



COVERSHEET

Minister	Hon Dr Megan Woods	Portfolio	Energy and Resources
Title of Cabinet paper	Fuel Industry Amendment Regulations 2021	Date to be published	23 February 2022

List of documents that have been proactively released		
Date	Title	Author
December 2021	<i>Fuel Industry Amendment Regulations 2021</i>	<i>Office of the Minister of Energy and Resources</i>
16 December 2021	<i>Fuel Industry Amendment Regulations 2021</i> <i>DEV-21-MIN-0270</i>	<i>Cabinet Office</i>

Information redacted

NO

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Office of the Minister of Energy and Resources
Cabinet Legislation Committee

Fuel Industry Amendment Regulations 2021

Proposal

- 1 This paper seeks authorisation to submit the Fuel Industry Amendment Regulations 2021 (the Amendment Regulations) to the Executive Council.

Executive Summary

- 2 The Fuel Industry Act 2020 (the Act) received Royal Assent on 11 August 2020.
- 3 The Act gives the Minister of Energy and Resources the power to recommend regulations in relation to various matters related to the fuel industry.
- 4 Regulations relating to terminal gate pricing, fixed wholesale contractual terms, consumer information requirements and dispute resolution have been developed and are contained in the Fuel Industry Regulations 2021.
- 5 Cabinet has agreed to the development of information disclosure regulations [CAB-21-MIN-0073]. To implement these policy proposals agreed to by Cabinet, these Amendment Regulations have been drafted (see attached).
- 6 However, before any regulations can be prescribed, the Act requires that the Minister of Energy and Resources:
 - 6.1 consult with the fuel industry participants that they consider are likely to be significantly affected by the proposed regulations; and
 - 6.2 is satisfied that the regulations are necessary or desirable after having regard to the purpose of the Act.
- 7 I have consulted with fuel industry participants that I consider are likely to be significantly affected by the proposed regulations.
- 8 I am satisfied that the Amendment Regulations are necessary or desirable after having regard to the purpose of the Act and the associated subpart.
- 9 I seek approval from Cabinet to submit the Amendment Regulations to the Executive Council.

Background

- 10 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.
- 11 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.
- 12 The Act establishes:
- 12.1 a terminal gate pricing regime to improve competition in the wholesale market by making it easier for a fuel reseller to access fuel more cheaply and in more locations;
 - 12.2 rules to ensure contracts between wholesale fuel suppliers and their wholesale customers are fair and support competition;
 - 12.3 requirements for retail fuel sites to display premium fuel prices on forecourt price boards;
 - 12.4 improvements to enable the monitoring of the fuel market by requiring fuel companies to collect and disclose certain information; and
 - 12.5 a dispute resolution scheme for the new regime under the Act.
- 13 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 came 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

- 14 The Act gives the Minister of Energy and Resources the power to recommend regulations in relation to various matters related to the fuel industry, including information disclosure requirements. The substantive detail of the new fuel information disclosure regime will be prescribed through regulations.
- 15 It is important that the regulations are developed before the relevant parts of the Act come into force on 11 February 2022.
- 16 However, before regulations can be prescribed, it is a requirement in the Act that the Minister of Energy and Resources:
- 16.1 consults with the fuel industry participants that the Minister considers are likely to be significantly affected by the proposed regulations; and

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- 16.2 is satisfied that the regulations are necessary or desirable after having regard to the purpose of the Act and the information disclosure subpart.
- 17 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.
- 18 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 (Consultation Paper 2021).
- 19 In November 2021, I undertook targeted consultation on an exposure draft of the Amendment Regulations.
- 20 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:
- 20.1 enable the Chief Executive of the Ministry of Business, Innovation and Employment (MBIE) and the Commission to monitor the performance of fuel markets; and
- 20.2 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.
- 21 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.
- 22 As a result of the Commission's market study, the Act 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.
- 23 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.
- 24 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.
- 25 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:
- 25.1 the kinds of fuels that the regulations apply to;

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- 25.2 the information that must be recorded and retained;
 - 25.3 the kinds of fuel industry participants that the regulations apply to;
 - 25.4 the circumstance in which information must be disclosed to the Chief Executive of MBIE, the Commission, or both; and
 - 25.5 providing for any other matters contemplated by the Act, necessary for its administration, or necessary for giving it full effect.
- 26 The disclosure of information Subpart of the Act will come into force on 11 February 2022 and Cabinet has agreed to the policy proposals for information disclosure regulations [CAB-21-MIN-0073].
- 27 The Amendment Regulations have been drafted (see attached) to implement the policy proposals agreed by Cabinet.
- 28 The main requirements in the Amendment Regulations are set out below.

