



COVERSHEET

Minister	Hon Dr Megan Woods	Portfolio	Energy and Resources
Title of Cabinet paper	Fuel Industry Act 2020 – Information Disclosure Regulations	Date to be published	11 October 2021

List of documents that have been proactively released

Date	Title	Author
August 2021	Fuel Industry Act 2020 – Information Disclosure Regulations	Office of the Minister of Energy and Resources
25 August 2021	Fuel Industry Act 2020: Information Disclosure Regulations CBC-21-MIN-0073	Cabinet Office
August 2021	Regulatory Impact Statement: Fuel Industry Act 2020 – Information disclosure regulations	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 reasons of Confidentiality and Constitutional conventions.

In Confidence

Office of the Minister of Energy and Resources
Cabinet Economic Development Committee

Fuel Industry Act 2020 – Information Disclosure Regulations

Proposal

- 1 This paper seeks agreement to make regulations for the information disclosure subpart of the Fuel Industry Act 2020.

Relation to government priorities

- 2 In the last term we made a commitment to fairer fuel prices for consumers. The passing of the Fuel Industry Act 2020 (the Act) in August 2020 was a critical step towards achieving this. We now need to put in place regulations that enable the regime to work. These should be in place before the relevant provisions of the Act come into force.

Executive Summary

- 3 The Fuel Industry Act 2020 received Royal Assent on 11 August 2020.
- 4 The Act gives the Minister of Energy and Resources the power to recommend regulations in relation to various matters related to the fuel industry. The detail of the new regime will be determined through the regulations.
- 5 I have consulted with fuel industry participants, as required by the Act.
- 6 I am satisfied that the regulations proposed in this Cabinet paper are necessary or desirable after having regard to the purpose of the Act and the associated subpart.
- 7 I seek approval from Cabinet to authorise the drafting of regulations by the Parliamentary Counsel Office that give effect to the proposals in this paper.

Background

- 8 The Fuel Industry Act 2020 received Royal Assent on 11 August 2020. The Act was put in place in response to the findings from the retail fuel market study undertaken by the Commerce Commission (the Commission) which concluded that fuel companies have been making higher profits than would be expected in a workably competitive market.
- 9 The Commission also found that wholesale fuel prices were higher than it would expect in a workably competitive market and that this flowed through to consumers paying higher pump prices.
- 10 The Act establishes:

- 10.1 a terminal gate pricing regime to improve competition in the wholesale market by making it easier for a fuel reseller to access wholesale fuel;
 - 10.2 rules to ensure fixed wholesale contracts between wholesale fuel suppliers and their wholesale customers are fair and support competition;
 - 10.3 consumer information requirements for retail fuel sites when displaying fuel prices on forecourt price boards;
 - 10.4 improvements to the monitoring of the fuel market by requiring fuel companies to collect, retain and disclose certain information; and
 - 10.5 a dispute resolution scheme for the new regime under the Act.
- 11 This paper relates to regulations for information disclosure only. Cabinet has already approved regulations for the terminal gate price regime, fixed wholesale contracts, consumer information and dispute resolution [CAB-21-MIN-0259 refers]. These have now been promulgated on 5 July 2021 and have come into effect on 11 August 2021, with the exception of consumer information which will come into effect on 11 February 2022.

Fuel Industry Act Information Disclosure Regulations

- 12 The Act gives the Minister of Energy and Resources the power to recommend regulations in relation to various matters related to the fuel industry. The substantive detail of the new fuel regulatory regime will be prescribed through regulations.
- 13 It is important that the regulations are developed before the relevant parts of the Act come into force on 11 February 2022.
- 14 However, before regulations can be prescribed, it is a requirement in the Act that the Minister of Energy and Resources:
- 14.1 consults with the fuel industry participants that the Minister considers are likely to be significantly affected by the proposed regulations; and
 - 14.2 is satisfied that the regulations are necessary or desirable after having regard to the purpose of the Act and the information disclosure subpart.
- 15 In March 2020, following Cabinet approval [CAB-20-MIN-0100 refers], I consulted publicly on the proposed content of regulations under the Fuel Industry Bill. Submissions relevant to the regulations were also made during the Select Committee process for the Fuel Industry Bill.
- 16 In April 2021, I released a more targeted consultation paper on information disclosure regulation to the stakeholders that I considered to be most significantly impacted by the proposed regulations.

