

**BIOFUEL DEVELOPMENT AND IN-STATE PRODUCTION INCENTIVE ACT -
ENACTMENT**

Act of Jul. 10, 2008, P.L. 1009, No. 78

Cl. 27

AN ACT

Providing for the study and mandated content of biofuels.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the Biofuel Development and In-State Production Incentive Act.

Section 2. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"American Society for Testing and Materials International" or "ASTM." A member-based international standards organization that develops and publishes voluntary consensus technical standards and test methods for a variety of materials and products, including automotive fuel and other petroleum products, or any successor organization. (Def. added July 5, 2012, P.L.921, No.96)

"Annualized basis." The sum of three consecutive months of in-State production multiplied by four. (Def. added July 5, 2012, P.L.921, No.96)

"Approved biodiesel blending method." A method whereby diesel fuel is blended with biodiesel under the following conditions:

(1) The method utilizes meters approved by the Department of Agriculture to individually measure the volume of each fuel.

(2) The method achieves and maintains a consistent blend throughout the entire volume being blended.

(3) The method achieves and maintains the blend percentage within a margin of ten percent of the total volume of biodiesel required to make the desired blending percentage.

(4) The blending occurs at a facility capable of maintaining the biodiesel at a minimum of ten degrees Fahrenheit above the cloud point of the biodiesel.

(Def. added July 5, 2012, P.L.921, No.96)

"ASTM specification." A standard quality specification developed and published by the American Society for Testing and Materials International. (Def. added July 5, 2012, P.L.921, No.96)

"Biodiesel." A renewable, biodegradable, mono alkyl ester combustible liquid fuel that meets American Society for Testing and Materials Specification D-6751-02, or its successor standard, Biodiesel Fuel (B100) Blend Stock for Distillate Fuels.

"Biodiesel blend." A blend of diesel fuel and biodiesel in a percentage blend to be sold or offered for sale to ultimate consumers in this Commonwealth for use in on-road compression ignition engines. (Def. added July 5, 2012, P.L.921, No.96)

"Cellulosic ethanol." The term shall have the same meaning as cellulosic biofuel set forth in section 211(o)(1)(E) of the Clean Air Act (69 Stat. 322, 42 U.S.C. § 7545(o)(1)(E)), as amended by section 201 of the Energy Independence and Security Act of 2007 (P.L. 110-140, Title II, Subtitle A, § 201, 121 Stat. 1519 (2007)).

"Consumer." A person who purchases fuel products for purposes other than resale. (Def. added July 5, 2012, P.L.921, No.96)

"Department." The Department of Agriculture of the Commonwealth.

"Diesel fuel." Petroleum diesel fuel that complies with ASTM D975 or its successor standard. (Def. added July 5, 2012, P.L.921, No.96)

"Nonpetroleum renewable resources." Vegetable oils, animal fats or animal wastes.

"Person." A natural person, corporation, partnership, limited liability company, business trust, association, estate or foundation. (Def. added July 5, 2012, P.L.921, No.96)

"Renewable diesel." A nonester diesel fuel or fuel blending component derived from nonpetroleum renewable resources that meets all of the following criteria:

(1) Is used to replace or reduce the quantity of fossil fuels present in fuels sold to the consumer.

(2) Is registered under 40 CFR Pt. 79 (relating to registration of fuels and fuel additives) for motor vehicle fuels or fuel additives.

(3) Meets an established American Society for Testing and Materials Specification, such as D975 for diesel fuels or D396 for fuel oils.

(4) Is compatible for use in engines and equipment designed to run on conventional petroleum diesel fuels.

(5) Is derived from renewable content at the percentages required by this act.

"Retailer." A person that sells, offers for sale or otherwise transfers title to fuel products, including diesel fuel, biodiesel and biodiesel blend, to a consumer. (Def. added July 5, 2012, P.L.921, No.96)

Section 3. Biodiesel content in diesel fuel sold for on-road use.

(a) Volume standards.--The following standards shall apply:

(1) All diesel fuel sold or offered for sale to ultimate consumers in this Commonwealth for use in on-road compression ignition engines must be blended with biodiesel so as to achieve a biodiesel blend of at least 2% biodiesel by volume one year after the in-State production volume of 40,000,000 gallons of biodiesel has been reached and sustained for three months on an annualized basis as determined by the department. Biodiesel blend of less than 6% biodiesel shall comply with ASTM specification D975 or its successor standard. Biodiesel blend of 6% or more through 20% biodiesel shall comply with ASTM specification D7467 or its successor standard. Biodiesel blend of more than 20% biodiesel shall comply with standards adopted by the department through regulation until an ASTM standard is applicable.

