



COVERSHEET

Minister	Hon Shane Jones	Portfolio	Energy
Title of Cabinet papers	Approval to consult on options to improve our diesel resilience, and Fuel Industry (Fuel Resilience) Amendment Regulations 2024.	Date to be published	12 November 2025

List of documents that have been proactively released

Date	Title	Author
September 2024	Approval to consult on options to improve our diesel resilience	Office of the Associate Minister for Energy
25 September 2024	Options for Improving New Zealand's Diesel Resilience: Release of Consultation Document ECO-24-MIN-0207	Cabinet Office
September 2024	Fuel Industry (Fuel Resilience) Amendment Regulations 2024.	Office of the Associate Minister for Energy
26 September 2024	Fuel Industry (Fuel Resilience) Amendment Regulations 2024 LEG-24-MIN-0200	Cabinet Office

Information redacted

YES

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

Some information has been withheld for the reason of legal professional privilege.

[In Confidence]

Office of the Associate Minister for Energy

Chair, Cabinet Legislation Committee

Fuel Industry (Fuel Resilience) Amendment Regulations 2024

Proposal

- 1 This paper seeks authorisation for submission to the Executive Council of the *Fuel Industry (Fuel Resilience) Amendment Regulations 2024*.

Executive Summary

- 2 The *Fuel Industry (Improving Fuel Resilience) Amendment Act 2023* establishes a minimum stockholding obligation (**MSO**) for petrol, jet fuel and diesel to be imposed on fuel importers who have access to a bulk storage facility for fuel (known as ‘obliged persons’). The Act enables regulations to be made that can amend the MSO settings and to prescribe record-keeping and reporting requirements.
- 3 Following targeted consultation on an exposure draft of the regulations, I seek authorisation to submit the *Fuel Industry (Fuel Resilience) Amendment Regulations 2024* to Executive Council. These regulations set out:
 - 3.1 The stockholding obligation, which specify who has the obligation, what fuels it applies to, the minimum days of cover and how the obligation should be calculated.
 - 3.2 Information disclosure requirements that enable the government to monitor compliance with the MSO and to improve information collected on New Zealand’s fuel security.
 - 3.3 Enforceable undertakings, which are voluntary agreements intended to address actual or possible non-compliance.
- 4 I seek two further policy decisions from Cabinet:
 - 4.1 A minor change to the audit provisions so that the chief executive of the Ministry of Business, Innovation and Employment can require an independent audit of information disclosed (this is not a material change from previous decisions).
 - 4.2 Agreement that the information disclosure requirements will apply to the Timaru terminal and its fuel, even if its owner and operator Timaru Oil Services Ltd is not an obliged person.
- 5 The regulations would commence on 1 January 2025.

Policy

- 6 In October 2022, Cabinet agreed to implement a fuel resilience policy package to improve fuel supply resilience and economic security in New Zealand [DEV-22-MIN-0243 refers]. This was in response to a fuel security policy review instigated following the closure of the Marsden Point oil refinery.
- 7 As part of the package, the *Fuel Industry (Improving Fuel Resilience) Amendment Act 2023* (the **Act**) was passed in 2023. The Act gives effect to two parts of the policy package:
 - 7.1 Information disclosure requirements to improve monitoring and information collection on fuel stocks and potential supply chain vulnerabilities for New Zealand, with regulations able to be made from 1 July 2024.
 - 7.2 The minimum fuel stockholding obligation (**MSO**), under which obliged persons will be required to hold, on average, 28 days' cover for petrol, 24 days' cover for aviation kerosene (jet fuel), and 21 days' cover for diesel from 1 January 2025.
- 8 The Act created regulation-making powers to amend the MSO settings. Regulations can change the stockholding requirements and impose new ones for specific locations or new types of engine fuel, allowing the MSO to adapt and evolve over time as the fuel market changes. The Act also provides for regulations to be made that prescribe record-keeping and information disclosure requirements.
- 9 In December 2023, the Minister for Energy and I consulted on an exposure draft of the *Fuel Industry (Fuel Resilience) Amendment Regulations* with targeted stakeholders from the fuel industry and the aviation sector.
- 10 The attached *Fuel Industry (Fuel Resilience) Amendment Regulations (Amendment Regulations) 2024* (the **Regulations**) incorporate suggestions made during this consultation period. The Regulations, made under section 69 of the *Fuel Industry Act 2020*, broadly seek to prescribe:
 - 10.1 *Stockholding obligation*. Subpart 2 of the Regulations includes provisions specifying the persons the obligation applies to, the fuels to which the obligation applies, the minimum level of cover (expressed in the number of days' national consumption to be held in stock) and how the minimum cover required is calculated.
 - 10.2 *Disclosure of information to the chief executive*. Subpart 3 of the Regulations sets out the information disclosure requirements, fuel stock record-keeping obligations, and related disclosures.
 - 10.3 *Enforceable undertakings*. Subpart 4 of the Regulations includes requirements around compliance plans for enforceable undertakings. An enforceable undertaking is used as an alternative to prosecution for actual or possible breaches of the Act. It is an agreement between the obliged person and the Ministry of Business, Innovation and Employment (**MBIE**), whereby the obliged person commits to specific actions to assure compliance in the future.