I N C O N F I D E N C E

- 17 The purpose of the Act is to promote competition in fuel markets for the long-term benefit of end users of fuel products. The purposes of the information disclosure subpart are to:
- 17.1 enable the Chief Executive of the Ministry of Business, Innovation and Employment (MBIE) and the Commission to monitor the performance of fuel markets; and
 - 17.2 to ensure that sufficient information is readily available to the Chief Executive of MBIE and the Commission to assess whether the purpose of the Act is being met.
- 18 There is currently inadequate information available on retail fuel markets to be able to monitor the performance of fuel markets, despite this being a matter of intense public interest. In the absence of such information, two market studies have been undertaken over five years to reach conclusions on the state of competition in retail fuel markets.
- 19 As a result of the Commission's market study, the Fuel Industry Act 2020 has introduced interventions aimed at promoting competition in retail fuel markets. Without the availability of more timely and granular information, it will be difficult to monitor the impact of these interventions.
- 20 The information disclosure regulations are designed to fill this gap. Although MBIE currently collects information on fuel margins and publishes this regularly, this is not sufficiently accurate to meet the purposes of the Act and subpart.
- 21 I am satisfied that the proposed regulations in this Cabinet paper are necessary or desirable after having regard to the purpose of the Act and the associated subpart.
- 22 The information disclosure regulations proposed in this paper relate to the record keeping, and the retention and disclosure of information about fuel markets and in particular:
- 22.1 the kinds of fuels that the regulations apply to;
 - 22.2 the information that must be recorded and retained;
 - 22.3 the kinds of fuel industry participants that the regulations apply to;
 - 22.4 the circumstance in which information must be disclosed to the Chief Executive of MBIE, the Commission, or both; and
 - 22.5 providing for any other matters contemplated by the Act, necessary for its administration, or necessary for giving it full effect.
- 23 The kinds of information that must be recorded and retained includes information relating to:
- 23.1 fixed wholesale contracts, switching and multi-sourcing;

- 23.2 profitability;
- 23.3 gross margins and terminal gate pricing;
- 23.4 discounting and loyalty programmes;
- 23.5 fuel supply; and
- 23.6 information disclosure quality assurance.

The kinds of fuels that the regulations apply to

- 24 Section 27(2)(a) of the Act provides that regulations may prescribe the kind of fuels that the regulations apply to.
- 25 It is important to monitor the main types of fuel that are sold to end-users in New Zealand. These are 91 octane, 95 octane, 98 octane (both premium) and diesel. I consider that disclosure requirements should apply to these fuels, despite 98 octane not being subject to the terminal gate pricing regime.
- 26 Cabinet agreed [CAB-21-MIN-0074 refers] that 98 octane will not be subject to the terminal gate pricing regime as including it would likely impose unreasonable costs on suppliers with specialised supply chains.
- 27 I consider it is necessary to monitor the sale and supply of 98 octane, to track the impact of this decision. Some parties argued that omitting it would lead to market distortions.
- 28 I recognise that in the future market circumstances may change and fuels that are not commonly sold today may become more prominent. The regulations will be reviewed regularly and the regulations can be updated as necessary.

The kinds of fuel industry participants that must record and retain information, and the circumstances in which the information must be disclosed to the Chief Executive, the Commission, or both

- 29 Section 27(2)(a) of the Act provides that regulations may be made prescribing the kind of fuel industry participants that the regulations apply to.
- 30 Section 27(2)(b) of the Act provides that regulations may be made prescribing the information that must be recorded and retained.
- 31 Section 27(2)(d) of the Act provides that regulations may be made prescribing the circumstances in which information must be disclosed to the Chief Executive of MBIE, the Commission, or both (for example, when requested by the Chief Executive or the Commission, at a specified time, or on the occurrence of a specified event).
- 32 I consider that all information required to be disclosed under this Act should be disclosed to the Commission as the primary regulator under the Act.

The kinds of industry participants

- 33 The consultation paper proposed that the majority of requirements would apply to wholesale suppliers. *Wholesale suppliers* as defined in the Act includes some distributors, but excludes others (“distributors” purchase fuel from wholesale suppliers for resale under their own brand). The intention was to capture the larger players in the industry to avoid placing compliance burdens on small participants who usually have less market power.
- 34 This is a matter I received significant feedback on:
- 34.1 one submitter suggested that the regulations be extended to apply to all distributors since they represent a significant market presence; and
- 34.2 several submitters noted that the market study was conclusive that competition concerns were due to the market power of the “majors” (BP, Z Energy and Mobil), and therefore should be the only participants covered by the regulations.
- 35 The most significant problem identified in the market study is the lack of an active wholesale market in New Zealand. This gap is attributed to advantages conferred by the majors’ joint infrastructure network, and wholesale supply relationships between the majors and their resellers.
- 36 I consider that it would be optimal to focus on the majors, in light of the conclusions reached in the market study.
- 37 To the extent information on competing suppliers will provide a richer picture, I consider these disclosures should be supplemented by data from the main competing importers Gull and Tasmanfuels, who also have significant infrastructure. This approach will enable monitoring of about 57per cent of the retail market.
- 38 However, I propose requiring financial statements, retail site addresses and annual volume supplied from a wider range of participants, including distributors. This would focus the monitoring on industry participants that have a degree of market power due to infrastructure ownership, while providing information to enable some monitoring of a broader range of market participants.
- 39 A future review of the regulations can determine whether it is appropriate to extend the scope to include more industry participants.
- 40 I have outlined which industry participants the disclosure requirement should apply to, under each topic heading below.

Fixed wholesale contracts, switching and multi-sourcing

- 41 Section 4 of the Act defines fixed wholesale contracts as:
- 41.1 a wholesale contract that governs for a fixed period or fixed amount of fuel, the wholesale price and other conditions of sale and supply of

fuel, but does not include a wholesale contract for the sale and supply of fuel under the terminal gate pricing regime.

- 42 Subpart 2 of Part 2 of the Act introduces obligations regarding fixed wholesale contract terms to address:
- 42.1 the bargaining imbalance between suppliers and their wholesale customers;
 - 42.2 pricing mechanisms contained in wholesale contracts which can impact competition; and
 - 42.3 the lack of switching between fuel suppliers by wholesale customers.

