



Fuel Industry Amendment Regulations 2021

Cindy Kiro, Governor-General

Order in Council

At Wellington this 20th day of December 2021

Present:

Her Excellency the Governor-General in Council

These regulations are made under section 27 of the Fuel Industry Act 2020—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister of Energy and Resources made in accordance with section 27(3) of that Act.

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Regulations

1 Title

These regulations are the Fuel Industry Amendment Regulations 2021.

2 Commencement

- (1) These regulations, other than regulation 6, come into force on 11 February 2022.
- (2) Regulation 6 comes into force on 1 April 2022.

3 Principal regulations

These regulations amend the Fuel Industry Regulations 2021.

4 Regulation 3 amended (Interpretation)

In regulation 3, insert in their appropriate alphabetical order:

co-ordination event means the rationing of engine fuel withdrawals, by 2 or more fuel importers and of 1 or more engine fuel types, at a bulk storage facility or a port because engine fuel stocks are forecast to be below 3 days' stock as at the time the next supply ship is due to arrive

discounting or loyalty programme means a recurring or ongoing programme that provides retail customers with discounts off the standard retail price, or non-fuel related benefits provided by the fuel importer or another entity, or both

financial quarter means the following periods:

- (a) the period that begins on 1 April of a year and ends on the following 30 June:

- (b) the period that begins on 1 July of a year and ends on the following 30 September:
- (c) the period that begins on 1 October of a year and ends on the following 31 December:
- (d) the period that begins on 1 January of a year and ends on the following 31 March

financial year means the period beginning on 1 April of each year and ending on 31 March of the following year

fuel importer means a fuel industry participant that imports fuel into New Zealand

infrastructure sharing agreement means an agreement between 2 or more fuel importers under which a fuel importer has the right to draw engine fuel from a bulk storage facility owned or operated by another fuel importer

5 New regulation 3A inserted (Transitional, savings, and related provisions)

After regulation 3, insert:

3A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 1 have effect according to their terms.

6 New Part 3A inserted

After regulation 17, insert:

Part 3A Disclosure of information

17A Which fuels information disclosure requirements apply to

For the purpose of section 27(2)(a) of the Act, this Part applies to the following engine fuels:

- (a) regular grade petrol:
- (b) diesel:
- (c) premium grade petrol with a research octane number of 95:
- (d) premium grade petrol with a research octane number of 98.

17B Meaning of own

In this Part, **own** includes holding a beneficial or legal interest or entitlement and includes having any share in ownership.

17C Obligation to record and retain copies of fixed wholesale contracts

- (1) A fuel importer must record and retain a copy of all fixed wholesale contracts that are in force on 1 April 2022 or that come into force after that date, including a copy of any material changes to the provisions of the contract.
- (2) The fuel importer must disclose a copy of a fixed wholesale contract to the Commission upon the Commission's request.
- (3) The fuel importer must continue to retain a copy of a fixed wholesale contract for a period of 7 years after it has expired or been terminated.
- (4) A fuel importer must record and retain a copy of any offers or bids made by the fuel importer in relation to a fixed wholesale contract that did not result in a new fixed wholesale contract.
- (5) The fuel importer must continue to retain a copy of an offer or bid described in subclause (4) for a period of 7 years after the date on which the offer or bid was disclosed to the Commission under regulation 17D.

17D Annual disclosure of fixed wholesale contracts

A fuel importer must, by no later than 1 September of each year, provide or disclose the following to the Commission in relation to the previous financial year:

- (a) a copy of any new fixed wholesale contracts entered into by the fuel importer:
- (b) a copy of any offers or bids made by the fuel importer in relation to a fixed wholesale contract that did not result in a new fixed wholesale contract:
- (c) a copy of any material changes to provisions of a fixed wholesale contract, including in relation to any of the following:
 - (i) the parties to the contract, the commencement date of the contract, or the term of the contract:
 - (ii) the pricing methodology used in the contract:
 - (iii) any prescribed minimum volumes:
 - (iv) termination periods, rights of renewal, rights of first refusal, restraints on trade, liquidated damages, or exclusive territories:
- (d) any expiry or termination of fixed wholesale contracts.

17E Annual disclosure of certain financial statements

- (1) A wholesale supplier or distributor must, by no later than the date each year that is 5 months after the wholesale supplier or distributor's balance date, disclose the following to the Commission:
 - (a) if the wholesale supplier or distributor has no subsidiaries, their financial statements (as defined in section 6 of the Financial Reporting Act 2013):

- (b) if the wholesale supplier or distributor has 1 or more subsidiaries, their group financial statements (as defined in section 7 of the Financial Reporting Act 2013).
- (2) However, the following persons are exempt from subclause (1):
 - (a) a wholesale supplier or distributor that is a subsidiary of a wholesale supplier or distributor required to disclose group financial statements under subclause (1)(b):
 - (b) a wholesale supplier or distributor that does not prepare financial statements under the Companies Act 1993.

