

Submission by

Z Energy



to the

Ministry of Business, Innovation and Employment & Ministry of
Transport

on the

The Sustainable Biofuels Obligation: proposals for regulations

1 July 2022

Introduction

Z Energy (Z) welcomes the opportunity to submit on the Ministry of Business, Innovation and Employment (MBIE) & Ministry of Transport's (MoT) consultation document, *The Sustainable Biofuels Obligation: proposals for regulations*.

As New Zealand's leading transport energy supplier, there are few companies that have the opportunity to make such a significant and important contribution to the decarbonisation of New Zealand as Z. We strongly agree with the Government that the time to take action on climate change is now and will be vital in determining the success of New Zealand's transition to a low-emissions, climate-resilient economy.

The fuels we sell and which our customers use are responsible for approximately 10 percent of New Zealand's greenhouse gas emissions. Z's purpose as a company is to *Solve what matters for a moving world by optimising the core business so that we can transition to a low carbon future*, meaning we have a responsibility and are motivated to lean into tough conversations around climate change and lead with meaningful action to achieve a low carbon Aotearoa.

Z is committed to playing our part in delivering against New Zealand's first Emissions Reduction Plan (ERP) to help meet the country's emissions budgets, of which the Sustainable Biofuels Obligation is an important part. Since Z was formed in 2010, we have consistently advocated for blending biofuels into mineral fuel as a tool for transitioning to a lower carbon fuel for ground transport. Our commitment to investing in biofuels, including leading the introduction of biofuels into the market to help the New Zealand transport sector decarbonise remains strong.

Domestic production of biofuels is an area Z has explored with its Te Kora Hou domestic biodiesel production plant. The site has been mothballed since early 2020 after rising global tallow prices, combined with falling international diesel prices made production uneconomic. Ahead of the Obligation coming into effect from 1 April 2023, we are carefully considering the opportunity verse the risk of reopening the plant.

One of the key questions we have asked ourselves is whether further investment in the plant is the best way for Z to meet the Obligation, and whether it will create a competitive advantage for Z by producing biofuels domestically that can abate carbon at a cheaper rate than an import alternative such as drop-in Renewable Diesel.

In the context of a highly competitive global market and the ongoing challenges associated with securing the necessary tallow feedstock, the case to stand up the plant for domestic production is challenging when compared to the cost of imported products. As an example, tallow prices have increased some 400 per cent from around \$450 per tonne in 2015, to \$2077 per tonne in March 2022.

Z believes that in order for domestic production of biofuels to become economically viable some form of Government intervention or direct support will be required, including prioritising access to domestic feedstocks as a way to allow local producers to compete more effectively with demand from subsidised markets overseas. For example, we suggest that double accounting for the emissions reductions created by locally produced biofuels could be considered as a way of supporting a domestic biofuel industry.

We note that there have been no significant investments made in the domestic biofuels industry since the announcement of the Government's Biofuels Mandate in January 2021. This reinforces the need for Government to urgently provide industry and associated participants with policy certainty given it is critical for long-term investment decisions.

In 2021 Z signed an MoU with Neste, the world's leading producer of Renewable Diesel and Sustainable Aviation Fuel (SAF). We continue to work in partnership with Neste and at this point in time, Z believes importing Renewable Diesel from the international market will be the most efficient and climate friendly way to meet the Obligation's emissions intensity reduction targets for the first 2-3 years of the Obligation and make biofuel products available to the New Zealand market.

Executive summary

In summary, Z's position on the proposed regulations and draft legislation for the Sustainable Biofuels Obligation is:

- Z supports the Obligation as an important part of the New Zealand's Emissions Reduction Plan (ERP) and is committed to investing in biofuels, including leading the introduction of biofuels into the market to help the New Zealand transport sector decarbonise.
- Given the increasingly short timeframe for Z as an obligated party to confirm commercial investment decisions ahead of the Obligation coming into effect from 1 April 2023, we expect that imported Renewable Diesel is the most cost efficient and climate friendly way to meet the first two years of emissions intensity reductions.