Consultation with fuel industry participants

- 43 Fuel industry participants were generally not supportive of disclosing fixed wholesale contracts and related information due to the commercially sensitive nature of the information. However, I am comfortable that the Commission and MBIE will store information in accordance with its robust and well tested information security policies.
- 44 Fuel industry participants also raised concerns about the frequency and timing of disclosures. I agree with these concerns. I have instead recommended that all ongoing annual disclosures under this section should be provided to the Commission five months after the end of each financial year to which the disclosure relates (i.e. 1 September).

Requirements to disclose fixed wholesale contract, switching and multi-sourcing information

- 45 I propose the following requirements for *fuel importers* (currently BP, Mobil, Z Energy, Gull and TasmanFuels):
- 45.1 disclosure on 1 September 2022 of all fixed wholesale contracts in force. This is one month after the Act applies to all such contracts, whether entered before or after it commenced;
 - 45.2 annual disclosure of any fixed wholesale contracts entered into after those disclosed in paragraph 45.1;
 - 45.3 annual disclosure of any changes to key provisions in the above fixed wholesale contracts;
 - 45.4 retention of fixed wholesale contracts and disclosure of any such contract on request by the Commission;
 - 45.5 annual disclosure of all offers and bids made by the *fuel importer* to supply fuel by way of fixed wholesale contract; and
 - 45.6 annual disclosure of instances of expired or terminated fixed wholesale contracts.

- 46 **Annex A** contains further details on these proposed disclosures.
- 47 I consider that these requirements will enable the Commission to undertake:
- 47.1 a baseline review so the impact of the Act on fixed wholesale contracts can be monitored;
 - 47.2 monitoring of any subsequent changes to that baseline;
 - 47.3 monitoring of resellers switching suppliers and sourcing fuel supply from multiple wholesale suppliers.

Profitability

- 48 The retail market study found that the fuel industry has earned excess returns since early last decade and that margins and returns were expected to remain at elevated levels for some time.

Consultation with fuel industry participants

- 49 Section 27(2)(c) of the Act allows regulations to be made prescribing methodologies that must be applied in recording information, including how common costs are to be allocated and how assets are to be valued.
- 50 Prescribing methodologies can be useful to ensure information is disclosed in a way that makes it comparable between firms. For example, the provision of different types of services (e.g. regulatory and non-regulatory) over shared assets by a fuel industry participant can give rise to the sharing of operating and capital costs. A cost allocation methodology could prescribe how these shared costs are allocated between regulated and non-regulated services.
- 51 However, I do not recommend prescribing methodologies at this stage. The Commission advised my officials that the disclosure of financial statements that applicable financial reporting standards already require the entity to prepare would be sufficient given:
- 51.1 the costs associated with developing and applying methodologies; and
 - 51.2 information on gross margins would also be disclosed.
- 52 Fuel industry participants were generally supportive of the approach as it aligns with existing financial reporting obligations.
- 53 I considered requiring the disclosure of financial statements that only relate to the supply of fuel (i.e. excluding revenue from ancillary activities such as cafes and stores). While this would provide more accurate information about fuel markets, it would impose increased cost and complexity that I do not consider is necessary at this time.

Requirements to disclose financial statements

- 54 I propose the following requirements for *fuel importers*, wholesale suppliers and distributors:
- 54.1 disclosure of financial statements that applicable financial reporting standards require the entity to prepare; or
- 54.2 where the relevant fuel industry participant has 1 or more subsidiaries, or is a subsidiary, disclose group financial statements;
- 55 **Annex A** contains further details on these proposed disclosures.
- 56 I consider that these requirements will enable the Commission to undertake monitoring of the profitability of *fuel importers*, wholesale suppliers and distributors in wholesale and retail markets.

Gross margins and terminal gate pricing

- 57 As discussed in paragraph 48 above, the retail market study found that the fuel industry has earned excess returns since early last decade and that margins and returns were expected to remain at elevated levels for some time.
- 58 In addition to analysis of financial statements, analysis of gross margins will enable monitoring of the impact on fuel industry returns of the Act and market developments.
- 59 'Fuel' in this section refers to 91 octane, 95 octane, 98 octane and diesel.

Consultation with fuel industry participants

- 60 I received significant feedback from fuel industry participants about the granular nature of the information that can be requested from the participants.
- 61 One fuel industry participant submitted that MBIE's current monitoring of gross margins is sufficient. While MBIE's current monitoring of gross margins remains valuable, I consider there are advantages in more accurate and comprehensive reporting. Greater accuracy would be achieved through the disclosure of better retail data. More comprehensive reporting would be achieved through greater regional coverage, better capture of transport costs and better reporting of wholesale margins.
- 62 Some fuel industry participants were particularly concerned about a proposed requirement to disclose daily revenue information, net of discounts, per retail fuel site. Confidentiality [REDACTED]
[REDACTED]
[REDACTED]
- 63 I now consider that fuel industry participants should be required to disclose less granular information to analyse margins at each retail fuel site:

- 63.1 the daily headline price for each fuel;
 - 63.2 discounts offered by the participant; and
 - 63.3 volume of each fuel sold.
- 64 Revenue information would not be collected from each retail site, but would still be provided on a quarterly, aggregated basis. I consider that requirements that necessitate a costly system upgrade which may be passed on to consumers, and which will have an uneven effect across different participants, are not appropriate.

