

# Fuel Quality Standards Amendment Regulations 2001 (No. 1) 2001 No. 255

## EXPLANATORY STATEMENT

### Statutory Rules 2001 No. 255

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

### Subject -- *Fuel Quality Standards Act 2000*

Fuel Quality Standards Amendment Regulations 2001 (No. 1)

Section 73 of 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.

Further relevant regulation making powers are described in [Attachment A](#).

The purpose of the regulations is to enable the further implementation of the monitoring, compliance and enforcement provisions of the Act, through amendments to the *Fuel Quality Standards Regulations 2001*.

The Act establishes for the first time in Australia a framework for the making and enforcement of national fuel quality standards. 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 set of regulations made under the Act - *the Fuel Quality Standards Regulations 2001* - commenced on 5 September 2001. The first environmental standards for petrol and diesel - the *Fuel Standard (Petrol) Determination 2001* and the *Fuel Standard (Diesel) Determination 2001* - commence on 1 January 2002.

The regulations were the subject of extensive consultation with major stakeholders including Commonwealth, State and Territory officials, fuel producers, and automobile manufacturers. Two national consumer and environmental organisations were also invited to comment. The feedback received during the consultation process was taken into account during the drafting process.

The regulations prescribe:

- what documents need to be provided by fuel suppliers to other fuel suppliers under the Act;
- the form in which identity cards are to be issued to inspectors by the Secretary;
- procedures for dealing with fuel samples taken for monitoring, compliance and enforcement purposes; and
- record keeping and reporting obligations.

The proposed regulations will also exempt the Act from the operation of the Trans Tasman Mutual Recognition Act 1997 until the end of 31 December 2002, during which time it is expected that New Zealand will harmonise its petrol and diesel standards with European and

Australian standards. This regulation is necessary because fuel that is imported into, or produced in New Zealand, and which can lawfully be sold in New Zealand, can lawfully be sold in Australia

Details of the regulations are set out in Attachment B.

The regulations commence on 1 January 2002.

## **Attachment A**

### ***Fuel Quality Standards Amendment Regulations 2001 (No. 1)***

#### **Further relevant regulation making powers**

In addition to the regulation making power provided in section 73 of the *Fuel Quality Standards Act 2000*, regulations may be made pursuant to the following provisions of the Act:

- section 19 requires supplies of fuel to be accompanied by documentation. Under paragraph 19(d) and (e) this documentation must include "a statement as to whether or not the fuel complies with the standard", and "any other information" that is prescribed by the regulations. Such documentation must be provided "within the period prescribed by the regulations";
- section 21 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;
- subsection 39(2) provides that an identity card issued to an inspector must be in the form prescribed by the regulations and contain a recent photograph of the inspector.
- subsection 58A(2) provides that regulations may be made that enable inspectors to arrange for tests to be carried out on samples of fuel, fuel additives or other evidential material, by other persons.
- subsection 58B(8) provides definitions for specified terms used in section 58B. An *accredited laboratory* means a laboratory or similar undertaking that, under the regulations, is an accredited laboratory for the purposes of the Act. An *accredited person* means a person that, under the regulations, is an accredited person for the purposes of the Act. Under subsection 58B(2) a certificate signed by an accredited person or an authorised person in relation to an accredited laboratory, is admissible as prima facie evidence of the matters stated in the certificate and of the correctness of the results of the analysis.
- subsection 58B(9) provides that for subsection (8), regulations made for defining *accredited laboratory*, *accredited person* and *authorised person* may provide for accreditation or approval by another person or body.
- subsection 66(1) provides that if a person supplies fuel in Australia that is the subject of a fuel standard, and the person is a constitutional corporation or a Commonwealth entity or the person supplies the fuel in the course of constitutional trade or commerce, the person must keep and maintain records in relation to such supplies in accordance with the regulations.
- paragraph 67(4)(c) enables regulations to be made that specify how annual statements from fuel producers and importers, which will contain any information required by the Secretary, are to be provided to the Secretary.