17F Annual disclosure of certain formulas and volumes

- (1) A fuel importer must record and retain the following information in respect of engine fuel that it imports:
 - (a) if the fuel importer uses an import parity formula, that formula:
 - (b) its domestic shipping costs:
 - (c) the total importer costs incurred, including each of the following (where relevant), and an explanation of what is included in each cost:
 - (i) all costs of importing refined product; and
 - (ii) all international shipping costs; and
 - (iii) all costs of insurance and losses:
 - (d) the volume of imported refined product.
- (2) The fuel importer must disclose all information recorded and retained under subclause (1) to the Commission by no later than 1 September of each year in respect of the previous financial year.
- (3) The fuel importer must retain the information disclosed to the Commission under subclause (2) for a period of 7 years after the date of the disclosure.

17G Annual disclosure of certain travel distances

- (1) A fuel importer must record and retain the information required by subclause (2) in respect of—
 - (a) each retail fuel site owned or operated by the fuel importer:
 - (b) each retail fuel site that is not owned or operated by the fuel importer and for which the fuel importer supplies the fuel and sets the standard retail price.
- (2) The fuel importer must record and retain the distance in kilometres between each bulk storage facility and each retail fuel site for which that bulk storage facility is the largest supplier.
- (3) The fuel importer must disclose all information recorded and retained under subclause (2) to the Commission by no later than 1 September of each year in respect of the previous financial year.

- (4) The fuel importer must retain the information disclosed to the Commission under subclause (3) for a period of 7 years after the date of the disclosure.

17H Annual disclosure of certain discounting or loyalty programmes

- (1) A fuel importer must record and retain the information required by subclause (2) in respect of the 2 discounting or loyalty programmes offered by the fuel importer that account for the most revenue from engine fuel sales associated with that programme for that fuel importer.
- (2) The fuel importer must record and retain—
- (a) the name of each discounting or loyalty programme; and
 - (b) any conditions that apply to a consumer when claiming one of the discount or loyalty benefits; and
 - (c) the date that each programme became available; and
 - (d) how any discounts under each programme are calculated; and
 - (e) the type of any other benefits received by a consumer under each programme; and
 - (f) any partnerships with third parties in respect of each programme, including incentives received by the fuel importer for honouring the programme.
- (3) The fuel importer must record and retain the date that any programme disclosed to the Commission in the previous year ceased to be offered.
- (4) The fuel importer must disclose all information recorded and retained under subclauses (2) and (3) to the Commission by no later than 1 September of each year in respect of the previous financial year.
- (5) The fuel importer must retain the information disclosed to the Commission under subclause (4) for a period of 7 years after the date of the disclosure.

17I Annual disclosure of storage capacity

- (1) A fuel importer must record and retain the following information in respect of each bulk storage facility it operates:
- (a) the total storage capacity for each engine fuel type; and
 - (b) if there have been any changes in the storage capacity for any engine fuel type at a bulk storage facility, the reasons for that change.
- (2) The fuel importer must disclose all information recorded and retained under subclause (1) to the Commission by no later than 1 September of each year in respect of the previous financial year.
- (3) The fuel importer must retain the information disclosed under subclause (2) for a period of 7 years after the date of the disclosure.

17J Annual disclosure of retail supply

- (1) A wholesale supplier or distributor (other than a fuel importer) must record and retain the total annual volume of each engine fuel type sold from retail fuel sites owned or operated by the wholesale supplier or distributor in respect of a financial year.
- (2) The wholesale supplier must record and retain the following information in respect of each retail fuel site for which the wholesale supplier supplies the fuel:
 - (a) the addresses of all retail fuel sites that the wholesale supplier currently supplies:
 - (b) the addresses of all new retail fuel sites that the wholesale supplier has begun supplying in the year:
 - (c) the addresses of all retail fuel sites that the wholesale supplier has ceased to supply in the year.
- (3) A distributor must record and retain the following information in respect of each retail fuel site owned and operated by the distributor:
 - (a) the address of each retail fuel site:
 - (b) the address of each new retail fuel site that the distributor began operating in the year:
 - (c) the address of each retail fuel site that the distributor has ceased to operate during the year.
- (4) The wholesale supplier or distributor must disclose the information recorded and retained under subclause (1), (2), or (3) to the Commission by no later than 1 September of each year in respect of the previous financial year.
- (5) The wholesale supplier or distributor must retain the information disclosed to the Commission under subclause (4) for a period of 7 years after the date of the disclosure.