During a time of increasing costs on affordability, we are concerned that the Obligation will have a significant impact on what consumers pay at the pump.

- Z believes that the cost of any biofuel must be implemented across all litres to help ensure an equitable playing field and avoid potential market distortions which would drive perverse policy outcomes. We have significant concerns that the Obligation may cause substantial market disruptions and would like to work with Government and Industry in the development of a regulatory mechanism to mitigate this risk.
- Z is concerned that there does not appear to be any thought on how to incentivise local production, meaning the Obligation is likely to be met solely through imported products, therefore reducing the potential impact of energy security and local economic benefits.
- Z remains concerned about the ongoing proposal to remain agnostic to product type and the likely outcome that this will promote a Bioethanol market. While Z is happy to participate in this market, overall Z does not believe this is the best way to promote the decarbonisation of the transport fleet, when petrol vehicles will be more likely substituted by electric vehicles.
- Z believes that the revised penalty fee for year one of the Obligation, which is less than the cost of abatement in any year, may drive negative outcomes that are contrary to the principles of both the Obligation and the intent of the Government's Emissions Reduction Plan (ERP).
- In order for industry to make long-term investment decisions that are efficient, well-structured and minimise the cost impact of the Obligation on consumers, a coordinated approach between industry and Government is urgently required.

Since the Government last consulted on the preferred design of the Obligation in July 2021 and Cabinet confirming the final policy design in December, the global energy market has been thrown into a period of significant challenge. Following nearly two years of Covid-19 economic disruptions and declines, the ongoing war in Ukraine continues to impact on the global supply chain driving high demand and less supply of liquid fossil fuels.

[REDACTED]

Noting the Government's intention to implement the Obligation from 1 April 2023, Z wants to highlight the likely costs of meeting the Obligation as based upon current day pricing. These include what the incremental costs are for the biofuel if we were not to spread those costs across all Petrol and Diesel litres, as that is still subject to market forces.

[REDACTED]

During a time of increasing costs on affordability, we understand how difficult even small changes in utilities and household costs can be for many New Zealanders. While measures to reduce emissions are challenging and require additional cost, the question of who bears this cost is an important challenge that must be solved for moving forward through both public/private partnerships as well as policy settings.

Meeting the Obligation

Z has three options for how it will meet the Obligation from 1 April 2023:

- Renewable Diesel – source, ship, store and distribute renewable diesel to meet the Obligation in the most cost-effective way, noting this is a drop in fuel requiring limited capital investment.
- Bioethanol - partner with other industry participants to help minimise costs and build an ethanol supply chain, noting ethanol alone will not be sufficient for Z to meet the Obligation.
- Domestic production – consider options for domestic production, starting with a decision on Z's mothballed biofuels plant, noting this is sub scale (providing [REDACTED] GHG reduction) and will still require imports to meet the Obligation.

Below we outline how Z intends to meet years one, two and three of the Obligation from 1 April 2023. It is important to note that the cost estimates are based upon what we observe in the market now, and that they will likely increase to the extent international demand for biofuels increases.

YEARS ONE & TWO: Scenario 1 – Renewable Diesel (only option)
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

YEAR THREE: Scenario 1 – Renewable Diesel and Bioethanol

[REDACTED]

YEAR THREE: Scenario 2 – Renewable Diesel

[REDACTED]



Potential market distortions

While we appreciate that the Obligation is deliberately targeted at any person or company that imports or refines liquid fossil fuels for transport in New Zealand, Z has significant concerns that there is potential for substantial market distortions that could result by product, channel and/or geography under the proposed legislation.

As an example, we see that a situation could arise where a Distributor (defined under the Fuel Industry Act 2020 as a reseller that is not a dealer), who is not required to take biofuels under the Obligation, may readily opt out of sharing their portion of the biofuels cost across all litres to take advantage of the pricing arbitrage that would arise. This would not only result in an uneven cost impact across communities but could also result in increased total emissions due to trucking between locations where a biofuel is supplied and not because there is a price arbitrage open. Both outcomes run contrary to the intent of the Obligation and the Government's Emissions Reduction Plan.