The kinds of fuels that the regulations apply to

- 29 Section 27(2)(a) of the Act provides that regulations may prescribe the kind of fuels that the regulations apply to.
- 30 The Amendment Regulations prescribe that the regulations apply to 91 octane, 95 octane, 98 octane and diesel, as Cabinet agreed [CAB-21-MIN-0073] to monitor these main types of fuel that are sold to end-users in New Zealand.

The information is to be disclosed to the Commerce Commission

- 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 The Amendment Regulations prescribe that all the information is to be disclosed to the Commission as the primary regulator under the Act, either as a one-off disclosure, as requested, quarterly, or annually, depending on the information to be disclosed.

The kinds of industry participants

- 33 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.
- 34 The Amendment Regulations prescribe that the majority of the information requirements apply to *fuel importers* (currently BP, Mobil, Z Energy, Gull and TasmanFuels) since:

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- 34.1 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; and
 - 34.2 information on competing suppliers will provide a richer picture, therefore these disclosures will be supplemented by data from the main competing importers Gull and TasmanFuels, who also have significant infrastructure.
- 35 The Amendment Regulations also prescribe some information disclosure requirements on wholesale suppliers and distributors to enable some monitoring of a broader range of industry participants.

The retention period

- 36 I propose that the information be recorded and retained for a period of seven years after the date that the information is disclosed to the Commission, or if a fixed wholesale contract has not been disclosed, seven years after the termination or expiry. This aligns with record keeping requirements under the Tax Administration Act 1994 and the Energy (Fuels, Levies, and References) Act 1989.

The kind of information that must be recorded and retained

- 37 Section 27(2)(b) of the Act provides that regulations may be made prescribing the information that must be recorded and retained.
- 38 The kinds of information that must be recorded and retained includes information relating to:
- 38.1 fixed wholesale contracts, switching and multi-sourcing;
 - 38.2 profitability;
 - 38.3 gross margins and terminal gate pricing;
 - 38.4 discounting and loyalty programmes; and
 - 38.5 fuel supply.

Fixed wholesale contracts, switching and multi-sourcing

- 39 Subpart 2 of Part 2 of the Act introduces obligations regarding fixed wholesale contract terms to address:
- 39.1 the bargaining imbalance between suppliers and their wholesale customers;
 - 39.2 pricing mechanisms contained in wholesale contracts which can impact competition; and

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- 39.3 the lack of switching between fuel suppliers by wholesale customers.
- 40 Requiring the disclosure of information on fixed wholesale contracts, switching and multi-sourcing will enable monitoring of the impact of the Act on fixed wholesale contracts, and resellers switching suppliers and sourcing fuel supply from multiple wholesale suppliers.
- 41 Key disclosure requirements prescribed in the attached Amendment Regulations, applying to fuel importers, and relating to fixed wholesale contracts, switching and multi-sourcing, include:
- 41.1 disclosure on 1 September 2022 of all fixed wholesale contracts in force on 11 August 2022 which is the date that the Act applies to all such contracts, whether entered before or after it commenced;
 - 41.2 annual disclosure of any fixed wholesale contracts entered into after those disclosed in paragraph 41.1;
 - 41.3 annual disclosure of any changes to key provisions in the above fixed wholesale contracts;
 - 41.4 retention of fixed wholesale contracts and disclosure of any such contract on request by the Commission;
 - 41.5 annual disclosure of all offers and bids made by the *fuel importer* to supply fuel by way of fixed wholesale contract; and
 - 41.6 annual disclosure of instances of expired or terminated fixed wholesale contracts.
- 42 Cabinet agreed [CBC-21-MIN-0073] for all fixed wholesale contracts that are in force on 1 September 2022, to be disclosed on 1 September 2022.
- 43 To give fuel importers sufficient time to comply with the disclosure, I recommend instead requiring all fixed wholesale contracts that are in force on 11 August 2022, be disclosed by no later than 1 September 2022.
- 44 Cabinet agreed [CBC-21-MIN-0073] for fixed wholesale contracts to be retained from when fixed wholesale contracts provisions in the Act come into effect (Subpart 2 of Part 2) and onwards. Given the split commencement provisions of Subpart 2 of Part 2, I recommend that this retention obligation come into effect at the same time the rest of the substantive retention and disclosure obligations come into effect (1 April 2022).