## **Attachment B**

### ***Fuel Quality Standards Amendment Regulations 2001 (No. 1)***

#### **Regulations 1 and 2 - Name of Regulations and Commencement**

Regulations 1 and 2 provide the name and commencement date of the regulations. They provide that the *Fuel Quality Standards Amendment Regulations 2001(No. 1)* commence on 1 January 2002.

### **Regulation 3 - Amendment of *Fuel Quality Standards Regulations 2001***

This regulation provides that Schedule 1 amends the *Fuel Quality Standards Regulations 2001*.

#### **Schedule 1 - Amendments**

##### **Item 1 - Subregulation 3 (1), after definition of *Act***

This item inserts definitions for terms used in the regulation. It provides that *blend*, for fuel, means to combine fuel with another substance, and *bulk facility* includes a storage depot, distribution terminal or refinery.

The "other substance" in the definition for *blend* can be fuel.

##### **Item 2 - Subregulation 3 (1), after definition of *contact details***

This item inserts further definitions. It provides that *NATA*, means the National Association of Testing Authorities, Australia; and *vehicle* includes railway rolling stock, a prime mover and trailer, and a vessel or thing, other than a pipeline, used to transport fuel for supply.

##### **Item 3 - After regulation 3**

This item inserts regulation 3A after regulation 3. It exempts the Act from the operation of the *Trans-Tasman Mutual Recognition Act 1997* (TTMR Act) for 12 months (until the end of 31 December 2002), during which time it is expected that New Zealand will harmonise its petrol and diesel standards with European and Australian standards. This regulation is necessary because fuel that is imported into, or produced in New Zealand, and which can lawfully be sold in New Zealand, can lawfully be sold in Australia. The New Zealand Ministry of Economic Development has established a Petrol and Diesel Quality Review, and amended *Petroleum Products Specifications Regulations* are expected to be in place by 1 July 2002. This regulation is made pursuant to sub-section 46(2) of the TTMR Act.

##### **Item 4 - Part 2, heading**

This item replaces the heading for Part 2 with "Part 2 - Regulation of fuel and fuel additives".

##### **Item 5 - After regulation 7**

This item inserts regulation 7A after regulation 7 which deals with the fuel documentation that must be provided by fuel suppliers to recipients of fuel, except end-users or consumers. For subregulation 7A(4) a fuel supplier is a person who imports fuel, produces or blends fuel, or distributes fuel from a bulk facility without blending or altering it. Where suppliers fit more than one of the above categories, appropriate documents fulfilling the requirements of other categories are to be provided. For example, if a supplier blends fuels in a bulk facility they are covered by paragraph 7A(3)(b). The aims of this regulation are to require the provision of fuel quality assurances, and to alert fuel suppliers down the supply chain when non-compliant fuel is supplied to them, and to facilitate the exercise of monitoring and offence-related powers. Inspectors appointed under the Act can inspect books, records and documents, and are expected

to establish where in the chain of supply fuel adulteration occurred. Detailed documentation is required for such audit powers to be exercised effectively.

Regulation 7A provides that for section 19 of the Act, the period within which a fuel supplier must provide the documents mentioned in the section, begins when the fuel is supplied and ends 72 hours after the fuel is supplied. If a fuel delivery is made in batches, delivery is taken to have occurred when the first batch is received by the person to whom it is being supplied.

Subregulation 7A(4) prescribes the information that has to be provided by fuel importers, producers and blenders under this regulation. It includes

- the supplier's name, contact details and ABN or ACN; and
- if the supplier is an agent for another person, the other person's name and contact details; and
- the delivery docket number for the fuel supplied; and
- the kind and grade of the fuel supplied or its product code; and
- the date of supply; and
- the total quantity being supplied; and
- if the fuel does not comply with a fuel standard:
  - (i) particulars of the requirements of the standards that are not met; and
  - (ii) reasons why the requirements are not met.

