

Fuel Quality Standards Regulations 2001 2001 No. 236

EXPLANATORY STATEMENT

STATUTORY RULES 2001 No. 236

Issued by the Authority of the Minister for the Environment and Heritage

Fuel Quality Standards Act 2000

Fuel Quality Standards Regulations 2001

The *Fuel Quality Standards Act 2000* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Act (section 73).

Section 21 of the Act provides that the Minister may make a determination that specifies the matters that constitute a fuel standard in respect of a specified kind of fuel. Such a determination is a disallowable instrument.

The Fuel Standard (Petrol) Determination 2001 and the Fuel Standard (Diesel) Determination 2001 will not affect the operation of a fuel standard established by a State or Territory law unless and until the Commonwealth standard for a substance has commenced in accordance with the date specified in the determination for that substance.

Section 4 provides that "fuel" and "fuel additive" has the meaning given by the regulations.

Section 14 provides that an application for an approval for a variation of a fuel standard must be made in accordance with the regulations and the application must be accompanied by the application fee (if any) prescribed by the regulations

Subsection 17(1) provides that it is a condition of an approval for a variation of a fuel standard, that its holder, within the period[prescribed by the regulations, inform any regulated person, to whom a particular condition of the approval applies, of that condition and its variation, if any', and of any revocation of the approval. A regulated person is a person to whom the approval for a variation of a fuel standard applies, other than the person to whom it is granted.

Subsection 17(2) provides that requirements in relation to the manner in which information is provided to regulated persons to whom particular conditions of an approval apply may be prescribed by the regulations

Section 29 provides that the regulations may prescribe matters relating to the members of the Fuel Standards Consultative Committee and expert advisers, including, but not limited to their term of appointment; resignation; disclosure of interests, termination of appointment, and leave of absence.

Subsection 34(1) provides that the Minister may enter on or remove a fuel additive or class of fuel additives from the Register of Prohibited Fuel Additives established under the Act.

Subsection 34(2) provides that the Minister must first publish, in accordance with the regulations, notice of the action he or she is proposing to take.

Subsection 35(3) provides that the Minister must invite persons to make submissions on the proposal, specify where the submissions are to be sent, and specify the date by which the submissions must be sent.

The purpose of the regulations is to enable the implementation of the *Fuel Quality Standards Act 2000*. The Act establishes for the first time in Australia a framework for the making of fuel quality standards that can apply nationally. The Act implements a number of commitments made by the Federal Government as part of *A New Tax System - Measures for a Better Environment*. The first environmental standards for petrol and diesel were announced on 8 May and 15 July 2001. The Minister will establish these standards in a separate disallowable instrument made pursuant to section 21 of the Act.

These regulations were the subject of limited consultation with major stakeholders including Commonwealth, State and Territory officials, and representative organisations of fuel producers, automobile manufactures, consumers, and environmentalists. The comments received during the consultation process were taken into account in the preparation of these regulations.

The regulations specify:

- definitions, including the definition of "fuel", which means petrol, automotive diesel, liquefied petroleum gas, liquefied natural gas, compressed natural gas, diesohol, biodiesel, any substance that is used as a substitute for "fuel" as defined, and any substance that is sold or represented as fuel for which a fuel standard is made: Regulation 3.
- the information applicants must provide with their applications for approvals to vary fuel standards: Regulation 4.
- the application fee that will be payable by non-government applicants for approvals, unless reduced or waived by the Minister or the Administrative Appeals Tribunal: Regulations 5, 6.
- the period within which the holder of an approval must inform a regulated person of a condition or variation of a condition: Regulation 7.
- various matters relating to members of the Fuel Standards Consultative Committee and expert advisers, including their term of appointment, disclosure of interests, resignation, termination of appointment and leave of absence: Regulations 9, 10, 11, 12, and 13.
- where notices must be published concerning proposed entries in the Register of Prohibited Fuel Additives: Regulation 14.

Details of the Regulations are set out in the Attachment.

The Regulations commenced on gazettal.