17K Quarterly disclosures relating to fuel supply

- (1) A fuel importer must record and retain the following information:
 - (a) in respect of each bulk storage facility to which the fuel importer supplies fuel, the volume of each engine fuel type that has been supplied to each bulk storage facility per month by the fuel importer, and whether the fuel was supplied to the bulk storage facility—
 - (i) directly from outside New Zealand; or
 - (ii) from elsewhere in New Zealand:
 - (b) in respect of each bulk storage facility at which the fuel importer has the right to draw fuel, the volume of each engine fuel type drawn from each bulk storage facility per month by the fuel importer, as follows:

- (i) the volume drawn to supply retail fuel sites owned or operated by the fuel importer:
 - (ii) the volume drawn by the fuel importer under an infrastructure sharing agreement:
 - (iii) the volume of all other engine fuel drawn:
 - (c) in respect of each bulk storage facility that the fuel importer operates, the volume of each engine fuel type at each bulk storage facility on the last day of each month.
- (2) A fuel importer must record and retain the following information:
- (a) if a co-ordination event occurs during the quarter,—
 - (i) whether individual bulk storage facilities or whole ports were involved in the co-ordination event; and
 - (ii) the date the co-ordination event began; and
 - (iii) the date the co-ordination event ended; and
 - (iv) which engine fuel type the co-ordination event applied to; and
 - (v) how the reduction of supply of engine fuel was rationed amongst fuel industry participants; and
 - (vi) why the co-ordination event occurred:
 - (b) the forecast monthly demand for each engine fuel type in the quarter after the quarter to which the disclosure relates:
 - (c) information about each individual sale of each engine fuel type from a bulk storage facility, including the following:
 - (i) the date of the sale:
 - (ii) the purchaser of the engine fuel:
 - (iii) whether the fuel was purchased under—
 - (A) the terminal gate price provisions of subpart 1 of Part 2 of the Act; or
 - (B) a fixed wholesale contract; or
 - (C) any other contract:
 - (iv) the volume of engine fuel sold, on an ambient temperature basis:
 - (v) the revenue from that sale, with any taxes and other charges (such as delivery costs) identified separately:
 - (vi) the price, on a cents per litre basis, charged for that engine fuel, with any taxes and other charges (such as delivery costs) identified separately:
 - (vii) the bulk storage facility from which the engine fuel was sold:
 - (viii) whether the purchaser is registered under the emissions trading scheme:

- (d) the throughput fees (exclusive of GST), if any, at each bulk storage facility at which the fuel importer has the right to draw engine fuel, on a cents per litre basis for each engine fuel type, and, where relevant, to whom the fees were charged and the associated fuel volumes:
 - (e) each terminal gate price posted for each engine fuel type subject to the terminal gate price provisions of subpart 1 of Part 2 of the Act, and the date and time that each price was posted:
 - (f) each request for supply under the terminal gate price provisions of subpart 1 of Part 2 of the Act that was refused by the fuel importer, including—
 - (i) the identity of the reseller that made the request; and
 - (ii) the date and time of the request; and
 - (iii) the date of the refusal to supply; and
 - (iv) the relevant specified engine fuel and bulk storage facility; and
 - (v) the amount of specified engine fuel that was requested; and
 - (vi) the grounds for refusal to supply:
 - (g) the terminal to Auckland pipeline costs each month and an explanation of the methodology used to estimate those costs.
- (3) The fuel importer must disclose all information recorded and retained under subclause (1) or (2) to the Commission by no later than the date that is 30 days of the end of each financial quarter.
 - (4) The fuel importer must retain the information disclosed to the Commission under subclause (3) for a period of 7 years after the date of the disclosure.