Profitability

- 45 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. Alongside monitoring of gross margins, monitoring financial statements will enable monitoring of industry participants' profitability.

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- 46 Key disclosure requirements prescribed in the attached Amendment Regulations, applying to fuel importers wholesale suppliers and distributors, and relating to profitability, include:
- 46.1 disclosure of financial statements that applicable financial reporting standards require the entity to prepare; or
 - 46.2 where the relevant fuel industry participant has one or more subsidiaries, or is a subsidiary, disclose group financial statements that applicable financial reporting standards require the entity to prepare.
- 47 Cabinet agreed [CBC-21-MIN-0073] that these financial standards should be prepared in accordance with other applicable statutory obligations. I propose that the applicable statutory obligation is the Companies Act 1993, since most fuel importers, wholesale suppliers and distributors are registered companies.
- 48 Analysis of financial statements is intended to be complementary to gross margin analysis in assessing profitability. Therefore, I also propose making it explicit that fuel importers, wholesale suppliers and distributors are exempt from this requirement, where they do not prepare financial statements in accordance with the Companies Act 1993. This means that the disclosure requirement would only apply to these participants if the Companies Act 1993 requires them to prepare financial statements (or group statements).

Gross margins and terminal gate pricing

- 49 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.
- 50 In addition to analysis of financial statements, analysis of gross margins will enable monitoring of the impact of the Act on fuel industry returns.
- 51 Key disclosure requirements prescribed in the attached Amendment Regulations, applying to fuel importers and relating to gross margins and terminal gate pricing include:

Transactions at fuel storage terminals

- 51.1 information on each individual sale of each fuel type sold at each terminal;
- 51.2 terminal gate price offered for the fuel types subject to the terminal gate pricing regime;
- 51.3 requests refused for supply under the terminal gate pricing regime;
- 51.4 fees charged for use of terminals by participants in terminal storage sharing schemes (throughput fees) for each fuel type;

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Cost data

- 51.5 annual costs of importing fuel (for example, costs of importing refined product and international shipping costs etc.);
- 51.6 costs of using the terminal to Auckland pipeline per month;
- 51.7 annual domestic shipping costs;
- 51.8 the volume of imported refined product;

Retail fuel site data

- 51.9 volumes of fuel supplied by the fuel industry participants to their own retail fuel sites, by each fuel type;
 - 51.10 the standard retail price for each fuel at each retail fuel site (the last price posted each day);
 - 51.11 the discounts offered by the supplier each day for each fuel at each retail fuel site, other than the discounts disclosed under the disclosure of discounting and loyalty programmes;
 - 51.12 daily volume of each fuel sold from each retail fuel site;
 - 51.13 quarterly revenue per fuel sold; and
 - 51.14 distance between each terminal and the retail fuel sites they predominately supply.
- 52 Cabinet agreed [CBC-21-MIN-0073] for the Amendment Regulations to require the disclosure of daily revenue, volume and volume weighted price, with associated information, such as each purchaser. I recommend that instead, information be disclosed about each individual sale of each engine fuel type from a bulk storage facility, including the date of the sale, the purchaser of the engine fuel, what contractual arrangement the fuel was purchased under, the volume of fuel sold, the revenue from that sale and the price (with taxes and other charges identified separately), the bulk storage facility from which the engine fuel was sold, and whether the purchaser is registered under the emissions trading scheme.
- 53 I consider this is necessary to enable the Commission to have a more granular understanding of gross wholesale margins and transactions at the terminal.
- 54 Cabinet agreed [CBC-21-MIN-0073] to require fuel importers to disclose all total costs to import fuel, including information that relates to the importation and refining of crude oil into New Zealand. As a result of Marsden Point Refinery switching to an import only terminal from April 2022, some of these costs are no longer necessary to disclose. However, to enable more accurate information on the cost to import fuel, I recommend requiring fuel importers to disclose the volume of imported refined product.