As we outline in our analysis above, the whole premise of our stated impact on customers (cents per litre premium) is that the [REDACTED] cost of biofuels is spread across all litres sold, Diesel or Petrol. Z believes that the cost of any biofuel must be implemented across all litres to help ensure an equitable playing field and avoid potential market distortions which would drive perverse policy outcomes.

Z would like to work with Government and Industry in the development of a regulatory mechanism to mitigate this risk.

Sustainability criteria

Z is committed to sustainable feedstocks in the production of biofuels and supports robust regulation to ensure biofuels come from sustainable sources. As not all feedstocks are created equal, we believe that the regulations must incentivise the right fuel for right use case.

We strongly agree that the life cycle emissions and full range of environmental effects associated with the production of biofuels must be assessed to ensure only those with a positive environmental impact are supported.

While we support the proposal that feedstocks and biofuels are certified under the International Sustainability and Carbon Certification (ISCC) ISCC-PLUS standard and the Roundtable on Sustainable Biomaterials (RSB), it will be critical that industry work closely with Government to clarify what monitoring and enforcement arrangements will be imposed, if any, which are essential for the effective implementation of such criteria.

As the consultation document acknowledges, drivers of biodiversity loss, water quality and land use change are cumulative and difficult to address on a single activity basis. The existence of and effectiveness of domestic legislation to manage adverse effects on the environment varies considerably from country to country. The sustainability criteria and certifications help provide some consistency and safeguards to ensure that only sustainable products are procured and incentivise improvements in environmental performance.

These shortcomings are not unique to biofuels, and we acknowledge that better land use planning and practise all round would lead to better long-term outcomes for biodiversity, afforestation and food security while meeting current energy needs and emission reduction goals.

Penalties for contravening the Obligation

Given the penalty in the draft Sustainable Obligation Bill has been revised down to \$300 per tonne in year one of the obligation, Z notes that this will likely be significantly less than the cost of abatement in any year and may drive perverse outcomes.

If an obligated party was only focused on cost, we could reasonably expect they may pay the penalty fee and not meet the Obligation in year one. Z believes this may drive negative outcomes that are contrary to the principles of both the Obligation and the intent of the **Government's Emissions Reduction Plan (ERP)**. On a financial basis, this could also leave Z less competitive if we were to meet to the Obligation in year one compared to our competitors.

Other matters

We would welcome the opportunity to hold a briefing session with you to go through our submission in more detail and look forward to arranging this with you.

Please note that costings included in our submission are commercially sensitive and are provided in confidence. We would be happy to provide a version of our submission that can be publicly released.

If there is any further information that would be of use to the Ministry of Business, Innovation & Employment and the Ministry of Transport, please do not hesitate to contact us.

Submitter information

Submitter information

MBIE and MoT would appreciate if you would provide some information about yourself. If you choose to provide information in the section below, it will be used to help MBIE and MoT understand how different sectors view the Sustainable Biofuels Mandate proposal. Any information you provide will be stored securely.

Your name, email address, phone number and organisation

Name:	Haley Mortimer
Email address:	[REDACTED]
Phone number:	[REDACTED]
Organisation:	Z Energy Limited (Z)

- The Privacy Act 1993 applies to submissions. Please tick the box if you do **not** wish your name or other personal information to be included in any information about submissions that MBIE and MoT may publish.
- MBIE and MoT may upload submissions and potentially a summary of submissions to the website(s), www.mbie.govt.nz and/or www.transport.govt.nz. If you do **not** want your submission or a summary of your submission to be placed on either of these websites, please tick the box and type an explanation below:

Please note that the analysis we have included in our submission is commercially sensitive and cannot be released in full. We are happy to provide the Ministry of Business, Innovation and Employment, and the Ministry of Transport with a version of our submission that can be publicly released.

Please check if your submission contains confidential information

- I would like my submission (or identifiable parts of my submission) to be kept confidential, and **have stated** my reasons and ground under section 9 of the Official Information Act that I believe apply, for consideration by MBIE and MoT.