17L Quarterly disclosures relating to retail fuel sites

- (1) A fuel importer must record and retain information about the volume of each type of engine fuel supplied in each quarter to each retail fuel site owned or operated by the fuel importer.
- (2) A fuel importer must record and retain the following information:
 - (a) the addresses of all retail sites that the fuel importer currently supplies:
 - (b) the addresses of all new retail fuel sites that the fuel importer has begun supplying in the quarter:
 - (c) the addresses of all retail fuel sites that the fuel importer has ceased to supply in the quarter.
- (3) A fuel importer must record and retain the information required by subclause (4) in respect of—
 - (a) each retail fuel site owned or operated by the fuel importer:

- (b) each retail fuel site that is not owned or operated by the fuel importer but for which the fuel importer supplies the fuel and sets the standard retail price.
- (4) The fuel importer must record and retain the following information:
 - (a) the last standard retail price of each day for each engine fuel type at each retail fuel site:
 - (b) the discounts (other than a discounting or loyalty programme to which regulation 17H applies or a commercial vehicle discount) offered by the fuel importer each day on a cents per litre basis for each engine fuel type at each retail fuel site:
 - (c) the daily volume of each engine fuel type sold at each retail fuel site:
 - (d) the quarterly revenue from sales of each engine fuel type, aggregated across retail fuel sites.
- (5) The fuel importer must disclose all information recorded and retained under subclause (1), (2), or (4) to the Commission by no later than the date that is 30 days after the end of each financial quarter.
- (6) The fuel importer must retain the information disclosed to the Commission under subclause (5) for a period of 7 years after the date of the disclosure.

7 New Schedule 1 inserted

Insert the Schedule 1 set out in the Schedule of these regulations as the first schedule to appear after the last regulation of the principal regulations.

Schedule New Schedule 1 inserted

r 7

Schedule 1 Transitional, savings, and related provisions

r 3A

Part 1 Provision relating to Fuel Industry Amendment Regulations 2021

1 First disclosure of fixed wholesale contracts

By no later than 1 September 2022, a fuel importer must disclose to the Commission a copy of all fixed wholesale contracts that were in force on 11 August 2022.

Michael Webster,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, except for *regulation 6*, come into force on 11 February 2022. *Regulation 6* comes into force on 1 April 2022. These regulations amend the Fuel Industry Regulations 2021 (the **principal regulations**).

Regulation 4 amends *regulation 3* of the principal regulations to insert new definitions of co-ordination event, discounting or loyalty programme, financial quarter, financial year, fuel importer, and infrastructure sharing agreement.

Regulation 5 inserts *new regulation 3A* into the principal regulations. *New regulation 3A* provides for transitional arrangements as set out in *new Schedule 1*.

Regulation 6 inserts *new Part 3A* into the principal regulations, which relates to disclosure of information.

New regulation 17A sets out which engine fuels the new information disclosure requirements apply to. *New Part 3A* applies in respect of regular grade petrol, diesel, and premium grade petrol with a research octane number of 95 or 98.

New regulation 17B defines own for the purpose of *new Part 3A*.

New regulation 17C requires fuel importers to record and retain copies of fixed wholesale contracts, changes to those contracts, and unsuccessful offers and bids in

relation to fixed wholesale contracts. The fuel importer must disclose those contracts to the Commerce Commission (the **Commission**) upon the Commission's request.

New regulation 17D requires fuel importers to disclose certain information about fixed wholesale contracts to the Commission on an annual basis.

New regulation 17E requires wholesale suppliers and distributors to disclose financial statements to the Commission on an annual basis. This requirement does not apply to—

- a wholesale supplier or distributor that is a subsidiary of a wholesale supplier or distributor that is required to disclose group financial statements under this regulation; or
- a wholesale supplier or distributor that does not prepare financial statements under the Companies Act 1993.

New regulations 17F to 17I require fuel importers to record and retain, and disclose to the Commission on an annual basis, the following information:

- certain information about formulas, costs, and volumes associated with importing and shipping engine fuel;
- information about travel distances;
- certain information about their 2 largest discounting or loyalty programmes;
- information about their engine fuel storage capacity.

New regulation 17J requires wholesale suppliers and distributors (other than fuel importers) to record and retain information about their retail supply of engine fuel, and disclose that information to the Commission on an annual basis.

New regulation 17K sets out the information relating to fuel supply that fuel importers must record and retain, and disclose to the Commission on a quarterly basis.

New regulation 17L sets out the information relating to retail fuel sites that fuel importers must record and retain, and disclose to the Commission on a quarterly basis.

Regulation 7 inserts *new Schedule 1*, which relates to transitional provisions.

Regulatory impact statement

The Ministry of Business, Innovation, and Employment produced a regulatory impact statement on 19 August 2021 to help inform the decisions taken by the Government relating to the contents of this instrument.

A copy of this regulatory impact statement can be found at—

- <https://treasury.govt.nz/publications/informationreleases/ris>

Issued under the authority of the Legislation Act 2019.

Date of notification in *Gazette*: 22 December 2021.

These regulations are administered by the Ministry of Business, Innovation, and Employment.