Changes to Regulations requiring further Cabinet decisions

Audit provisions

- 11 I seek Cabinet agreement to a minor change in the audit provisions.
- 12 Cabinet agreed that the chief executive of MBIE have the power to appoint a compliance officer or an independent auditor, *with costs recoverable from an obliged person if material issues are found*, and to require certain information, similar to sections 99E and 99F of the *Crown Minerals Act 1991* [ECO-24-MIN-0093 refers].
- 13 However, the Act does not contain a regulation-making power to prescribe fees (which would be the mechanism by which MBIE would recover its costs). Accordingly, the regulations instead enable the chief executive to direct an obliged person to undertake an independent audit themselves.
- 14 There are no material consequences from this change.

Reporting from the Timaru terminal

- 15 I seek Cabinet agreement that certain reporting requirements will apply to the Timaru fuel terminal.
- 16 Timaru Oil Services Limited (TOSL) owns and operates the 32 million litre fuel terminal in Timaru. As TOSL currently orders fuel from other fuel importers rather than importing it, there is some uncertainty about whether it is an obliged person and whether the reporting requirements would apply.
- 17 However, because the Timaru terminal stores about 20 per cent of the South Island's diesel, I consider it necessary on fuel resilience grounds for information about the terminal and its fuel to be reported to the government in accordance with Section 63(3) of the Act.
- 18 Regulation 49 in the Regulations now sets out that the information disclosure provisions apply to the Timaru terminal and to TOSL (or to any successor that may operate the Timaru terminal).

Timing

- 19 The regulations will come into force on 1 January 2025. Therefore, there is no need for a waiver of the 28-day rule.

Compliance

- 20 The Regulations comply with:
- 20.1 the principles of the Treaty of Waitangi;
 - 20.2 the rights and freedoms contained in the *New Zealand Bill of Rights Act 1990* or the *Human Rights Act 1993*;
 - 20.3 the principles and guidelines set out in the *Privacy Act 2020*;

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- 20.4 relevant international standards and obligations;
- 20.5 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

21 In addition to the above, the Regulations have been made in accordance with the relevant statutory provisions in the Act. Sections 58(3), 63(3), and 69(2) of the Act set out the conditions under which the Minister can recommend regulations. These conditions stipulate matters relating to the stockholding obligation(s), disclosure requirements and industry participant consultation.

Regulations Review Committee

22 I consider there are no grounds for the Regulations Review Committee to draw the Regulations to the attention of the House under Standing Order 327.

Certification by Parliamentary Counsel

23 The draft regulations were certified by the Parliamentary Counsel Office (PCO) as being in order for submission to Cabinet.

Impact Analysis

24 Two regulatory impact statements in accordance with the necessary requirements were prepared for the policy proposals that these regulations give effect to. They were submitted when the Cabinet Economic Development Committee (DEV) approved the fuel resilience policy package, which includes the final high-level design of the MSO [DEV-22-MIN-0243 refers], and when DEV approved the detailed design of the MSO [DEV-23-MIN 0061 refers].