Requirements to disclose information which would allow calculation of gross margins and monitoring of the terminal gate pricing regime

- 65 I propose the following disclosure requirements on *fuel importers*, which I consider will allow the Commission to monitor the terminal gate price regime and the performance of fuel markets through analysis of gross margins:

Transactions at fuel storage terminals

- 65.1 daily revenue, volume and volume weighted price for each fuel type sold at each terminal;
- 65.2 terminal gate price offered for the fuel types subject to the terminal gate pricing regime;
- 65.3 requests refused for supply under the terminal gate pricing regime;
- 65.4 fees charged by terminal owners for use of terminals by participants in terminal storage sharing schemes (throughput fees) for each fuel type;

Cost data

- 65.5 annual costs of importing fuel (for example, crude costs and refinery costs etc.);
- 65.6 costs of using the pipeline between the refinery and Auckland per month;
- 65.7 annual domestic shipping costs;

Retail fuel site data

- 65.8 volumes of fuel supplied by the fuel industry participants to their own retail fuel sites, by each fuel type;
- 65.9 the standard retail price for each fuel at each retail fuel site (the last price posted each day);
- 65.10 the discounts offered by the supplier each day for each fuel at each retail fuel site;

- 65.11 daily volume of each fuel sold from each retail fuel site;
- 65.12 quarterly revenue per fuel sold; and
- 65.13 distance between each terminal and the retail fuel sites they predominately supply.

- 66 **Annex A** contains further details on these proposed disclosures.
- 67 For the information that I do not expect to change regularly or that relates to a yearly period, I consider that these disclosures should be required to the Commission five months after the end of each financial year to which the disclosure relates (i.e. 1 September). However, all other disclosures should be disclosed 30 working days after the end of each quarter during the financial year to enable ongoing monitoring.
- 68 Alongside disclosure of financial statements, information disclosed on gross margins and terminal gate pricing will enable the Commission to monitor fuel importers' profitability in the wholesale and retail markets and the impact that interventions in the Act are having on the market.

Discounting and loyalty programmes

- 69 In its market study, the Commission stated that the use of discounts and loyalty programmes avoided direct competition on board prices. However, they also noted that discounted pricing had evolved over the course of its market study and did not recommend regulation at this time. It instead recommended that the Government monitor the display of discount prices on price boards to assess whether they benefit consumers or limit competition.
- 70 Cabinet agreed in February 2020 [CAB-20-MIN-003 refers] that monitoring of discounts is the most appropriate response at this time.
- 71 In this context, a discount means the amount deducted from the fuel price at the pump.
- 72 Loyalty programmes are benefits or rewards unrelated to fuel (e.g. the accumulation of Flybuys points or Air New Zealand Airpoints).

Consultation with fuel industry participants

- 73 The consultation paper proposed that an explanation of how the four largest discounts functioned should be disclosed. Several submitters said that this would capture some very minor programmes. It was further submitted that discounts were not the only benefits offered to consumers, since loyalty programmes are also on offer from some retailer suppliers.
- 74 I agree with this feedback and the regulations will now require disclosure of the two largest discounts and two loyalty programmes that have the highest uptake.

Requirements to disclose information on discounting and loyalty programmes

- 75 I propose the following disclosure requirements for *fuel importers*:
- 75.1 explanation of its two largest discount practices;
 - 75.2 explanation of its two loyalty programmes that have the highest uptake; and
 - 75.3 explanation of its discounting partnerships with third parties.
- 76 See **Annex A** for further details on these proposed disclosures.
- 77 I do not consider that this information will change regularly, therefore I consider it should be disclosed to the Commission five months after the end of each financial year to which the disclosure relates (i.e. 1 September).
- 78 This will enable the Commission to undertake ongoing monitoring of discounting practices, loyalty programmes and discounting partnerships.

Fuel supply

- 79 The market study found that a lack of terminal investment and tight supply may have detrimental effects upon competition at the wholesale level and this, in turn, may result in less retail competition and higher than expected prices for consumers. However, the market study also noted that the case for future investment in terminals is uncertain, particularly given the entry of Timaru Oil Services Limited (now trading as TasmanFuels) and forecast of relatively flat fuel demand.
- 80 Analysis of information disclosed on fuel supply will enable the monitoring of terminal investment and tight supply in the market and its impact on competition.
- 81 Retail fuel supply information will enable monitoring of the participants that supply the retail market and of whether there are new entrants or expansions in the market.
- 82 'Fuel' in this section refers to 91 octane, 95 octane, 98 octane and diesel.

Consultation with fuel industry participants

- 83 Fuel industry participants provided a range of views during consultation that have helped to refine my recommendations.