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- 55 Cabinet agreed [CBC-21-MIN-0073] to require fuel importers to disclose the methodology used to estimate domestic shipping costs and total importer costs incurred. Instead of the disclosure of the methodology, I recommend requiring the disclosure of actual domestic shipping costs and an explanation of what is included in these costs, to enable more accurate gross margin analysis.
- 56 Cabinet agreed [CBC-21-MIN-0073] to require fuel importers to disclose discounts offered each day for each fuel at each retail fuel site. The intention is to only capture bespoke discounts offered per site (rather than discounts that consumers can accumulate and redeem at any time). I recommend making this intention more explicit in the Amendment Regulations, by capturing only the discounts offered each day for each fuel at each retail fuel site, rather than the discounts disclosed under discounting and loyalty programmes.

Discounting and loyalty programmes

- 57 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. Cabinet agreed in February 2020 [CAB-20-MIN-003 refers] that monitoring of discounts is the most appropriate response at this time.
- 58 Cabinet agreed [CBC-21-MIN-0073] to require fuel importers to disclose an explanation of its two largest discount practices, two loyalty programmes that have the highest uptake and discounting partnerships with third parties. Many discounting and loyalty programmes offer the consumer a choice between discounts off the price of fuel, or other benefits (for example Fly Buys points) and have connections with third parties. To avoid overlapping disclosures, I recommend bundling these.
- 59 To make the policy intent more explicit, I also recommend that the disclosed discounting and loyalty programmes should:
- 59.1 exclude commercial fuel cards; and
 - 59.2 be the two programmes that account for the most fuel sales revenue.
- 60 This will ensure the Commission receives information on the two most prominent discounting and loyalty programmes offered to the retail market.

Fuel supply

- 61 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

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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.

- 62 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.
- 63 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.
- 64 Key disclosure requirements prescribed in the attached Amendment Regulations, applying to fuel importers and relating to fuel supply include:
- 64.1 monthly fuel supply to each terminal for each fuel;
 - 64.2 monthly fuel withdrawn from each terminal for each fuel;
 - 64.3 total storage capacity at each terminal and nationally for each fuel;
 - 64.4 forecast monthly demand for each fuel type; and
 - 64.5 coordination event information (in situations where fuel inventories are low at a terminal and fuel is rationed).
- 65 Cabinet has agreed [CAB-21-MIN-0073] that fuel importers must disclose monthly fuel supply to each terminal for each engine fuel type, and must identify whether the fuel was supplied as part of an infrastructure sharing agreement, whether the fuel was imported as refined fuel or whether the fuel had been refined in New Zealand. As a result of the Marsden Point Refinery switching to an import only terminal from April 2022, it is no longer necessary to require the disclosure of information that relates to the refining of crude oil.
- 66 I recommend that fuel importers monthly fuel supply disclosure should instead identify whether the fuel was supplied to the terminal directly from outside New Zealand, or from elsewhere in New Zealand.
- 67 Cabinet has agreed [CAB-21-MIN-0073] that fuel importers must disclose monthly fuel withdraw volumes for each terminal and engine fuel type.
- 68 I recommend that the requirement to disclose monthly fuel withdrawn from each terminal for each fuel must also identify whether the volume drawn:
- 68.1 is to supply retail sites owned and operated by the fuel importer;
 - 68.2 is under an infrastructure sharing agreement; or
 - 68.3 does not fall into the preceding two categories.
- 69 Information on whether drawn fuel is to supply retail sites owned and operated by the fuel importer, will enable the Commission conduct gross margin

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analysis, while the remaining information will enable the Commission to monitor the impact of terminal investment and tight supply on the market and its impact on competition.

