



COVERSHEET

Minister	Hon Dr Megan Woods	Portfolio	Energy and Resources
Title of Cabinet paper	Amendments to New Zealand's Engine Fuel Specifications Regulations 2011	Date to be published	6 May 2022

List of documents that have been proactively released

Date	Title	Author
March 2022	Amendments to New Zealand's Engine Fuel Specifications Regulations 2011	Office of the Minister of Energy and Resources
17 March 2022	LEG-22-MIN-0030 Minute	Cabinet Office

Information redacted

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.

In Confidence

Office of the Minister of Energy and Resources

Cabinet Legislation Committee

Amendments to New Zealand's Engine Fuel Specifications Regulations 2011

Proposal

- 1 This paper seeks authorisation for submission to the Executive Council of the Engine Fuel Specifications Amendment Regulations 2022 (the Amendment Regulations).

Executive Summary

- 2 Cabinet has agreed that New Zealand will accede to Annex VI of the International Convention for the Prevention of Pollution from Ships (MARPOL). Annex VI imposes obligations on ships in relation to emissions of sulphur dioxide, particulate matter, and nitrogen oxides. It is also the primary mechanism for addressing climate change impacts from shipping. Accession will reduce adverse public health effects of marine air pollution on communities close to ports and harbours from domestic ships, and enable New Zealand to enforce the requirements for both domestic and visiting foreign ships.
- 3 In order to support the implementation of Annex VI, I seek approval for amendments to the Engine Fuel Specifications Regulations 2011 (EFSR). These amendments establish new requirements for the sale of marine fuel oil and place specific obligations on marine fuel suppliers so that compliance with Annex VI can be demonstrated.
- 4 Once New Zealand's domestic legislation has been aligned to give effect to MARPOL Annex VI, the Minister of Foreign Affairs will sign an instrument of accession to the Agreement and the Ministry of Foreign Affairs and Trade (MFAT) will arrange for its deposit with the International Maritime Organisation (IMO). In accordance with Article 15(5) of MARPOL, Annex VI, the Agreement will enter into force for New Zealand three months after the date of deposit.

Policy

- 5 Annex VI of MARPOL responds to two global problems related to shipping emissions:
 - 5.1 impacts on human health and environments in port communities from maritime pollution, and
 - 5.2 contributions to climate change and ozone layer depletion.
- 6 In December 2019, Cabinet agreed to accede to Annex VI of MARPOL, subject to the satisfactory completion of the parliamentary treaty examination process [DEV-19-MIN-0304 and CAB-19-MIN-0593 refer]. On 26 June 2020, the Environment Select

Committee released the final international treaty examination and stated that given the environmental and public health benefits identified, it believed that the Government should accede to Annex VI as soon as practicable.

- 7 To implement Annex VI obligations and give effect to the Maritime Transport (MARPOL Annex VI) Amendment Act 2021, Cabinet agreed to amend the following regulations:
 - 7.1 Marine Protection (Offences) Regulations 1998 under the Maritime Transport Act 1994 [DEV-19-MIN-0304 and CAB-19-MIN-0593];
 - 7.2 Maritime (Charges) Regulations 2014 under the MTA [LEG-21-MIN-0058 and CAB-21-MIN-0165]; and
 - 7.3 Engine Fuel Specifications Regulations 2011 (ESFR) under the Energy (Fuels, Levies, and References) Act 1989 [DEV-19-MIN-0304 and CAB-19-MIN-0594].
- 8 In November 2021, Cabinet authorised submission to the Executive Council of the Marine Protection (Offences) Amendment Regulations 2021 and Maritime (Charges) Amendment Regulations 2021 [LEG-21-MIN-0205 and CAB-21-MIN-0505].

Changes to the Engine Fuel Specification Regulations 2011

- 9 Amendments to the EFSR are required to introduce new fuel specifications for marine engine fuels. There are other new requirements under the EFSR that will apply exclusively to marine fuel oil to ensure that New Zealand meets its obligations under Annex VI.
- 10 Annex VI will greatly decrease the allowable level of sulphur in fuels supplied to vessels. Reduction in sulphur will result in cleaner burning fuels, and consequential reduction in discharges of pollutants to the atmosphere. There are also a number of other requirements that are not directly required by Annex VI but are related to measures for health and safety, which I propose are included in the Amendment Regulations.
- 11 The EFSR currently differentiates between retail sales and non-retail sales of fuels. However, marine fuel oils are largely sold via non-retail sale (compared to petrol and diesel which are largely retail). Retail sales for marine fuels do occur, but are generally the sale of automotive grade diesel for smaller vessels. I propose the following requirements for retail/non-retail sale of marine fuel oils:
 - 11.1 For retail: The marine fuel oil must be fit for common purposes, and meet the fuel specifications for diesel (set out in Schedule 2 of the EFSR). I note that the Schedule 2 requirements are sufficient for meeting our Annex VI fuel obligations; and
 - 11.2 For non-retail: These fuels should have properties that conform to the limits specified for marine fuel oils (set out in new Schedule 5 of the EFSR). Fuel properties must be calculated and tested in accordance with the requirements

referred to in Schedule 5. Fuel suppliers will also have to specify the kinematic viscosity and the density of the fuel to purchasers at the time of sale.