Requirements to disclosure fuel supply information

- 84 I propose the following requirements for *fuel importers*:
- 84.1 monthly fuel supply to each terminal for each fuel;
 - 84.2 monthly fuel withdrawn from each terminal for each fuel;

- 84.3 total storage capacity at each terminal and nationally for each fuel;
 - 84.4 forecast monthly demand; and
 - 84.5 rationing event information (in situations where fuel inventories are low at a terminal and fuel is rationed).
- 85 I propose the following requirements on *fuel importers*, wholesale suppliers and distributors (where they supply at retail):
- 85.1 addresses of retail fuel sites supplied by the fuel importer, wholesale supplier and distributor; and
 - 85.2 total annual volume of each fuel type supplied.
- 86 **Annex A** contains further details on these proposed disclosures.
- 87 I do not expect the total storage capacity information to change regularly. Therefore I consider that these disclosures should be provided to the Commission five months following after the end of each financial year to which the disclosure relates (i.e. 1 September). For all other disclosures, I consider that the information should be disclosed 30 working days after the end of each quarter during the financial year to enable ongoing monitoring.
- 88 This will enable the Commission to monitor:
- 88.1 the impact of terminal investment and tight supply on the market and its impact on competition; and
 - 88.2 the annual volumes of fuel that fuel industry participants supply to their customers.

Quality assurance

- 89 Section 47(1)(d) of the Act provides that regulations may be made providing for any other matters contemplated by the Act, necessary for its administration, or necessary for giving it full effect.
- 90 I consulted on requiring certification by a Director that disclosures made over the year comply with the regulations.

Consultation with fuel industry participants

- 91 Fuel industry participants were not generally supportive of certification of compliance by a Director.

Requirements to disclose quality assurance information

- 92 I propose requiring fuel industry participants that are subject to information disclosure requirements to have a Director certify annually that disclosures made over the year comply with regulations.

93 I consider that this is necessary to give the Act full effect since it will provide assurance to the Commission that information disclosed is of acceptable quality. The regime relies on the Commission and the Chief Executive of MBIE receiving accurate information to assess whether the Act is promoting competition in fuel markets for the long-term benefit of consumers.

94 **Annex A** contains further details on these proposed disclosures.

Financial Implications

95 The Act created new functions, powers and duties under the Act for the Commission and MBIE. The regulatory proposals in this paper further set out the detail of the regime to enable the Act to come into effect.

96 Constitutional conventions

97 I have not separately assessed what portion of this bid relates to these regulatory proposals.

Legislative Implications

98 Regulations will need to be developed to give effect to the proposals in this Cabinet paper.

99 The regulations will need to be drafted by PCO.

Regulatory Impact Statement

100 MBIE's Regulatory Impact Analysis Review Panel has reviewed the attached Impact Statement prepared by MBIE. The panel considers that the information and analysis summarised in the Impact Statement meets the criteria necessary for Ministers to make informed decisions on the proposals in this paper.

Climate Implications of Policy Assessment

101 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the impact on emissions is indirect.

102 When Cabinet considered final policy decisions on the Fuel Industry Bill last year, it was noted that analysis indicated that emissions increases could range from between approximately 11 Kiloton (Kt) CO₂ per annum for a price change of 1 cent per litre (cpl) in the short run, through to approximately 219 Kt CO₂ per annum in the long run for a price change of 12cpl.

103 While the Act may lead to a fall in prices, the information disclosure regulations will have an indirect impact, beyond the overall framework set out in the Act.

104 Although greenhouse gas and air pollutant emissions from transport may increase as a result of a decrease in fuel prices, I note that the Clean Car Standard and the Clean Car Discount will drive emission reductions in the transport sector.

Population Implications

105 There are no population implications in regards to the proposals in this paper.

Human Rights

106 The proposals in this paper are not inconsistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Consultation

107 The Ministry of Transport, the Ministry for the Environment, the Treasury, New Zealand Transport Authority and the Commerce Commission were consulted on this paper. The Department of Prime Minister and Cabinet were informed.

108 I undertook targeted engagement with fuel industry participants that I consider likely to be significantly affected by the proposed regulations on the proposals in this paper including major fuel suppliers, Gull, Tasmanfuels, distributors, the AA and the Motor Trades Association.

Communications

109 I intend to proactively release this paper alongside a press release.

Next steps

110 I propose to undertake targeted consultation on an exposure draft of the regulations with fuel industry participants I consider likely to be significantly affected by the proposed regulations.

Recommendations

The Minister of Energy and Resources recommends that the Committee:

- 1 **note** that the Fuel Industry Act 2020 (the Act) received Royal Assent on 11 August 2020;
- 2 **note** that the Act gives the Minister of Energy and Resources the power to recommend regulations in relation to various matters related to the fuel industry;
- 3 **note** that I consider it important that the supporting regulations are developed before the relevant sections of the Act come into force;
- 4 **note** that disclosure of information provisions under the Act come into force on 11 February 2022 (unless brought into force earlier by the Governor General by Order in Council);

- 5 **note** that the Act provides that before regulations can be made the Minister of Energy and Resources must have consulted with fuel industry participants that are likely to be significantly affected by the proposed regulations;
- 6 **note** that in April 2021, I released a targeted consultation paper on the proposals in this paper to the fuel industry participants I consider likely to be significantly affected by the proposed regulations;
- 7 **note** that the Act provides that before regulations can be made the Minister of Energy and Resources must be satisfied that the regulations are necessary or desirable after having regard to the purpose of the Act, and the relevant subpart;
- 8 **note** that I am satisfied that the proposals for regulations in this Cabinet paper are necessary or desirable after having regard to the purpose of this Act, and the associated subpart;
- 9 **note** that regulations for the other Parts of the Act were approved by Cabinet [CAB-21-MIN-0259 refers] and came into force on 11 August 2021 in relation to terminal gate pricing, fixed wholesale contract terms and dispute resolution. The consumer information requirements will come into force on 11 February 2022;