Regulation 7A(5) provides that a supplier who operates a vehicle for supply, (ie. railway rolling stock, prime mover and trailer, or other useful vessel or thing, but not a pipeline) must provide a copy of the documents provided by the person who supplied the fuel to him or her. The vehicle operator must also provide a signed statement stating that the quality of the fuel has not been altered since it was received by the supplier. The supplier must also provide other information that is specified in the regulation which can be used by the Commonwealth for monitoring, compliance and enforcement purposes under the Act.

## **Item 6 - After Part 4**

This item inserts a new Part 5, dealing with enforcement, into the regulations.

### **Division 5.1 - Identity cards**

#### **Regulation 15 - Form of identity cards**

Regulation 15 in Division 5.1 deals with the form in which identity cards must be issued by the Secretary. Subsection 39(2) of the Act requires the card to be in the form prescribed by the regulations and to contain a recent photograph of the inspector. Regulation 15 requires the inclusion of detailed and verifiable particulars that establish that the cardholder is an inspector appointed under the Act. Identity cards will be valid for 3 years unless its holder ceases to be an inspector.

## **Division 5.2 - Samples**

### **Regulation 16 - Procedures for dealing with samples**

Regulation 16 provides that for subsection 58A(1) of the Act, Division 5.2 sets out the procedures for dealing with samples of fuel, fuel additive or evidential material, taken by an inspector under Part 3 of the Act. This Division is necessary to ensure that the integrity of the sample is maintained and that high quality evidence can be obtained for prosecution purposes.

### **Regulation 17 - Taking samples**

Regulation 17 prescribes some essential steps that must be taken to ensure that samples taken under the Act have sound evidential value. Samples must be as uniform as practicable, and be put in separate containers and securely sealed and labelled. One or more containers must be sent to an accredited laboratory or accredited person by means that will ensure the safe arrival of its contents. The inspector must give one of the containers to the occupier, or another person who apparently represents the occupier, of the premises. If such a person is not present when samples are taken, the inspector must keep one container and give it to them if they ask for it within one week of the sample being taken. The inspector may also keep one or more containers for further inspection, measuring or testing. These requirements are in addition to those under other legislation and industry codes and standards regulating chemical sampling, occupational health and safety, transport of hazardous goods etc.

Subregulation 17(2) provides that if the occupier, or another person who apparently represents the occupier, of the premises where a sample is taken, is present when the sample is taken, the inspector must ask that person to inspect the container to satisfy himself or herself that it has been sealed and labelled properly. Substantial compliance with this routine requirement is sufficient for subsection 58A (3) of the Act. Strict compliance is not required because there are safeguards in other provisions of the Act and regulations ensuring that the integrity of the sample and other evidence is maintained. These are found, for example, in subsections 58A(4), 58A(5), and 58B(2), and regulation 19.

### **Regulation 18 - Identification of samples**

Regulation 18 deals with the identification of samples. It provides that an inspector who takes a sample must record enough details to identify it; the address of the premises where it was taken, and ask the occupier, or another person who apparently represents the occupier, to sign the record as soon as possible after the sample is taken. Subregulation 18(2) provides that substantial compliance is sufficient for subsection 58A(3) of the Act concerning the request for a signature. This is because regulation 19 provides additional safeguards for ensuring that the sample is clearly identifiable.

### **Regulation 19 - Method of securing samples**

Regulation 19 prescribes how samples are to be secured. Inspectors are required to ensure that the sample is contained and sealed in an appropriate vessel or package which is clearly identified but without disclosing the name and any contact details of the supplier from whom the sample was taken. The vessel or package must not be able to be opened, or its identification removed, without breaking the seal. Samples also have to be packed, stored and transported in such a way that their integrity is preserved, and such that when they are tested, the same results are obtained as would have been obtained if the sample had been tested immediately after it was taken.

### **Regulation 20 - Payment for samples**

Regulation 20 provides that when a sample is taken from a place from which the material can be sold legally, the Commonwealth is required to pay the market price for the sample. This requirement respects the property and commercial rights of the owners of material from which a sample is taken in the exercise of powers under the Act.