- 12 Disclosure of the fuel's key properties, namely kinematic viscosity and the density of the fuel is required in order to both inform non-retail consumers as to what fuel is being supplied, and to ensure that sufficient information is available for the fuel to be tested for compliance with Annex VI requirements. Therefore, I consider that suppliers should record and disclose these properties in accordance with the appropriate test methods, based on international standards.
- 13 I also propose that a new schedule for marine fuel specifications is included, in line with current practice with other engine fuels, that:
 - 13.1 sets out the fuel properties required to be tested to ensure that Annex VI requirements are met;
 - 13.2 sets out the testing methods and standards that will be applied when testing; and
 - 13.3 ensures that appropriate information is provided to inform testing approaches to properties, such as the kinematic viscosity and density properties of the fuel.
- 14 I propose that new requirements for Bunker Delivery Notes (BDN)¹ and fuel oil samples will apply to vessels over 400 gross tonnage (400GT) and above. MARPOL Annex VI parties have discretion as to whether these requirements will apply to vessels under 400GT. On balance, I consider that the costs to smaller shipping vessels outweighs the benefits of these vessels having to be supplied with and hold a BDN and retain fuel samples. It would also be unfair to require ships to meet the BDN and fuel oil sampling requirements in New Zealand ports when they may have had to conform to different standards overseas.
- 15 A new schedule of information that is to be included with a BDN will require fuel suppliers to specify the properties of the fuel being supplied. BDN's are able to be inspected by any competent authority of a party to Annex VI to verify compliance. This is important in ensuring compliance with fuel requirements across and within port states.
- 16 Annex VI also requires that the BDN is accompanied by a representative sample of fuel oil delivered. I consider that to ensure consistency, the EFSR should require that representative samples are obtained in accordance with the IMO Guidance.
- 17 I propose that any breaches to these amendments to the EFSR should incur a maximum fine of \$10,000 upon conviction. This aligns with the current maximum fine prescribed under regulation 22 of the EFSR for similar breaches and ensures that New Zealand is meeting its international obligations.
- 18 The two regulators, the Ministry of Business, Innovation and Employment and Maritime New Zealand have agreed a Memorandum of Understanding to ensure that

¹ A bunker delivery note (BDN) is the standard document required by Annex VI of MARPOL which contains information on fuel oil delivery.

these regulatory functions will work together to ensure that compliance breaches of Annex VI are investigated under the appropriate regime.

Timing and 28-day rule

- 19 Annex VI requirements will become effective in New Zealand three months after the date of deposit of the instrument of accession. However, the instrument cannot be deposited until domestic legislation has been aligned to give effect to Annex VI.
- 20 I am seeking an “*in principle approval*” to submit the Amendment Regulations to the Executive Council, as the commencement clauses cannot be completed until the instrument of accession has been deposited. Following deposit, the exact date Annex VI will come into force for New Zealand will be known, the commencement dates can be completed, and the Amendment Regulations can be submitted to the Executive Council.
- 21 I am also seeking approval to waive the 28-day rule, a requirement which specifies regulations must not come into force until at least 28 days after they have been notified in the *New Zealand Gazette*. This is on the basis that early commencement of the Amendment Regulations is necessary to comply with statutory or international obligations.
- 22 This would provide a degree of flexibility, given the date for depositing the instrument of accession is currently not known, or when the three-month period for Annex VI coming into force for New Zealand under Article 15(3) of MARPOL would expire. Subject to Cabinet’s approval, the Amendment Regulations will be notified in the *New Zealand Gazette* as soon as the date that Annex VI comes into force is determined.

Compliance

- 23 The Amendment Regulations comply with each of the following:
 - 23.1 the principles of the Treaty of Waitangi 1840;
 - 23.2 New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 23.3 the principles and guidelines set out in the Privacy Act 2020;
 - 23.4 relevant international standards and obligations; and
 - 23.5 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Regulations Review Committee

- 24 There are no grounds for the Regulations Review Committee to draw the Amendment Regulations to the attention of the House of Representatives.

Certification by Parliamentary Counsel

- 25 As the commencement date for the Amendment Regulations is not yet known, Parliamentary Counsel Office have provided a qualified certificate noting that the Amendment Regulations will not be ready for submission to the Executive Council until an instrument of accession has been deposited.

Impact Analysis

- 26 The Regulatory Impact Analysis Team at the Treasury has determined that a separate Regulatory Impact Statement (RIS) is not required for the amendments to regulations to implement MARPOL because Government has limited statutory decision-making discretion for the content of the proposed delegated legislation as it involves making necessary changes to comply with international obligations.
- 27 A RIS would also substantively duplicate the existing National Impact Analysis which is available at:
<https://www.transport.govt.nz/assets/Uploads/Report/MARPOL-Annex-VI-National-Interest-Analysis.pdf>
- 28 This National Interest Analysis was prepared and accompanied the Cabinet paper seeking approval for New Zealand to accede to MARPOL Annex VI [CAB-19-MIN-0593 refers].