The kinds of fuels that the regulations apply to

- 10 **agree** that 91 octane, 95 octane, 98 octane and diesel are the kinds of fuels that the information disclosure regulations apply to, despite 98 octane not being subject to the terminal gate pricing regime;

Requirements relating to the kinds of fuel industry participants to whom the regulations will apply, the information that must be recorded and retained and the circumstances in which it must be disclosed to the Chief Executive of MBIE, the Commerce Commission, or both

- 11 **agree** that, all information required to be disclosed under this Act would be disclosed to the Commerce Commission as the primary regulator under the Fuel Industry Act;

Fixed wholesale contracts, switching and multi-sourcing

- 12 **agree** that, as specified in Annex A, *fuel importers* (currently BP, Mobil, Z Energy, Gull and TasmanFuels) must be required to:
- 12.1 disclose on 1 September 2022 all fixed wholesale contracts in force;
 - 12.2 annual disclosure fixed wholesale contracts entered into after those disclosed in 12.1;
 - 12.3 annually disclose changes to key provisions in the above fixed wholesale contracts;

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- 12.4 retain and disclose any fixed wholesale contract on request by the Commission;
- 12.5 annually disclose offers and bids made by the *fuel importer* to supply fuel by way of fixed wholesale contract;
- 12.6 annually disclose instances of expired or terminated fixed wholesale contracts;

Profitability

- 13 **agree** that, as specified in Annex A, *fuel importers*, wholesale suppliers and distributors must be required to annually:
 - 13.1 disclose financial statements that applicable financial reporting standards require the entity to prepare; or
 - 13.2 where the relevant fuel industry participant has 1 or more subsidiaries, or is a subsidiary, disclose group financial statements;

Gross margins and terminal gate pricing

- 14 **agree** that, as specified in Annex A, *fuel importers* must be required to disclose:

Transactions at fuel storage terminals

- 14.1 daily revenue, volume and volume weighted price for each fuel type sold at each terminal;
- 14.2 terminal gate price offered for the fuel types subject to the terminal gate pricing regime;
- 14.3 requests refused for supply under the terminal gate pricing regime;
- 14.4 fees charged by terminal owners for use of terminals by participants in terminal storage sharing schemes (throughput fees) for each fuel type;

Cost data

- 14.5 annual costs of importing fuel (for example, crude costs and refinery costs etc.);
- 14.6 costs of using the pipeline between the refinery and Auckland per month;
- 14.7 annual domestic shipping costs;

Retail fuel site data

- 14.8 volumes of fuel supplied by the fuel industry participants to their own retail fuel sites, by each fuel type;

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- 14.9 the standard retail price for each fuel at each retail fuel site (the last price posted each day);
- 14.10 the discounts offered by the supplier each day for each fuel and at each retail fuel site;
- 14.11 daily volume of each fuel sold from each retail fuel site;
- 14.12 quarterly revenue per fuel sold; and
- 14.13 distance between each terminal and the retail fuel sites they predominately supply;

Discounting and loyalty programmes

- 15 **agree** that, as specified in Annex A, *fuel importers* must be required to disclose annually an:
 - 15.1 explanation of its two largest discount practices;
 - 15.2 explanation of its two loyalty programmes that have the highest uptake; and
 - 15.3 explanation of discounting partnerships with third parties (unless previously provided);

Fuel supply

- 16 **agree** that, as specified in Annex A, *fuel importers* must be required to disclose:
 - 16.1 monthly fuel supply to each terminal for each fuel;
 - 16.2 monthly fuel withdrawn from each terminal for each fuel;
 - 16.3 total storage capacity at each terminal and nationally for each fuel;
 - 16.4 forecast monthly demand; and
 - 16.5 rationing event information;
- 17 **agree** that, as specified in Annex A, *fuel importers*, wholesale suppliers and distributors (where they supply at retail) must be required to disclose:
 - 17.1 retail fuel site addresses supplied by the *fuel importer*, wholesale supplier or distributor; and
 - 17.2 total annual volume of each fuel type supplied;

Quality assurance

- 18 **agree** that, as specified in Annex A, annually, fuel industry participants that are subject to information disclosure requirements must have the disclosure certified by a Director of the participant;

Other recommendations

- 19 **invite** the Minister of Energy and Resources to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above recommendations;
- 20 **authorise** the Minister of Energy and Resources to make decisions, consistent with the policy proposals in these recommendations, on any issues that arise during the drafting process;
- 21 **authorise** the Minister of Energy and Resources to make decisions on minor and technical matters that may arise during the drafting process; and
- 22 **agree** to release an exposure draft of the regulations for the purposes of targeted consultation with fuel industry participants the Minister of Energy and Resources considers likely to be significantly affected by the proposed regulations.