Impact analysis relating to proposal for Reporting from the Timaru terminal

25 The Ministry for Regulation has determined that this proposal is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities.

Publicity

26 MBIE will advise stakeholders once the *Fuel Industry (Fuel Resilience) Amendment Regulations 2024* are made.

Proactive release

27 I intend to proactively release this paper with any appropriate redactions.

Consultation

Government departments

28 The following departments and agencies have been consulted on in developing the policy underlying the draft regulations: National Emergency Management Agency, Te Manatū Waka Ministry of Transport, Ministry of Justice, the Ministry for the

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Environment, the Treasury, the Ministry of Defence, Waka Kotahi, Customs, Commerce Commission, Civil Aviation Authority, Maritime New Zealand, and Infrastructure Commission. The Department of Prime Minister and Cabinet was informed.

Public consultation

- 29 Targeted consultation with stakeholders from the fuel and aviation sector on draft regulations has taken place. Consulted parties include: Mobil, Z, BP, Gull, Tasman Fuels, Channel Infrastructure, Wiri Oil Services Limited, New Zealand Oil Services Limited, the New Zealand Airports Association, Auckland Airport, Board of Airline Representatives New Zealand, and Air New Zealand.

Recommendations

I recommend that the Cabinet Legislation Committee

- 1 note that the *Fuel Industry (Improving Fuel Resilience) Amendment Act 2023* contains regulation-making powers to amend the minimum stockholding obligation settings and prescribe record-keeping and information disclosure requirements;
- 2 note that in December 2023, the Minister for Energy and the Associate Minister for Energy consulted on an exposure draft of the *Fuel Industry (Fuel Resilience) Amendment Regulations* (the **Regulations**) with targeted stakeholders from the fuel industry and the aviation sector;
- 3 note that in May 2024, Economic Policy Committee agreed that the chief executive of the Ministry for Business, Innovation and Employment have the power to appoint a compliance officer or an independent auditor, with costs recoverable from an obliged person if material issues are found, and to require certain information, similar to what is set out in sections 99E and 99F of the *Crown Minerals Act 1991* [ECO-24-MIN-0093 refers];
- 4 Legal professional privilege
- 5 agree to rescind the decision referred to in Recommendation 3 above;
- 6 agree that the Regulations enable the chief executive of the Ministry to direct an obliged person to undertake an independent audit;
- 7 note that the change proposed to in Recommendation 6 will not have any material impacts on obliged persons or the Ministry;
- 8 note that Timaru Oil Services Limited (**TOSL**) own and operate the 32ML fuel terminal in Timaru and can import fuel directly but currently orders fuel from other fuel importers
- 9 note that there is some uncertainty about whether TOSL is an obliged person with information disclosure obligations;

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- 10 note that because of the size of the Timaru terminal, it is necessary on fuel resilience grounds that certain information about the terminal and its fuel is disclosed to the government;
- 11 agree that the following regulations will apply to the Timaru terminal and to TOSL, regardless of whether TOSL is an obliged person;
 - 11.1 regulation 41(1)(a), (2), and (3), relating to monthly records of fuel stocks
 - 11.2 regulation 42(a), but only in relation to information recorded and retained under regulation 41(1)(a)(i), (1)(a)(iii) to (vi), and (2), relating to monthly disclosure of fuel stocks
 - 11.3 regulation 42(b), relating to daily drawings from the Timaru terminal
 - 11.4 regulation 44, relating to annual disclosure of storage capacity
 - 11.5 regulation 45, relating to annual disclosure about assurance from board of directors
 - 11.6 regulation 46, excluding regulation 46(3)(g)(i), relating to audits;
- 12 authorise the submission to the Executive Council of the *Fuel Industry (Fuel Resilience) Amendment Regulations 2024*;
- 13 note that the *Fuel Industry (Fuel Resilience) Amendment Regulations 2024* will come into force on 1 January 2025.

Authorised for lodgement

Hon Shane Jones

Associate Minister for Energy