Attachment

Fuel Quality Standards Regulations 2001

Part 1: Preliminary

Part 1 provides the name and commencement date of the regulations. Regulations 1 and 2 provide that the Fuel Quality Standards Regulations 2001 commence on gazettal.

Part 1 also provides definitions for certain words and expressions used in the regulations. For example, subregulation 3(2) provides the definition of "fuel" pursuant to subsection 4(1) of the *Fuel Quality Standards Act 2000* (the Act). "Fuel" is defined to include specified types of fuel such as petrol, automotive diesel, liquefied petroleum gas, liquefied natural gas, compressed natural gas, diesohol, and biodiesel. Subregulation 3(1) defines "biodiesel" as a substance obtained by esterification of oil derived from plants or animals. It defines "diesohol" as a blend of diesel, hydrated ethanol and an emulsifier. "Fuel" is also defined in paragraph 3(2)(h) and (i) to include any substance that is used as a substitute for the fuels specified, and any substance that is represented as a fuel for which a fuel standard is in effect. This broad definition is intended to be sufficiently flexible to enable a wide range of conventional and alternative fuels to be the subject of a fuel standard under the Act, and to enable fuel suppliers who misrepresent the fuel they supply to be prosecuted under the Act.

Part 2: Approvals for variation of fuel standards

Regulation 4 prescribes what information must be included in a written application for an approval for a variation of a fuel standard under the Act. This includes the applicant's name and contact details, a statement of the reasons why the applicant wants the standard to be varied, and an explanation of the variation sought. Additionally, Regulation 4 requires applicants to specify the period for which the variation is sought, and information about the possible effect of the approval, if granted, on protection of the environment, occupational and public health and safety, the interests of consumers, and economic and regional development. Subregulation 4(2) provides that an application may be withdrawn at any time before the Minister decides whether or not to grant the approval. Subregulation 4(3) provides that the Minister may, by written notice, require the applicant to provide, within a reasonable time, specified further information the Minister reasonably considers to be relevant to the application.

Regulation 5 prescribes the fee that must be paid, subject to subregulation 5(2), when an application for an approval is made. Subregulation 5(1) provides that the application fee for an approval is the sum of \$2 500 plus \$275 for each regulated person whose supply of fuel is intended to be covered by the approval, plus an additional amount which varies according to the number of pages in the application. For example, an application of up to 10 pages requires the payment of \$2 500 plus \$725 (ie a total of \$3 225). An application of more than 1,000 pages requires the payment of \$2 500 plus \$18,500 plus \$18.50 for each additional page.

The fees payable with an application for an approval have been set based on cost-recovery considerations. In order to assess an application for an approval to vary a fuel standard the Minister is required to consider recommendations about the application made by the Fuel Standards Consultative Committee (the Committee) established under the Act. The Minister must also have regard to considerations such as the protection of the environment, occupational health and safety, the interests of consumers, economic and regional development, and any other matter he or she considers relevant (section 15 of the Act). The Minister would have to be fully briefed about these considerations. In order to prepare such briefs the Department may have to commission technical assessments by experts. Thus the fees payable with applications for approvals are intended to defray the administrative and consultancy costs associated with the preparation of advice for the Minister and the Committee. These fees are comparable with those set under some other Commonwealth regulations.

Subregulation 5(2)(a) provides that no application fee is payable by an applicant that is an agency of the Commonwealth or a State or Territory. Subregulation 5(2)(b) provides that the Minister may waive or reduce the application fee if he or she thinks the fee would cause financial hardship for the applicant. Paragraph 5(2)(c) provides that if the applicant withdraws the application before it is considered, any application fee paid must be refunded.

Subregulation 5 (3) provides that a page of an application is taken to be the amount of information that can reasonably be contained on 1 side of an A4 sheet when printed in a type size of at least 10 point.

Regulation 6 provides that an applicant that is not an agency of the Commonwealth or a State or Territory may ask the Minister to waive or reduce the application fee. A request for a reduction or waiver of the application fee must set out the reasons for making the request. The Minister must decide whether to waive or reduce the application fee, and give to the person who made the request written notice of the decision and of the grounds for the result within 14 days of receiving the request. The notice must include a statement that, subject to the *Administrative Appeals Tribunal Act 1975*, the person may apply to the Administrative Appeals Tribunal for review of the decision. Subregulation 6(5) provides that an applicant for an approval may apply to the Tribunal for the review of a Minister's decision about the waiver or reduction of the application fee.