Authorised for lodgement

Hon Dr Megan Woods

Minister of Energy and Resources

Annex A: Recommended information disclosure requirements

#	Information that must be recorded and retained	Kinds of fuel industry participants	Circumstances in which information must be disclosed
Fixed wholesale contracts, switching and multi-sourcing			
1	All fixed wholesale contracts in force on 1 September 2022.	Fuel importers (which currently includes, BP, Mobil, Z Energy, Gull and Tasmanfuels) where they are the suppliers in the arrangement.	1 September 2022.
2	Any new fixed wholesale contracts entered into during the financial year.	Fuel importers where they are the suppliers in the arrangement.	Annually - 1 September following the financial year ending 31 March.
3	The following key provisions in each in force fixed wholesale contract: <ul style="list-style-type: none"> parties, commencement date, term; pricing methodology; prescribed minimum volumes; and termination periods, right of renewal, rights of first refusal, restraints on trade, liquidated damages clauses, exclusive territories. 	Fuel importers where they are the suppliers in the arrangement.	Annually - 1 September following the financial year ending 31 March.
4	All fixed wholesale contracts in force at the time the fixed wholesale contract provisions in the Act come into force and onwards.	Fuel importers where they are the suppliers in the arrangement.	To retain the wholesale contracts and disclose when requested by the Commission.
5	The offers and bids made over the year by the wholesale supplier, even if unsuccessful, to supply fuel by way of fixed wholesale contract with associated fuel volume, price, name of resellers.	Fuel importers where they are the suppliers in the arrangement.	Annually - 1 September following the financial year ending 31 March.
6	Instances of expired or terminated fixed wholesale contracts (including when the right to terminate in section 17 of the Act has been exercised).	Fuel importers where they are the suppliers in the arrangement.	Annually - 1 September following the financial year ending 31 March.
Profitability			
7	Where a fuel importer, wholesale supplier, or distributor supplies engine fuel under a wholesale contract and/or engages as a retailer of engine fuel, and has any subsidiaries or is a subsidiary, group financial statements may be disclosed. However, where the participants has no subsidiaries or is not a subsidiary, financial statements should be disclosed. These financial statements should be prepared in accordance with other applicable statutory obligations.	All fuel importers and wholesale suppliers, including those: <ul style="list-style-type: none"> that have an overseas parent company; and/or are a parent company or subsidiary that engages in wholesale and/or retail supply. All distributors, including those: <ul style="list-style-type: none"> that have an overseas parent company; and/or are a parent company or subsidiary that that engages in retail supply.	Annually - 5 months after the participant's balance date.
Gross margins			
8	Daily revenue, volume and volume weighted daily price on a cpl basis for each fuel type sold by each terminal and purchaser, that identifies: <ul style="list-style-type: none"> the fuel type; 	Fuel importers that sell fuel at bulk storage facilities, and are the sellers in the transaction.	Quarterly - 30 working days after the end of each quarter during the financial year ending 31 March.

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	<ul style="list-style-type: none"> • each purchaser and identification of whether the purchaser is ETS registered; • whether the fuel was sold under TGP at the terminal; • whether the fuel was sold under fixed wholesale contracts at the terminal; and • whether the fuel was sold at the terminal that does not fall under the preceding two categories. 		
9	TGP offered for the fuel types subject to the TGP regime and the date and time that the offer became valid (regardless of whether any fuel was sold).	Fuel importers that have a right to draw at bulk storage facilities for the fuel types sold under TGP, and are the sellers in the transaction.	Quarterly - 30 working days after the end of each quarter during the financial year ending 31 March.
10	Requests refused for supply under the TGP regime and <ul style="list-style-type: none"> • identity of the reseller who made the request • the date and time of the request • the date of refusal to supply • the relevant specified fuel and bulk storage facility • the amount of specified fuel that was requested; and • the grounds for refusal to supply. 	Fuel importers that have a right to draw at bulk storage facilities for the fuel types sold under TGP, and are the sellers in the transaction.	Quarterly - 30 working days after the end of each quarter during the financial year ending 31 March.
11	Throughput fees in place per terminal on a cpl basis for each fuel, and where relevant to whom the fee(s) were charged and the associated fuel volumes.	Fuel importers that sell fuel at bulk storage facilities and are the sellers in the transaction.	Quarterly - 30 working days after the end of each quarter during the financial year ending 31 March.
12	Total annual importer costs incurred, including individual costs for the following: <ul style="list-style-type: none"> • crude costs; • refinery costs (where relevant); • imported refined product; • costs to ship to New Zealand; • wharfage and handling; • additives used in the blending process; and • insurance and losses. Explanation of the methodology that was used to estimate each cost.	Fuel importers.	Annually - 1 September following the financial year ending 31 March.
13	Import parity formula (if relevant).	Fuel importers.	Annually - 1 September following the financial year ending 31 March.
14	Refinery Auckland Pipeline costs per month. Explanation of the methodology that was used to estimate this cost.	Fuel importers.	Quarterly - 30 working days after the end of each quarter during the financial year ending 31 March.
15	Annual domestic shipping costs on national basis. Explanation of the methodology that was used to estimate this cost.	Fuel importers.	Annually - 1 September following the financial year ending 31 March.