(2) All diesel fuel sold or offered for sale to ultimate consumers in this Commonwealth for use in on-road compression ignition engines must be blended with biodiesel so as to achieve a biodiesel blend of at least 5% biodiesel by volume one year after the in-State production volume of 100,000,000 gallons of biodiesel has been reached and sustained for three months on an annualized basis as determined by the department. Biodiesel blend of less than 6% biodiesel shall comply with ASTM specification D975 or its successor standard. Biodiesel blend of 6% or more through 20% biodiesel shall comply with ASTM specification D7467 or its successor standard. Biodiesel blend of more than 20% biodiesel shall

comply with standards adopted by the department through regulation until an ASTM standard is applicable.

(3) All diesel fuel sold or offered for sale to ultimate consumers in this Commonwealth for use in on-road compression ignition engines must be blended with biodiesel so as to achieve a biodiesel blend of at least 10% biodiesel by volume one year after the in-State production volume of 200,000,000 gallons of biodiesel has been reached and sustained for three months on an annualized basis as determined by the department. Biodiesel blend of 10% or more through 20% biodiesel shall comply with ASTM specification D7467 or its successor standard. Biodiesel blend of more than 20% biodiesel shall comply with standards adopted by the department through regulation until an ASTM standard is applicable.

(4) All diesel fuel sold or offered for sale to ultimate consumers in this Commonwealth for use in on-road compression ignition engines must be blended with biodiesel so as to achieve a biodiesel blend of at least 20% biodiesel by volume one year after the in-State production volume of 400,000,000 gallons of biodiesel has been reached and sustained for three months on an annualized basis as determined by the department. Biodiesel blend of 20% biodiesel shall comply with ASTM specification D7467 or its successor standard. Biodiesel blend of more than 20% biodiesel shall comply with standards adopted by the department through regulation until an ASTM standard is applicable.

((a) amended July 5, 2012, P.L.921, No.96)

(b) Applicability of standards.--The volume standards mandated in subsection (a)(3) and (4) shall be effective only if the department, in cooperation with the Department of Transportation and the Department of Environmental Protection, makes a determination that manufacturers of diesel-fueled vehicles that are sold in this Commonwealth have indicated publicly that they will not void or withdraw vehicle engine warranties due to the use of biodiesel blends at the percentages contained in the corresponding subsection. This determination shall be published in the Pennsylvania Bulletin and transmitted to the Majority Leader and the Minority Leader of the Senate and the Majority Leader and the Minority Leader of the House of Representatives.

(c) Calculations.--The department, in cooperation with the Department of Environmental Protection, shall determine by June 30, 2009, and each June 30 thereafter, the name and location of each biodiesel production facility located within this Commonwealth, the amount of biodiesel produced by the biodiesel production facility in the preceding year and an amount and description of any financial assistance made available to the biodiesel production facility by the Commonwealth in the preceding year.

(d) Coal-to-liquids substitution.--Nonsulfur diesel fuel derived from coal may be used in place of biodiesel to meet the requirements of this section, provided that the fuel's carbon emissions are fully offset, either through carbon sequestration or by participation in carbon offset programs.

(e) Renewable diesel substitution.--Renewable diesel produced in this Commonwealth may be used in place of biodiesel to meet the volume standard requirements of this section, up to a maximum of 25% of the volume of biodiesel necessary to meet the Statewide mandated contents required by this act. Within 180 days of the effective date of this section, the department, in collaboration with the Department of

Environmental Protection, may establish reporting requirements to ensure renewable diesel meets the requirements of this act.

(f) Exceptions.--The requirements of this section shall not apply to:

(1) Aviation fuel, home heating fuel oil of any grade or where prohibited by law.

(2) Fuel stored at a nuclear power plant.

(3) The blend percentage requirements of subsection (a) (2), (3) and (4) shall not apply to diesel fuel produced from 100% Pennsylvania grade crude oil by a small refiner, as defined by 40 CFR 80.1101(g) (relating to definitions).