Sustainable Biofuels Mandate

Calculating the Obligation

Determining intensity of fossil fuels

1. Do you agree with the proposal to allow the use of default values from the similar to the European Union's Renewable Energy Directive or actual values verified under sustainability schemes?

Yes Yes, with changes No Not sure/No preference

Please explain your views.

Z agrees with the proposal to use the default values from the European Union's Renewable Energy Directive (EU RED) on the basis they provide a standard methodology that includes all relevant components of the supply chain, including impacts of direct land-use change.

To help ensure the default values from the EU RED scheme are suitable for specific fuels, Z supports the use of actual data where it is available. If actual data was to be used, a robust assurance process would need to be established to include the methodology used to calculate the lifecycle analysis of fuels would need to be comparable to the EU RED default values, verified under the International Sustainability and Carbon Certification (ISCC) or the Roundtable on Sustainable Biomaterials (RSB), and audited by a third party.

The Environmental Protection Authority (EPA) would need to have final approval as the regulator for the Obligation.

2. Apart from transport and distribution emissions, should we allow actual values that have been verified under the European Union's Renewable Energy Directive or the California Low Carbon Fuels Standard to be used? If not, why?

Yes, I agree I agree in part No, I don't agree Not sure/no preference

Please explain your views.

As we outline in the response above, we agree that actual data (where available) may also be used in determining the emissions intensity of fossil fuels to meet the Obligation if it was supported by a robust assurance process.

Z believes this process would need to be run by the EPA as the regulator and include the methodology used to calculate the lifecycle analysis of fuels would need to be comparable to the EU RED default values, verified under the International Sustainability and Carbon Certification (ISCC) or the Roundtable on Sustainable Biomaterials (RSB), and audited by a third party.

3. Do you see value in developing a New Zealand-specific and inhouse GHG emissions model, similar to the GREET model? If not, who should pay for the model's development and upgrading? If not, why?

Yes, I do I do in part No, I don't see value Not sure/no preference

Please explain your views.

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Z does not believe that the development of a New Zealand-specific GHG emissions model is necessary at this point in time, given it would be costly to develop and lacks a clear use case. We suggest that the development of such a model be re-considered at the two-year review period of the Obligation.

4. Do you agree with the proposal to use a default emissions factor that would apply to all fossil fuels? If not, why?

Yes, I agree I agree in part No, I don't agree Not sure/no preference

Is there anything you would like to tell us about the reason(s) for your choice?

Z supports the proposal to use an average default emissions factor as expressed in the European Union Renewable Energy Directive II (RED II) across all fossil fuels. We believe that this approach would help to simplify reduction calculations and make the Obligation as practical as possible to implement from 1 April 2023.

We note that while emissions factors between fuel types do vary, the alternative approach of using separate lifecycle emissions factor analysis for each fuel type would be achievable. On this basis, Z suggests that officials consider using historical data to test if there is a material difference between approaches. If evidence showed that a separate lifecycle emissions factor analysis was beneficial in determining the intensity of fossil fuels, this could be considered at the two-year review of the Obligation.

5. Should we only allow biofuels that deliver a greater than 50 per cent emissions reduction, compared to fossil fuels, to be eligible for meeting the Obligation? If not, why?

Yes, I agree I agree in part No, I don't agree Not sure/no preference

Is there anything you would like to tell us about the reason(s) for your choice?

Z does not agree with the proposal that biofuels should be limited under the regulations based their ability to deliver a greater than 50 per cent emissions reduction. We see that such a proposal is unnecessary if the lifecycle emissions factor analysis and sustainability criteria are implemented as currently proposed.

Noting that the economics of a percentage reduction will be determined by the price and availability of biofuel options, Z believes that sufficient incentives exist for a fuel supplier to use a biofuel with the greatest emissions reduction potential, provided it was cost competitive.

Sustainability Criteria

6. Do you agree with the way that we propose to assess compliance with the sustainability criteria in legislation?

Yes, I agree I agree in part No, I don't agree Not sure/no preference

Is there anything you would like to tell us about the reason(s) for your choice?