### **Regulation 21 - Accredited laboratories**

This regulation lists the kind of laboratories that are accredited for subsection 58B(8) of the Act. Subregulation 21(1) provides that for subsection 58B(8) of the Act, the following are accredited laboratories:

- a laboratory in Australia that is accredited by the National Association of Testing Authorities, Australia (NATA);
- a laboratory in another country that is accredited by the national laboratory accreditation body operating in the country where the laboratory is located; and
- an organisation of more than one laboratory or similar undertaking that uses their joint resources and that is accredited by NATA.

Subregulation 21(2) provides that for the purpose of paragraph (1) (b), a national accreditation body must be a member of the International Laboratory Accreditation Corporation, and accept the accreditation standards of that Corporation, and comply with ISO/IEC Guide 58:1993 *Calibration and testing laboratory accreditation systems -- general requirements for operation and recognition*, first edition, published by the International Organization for Standardization, Geneva.

### **Regulation 22 - Accredited persons**

Regulation 22 provides that an accredited person is an individual who is accredited by NATA. Accredited persons may sign evidentiary certificates under paragraph 58B(2)(a) of the Act that are admissible in offence proceedings under the Act.

### **Regulation 23 - Authorised persons**

This regulation provides that an authorised person is a person who is accredited by NATA. Paragraph 58B(8)(b) of the Act provides that authorised persons in relation to accredited laboratories may sign evidentiary certificates that are admissible in offence proceedings under the Act.

## **Part 5 - Record keeping and reporting obligations**

A new Part 5, concerned with the retention of records, is inserted into the regulations. This Part will facilitate monitoring under and enforcement of the Act.

### **Regulation 24 - Record keeping**

This regulation prescribes what records must be retained for 2 years, under subsection 66 (1) of the Act, for each calendar year. The retention of records is necessary for the effective exercise of monitoring and offence-related powers under the Act.

### **Regulation 25 - Records of producers or blenders of fuel**

This regulation prescribes the calendar-year records that fuel producers or blenders are required to retain for two years under regulation 24. In addition to copies of documents required to be provided under subregulation 7A(4) (see paragraph (d)), this regulation requires fuel producers and blenders to keep records of any testing done on the fuel, and records by which fuel supplies can be linked to tank holdings and takings, and to delivery document numbers, and stock reconciliation records. These records will facilitate the exercise of monitoring and offence-related powers under the Act.

### **Regulation 26 - Records for importers of fuel**

This regulation prescribes the calendar-year records that fuel importers are required to retain for two years under regulation 24. These are similar to the records required to be retained by fuel producers or blenders but additional information must be kept concerning the importation, such as the tariff code, the date and port of arrival, and the importer number for the shipment. These records will facilitate the exercise of monitoring and offence-related powers under the Act.

### **Regulation 27 - Records for operators of vehicles**

This regulation requires suppliers who supply fuel by way of railway rolling stock, or prime mover and trailer, or other vessel or thing (except a pipeline), to keep copies of all documents that they receive from upstream suppliers, or that they give to downstream suppliers, pursuant to section 19 of the Act. These records will facilitate the exercise of monitoring and offence-related powers under the Act.

### **Regulation 28 - Records for service station operators and distributors**

This regulation prescribes the calendar-year records that a supplier who operates a service station or distributes fuel is required to retain for two years under regulation 24. Such suppliers must keep copies of all documents that they receive from upstream suppliers, or that they give to downstream suppliers, pursuant to section 19 of the Act, stock reconciliation records, and details of any testing done on the fuel. It is not expected that service station operators and distributors would ordinarily test the fuel they receive for on-supply, but if they do, such test records must be retained. These records will facilitate the exercise of monitoring and offence-related powers under the Act.

### **Regulation 29 - Annual statements**

This regulation provides that for subsection 67 (4) of the Act, an annual statement must be sent to the Secretary, GPO Box 787, CANBERRA, ACT, 2601 in printed form. It may also be emailed to [fuel.quality@ea.gov.au](mailto:fuel.quality@ea.gov.au).