



COVERSHEET

Minister	Hon Dr Megan Woods	Portfolio	Energy and Resources
Title of Cabinet paper	Fuel Industry Act 2020 – Regulations	Date to be published	25 May 2021

List of documents that have been proactively released

Date	Title	Author
March 2021	Fuel Industry Act 2020 – Regulations	Office of the Minister of Energy and Resources
17 March 2021	Fuel Industry Act 2020: Proposed Regulations DEV-21-MIN-0030	Cabinet Office
March 2021	Impact Statement: Regulations under the Fuel Industry Act	MBIE

Information redacted

YES / NO

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Some information has been withheld for the reason of constitutional conventions.



Cabinet Economic Development Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Fuel Industry Act 2020: Proposed Regulations

Portfolio **Energy and Resources**

On 17 March 2021, the Cabinet Economic Development Committee:

Background

- 1 **noted** that the Fuel Industry Act 2020 (the Act) received Royal Assent on 11 August 2020 [DEV-20-MIN-0111];
- 2 **noted** that the Act gives the Minister of Energy and Resources (the Minister) the power to recommend regulations in relation to various matters related to the fuel industry;
- 3 **noted** that the Minister considers it important that the supporting regulations are developed before the relevant sections of the Act come into force;
- 4 **noted** that the terminal gate pricing, fixed wholesale contractual terms and dispute resolution provisions come into force on 11 August 2021 (unless brought into force earlier by the Governor General by Order in Council);
- 5 **noted** that consumer information requirements and disclosure of information provisions come into force on 11 February 2022 (unless brought into force earlier by the Governor General by Order in Council);
- 6 **noted** that the Minister intends to publish the consumer information requirements provisions at the same time as terminal gate pricing, fixed wholesale contractual terms and dispute resolution provisions, but that the Minister does not intend those provisions to come into force until 11 February 2022;
- 7 **noted** that the Act provides that, before regulations can be made, the Minister must have consulted with fuel industry participants that the Minister considers likely to be significantly affected by the proposed regulations;
- 8 **noted** that in November 2020, the Minister released a targeted consultation paper on the proposals outlined in the paper under DEV-21-SUB-0030 to the fuel industry participants she considered likely to be significantly affected by the proposed regulations;
- 9 **noted** that the Act provides that before regulations can be, made the Minister must be satisfied that the regulations are necessary or desirable after having regard to the purpose of the Act, and the relevant subpart;

- 10 **noted** that the Minister is satisfied that the proposals for regulations outlined in the paper under DEV-21-SUB-0030 are necessary or desirable after having regard to the purpose of this Act, and/or the relevant subpart;
- 11 **noted** that proposals for the information disclosure regulations are still under development, and that and approval to those regulations will be sought from Cabinet in mid-2021;
- 12 **noted** that the regulations are intended to be reviewed regularly, to ensure that regulatory parameters are set at the right level to best meet the purpose of the Act;

Terminal gate pricing

- 13 **agreed** that premium petrol with an octane 98 and higher be not subject to the terminal gate pricing regime;
- 14 **agreed** that any bio- or ethanol-blended petrol or diesel be not subject to the terminal gate pricing regime;
- 15 **agreed** that the terminal gate price be posted by each wholesale supplier:
- 15.1 by bulk storage facility and by specified engine fuel that the supplier has a right to draw at that facility;
 - 15.2 with the price in cents per litre, on an ambient temperature basis;
 - 15.3 specifying the time when the price is posted;
 - 15.4 covering all costs incurred behind the terminal gate in supplying the fuel (i.e. taxes, charges and throughput fees, as relevant) but excluding amounts charged for additional services (e.g. delivery beyond the terminal gate or fuel card services);
- 16 **agreed** that the wholesale supplier must post:
- 16.1 the current terminal gate prices on their own website in a way that is accessible to the public;
 - 16.2 a phone number or contact details for making requests;
- 17 **agreed** that the reseller be required to make the request at the wholesale supplier's designated contact point and during working hours and that, if requested by the wholesale supplier, the reseller be required to advise:
- 17.1 the bulk storage facility, the specified engine fuel, and the amount in litres that is requested;
 - 17.2 the estimated time of pick-up of the fuel, which must be within operating hours for the bulk storage facility;
 - 17.3 the proposed means of payment;
 - 17.4 whether the driver has met any relevant site access requirements;
 - 17.5 whether the vehicle has any relevant certification;