Z strongly agrees that the lifecycle emissions and full range of environmental effects associated with the production of biofuels must be assessed to ensure only those with a positive environmental impact are supported in legislation. As such, we support the proposed approach to use the best available sustainability schemes and standards to provide assurance that the sustainability criteria are met.

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Sustainability criteria

The proposed sustainability criteria in the legislation are broad and open to interpretation and apply to offshore sources of feedstock as well as domestic feedstock. We query how easy it will be for Z (or any certifier) to determine whether the criteria are achieved given the criteria terms aren't precise and have broad and thus restrictive implications. For example, "adverse impact" may not be a high bar when applied to generic concepts such as "food and feed security" or "soil carbon".

We would like officials to consider whether a qualifier would improve this that ensures that the scale of the adverse impact is sufficiently material in the relevant country/region or receiving environment. This could be "significant adverse impact" – which is applied to adverse effect on biodiversity under Clause 13(1)(a) but is not applied to the other criteria.

Section 14, Regulations providing for sustainable biofuels

In the current draft of the Sustainable Biofuel Obligation Bill, Section 14 sets out the regulations for providing sustainable biofuels. Z notes that as currently drafted, sustainable outcomes, as ensured through sustainability criteria and standards, are not guaranteed in regulations.

Z recommends that 'must' is used instead of 'may' in Section 14(1). This change also sees greater alignment to the regulation making powers set out in Section 39(1)(a) where the Governor-General may, by Order in Council on recommendation of the Minister, make regulations for anything the Act says 'must' or 'may' be provided for.

14 Regulations providing for sustainable biofuels

(1) Regulations ~~may~~ **must** provide for sustainable biofuels, including for 1 or more of the following:

Section 10, Biofuel Obligation

As per our feedback above, we recommend that 'must' is used instead of 'may' in Section 10(5).

(5) The regulations ~~may~~ **must** provide for the calculation of the matters required by this section, including the following, or methodologies for calculating the following:

- (a) life-cycle emissions intensity value for each type of fuel:
- (b) energy content for each type of fuel:
- (c) assessment of life-cycle emissions.

7. Are there any international sustainability certification schemes that you think should be included?

Yes, I agree I agree in part No, I don't agree Not sure/no preference

Is there anything you would like to tell us about the reason(s) for your choice?

The mass balance approach – Book and Claim

Noting Z supports the proposal to certify feedstocks or biofuels under the International Sustainability and Carbon Certification (ISCC) ISCC-PLUS standard, alongside the

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Roundtable on Sustainable Biomaterial (RSB), we would like to work with officials on the chain of custody options attached to the standard including how this would allow for mass balancing at a terminal level.

As Z has a large terminal network with associated infrastructure around the country, it would not be optimal from a sustainability or economic perspective to deliver biofuels in small quantities to each individual terminal. For example, it might be most efficient from a supply perspective for Z to import (or receive from a local manufacturer) all renewable hydrocarbons at one designated terminal like Marsden Point, then track this as virtual inventory that can be sold anywhere in New Zealand.

Referred to as Book and Claim*, this would mean that while a biofuel like renewable diesel may physically end up at Marsden Point, we would still have the ability to sell the certification of the renewable fuel in Dunedin. Although the Obligation sits with the fuel supplier, being Z in this instance, customers willing to pay for this product may be spread over New Zealand which may be difficult to supply without an enterprise level approach.

*Book and Claim

Book and Claim is a chain of custody model that allows to de-couple specific attributes, like environmental benefits, from the physical product and to transfer them separately via a dedicated registry in the form of a credit. This approach has already been successfully implemented in the renewable electricity sector.

Ensuring that there is full traceability, and no risk of double counting is vital to maintain credibility and trust in the process. This means that producers and customers should be using a system that is managed by an independent and trusted third party and is subject to regular independent audits.

Indirect Land Use Change

8. Do you agree with our assessment that indirect land use change emissions should not be included in the lifecycle GHG emissions analysis, due to the inherent uncertainty in the economic modelling that would be required to do this?

Yes, I agree I agree in part No, I don't agree Not sure/no preference

Is there anything you would like to tell us about the reason(s) for your choice?