- 70 Cabinet has agreed [CAB-21-MIN-0073] to require the disclosure of forecast monthly demand from fuel importers. To be consistent with other information disclosures, I recommend that this information be disclosed per engine fuel type.
- 71 Cabinet has agreed [CAB-21-MIN-0073] that fuel importers, wholesale suppliers and distributors must disclose addresses of retail fuel sites supplied, on a quarterly basis. I recommend requiring this disclosure from wholesale suppliers and distributors (excluding fuel importers) on an annual basis to align the timing of disclosures that these participants are subject to. Fuel importers would still be required to disclose this information quarterly, to enable regular monitoring.
- 72 Cabinet has agreed [CAB-21-MIN-0073] that fuel importers, wholesale suppliers and distributors must disclose the total volume of each fuel type supplied on an annual basis. This will overlap with fuel importers' requirements to disclose daily volume of each fuel sold from each retail fuel site. To avoid this overlap, I recommend no longer requiring fuel importers to disclose this information annually.

Information disclosure quality assurance

- 73 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.
- 74 Cabinet have agreed that fuel industry participants that are subject to the information disclosure requirements must have the disclosure certified by a Director of the participant [CAB-21-MIN-0073].
- 75 I have received subsequent advice that this regulation does not fall within the empowering provisions of the Act.
- 76 Given that the Act already provides for pecuniary penalties to be imposed by the High Court for contravening the Act's information disclosure requirements, I do not consider that not requiring Director certification will substantially impact the information disclosure regime.
- 77 I recommend no longer requiring that fuel industry participants have the disclosure certified by a Director of the participant.

Compliance

- 78 The proposed regulations comply with:
- 78.1 the principles of the Treaty of Waitangi;

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- 78.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
- 78.3 the principles and guidelines set out in the Privacy Act 2020;
- 78.4 relevant international standards and obligations;
- 78.5 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Statutory prerequisites

- 79 For regulations to be made under Part 2 Subpart 4 (Disclosure of information) of the Act, section 27(3) requires that the Minister must:
 - 79.1 have consulted with any fuel industry participants that they consider like to be significantly affected by the proposed regulations; and
 - 79.2 be satisfied that the regulations are necessary or desirable after having regard to the purpose of the Act and associated Subpart.
- 80 I have considered all of the necessary pre-requisites under the Act and I am satisfied they have been met.

Regulations Review Committee

- 81 I do not consider there are grounds for the Regulations Review Committee to draw the regulations to the attention of the House of Representatives under Standing Order 327.

Certification by Parliamentary Counsel

- 82 These draft regulations have been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

Impact Analysis

- 83 A Regulatory Impact Assessment was prepared in accordance with the necessary requirements and was submitted at the time that Cabinet approval was sought for the policy relating to the Amendment Regulations [CBC-21-MIN-0073].

Publicity

- 84 MBIE will notify interested stakeholders.

Proactive release

- 85 I intend to release the paper proactively in whole within 30 days of Cabinet decision. MBIE will publish a copy on its website.