- 18 **agreed** that each wholesale supplier must prepare and publish on its website a procedure for pre-certification and what evidence would be required to enable the wholesale supplier to assess the reseller's ability to pay and compliance with health and safety requirements, which (without limiting those requirements) may include:
- 18.1 that the driver is certified to transport fuel;
 - 18.2 that the vehicle is certified to transport fuel;
 - 18.3 the materials that are prohibited from being brought onto the site of the bulk storage facility;
- 19 **agreed** that if the wholesale supplier is not the operator of the bulk storage facility for which they have a right to draw fuel, they should ensure that the relevant site requirements are readily accessible;
- 20 **agreed** that the regulations provide that there is a minimum purchase amount of 5,000 litres for each specified engine fuel at each bulk storage facility;
- 21 **agreed** that the period over which forecast demand shall be set for the purposes of assessing whether to restrain supply be a rolling 28 day period, and that it does not need to be differentiated by port or engine fuel;
- 22 **agreed** that the prescribed minimum be:
- 22.1 30,000 litres per week by specified location for regular diesel and regular grade petrol;
 - 22.2 30,000 litres per month by specified location for premium 95 octane petrol;
- 23 **agreed** that bulk storage facilities at the following specified locations be subject to the terminal gate pricing regime:
- 23.1 Bluff;
 - 23.2 Dunedin;
 - 23.3 Christchurch (Lyttelton/Woolston);
 - 23.4 Mount Manganui;
 - 23.5 Napier;
 - 23.6 Nelson;
 - 23.7 New Plymouth;
 - 23.8 Timaru;
 - 23.9 Whangarei (Marsden Point);
 - 23.10 Wellington;
 - 23.11 Auckland (Wiri/Wynyard Wharf);

- 24 **agreed** that a wholesale supplier be able to refuse supply if there is an event outside the control of the wholesale supplier that makes it unreasonable for the wholesale supplier to be required to supply at that bulk storage facility (examples include fuel contamination, industrial action, or force majeure grounds);
- 25 **agreed** that where a wholesale supplier has refused supply to a reseller under section 12(1)(e) of the Act, the wholesale provider must provide a notice to the Commerce Commission within five working days of the circumstance occurring, that includes:
- 25.1 the grounds for refusing to supply;
 - 25.2 any evidence to support a conclusion that the requested fuel was required to meet the wholesale supplier's contractual obligations or forecast demand for its own sales;
 - 25.3 advice on whether or not the wholesale supplier has supplied the minimum supply amount in the relevant period;
- 26 **agreed** that on the day that a wholesale supplier refuses supply to a reseller under section 12(1)(e) of the Act, the wholesale supplier must provide a written notice (if requested by the reseller) to the reseller advising of the grounds for refusal;

Fixed wholesale contractual terms

- 27 **agreed** that all significant elements of the pricing method must be identified in the fixed wholesale contract, and that how they fit together as a pricing method must be explained;
- 28 **agreed** that if the pricing method is a formula, the formula must be set out in the fixed wholesale contract;
- 29 **agreed** that the pricing method in a fixed wholesale contract can be changed to another pricing method only when:
- 29.1 sufficient notice has been given; and
 - 29.2 both parties agree to the new pricing method;
- 30 **agreed** that the maximum duration after which a distributor can terminate a fixed wholesale contract with a wholesale supplier be five years;
- 31 **agreed** that 80 percent be the maximum percentage of the distributor's annual requirement for engine fuel that a fixed wholesale contract can require the distributor to purchase from the wholesale supplier;

Consumer information requirements

- 32 **agreed** that retail sites must display the 'standard retail price' of:
- 32.1 91 octane;
 - 32.2 diesel;
 - 32.3 all premium grades of fuel;
- 33 **agreed** that the consumer information requirements apply to all retail fuel sites, other than truck stops;