((f) amended July 5, 2012, P.L.921, No.96)

Section 4. Cellulosic ethanol content in gasoline.

(a) Cellulosic ethanol content required.--All gasoline sold or offered for sale to ultimate consumers in this Commonwealth must contain at least 10% cellulosic ethanol by volume as determined by an appropriate Environmental Protection Agency or American Society for Testing Materials standard method of analysis one year after the in-State production volume of 350,000,000 gallons of cellulosic ethanol has been reached and sustained for three months on an annualized basis as determined by the department. ((a) carried without amendment July 5, 2012, P.L.921, No.96)

(b) Renewable fuel substitution.--A person may apply to the department for approval to use renewable fuel other than cellulosic ethanol to meet the requirements of this section. The applicant shall demonstrate that the renewable fuel complies with regulations promulgated by the department which shall include, at a minimum, the following criteria:

(1) Meets the requirements of 40 CFR Pt. 79 (relating to registration of fuels and fuel additives).

(2) Has an emissions profile at least as environmentally protective as the cellulosic ethanol that the proposed renewable fuel is replacing or can demonstrate commensurate environmental or cost-effective benefits as defined by the department.

(3) Is suitable for use in motor vehicle engines.

(4) Is derived from renewable resources or feedstock.

(c) Exception.--The requirements of this section shall not apply to gasoline sold in regions of this Commonwealth where the use of cellulosic ethanol would violate, conflict with or otherwise exacerbate compliance with a National Ambient Air Quality Standards State Implementation Plan.

Section 4.1. Blending, registration and other requirements.

(a) Blending requirements.--The following requirements shall apply:

(1) Biodiesel blend shall be created using an approved biodiesel blending method.

(2) Biodiesel blend created in this Commonwealth for transfer, offer for sale or sale in this Commonwealth shall be created using an approved biodiesel blending method at such time when and place where the diesel fuel is loaded out of the petroleum load rack terminal.

(3) Biodiesel blend created outside of and imported into this Commonwealth shall not be transferred, offered for sale or sold in this Commonwealth unless it has been created using an approved biodiesel blending method.

(4) Diesel fuel imported into this Commonwealth shall be blended with biodiesel to create biodiesel blend by an approved biodiesel blending method before the diesel fuel may be sold or offered for sale or use within this Commonwealth.

(b) Registration requirements.--Any person that offers for sale, sells or otherwise transfers title in this Commonwealth to biodiesel blend or biodiesel for use by consumers in on-road compression ignition engines shall register annually with the department. Each location in this Commonwealth where the person conducts the activity shall be separately registered, but may be submitted in a single form. This subsection shall apply to in-State and out-of-State persons. The application for registration shall be on a form prescribed by the department and may be accepted electronically by the department.

(c) Bill of lading.--

(1) Each time biodiesel blend is sold, offered for sale or title to which is otherwise transferred by a person other than a retailer for ultimate sale to consumers in this Commonwealth, a bill of lading or shipping manifest meeting the requirements of paragraph (2) shall be provided to the person that receives the biodiesel blend.

(2) The bill of lading or shipping manifest required under paragraph (1) shall:

(i) Include a certification by the person that created the biodiesel blend stating that it was created by an approved biodiesel blending method and that the information contained in the bill of lading or shipping manifest is true and correct. The certification shall be subject to the penalties under 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

(ii) Contain the following information:

(A) The name and location of the person that created the biodiesel blend and, if the biodiesel blend was created in this Commonwealth, the registration number assigned by the department to the subject location.

(B) The biodiesel content, stated as volume percentage, based upon an ASTM "Bxx" designation where "xx" denotes the volume percentage biodiesel included in the blended product.

(C) The ASTM specification of the biodiesel used in the biodiesel blend.

(D) The grade and ASTM specification of the diesel fuel.

(E) The ASTM specification of the biodiesel blend.

(F) The total gallons of biodiesel blend sold, offered for sale or title to which is otherwise being transferred.