Subregulation 6(6) provides that if an applicant applies for a waiver or reduction of an application fee at the same time as they apply for an approval to vary a fuel standard, the application is taken not to have been made until the Minister has decided whether to waive or reduce the application fee. This subregulation is necessary because subsection 14(2) of the Act provides that applications for approvals under the Act must be accompanied by the application fee (if any) prescribed by the regulations. Subregulation 6(6) enables the outcome of an application for a waiver or reduction of the application fee to be determined before the fee becomes payable with the application.

Regulation 7 prescribes the period within which the holder of an approval varying a fuel standard under the Act must inform a regulated person under the Act about the conditions attached to the approval, or any variation of those conditions. A regulated person is any fuel supplier who is covered by an application for an approval under the Act. The notification period begins when a condition is imposed or varied and ends at different times depending on the number of regulated persons affected by the conditions attached to the approval. For example, if only one regulated person is covered by the approval, the period ends either when the approval-holder first supplies fuel to the regulated person after the holder is told of the condition or variation; or 24 hours after the holder is told of the condition or variation, whichever is earlier. If the condition applies to fewer than 16 regulated persons, the period is 24 hours after the holder is told of the condition or variation. For another example, if the condition applies to more than 50 regulated persons, the period is 5 working days after the holder is told of the condition or variation.

Under subregulation 7(1)(b) the period within which the holder of an approval must inform a regulated person of the revocation of the approval begins when the holder is told that the approval is revoked and ends at variable time depending on the number of persons needing to be informed of the revocation.

Subregulation 7(2) prescribes the manner by which the holder of an approval must inform a regulated person of their obligations under the Act. Communication can be effected either personally, or by posting or sending information by electronic means to the person, or by leaving it at the last-known place of residence or business of the relevant individual, or in relation to a regulated person that is a body corporate, at the head office, registered office or principal place of business of the corporation.

Part 3: The Committee

Regulation 8 provides that Part 3 sets out matters relating to members of the Committee and expert advisers.

Regulation 9 provides that the term of appointment for a member or an expert adviser must be not more than 3 years. Members can be re-appointed however pursuant to subsection 33(4A) of the Acts *Interpretation Act 1901*.

Regulation 10 deals with disclosure of interests by members of the Committee. It provides that a member or an expert adviser who has a direct or indirect interest in a matter being considered or about to be considered by the Committee must, as soon as possible after becoming aware of the relevant facts, disclose the nature of the interest at a meeting of the Committee. An interest for the purposes of this regulation must be something other than the direct or indirect interest that the member has through being a representative of a government or non-government organisation on the Committee. A member or expert adviser who makes such a disclosure must not, unless the Committee or the Minister otherwise determines in their absence, be present during any deliberation of the Committee about the matter, or take part in any decision of the Committee about the matter.

Regulation 11 provides that a member or an expert adviser may resign by giving written notice to the Minister.

Regulation 12 provides that the Minister may terminate the appointment of a member or expert adviser in prescribed circumstances such as misbehaviour or physical or mental incapacity, or for incompetence or inefficiency, amongst others.

Regulation 13 provides that the Minister may grant leave of absence to the Chair. The Chair may grant leave of absence to another member of the Committee.

Part 4: The Register

Regulation 14 in Part 4 prescribes where the Minister must publish notices concerning proposed entries and decisions about entries in the Register of Prohibited Fuel Additives established under the Act. Under subregulation 14(1), such notices must be published at an appropriate location on the Internet, in Government Gazettes, daily newspapers that circulate nationally and in each State and Territory, and if practicable, in regional newspapers throughout Australia. Subregulation 14(2) provides that it would not be practical to publish a notice in all relevant regional newspapers if the relevant impacts of a decision to add or remove an entry from the Register of Prohibited Fuel Additives could affect the whole, or a large proportion, of Australia.