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Consultation

- 86 The Ministry of Transport, Ministry for the Environment, the Treasury, Waka Kotahi New Zealand Transport Agency and the Commerce Commission have been consulted throughout the development of the policy and draft Amendment Regulations. The Department of the Prime Minister and Cabinet has been informed.
- 87 In November 2020, I undertook targeted engagement with fuel industry participants that I consider likely to be significantly affected by the proposed regulations during the policy development process including major fuel suppliers, Gull, Timaru Oil Service Limited (TOSL), distributors, the Automobile Association and the Motor Trade Association.
- 88 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.
- 89 In November 2021, I undertook further targeted engagement on the draft of the Amendment Regulations with fuel industry participants I considered likely to be significantly affected by the proposed regulations, and with other interested stakeholders.
- 90 Seven submissions were received from stakeholders. Most of the submissions suggested minor technical changes to the drafting of the Amendment Regulations. Minor changes have been incorporated where I consider the suggestion will improve the Amendment Regulations.
- 91 Some participants were supportive of the Amendment Regulations, with one submitter praising the comprehensive nature and breadth of information. Industry participants subject to the obligations were generally not supportive of the Amendment Regulations, noting the granular nature of the information to be disclosed.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 **note** that on 25 August 2021 Cabinet agreed to the development of information disclosure regulations under the Fuel Industry Act 2020 [CBC-21-MIN-0073];
- 2 **note** that the Fuel Industry Amendment Regulations 2021 will give effect to the decision referred to in recommendation 1 above;
- 3 **agree** that the information must be recorded and retained by fuel industry participants to which the regulations apply, for a period of seven years after the date that the information is disclosed to the Commission, or if a fixed wholesale contract has not been disclosed, seven years after the termination or expiry;
- 4 **note** that Cabinet previously **agreed** [CBC-21-MIN-0073] that all fixed wholesale contracts in force on 1 September 2022, must be disclosed by fuel importers on 1 September 2022;
- 5 **agree** to rescind the decision referred to in recommendation 4, to the extent that it relates to when fixed wholesale contracts in force on 1 September 2022 must be disclosed by fuel importers;
- 6 **agree** all fixed wholesale contracts that are in in force on 11 August 2022, must be disclosed by fuel importers no later than 1 September 2022;
- 7 **note** that that Cabinet previously **agreed** [CBC-21-MIN-0073] that the obligation for fuel importers to retain all fixed wholesale contracts and disclose these to the Commerce Commission upon request, comes into effect at the time the fixed wholesale provisions in the Act come into force;
- 8 **agree** to rescind the decision referred to in recommendation 7 to the extent that it relates to when the obligation for fuel importers to retain fixed wholesale contracts and disclose those to the Commerce Commission comes into effect;
- 9 **agree** that the obligation for fuel importers to retain all fixed wholesale contracts and disclose these to the Commerce Commission upon request, comes into effect on 1 April 2022;
- 10 **note** that Cabinet previously **agreed** [CBC-21-MIN-0073] that fuel importers, wholesale suppliers and distributors must disclose financial statements that have been prepared in accordance with other applicable statutory obligations;
- 11 **agree** that these financial statements should be prepared in accordance with the Companies Act 1993;
- 12 **agree** that if fuel importers, wholesale suppliers and distributors are exempt from the obligation to disclose financial statements if they do not prepare financial statements in accordance with the Companies Act 1993;

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- 13 **note** that Cabinet previously **agreed** [CBC-21-MIN-0073] that fuel importers must disclose daily revenue, volume and volume weighted price for each fuel type sold at each bulk storage facility, with associated information;
- 14 **agree** to rescind the decision referred to in recommendation 13, to the extent that it relates to requiring fuel importers to disclose daily revenue, volume and volume weighted price for each fuel type sold at each bulk storage facility, with associated information;
- 15 **agree** that fuel importers must disclose each individual sale of each engine fuel type from a bulk storage facility, including the date of the sale, the purchaser of the engine fuel, what contractual arrangement the fuel was purchased under, the volume of fuel sold, the revenue from that sale and the price (with taxes and other charges identified separately), the bulk storage facility from which the engine fuel was sold, and whether the purchaser is registered under the emissions trading scheme;
- 16 **note** that Cabinet previously **agreed** [CBC-21-MIN-0073] that fuel importers must disclose all costs of importing crude oil, all refinery costs and the costs of additives used in the blending process;
- 17 **agree** to rescind the decision referred to in recommendation 16, to the extent that it relates to disclosing the costs of importing crude oil, all refinery costs and the costs of additives used in the blending process;
- 18 **note** that that Cabinet previously **agreed** [CBC-21-MIN-0073] that fuel importers must disclose the methodology used to estimate domestic shipping costs and total importer costs incurred;
- 19 **agree** that Cabinet rescind the decision referred to in recommendation 18, to the extent that it relates to the disclosing of the methodology used to estimate domestic shipping costs and total importer costs incurred;
- 20 **agree** to require fuel importers to disclose actual domestic shipping costs and an explanation of what is included in the disclosure of domestic shipping costs and total importer costs incurred;
- 21 **note** that Cabinet previously **agreed** [CBC-21-MIN-0073] that fuel importers must disclose discounts offered each day for each fuel at each retail fuel site;
- 22 **agree** to explicitly exclude the discounts disclosed under the disclosure of discounting and loyalty programmes, from the regulation outlined in recommendation 21;
- 23 **note** that Cabinet previously **agreed** [CBC-21-MIN-0073] that fuel importers must disclose an explanation of its two largest discount practices, two loyalty programmes that have the highest uptake and discounting partnerships with third parties;
- 24 **agree** that Cabinet rescind the decision referred to in recommendation 23, to the extent that it relates to the disclosure of an explanation of a fuel importers