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16	Volumes of fuel self-supplied to the fuel industry participant's retail fuel sites, by each fuel type.	Fuel importers that operate or own retail fuel sites.	Quarterly - 30 working days after the end of each quarter during the financial year ending 31 March.
17	The last standard retail price of the day, on a cpl basis, for each fuel at each retail fuel site.	Fuel importers that operate or own retail fuel sites. Fuel importers to also provide this information about dealer owned retail fuel sites which they supply and set the price for.	Quarterly - 30 working days after the end of each quarter during the financial year ending 31 March.
18	The discounts offered by the participant each day on cpl basis for each fuel and at each retail fuel site.	Fuel importers that operate or own retail fuel sites. Fuel importers to also provide this information about dealer owned retail fuel sites which they supply and set the price for.	Quarterly - 30 working days after the end of each quarter during the financial year ending 31 March.
19	Daily volume of each fuel sold from each retail fuel site.	Fuel importers that operate or own retail fuel sites. Fuel importers to also provide this information about dealer owned retail fuel sites which they supply and set the price for.	Quarterly - 30 working days after the end of each quarter during the financial year ending 31 March.
20	Quarterly revenue per fuel sold.	Fuel importers that operate or own retail fuel sites. Fuel importers to also provide this information about dealer owned retail fuel sites which they supply and set the price for.	Quarterly - 30 working days after the end of each quarter during the financial year ending 31 March.
21	Distance (km) between each bulk storage facility and retail fuel sites they predominately supply.	Fuel importers that operate or own retail fuel sites. Fuel importers to also provide this information about dealer owned retail fuel sites which they supply and set the price for.	Annually - 1 September following the financial year ending 31 March.
Discounting and loyalty programmes			
22	Explanation of the two largest discounting practices, including the name of the discount, (if relevant) the conditions on claiming the discount, date the practice became available and the date that any previously reported practices ceased and the amount of the discount offered to end-users on a cpl basis.	Fuel importers that operate or own retail fuel sites. Fuel importers to also provide this information about dealer owned retail fuel sites which they supply and set the price for.	Annually - 1 September following the financial year ending 31 March.
23	Explanation of the two loyalty programmes that has the highest uptake, including the name of the loyalty programme, (if relevant) the conditions on claiming any benefit, the type of the benefit offered to end-users, date the practice became available and the date that any previously reported practices ceased.	Fuel importers that operate or own retail fuel sites. Fuel importers to also provide this information about dealer owned retail fuel sites which they supply and set the price for.	Annually - 1 September following the financial year ending 31 March.
24	Explanation of discounting partnerships with third parties, including the dates that the partnerships became available and any partnerships that any previously reported partnerships ceased.	Fuel importers that operate or own retail fuel sites. Fuel importers to also provide this information about dealer owned retail fuel sites which they supply and set the price for.	Annually - 1 September following the financial year ending 31 March.
Fuel supply			
25	Monthly fuel supply to each bulk storage facility for each fuel, that identifies whether the fuel was: <ul style="list-style-type: none"> • supplied by a fuel industry participant part of infrastructure sharing arrangements; 	Fuel importers.	Quarterly - 30 working days after the end of each quarter during the financial year ending 31 March.

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	<ul style="list-style-type: none"> supplied by a fuel industry participant, that has been imported as refined fuel; and supplied by a fuel industry participant, that has been refined in New Zealand. 		
26	Monthly fuel withdrawn from each bulk storage facility for each fuel.	Fuel importers.	Quarterly - 30 working days after the end of each quarter during the financial year ending 31 March.
27	Actual month-end volumes at each bulk storage facility (litres) for each fuel.	Fuel importers.	Quarterly - 30 working days after the end of each quarter during the financial year ending 31 March.
28	Total storage capacity for each fuel, that takes into account tank outages and maintenance, at each bulk storage facility and nationally and reasons for changes in capacity.	Fuel importers.	Annually - 1 September following the financial year ending 31 March.
29	Forecast monthly demand for each month in the following quarter.	Fuel importers.	Quarterly - 30 working days after the end of each quarter during the financial year ending 31 March.
30	In the event of a rationing event, identification of whether it was at a terminal or port level, the dates it began and ended, why the event occurred, how fuel was rationed and which fuel it applies to.	Fuel importers.	Quarterly - 30 working days after the end of each quarter during the financial year ending 31 March.
31	All retail fuel site addresses supplied by the participant, and new retail fuel sites supplied or retail fuel sites where supply has been discontinued.	Fuel importers, wholesale suppliers and distributors that have retail fuel sites. Fuel importers, wholesale suppliers and distributors to provide this information about dealer owned retail fuel sites they supply and set the price for.	Quarterly - 30 working days after the end of each quarter during the financial year ending 31 March.
32	Total annual volume of each fuel type supplied.	Fuel importers, wholesale suppliers and distributors that have retail fuel sites. Fuel importers, wholesale suppliers and distributors to provide this information about dealer owned retail fuel sites they supply and set the price for.	Annually - 1 September following the financial year ending 31 March.
Quality assurance			
33	Director certification having made all reasonable enquiry that the disclosures made over the course of the year comply in all material respects with the information disclosure regulations.	Fuel industry participants that are subject to information disclosure requirements.	Annually - 1 September following the financial year ending 31 March.