Z agrees that indirect land use change emissions should not be included in the lifecycle GHG emissions analysis, due to the inherent uncertainty in the economic modelling that would be required to do this.

9. What is your preferred option, or combination of options, for addressing the risk of indirect land use change caused by additional biofuels production?

Option 1: Set a cap on the maximum amount of food and feed-based biofuels, and ban feedstocks that have historically resulted in significant indirect land use change emissions

Option 2: Require all biofuels to have certification showing they are considered at "low risk" of causing indirect land use change.

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Is there anything you would like to tell us about the reason(s) for your choice?

Z supports a combined application of Options 1 and 2 which would see a sinking cap on the amount of food and feed-based biofuels, an outright ban on the highest risk feedstocks, and a requirement that all biofuels have certification showing they are considered at "low risk" of causing indirect land use change.

10. Do you think these options will adequately address the risk of indirect land use change? If not, why and what alternatives would you suggest?

Yes, I agree I agree in part No, I don't agree Not sure/no preference

Is there anything you would like to tell us about the reason(s) for your choice?

We acknowledge that due to the possible effects of indirect land use change occurring overseas, certification may not comprehensively address the risks associated with indirect land use change occurring because of the Obligation. However, given global concern about land use change emissions and the possible displacement of crops for feed and feed purposes for biofuels, Z believes additional certification is an important attempt to manage the risk.

Z acknowledges that such measures will likely add compliance costs to meeting the Obligation but believes that environmental bottom lines, as per global best practice, need to be established to help minimise the variation in the potential environmental impacts of biofuels.

Biofuels and Food Security

11. What is your preferred option, or combination of options, for addressing the risk of the biofuels Obligation adversely impacting food security and why?

Option 1: Require all biofuels produced from food-based feedstocks to be certified against the Food Security Standard or an equivalent standard

Option 2: Rely on the options outlined to address indirect land use change (ILUC) to mitigate any indirect impacts on food security (discussed in section 3.3)

Is there anything you would like to tell us about the reason(s) for your choice?

Please refer to our response to Q10.

We also note our support for a sinking cap on food and feed-based biofuels (Q9) which MBIE acknowledge would provide the most certainty that biofuels demand driven by the Obligation would not exacerbate food security concerns.

Use of waste and Classification of feedstocks

12. Do you agree with our proposed approach to require biofuels derived from any of the waste streams to be certified against the relevant ISCC EU standard or RSB standard? If not, why?

Yes, I agree I agree in part No, I don't agree Not sure/no preference

Is there anything you would like to tell us about the reason(s) for your choice?

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Z agrees that biofuels derived from waste streams should be certified against either the International Sustainability and Carbon Certification (ISCC) or the Roundtable on Sustainable Biomaterials (RSB) standards to enable the obligated party and the Environmental Protection Authority (EPA) to determine that feedstocks are compliant with the sustainability criteria and avoid the risk of fraud or mislabelling.

13. Do you agree with our proposed approach for allocating GHG emissions to products, co-products, residues and wastes according to Table 1, based on energy content? If not, why?

- Yes, I agree I agree in part No, I don't agree Not sure/no preference

Is there anything you would like to tell us about the reason(s) for your choice?

No further comments.

14. Do you agree that feedstocks that are classified as agriculture, aquaculture, fisheries or forestry residues or co-products would need to meet the sustainability criteria? If not, why?

- Yes, I agree I agree in part No, I don't agree Not sure/no preference

Is there anything you would like to tell us about the reason(s) for your choice?

No further comments.

15. Do you agree with our proposal to exclude or limit residues or co-products that may be excluded or limited under the other criteria (such as the ILUC options)? If not, why?

- Yes, I agree I agree in part No, I don't agree Not sure/no preference

Is there anything you would like to tell us about the reason(s) for your choice?

No further comments.

Other considerations for the implementation of the Obligation

Interactions with the Fuel Industry Act and other regulations

16. Do you agree with the risks outlined above? If you do, do you agree with the proposed approach?

- Yes, I agree I agree in part No, I don't agree Not sure/no preference

Is there anything you would like to tell us about the reason(s) for your choice?