(3) A retailer selling, offering to sell or otherwise transferring title to a biodiesel blend shall retain a copy of the bill of lading or shipping manifest required under paragraph (1) for a period of one year from receipt of the biodiesel blend or for a longer period of time, if the bill of lading or shipping manifest is part of an enforcement action initiated during the one-year period. The bill of lading or shipping manifest must remain at the facility where the biodiesel blend has been offered for sale, sold or title to which has otherwise been transferred at least until the biodiesel blend physically leaves the facility, after which it may be retained at the corporate headquarters of the retailer. Failure by a retailer to make a copy of a bill of lading or shipping manifest immediately available to the department for inspection at the facility where the biodiesel blend was offered for sale, sold or title to which was otherwise transferred shall not be deemed a violation of

this act if the copy is submitted to the department within two business days following the inspection.

(d) Certification.--

(1) Any time biodiesel is sold, offered for sale or title to which is otherwise transferred in this Commonwealth for use in biodiesel blend, the person selling, offering for sale or otherwise transferring title to the biodiesel shall provide a certification stating that the biodiesel is compliant with the definition and quality standards for biodiesel under this act. The certification shall also contain the name and location of the person that manufactured the biodiesel and, if the biodiesel was manufactured in this Commonwealth, the registration number assigned by the department to the subject location and shall be subject to the penalties of 18 Pa.C.S. § 4904.

(2) A copy of the certification required under paragraph (1) shall be provided to any person that receives the biodiesel and the person that blends the biodiesel with the diesel fuel to create the biodiesel blend. The person providing the certification and each person that receives a copy of the certification shall retain a copy of the certification for a period of one year from the delivery of the biodiesel or for a longer period of time, if part of an enforcement action initiated during the one-year period.

(4.1 added July 5, 2012, P.L.921, No.96)

Section 5. Department authority and responsibility. (Hdg. amended July 5, 2012, P.L.921, No.96)

(a) Enforcement.--With the exception of section 3(d), the department shall enforce this act and shall promulgate regulations as necessary to implement and enforce the requirements of this act. The department may employ all proper means for the enforcement of this act, including issuing notices and orders, initiating criminal prosecutions, seeking injunctive relief, imposing civil penalties and entering into consent agreements. ((a) amended July 5, 2012, P.L.921, No.96)

(b) Environmental Quality Board.--The Environmental Quality Board shall promulgate regulations as necessary to ensure compliance with the carbon offset requirements of section 3(d).

(c) Report.--Beginning one year from the effective date of this act and each year thereafter, the Department of Conservation and Natural Resources shall report on the effect, if any, of in-State production of cellulosic ethanol from woody biomass on forest health, condition and productivity.

(d) Reduction.--The department, in consultation with the Department of Environmental Protection, may suspend or modify to reduce the mandated contents required by section 3 or 4 if the department determines that doing so is warranted by factors, including, but not limited to, substantially increased costs to consumers or insufficient quantity or distribution of biodiesel or cellulosic ethanol.

(e) Authority.--

(1) The department shall have the following authority:

(i) To access during regular business hours and to conduct unannounced random inspections of any facility located in this Commonwealth that stores, holds, blends, sells, offers for sale or otherwise transfers title to diesel fuel, biodiesel or biodiesel blend. Inspections shall include the premises of the facility, tanks, storage facilities, transportation and storage vehicles, dispensing devices and any other place where diesel fuel, biodiesel or biodiesel blend is stored, held, blended,

sold, offered for sale or title to which is otherwise transferred.

(ii) To take samples of and test the diesel fuel, biodiesel and biodiesel blend being stored, held, blended, sold, offered for sale or title to which is otherwise being transferred.

(iii) To audit and copy the books and records pertaining to the diesel fuel, biodiesel or biodiesel blend being stored, held, sold, offered for sale or title to which is otherwise being transferred, and its component parts, including:

(A) Delivery invoices, sales invoices, bills of lading and shipping manifests.

(B) Inventory records.

(C) Relevant contracts and agreements.

(iv) To issue stop-sale orders with respect to all biodiesel blend and biodiesel stored, held, blended, sold or title to which is otherwise transferred or offered for sale to consumers in this Commonwealth for use in on-road compression ignition engines if the department determines, after sampling and analysis, that the biodiesel blend or biodiesel does not comply with the standards established under this act or the regulations promulgated under this act and would be detrimental to the operation of on-road compression ignition engines if used for its intended use. The department may release the noncompliant biodiesel blend or biodiesel for sale only when the department determines the biodiesel blend or biodiesel is either brought into compliance with this act or regulations promulgated under this act or it would no longer be detrimental to the operation of on-road compression ignition engines if used for its intended use. All such biodiesel blend or biodiesel must be properly labeled as to its noncompliant characteristics if released and permitted to be sold without being brought into compliance with this act or regulations promulgated under this act. A person that knowingly sells, offers for sale or otherwise transfers title to biodiesel blend or biodiesel in this Commonwealth subject to a stop-sale order for use by consumers in on-road compression ignition engines commits a misdemeanor of the third degree.

