for which the exemption is sought.

8.3 Retrospective exemptions

While it is preferred that exemption applications would be for future quarters, there may be some circumstances where a retrospective exemption is appropriate. The Act does not prevent retrospective exemptions, however the application should explain why the application was not submitted earlier.

8.4 Requested information

If the fuel seller does not provide further information by the date requested, the application for an exemption is taken to have been withdrawn. Requests for further information will allow at least 14 days for the information to be submitted (refer to section 35G(3)). If the time allowed for submission of additional information is exceeded, the application will be taken to be withdrawn, and cannot be assessed. A new application will be required.

8.5 Consideration of draft exemption

Although the legislation allows conditions to be applied to an exemption without consultation, the general approach will be to issue a draft exemption decision and provide applicants with at least 14 days to comment on the draft exemption decision before it is issued as a final decision.

9 Application outcomes

This document is designed to provide guidance for exemption applications and decisions. It does not override or limit the provisions of the Act. It does not bind the Minister or her/his delegate in deciding exemption applications and does not limit their discretion.

Applicants will be advised of the outcome of their application. The decision will also contain details of who the decision maker was, the process followed, the information collected and considered, factual findings, the relevant law and policy considered, and reasons for the decision.

10 Confidentiality and publication of information contained in exemption applications

Fuel sellers will be able to declare certain information contained within exemption applications as commercial-in-confidence. The Queensland Government will treat any bona fide commercial-in-confidence information accordingly.

The Queensland Government reserves the right to publish certain information about exemption decisions, such as the name of the fuel seller and the dates associated with any exemptions.

11 Review

A review of an exemption decision can be requested by the applicant in accordance with the Department of Natural Resources, Mines and Energy complaints process. More information is available at www.dnrme.qld.gov.au.

12 Guideline subject to change

This guideline may be updated from time to time. Please ensure that you are referring to the latest version of this guideline by downloading it from the Department of Natural Resources, Mines and Energy website: www.dnrme.qld.gov.au.

Schedule 1 – Application processing timeframes

Once an exemption application is properly made and contains all the required information, the Department of Natural Resources, Mines and Energy will seek to assess applications and have the delegate issue a draft decision within the following timeframes:

For fuel sellers with up to 20 sites – 20 working days

For fuel sellers with more than 20 sites – 30 working days

Schedule 2 – Compliance plan example contents

If a fuel seller chooses to submit a compliance plan with their exemption application, it could provide the following information:

Background including description of the fuel selling business and current barriers to achieving compliance

For fuel sellers with multiple sites, the barriers should be documented at the site level as well as overall.

Statement of objectives to be achieved and maintained

The objective of the compliance plan will generally be to address the current barriers to compliance, so that these can be removed or minimised by implementing all reasonable steps within a specified timeframe.

Statement of roles and responsibilities

For fuel sellers who own and operate a single site, a statement of roles and responsibilities will be relatively straightforward. For fuel sellers who own multiple sites, and where there may be multiple parties with an interest in a site, it is essential that all interested parties are identified, and that roles and responsibilities are very clearly articulated.

Relationship between compliance plan and any business plan and/or asset management plan(s)

This may for example include details from an existing asset management plan for the site or portfolio of sites. This would be particularly relevant if the fuel storage and handling equipment is approaching end of life.

Detailed description of specified actions required to achieve the objectives

This section would provide a description of actions to be undertaken in order to achieve the objectives of the compliance plan.

Actions could fall into some or all of the following categories:

- Availability – this could include actions in relation to infrastructure changes, sourcing strategies, etc.
- Pricing
- Marketing – this could include site-specific marketing or partnerships with other stakeholders for collaborative marketing
- Forecourt strategies (e.g. changing bowser locations/presentations, changing the range of fuels sold, etc.)

Implementation plan with key milestones

The implementation plan should provide a commencement/completion date for each of the specified actions (detailed above), as well as a statement about whether the action is a one-off or ongoing.

Note: If a key milestone represents a decision point (for example completion of a feasibility study) and the compliance plan cannot assume a particular outcome following that decision point, this could be managed by limiting the duration of the compliance plan to align with the decision point, with the expiry date for the exemption set at an appropriate point in time following the expiry of the compliance plan.

Reporting schedule

This would include dates for reporting to the Department of Natural Resources, Mines and Energy on the implementation of the complian