Interactions with the Fuel Industry Act
 Fuel Industry Act
 Z supports the proposal to monitor the effect of the Obligation on competition through the current information disclosure regulations but asks that sufficient lead time is given to the industry to ensure data is comparative for all parties.
 We acknowledge the recommendation by MBIE not to progress any changes with biofuels in relation to the Fuel Industry Act at this time. However, we strongly encourage officials to consider including the relationship between Terminal Gate

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Pricing (TGP) and the Obligation as part of the review of the Obligation two years after it comes into effect, to help ensure both regimes continue to work as planned.

Engine Fuel Specifications Regulations Review

Z supports the current review of the Engine Fuel Specifications Regulations 2011 (EFSR) to consider the maximum percentage by volume for blends sold by retail sale. We agree that MBIE should include specifications for advanced biofuels that can be blended into the EFSR as part of the review of the specifications.

Labelling at the pump

Z supports the decision by officials not to prescribe the labelling emissions reductions associated with a particular biofuel blend due to the complexity this would introduce as different biofuels have different emissions reduction potential.

Feedback on the draft Sustainable Obligation Bill

Limitation to transport fuels

While the key policy purpose of the Obligation relates to transport fuels, Z notes there is no specific exclusion in the 'exempt fuel' definition for fuels sold for use in non-transport settings (i.e., for energy generation). Such an exemption could be provided under the regulations referenced at Clause 9(2)(d) to ensure regulations identify exempt fuels, including fuels that are not being used for transport purposes.

Commercial sensitivity

We note that Clause 23 in the Bill isn't particularly clear as to whether the EPA's published report will report total aggregated reductions, borrowings, bankings etc, or if it will allow identification of participant-specific detail.

We strongly encourage officials to clarify this so obligated parties can determine if there are any commercially sensitive issues with such published reports. For example, if it is publicly known that Z has borrowed its maximum 10 per cent from a future year, it could adversely affect our commercial position with respect to trading obligations with other parties.

Flexibility measures

Z notes that the draft Bill does not provide strong mechanisms for the recording of emission reduction trades. While the number of parties who will be engaged in such trades will be relatively low and therefore the mechanics of a registry are not justified, we see it as important that all obligated parties understand how trades will be recorded to avoid double counting and ensure a robust system. For example, will there be a register of traded/banked reductions that obligated parties will have access to?

We also note that there is an apparent inconsistency within Clause 16, where 16(3) and (4) suggest that banking/trading applies only to the "next year" or "current year" despite Clause 16(6) providing for no limits on the number of years to which a reduction can be carried forward.

Z suggests that the drafting in Clause 16 be improved to remove this inconsistency and increase the utility of the flexibility measures by clearly ensuring traded and banked reductions can be held and used in relation to any subsequent compliance year.

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Definitional consistency with Climate Change Response Act 2002 (CCRA) Regulations

Z notes that in the current draft of the Sustainable Biofuels Obligation Bill some terms are not defined in the Bill that we believe should be. For example, Tariff requires definition as per the 2008 regulations "Tariff has the same meaning as in section 2(1) of the Tariff Act 1988."

There are also a small number of definitions in the Bill that are subtly different from the definitions under the Liquid Fossil Fuels Regulations 2008 without any reason. For example, the definition of "removed for home consumption". We suggest that the definitions are regularised and/or included to avoid interpretation issues.

Transition measures

While there is some transition provided for in the Bill including deferral of the Obligation for the first two years, that process is subject to a 0.1% penalty payment as well as Ministerial discretion. Moreover, decisions on such deferral exemption applications can take up to 40 working days which could result in the Ministers decision on a deferral being reached 60 working days into the next year (i.e., the 40 working days plus the 20 working days timeframe for deferral applications).

Z notes that this may mean that any deferral decision is not yet available when the 31 March Annual Report (with statutory declaration) is required to be provided to the EPA. We suggest that officials consider an alternative option like that undertaken under the ETS, where the initial years required participants to report emissions but not undertake surrenders. This would give parties valuable time to establish compliance processes without the risk of penalties.