(2) A person that willfully and intentionally interferes with an employee of the department in the performance of the duties conferred upon the department under the provisions of this act commits a misdemeanor of the third degree.

((e) added July 5, 2012, P.L.921, No.96)

(f) Penalties.--

(1) (i) The department may assess a civil penalty of not less than \$100 nor more than \$1,000 per day for each knowing violation of this act or a regulation promulgated under this act.

(ii) If a person fails to pay all or a portion of a penalty assessed against the person, the department may refer the matter to the Office of General Counsel or the Office of Attorney General, which shall institute an action in the appropriate court to recover the penalty.

(2) A person that knowingly violates a provision of this act or a rule or regulation adopted or order issued under this act:

(i) Unless otherwise specified in this act, for the first offense, commits a summary offense and shall, upon conviction, be sentenced to pay a fine of not less than \$100 nor more than \$500 plus costs of prosecution or to imprisonment for not more than 90 days, or both.

(ii) For a subsequent offense at one location that occurs within two years of sentencing for the prior violation at the same location, commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not less than \$500 nor more than \$1,000 plus costs of prosecution or to imprisonment of not more than one year, or both.

(3) In addition to any other remedies under this act, a violation of this act or a regulation promulgated under this act shall be abatable in any manner provided by law or equity. In addition to any remedy ordered in an equity proceeding, the court may assess civil penalties in accordance with this act.

((f) added July 5, 2012, P.L.921, No.96)

(g) Account.--

(1) There is established a restricted account within the State Treasury to be known as the Biofuel Development Account. All money in the account is hereby appropriated on a continuing basis to the department for the enforcement and administration of this act.

(2) The following shall be deposited in the Biofuel Development Account:

(i) Federal and State funds appropriated to the department for implementation and administration of this act.

(ii) Notwithstanding the provisions of 42 Pa.C.S. §§ 3733 (relating to deposits into account) and 3733.1 (relating to surcharge), all fines, judgments and penalties, including administrative, civil and criminal penalties, and interest on the foregoing collected by the department under this act.

(iii) Interest and any other earnings on money in the account.

(iv) Funds from any other source, including gifts and other contributions from public and private sources.

((g) added July 5, 2012, P.L.921, No.96)

Section 6. Infrastructure reports.

(a) Certification.--At least six months prior to the effective dates of the mandated content requirements contained in sections 3(a)(1), (2), (3) and (4) and 4, the department and the Department of Transportation shall jointly make a certification as to whether there is sufficient transportation, distribution and other necessary infrastructure, including rail capability and terminal facilities, in this Commonwealth to meet the requirements of this act.

(b) Hearing.--The department and the Department of Transportation shall conduct at least three public hearings across this Commonwealth for each report required under this act.

(c) Posting.--The infrastructure reports shall be submitted to the General Assembly and posted and maintained on each department's publicly accessible Internet website.

(d) Insufficient infrastructure.--If any infrastructure report determines that there is insufficient infrastructure in place to meet any of the mandated volume standard requirements contained in section 3 or 4, that mandated content requirement shall be delayed at least six months or until the department

and the Department of Transportation certify that sufficient infrastructure is in place through the issuance of a new infrastructure report, whichever is later.

Section 7. National Ambient Air Quality Standards impact study.

(a) Contracts.--The Department of Environmental Protection shall contract with an independent third party certified in conducting ambient air quality studies to determine the impact of this act on the Commonwealth's ability to achieve and maintain the National Ambient Air Quality Standards.

(b) Study.--The study required under subsection (a) shall be completed no later than December 31, 2009.

(c) Submission and posting.--The study required under subsection (a) shall be submitted to the General Assembly and posted and maintained on the Department of Environmental Protection's publicly accessible Internet website.

(d) Funding.--The Department of Environmental Protection is authorized to utilize up to \$200,000 of funds contained in the Clean Air Fund to pay for the study required by this section.

Section 20. Effective date.

This act shall take effect in 90 days.