Publicity

- 29 The Amendment Regulations will form part of a package of domestic legislation that will implement obligations under Annex VI. Once all our domestic legislation is aligned, the Minister of Foreign Affairs will sign an instrument of accession to the Agreement and MFAT will arrange for its deposit with the IMO. In accordance with Article 15(5) of MARPOL, Annex VI requirements will become effective in New Zealand three months after the date of deposit.
- 30 I will work with the Minister of Transport on the announcement, and officials will notify stakeholders of the date Annex VI will come into force in New Zealand.

Proactive release

- 31 I propose to release this paper proactively subject to appropriate redactions within 30 business days of final decisions being made.

Consultation

- 32 The Ministry of Transport undertook public consultation between November 2018 and February 2019 on whether New Zealand should accede to Annex VI. As a result of that consultation, 49 submissions were received.
- 33 The Environment Select Committee also sought public submissions on whether New Zealand should accede to Annex VI in March 2020. The Committee received 16 submissions from organisations and individuals and heard oral evidence from one submitter. The Environment Select Committee noted that the Ministry's engagement with stakeholders has demonstrated a high level of support for New Zealand to

accede. Even some of the operators likely to be most affected, including fuel companies and some large fishing companies, have expressed strong support for accession, for environmental sustainability and reputational reasons, as well as to strengthen New Zealand's influence in IMO negotiations on issues affecting them.

- 34 Since September 2020, a number of roundtables with industry and stakeholders took place to build awareness of the forthcoming requirements, and to develop an understanding of the impacts and how specific aspects of Annex VI can be implemented.
- 35 On 21 December 2021, an exposure draft of the amended EFSR was released to targeted stakeholders, including major fuel suppliers, and distributors. Submitters were broadly supportive of the proposed regimes, and suggested changes have been incorporated into the amended EFSR.
- 36 On 23 February 2022, MBIE lodged a notice in *New Zealand Gazette*, notifying the intention to incorporate standards by reference in the Amendment Regulations. This is a statutory requirement of the Energy (Fuels, References and Levies) Act 1989. No submissions were received.
- 37 The Ministry of Transport, Maritime NZ, Ministry of Foreign Affairs and Trade, the Treasury, Ministry for the Environment and the Environmental Protection Authority were consulted with. The Department of Prime Minister and Cabinet have also been informed.

Recommendations

The Minister of Energy and Resources recommends that the Cabinet Legislation Committee:

- 1 **note** that on 13 November 2019, the Cabinet Economic Development Committee agreed that the Engine Fuel Specifications Regulations 2011 be amended to establish new requirements for the sale of marine fuel oil to ensure compliance with Annex VI of the International Convention for the Prevention of Pollution from ships (MARPOL) can be demonstrated [DEV-19-MIN-0304];
- 2 **note** that I am proposing a new schedule of requirements for marine fuel oil for both retail and non-retail sale to give effect to MARPOL Annex VI obligations, these obligations also involve new requirements for Bunker Delivery Notes (BDN) and fuel oil samples which will apply to vessels over 400 gross tonnage;
- 3 **note** that once New Zealand's domestic legislation is aligned to give effect to MARPOL Annex VI, the Minister of Foreign Affairs will sign an instrument of accession to the Agreement and the Ministry of Foreign Affairs and Trade will arrange for its deposit with the International Maritime Organization;
- 4 **note** that MARPOL Annex VI will enter into force three months after the deposit of the instrument of accession, in accordance with Article 15(5) of MARPOL;
- 5 **note** that it is not possible to complete the commencement clauses in the Engine Fuels Specifications Amendment Regulations 2022 as the date of deposit of the instrument of accession is not yet known;

- 6 **approve**, in principle, the submission to the Executive Council of the Engine Fuel Specifications Amendment Regulations 2022 on the basis of recommendation seven;
- 7 **note** that the Engine Fuel Specifications Amendment Regulations 2022 will be submitted to the Executive Council after the instrument of accession has been deposited;
- 8 **note** the commencement date for the Engine Fuels Specifications Amendment Regulations 2022 will align with the date of entry into force of Annex VI obligations for New Zealand (being the date three months after the date of deposit of the instrument of accession);
- 9 **note** that a waiver is sought of the 28-day rule, which is the requirement that regulations must not come into force until at least 28 days after they have been notified in the *New Zealand Gazette*:
 - 9.1 so that the commencement date for the Engine Fuel Specifications Amendment Regulations 2022 can align with the date of entry into force of Annex VI obligations for New Zealand (being the date three months after the date of deposit of the instrument of accession);
 - 9.2 on the grounds that early commencement is necessary to comply with statutory or international obligations;
- 10 **agree** to waive the 28-day rule so that the Engine Fuel Specifications Amendment Regulations 2022 can commence three months after the date of deposit of the instrument of accession;
- 11 **note** that the Ministry of Business, Innovation and Employment will work with the Ministry of Transport and Maritime New Zealand to implement the new requirements under MARPOL Annex VI.

Authorised for lodgement

Hon Dr Megan Woods

Minister of Energy and Resources