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two largest discount practices, two loyalty programmes that have the highest uptake and discounting partnerships with third parties;

- 25 **agree** that fuel importers must disclose an explanation of the two discounting and loyalty programmes that account for the most fuel sales revenue associated with such programmes (excluding commercial fuel cards);
- 26 **note** that Cabinet previously **agreed** [CBC-21-MIN-0073] that fuel importers must disclose the monthly fuel supply to each terminal and identify whether the fuel was supplied as part of an infrastructure sharing agreement, whether the fuel was imported as refined fuel and whether the fuel had been refined in New Zealand;
- 27 **agree** to rescind the decision referred to in recommendation 26 to the extent that it relates to the disclosure monthly fuel supply to each terminal and identification of whether the fuel was supplied as part of an infrastructure sharing agreement, whether the fuel was imported as refined fuel and whether the fuel had been refined in New Zealand;
- 28 **agree** to require fuel importers to disclose monthly fuel supply to each terminal, that must identify whether the fuel was supplied to the terminal directly from outside New Zealand, or from elsewhere in New Zealand;
- 29 **note** that Cabinet previously **agreed** [CBC-21-MIN-0073] that fuel importers must disclose the monthly fuel withdrawn from each terminal for each fuel;
- 30 **agree** that alongside the requirement for fuel importers to disclose the monthly fuel withdrawn from each terminal for each fuel, fuel importers must also identify whether the volume drawn is to supply retail sites owned and operated by the fuel importer, is under an infrastructure sharing agreement, or does not fall under any of the preceding categories;
- 31 **note** that Cabinet previously **agreed** [CBC-21-MIN-0073] that fuel importers must disclose forecast monthly demand;
- 32 **agree** that the requirement for fuel importers to disclose forecast monthly demand is per engine fuel type;
- 33 **agree** that fuel importers must annually disclose the associated volumes when disclosing the costs of importing fuel;
- 34 **note** that Cabinet previously **agreed** [CBC-21-MIN-0073] that fuel industry participants that are subject to the information disclosure requirements must have the disclosure certified by a Director of the participant;
- 35 **agree** to rescind the decision referred to in recommendation 34;
- 36 **note** that Cabinet previously **agreed** [CBC-21-MIN-0073] that fuel importers, wholesale suppliers and distributors must disclose addresses of retail fuel sites supplied on a quarterly basis;

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- 37 **agree** to rescind the decision referred to in recommendation 36, to the extent that it relates to requiring wholesale suppliers and distributors to disclose addresses of retail fuel sites supplied on a quarterly basis;
- 38 **agree** to require the wholesale suppliers and distributors to disclose addresses of retail fuel sites supplied from on an annual basis;
- 39 **note** that Cabinet previously **agreed** [CBC-21-MIN-0073] that fuel importers, wholesale suppliers and distributors must disclose the total annual volume of each fuel type supplied;
- 40 **agree** to rescind the decision referred to in recommendation 39 to the extent that it relates to fuel importers;
- 41 **authorise** the submission to the Executive Council of the Fuel Industry Amendment Regulations 2021;
- 42 **note** that the Fuel Industry Amendment Regulations 2021 will come into force on 11 February 2022, with the substantive retention and disclosure obligations to come into force on 1 April 2022;
- 43 **note** that for regulations to be made under Part 2 Subpart 4 (Disclosure of information) of the Act, section 27(3) requires that the Minister must:
- 43.1 have consulted with any fuel industry participants that they consider likely to be significantly affected by the proposed regulations; and
- 43.2 be satisfied that the regulations are necessary or desirable after having regard to the purpose of the Act and associated Subpart.
- 44 **Note** the advice of the Minister of Energy and Resources that these requirements have been met.

Authorised for lodgement

Hon Dr Megan Woods
Minister of Energy and Resources

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