

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Climate Change and Energy

Fuel Security Act 2021

Fuel Security (Minimum Stockholding Obligation) Rules 2022

Purpose and Operation

The *Fuel Security (Minimum Stockholding Obligation) Rules 2022* (the Rules) prescribe various technical and administrative matters for the purposes of the minimum stockholding obligation (MSO) aspects (primarily under Part 2) of the *Fuel Security Act 2021* (the Act).

In particular, these Rules prescribe requirements for:

- the start date of the MSO scheme;
- triggering the MSO, including:
 - thresholds to trigger the MSO; and
 - trigger assessment periods;
- calculating designated quantities of MSO products;
- “obligation days” on which designated quantities of MSO products must be held;
- making an application to temporarily reduce or suspend the MSO;
- meeting the definition of an “MSO product” and stock holding under the Act;
- reporting by regulated entities of the MSO; and
- information in an entity’s MSO compliance plan.

As set out in the explanatory memorandum to the Fuel Security Bill 2021 which became the Act, Part 2 of the Act establishes a national level obligation for corporate entities that undertake certain activities (generally, importing and refining) in relation to certain transport fuels to hold a minimum quantity of those fuels nationally. The Minister for Climate Change and Energy (the Minister) has set a national consumption day target under the *Fuel Security (Target Number of Days) Declaration 2022*. Each entity will have a specific MSO determined by reference to the national target and their historical operations. The major transport fuels are gasoline, diesel and kerosene. Gasoline and kerosene MSOs have been set at the average of the 2018 and 2019 calendar years (pre-COVID-19) levels, and the diesel MSO has been increased by 40% on pre-COVID-19 levels from mid-2024. Consistent with subsection 14(4) of the Act, Part 4 of the Rules takes into account the *Fuel Security (Target Number of Days) Declaration 2022* by using the relevant target number of days in the calculation of the designated quantities for subsections 10(3), 15(3) and 16(3) of the Act.

Further details of the Rules are set out at **Attachment A**.

Authority

The Rules are made pursuant to the Act. In particular, section 84 includes the power for the Minister to make legislative rules.

Consultation

Targeted consultation with stakeholders including importers, refiners, and liquid fuel industry representative groups was undertaken during drafting the Act, and on the policy settings and draft Rules, to ensure they would operate as intended. A range of measures were included in the Rules as a result of this consultation, particularly regarding stockholding requirements and transitional arrangements for the commencement of the scheme.

An exposure draft of the rules was released for public consultation from 31 January 2022 to 28 February 2022. Stakeholders acknowledged the intent of the MSO and were largely supportive of the draft rules and the flexibility they provide. Stakeholders also supported the drafting changes made to clarify the intent or operation of some provisions. In particular, a new import definition was included to pick up commercial arrangements in the sector, new arrangements were added to recognise that circumstances involving the loss of a major customer for MSO products may justify a reduction of an entity's MSO for the following period, and general publication of scheme information has been added to assist scheme transparency.

Review

The Department will conduct ongoing monitoring and review of the MSO settings to ensure the settings remain appropriate. This will occur as the scheme matures and include, but not be limited to: the threshold levels, the effectiveness and adequacy of the intermediary market, and unintended consequences where they arise.

Regulatory Impact

An addendum to the Regulation Impact Statement (RIS) previously prepared in relation to the Act (reference numbers: 42904 and 20489) has been prepared for the purpose of this instrument in accordance with the Australian Government Guide to Regulation, which is available at pmc.gov.au. A copy of the Addendum to the RIS is included at the end of this Explanatory Statement at **Attachment C**.

Statement of Compatibility with Human Rights

A Statement of Compatibility with Human Rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out at **Attachment B**.

Glossary of Terms

A Glossary of Terms is included in **Attachment A**.

Details of the Fuel Security (Minimum Stockholding Obligation) Rules 2022**GLOSSARY OF TERMS**

Abbreviation	Definition
Act	<i>Fuel Security Act 2021</i>
EEZ	Exclusive Economic Zone has the meaning given by the <i>Seas and Submerged Lands Act 1973</i> through the application of section 2B of the <i>Acts Interpretation Act 1901</i>
FQS Act	<i>Fuel Quality Standards Act 2000</i>
FSSP Guidelines	<i>Fuel Security (Fuel Security Services Payment) Guidelines 2021</i>
FSSP Rule	<i>Fuel Security (Fuel Security Services Payment) Rule 2021</i>
Minister	The Minister that is responsible for administering the Act (presently, the Minister for Climate Change and Energy)
MSO	Minimum stockholding obligation
NGER (Audit) Determination	<i>National Greenhouse and Energy Reporting (Audit) Determination 2009</i>
POFR Act	<i>Petroleum and Other Fuels Reporting Act 2017</i>
POFR Rules	<i>Petroleum and Other Fuels Reporting Rules 2017</i>
the/these Rules	<i>Fuel Security (Minimum Stockholding Obligation) Rules 2022</i>
Secretary	The Secretary of the Department that is responsible for administering the Act and POFR Act (presently, the Department of Climate Change, Energy, the Environment and Water). Note that the Secretary can delegate functions under section 83 of the Act.

