

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Climate Change and Energy

Fuel Quality Standards Act 2000

Fuel Quality Standards (Ethanol E85) Amendment Determination 2022

Purpose and Operation

The purpose of the *Fuel Quality Standards (Ethanol E85) Amendment Determination 2022* (the 2022 Determination) is to amend the *Fuel Quality Standards (Ethanol E85) Determination 2019* (the 2019 Determination) to bring forward the implementation of 10 milligrams per kilogram (mg/kg) (equivalent to ‘parts per million’ or ‘ppm’ by mass) sulfur from 1 July 2027 to 15 December 2024.

The 2022 Determination is a legislative instrument for the purposes of the *Legislation Act 2003*.

Background

The *Fuel Quality Standards Act 2000* (the Act) provides the legislative framework for regulating the quality of fuel supplied in Australia. The objectives of the Act are to reduce the level of pollutants and emissions arising from the use of fuel that may cause environmental and health problems, facilitate the adoption of better engine and emission control technology, allow the more effective operation of engines and ensure that, where appropriate, information about fuel is provided when the fuel is supplied.

The 2019 Determination was made under section 21 of the Act on 18 March 2019 to:

- revoke and replace the sunseting *Fuel Standard (Ethanol E85) Determination 2012*;
- set out the parameters and testing methods for ethanol E85 supplied in Australia; and
- provide certainty for the quality of ethanol E85 supplied in Australia.

Further details of the 2022 Determination are outlined in Attachment A.

Authority

The 2022 Determination was made under section 21 of the Act. Section 21 of the Act provides that the Minister may, by legislative instrument, determine a fuel standard in respect of a specified kind of fuel.

In addition to the power to make this instrument under section 21 of the Act, subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules,

regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Consultation

The sulfur limit change has been developed following extensive public consultation in relation to a range of policy options to improve Australia's fuel quality as part of the 2018 Better fuel for cleaner air Regulation Impact Statement. Two rounds of public consultation were conducted, as well as targeted consultation with key industry stakeholders to finalise options. Fuel producers, fuel importers, vehicle manufacturers and automobile associations were consulted. In response to consultation on the 2018 Regulation Impact Statement, there was broad support for reducing sulfur in petrol to 10 parts per million in 2027.

The previous Government consulted with stakeholders in 2021. An agreement was reached with stakeholders to bring forward the reduction of sulfur in petrol from 2027 to 2024.

Before determining a fuel standard under section 21 of the Act, the Minister must also consult the Fuel Standards Consultative Committee (the Committee) in accordance with section 24A of the Act. The Committee provided advice on the exposure draft of the 2022 Determination.

Regulatory Impact

For the sulfur changes it is estimated that the regulatory burden is likely to be minor (Office of Best Practice Regulation reference number 43742).

A Statement of Compatibility with Human Rights is set out in Attachment B.

Details of the *Fuel Quality Standards (Ethanol E85) Amendment Determination 2022*

PART 1 – PRELIMINARY

Section 1 – Name of Instrument

This section specifies the name of the determination as the *Fuel Quality Standards (Ethanol E85) Amendment Determination 2022*.

Section 2 – Commencement

This section provides that the determination commenced on the day after registration on the Federal Register of Legislation.

Section 3 – Authority

This section sets out the provision of the *Fuel Quality Standards Act 2000* under which the determination is made.

Section 4 – Schedules

This section is a machinery clause that allows the Schedule to operate according to its terms.

Schedule 1 – Amendments

Item 1: Subsection 5(1) (item 17 of the table)

This item amends the sulfur specification, setting a 10 mg/kg limit from 15 December 2024.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Fuel Quality Standards (Ethanol E85) Amendment Determination 2022

This determination is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The purpose of the *Fuel Quality Standards (Ethanol E85) Amendment Determination 2022* is to amend the *Fuel Quality Standards (Ethanol E85) Determination 2019* to bring forward the implementation of 10 parts per million (ppm) sulfur from 1 July 2027 to 15 December 2024.

Human rights implications

This determination does not engage any of the applicable rights or freedoms.

Conclusion

This determination is compatible with human rights as it does not raise any human rights issues.

The Hon Chris Bowen MP
Minister for Climate Change and Energy