- 34 **agreed** that regulations require the display of the ‘standard retail price’ of the required fuel types;
- 35 **agreed** that prices are to be displayed at any time that the retail fuel site is open for business for the supply of the prescribed fuel, unless prohibited by other bylaws;
- 36 **agreed** that price boards must still comply with any relevant bylaws;
- 37 **agreed** that the regulations recognise that there may be circumstances outside of a retailer’s control that might mean that prices cannot be displayed for a period of time, e.g. power outages;
- 38 **agreed** that the ‘standard retail price’ be required to be displayed on a ‘price board’, and that the ‘standard retail price’ must be visible to passing motorists;

Dispute resolution

- 39 **agreed** that mediation may be initiated by either party writing to the other party and identifying the dispute that is being suggested for mediation within 20 working days of the dispute arising (although the events giving rise to the dispute may have occurred earlier);
- 40 **agreed** that the party served the dispute notice must respond within 10 days of receiving the dispute notice;
- 41 **agreed** that if the parties cannot agree on a mediator, an independent nominating authority will appoint a mediator with qualifications and experience relevant to the dispute for them;
- 42 **agreed** that independent nominating authorities will be appointed by the Minister;
- 43 **agreed** that the mediator should at a minimum be appropriately qualified and certified by either of the two professional bodies for alternative dispute resolution practitioners in New Zealand (the Arbitrators and Mediators Institute of New Zealand (AMINZ), or the Resolution Institute);
- 44 **agreed** that the appointed mediator should have appropriate experience and/or training, and that the ability of the parties to pay should be considered in making the appointment;
- 45 **agreed** that mediation must proceed within 20 working days of all notices having been served as long as the parties have agreed on the mediator and the procedure for mediation, and, if not, an independent nominating authority will appoint a mediator;
- 46 **agreed** that:
- 46.1 once one party has initiated the mediation by serving a notice of dispute, the served party must participate in the mediation procedure;
 - 46.2 until mediation has been attempted in accordance with the procedures prescribed in regulations, neither party can access other methods of dispute resolution;
- 47 **agreed** that if one party refuses to participate from the start, or withdraws from the mediation process, they must provide reasons in writing to the other party, and that the other party may then refer the matter to arbitration;
- 48 **agreed** that if resolution is reached on the whole or part of a dispute, the terms of the settlement must be recorded in a settlement agreement;
- 49 **agreed** that the settlement agreement will be binding on the parties;

- 50 **agreed** that the parties may enforce the settlement agreement by way of proceedings in a court of competent jurisdiction;
- 51 **agreed** that if the parties are unable to resolve the dispute at mediation within 60 days from the date the dispute notice is issued, the dispute may be referred to arbitration;
- 52 **agreed** that once this 60 days has expired, if the dispute is to be referred to arbitration, this must be done within 10 days;
- 53 **agreed** that each party to the dispute:
- 53.1 pays their own costs and expenses in relation to the mediation; and
- 53.2 splits the fees and expenses of the mediator and nominating authority (if required) 50/50;

Legislative implications

- 54 **invited** the Minister to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above paragraphs;
- 55 **authorised** the Minister to make decisions, consistent with the proposals in the above paragraphs, on any issues that arise during the drafting process;
- 56 **authorised** the Minister to make decisions on minor and technical matters that may arise during the drafting process;
- 57 **agreed** to the release of an exposure draft of the regulations for the purposes of targeted consultation with fuel industry participants the Minister considers likely to be significantly affected by the proposed regulations.

Janine Harvey
Committee Secretary

Present:

Hon Grant Robertson (Chair)
Hon Dr Megan Woods
Hon Nanaia Mahuta
Hon Poto Williams
Hon Damien O'Connor
Hon Kris Faafoi
Hon Dr David Clark
Hon Dr Ayesha Verrall
Hon Meka Whaitiri
Hon Phil Twyford
Rino Tirikatene, MP
Dr Deborah Russell, MP

Officials present from:

Office of the Prime Minister
Officials Committee for DEV

Hard-copy distribution:

Minister of Energy and Resources