PART 1—PRELIMINARY

Section 1 – Name

This section specifies the name of this instrument made under the Act as the *Fuel Security (Minimum Stockholding Obligation) Rules 2022* (the Rules).

Section 2 – Commencement

This section provides that the Rules commenced on the day after they were registered on the Federal Register of Legislation.

Section 3 – Authority

Section 3 provides that the Rules are made under the Act. In particular, section 84 of the Act confers power on the Minister to make legislative rules. Subsection 84(3) of the Act includes the power for rules to prescribe matters by reference to other instruments or writing as in force from time to time.

Section 4 – Definitions

This section provides for definitions of terms used in the Rules that are not otherwise defined in the Act or are intended to have a different meaning to a term defined under the Act. Key definitions include the following:

- ***MSO compliance plan*** is defined to mean the plan required by section 36 of the Act. This is a central document to assist scheme compliance and the Rules detail key contents for the plan in Part 9.
- ***section 24 arrangement*** is defined to capture the arrangements under section 24 of the Act where fuel is held for another entity to assist compliance with the MSO. These are the key secondary market instruments that will allow entities to comply when their own fuel volumes fall below the level of the MSO.
- ***trigger assessment period*** is defined in section 16 of the Rules to be the 2019 calendar year, 2022 calendar year and subsequent calendar years. It is relevant to both triggering the MSO and the calculation of the designated quantity.

The ***N10 form*** and ***N30 form*** are defined by reference to the relevant forms approved under section 71K of the *Customs Act 1901* as in force from time to time. These are the relevant forms that signify the import of products into Australia for home consumption and referenced in paragraph (a) of the definition of import in the Act. The forms are freely available from: <https://www.abf.gov.au/imports/Pages/How-to-import/Import-declarations.aspx> and can be freely used. They are used to provide an evidentiary basis for determining matters under the Rules, and the Rules do not incorporate any provisions of the N10 form or N30 form as requirements under the Rules and are therefore not incorporated by reference for the purpose of section 14 of the *Legislation Act 2003* or subsection 84(3) of the Act.

The FQS Act, FSSP Rule, *Industry Research and Development (Refinery Upgrades Program) Instrument 2021*, NGER (Audit) Determination 2009, POFR Act, and POFR Rules are also incorporated as in force from time to time, consistent with the usual reference to Acts and legislative instruments. They are freely available from the Federal Register of Legislation (www.legislation.gov.au).

Unless specified in the Rules, where a term is defined in the Act the definition of that term will also apply to the Rules – e.g. “Australian controlling corporation” (defined in paragraph 8(2)(a) of the Act).

PART 2—Importing, MSO products and stock holding

Section 5 – Importing

This section prescribes when additional acts relating to the import of an MSO product meet the definition of “import” in section 5 of the Act.

Paragraph (a) of the definition of “import” in section 5 of the Act is the primary mechanism for triggering the MSO and the volume of such imports is the key input into the calculation of the designated quantity under Part 4 of the Rules. In particular, an entity will “import” an MSO product produced overseas if the entity does the act that constitutes the importation of the product into Australia for home consumption. The Act is designed to work consistently with the *Customs Act 1901*, which also regulates the importation of products for home consumption. Accordingly, the focus of paragraph (a) of the definition of import is the legal entity that imports for home consumption. This is generally evidenced by the use of N10 and N30 forms under the *Customs Act 1901*. The N10 form relates to a direct import for home consumption and the N30 form relates to the release from a warehouse into home consumption. The entry into the warehouse and N20 form is not the step of importation for home consumption and not included within paragraph (a) of the definition of import. Accordingly, the volume of all such imports are relevant to the thresholds in section 17 of the Rules.

Section 5 of the Rules is designed to provide flexibility to recognise commercial arrangements in the sector. The purpose of this section is to recognise that where an MSO product is imported under paragraph (a) of the definition of “import” by an entity, there may also be an import by a second entity because the first entity captured by paragraph (a) was in fact importing the product on behalf of another entity. The result of this import being recognised is that the importation of the product under paragraph (a) of the definition of import in the Act will no longer be relevant to the calculation of the designated quantity for that person (the first entity), but will only be counted to the designated quantity of the person covered by this section (the second entity).

To ensure that import volumes are not transferred to another entity for the purpose of avoiding a higher MSO, there are specific circumstances that must be met before a transfer of stocks will be considered.

- It is important that any such arrangements are mutually agreed by both the importer for paragraph (a) of the definition of “import” and the person for whom the products are imported. Paragraph 5(3)(a) of the Rules ensures that there is a relevant arrangement in place, which could be a one-off agreement or a standing arrangement for multiple imports.
- Paragraph 5(3)(b) provides that the second entity must own the MSO product and also be the entity responsible for paying the relevant fees and charges for the imports of that MSO product.
- Paragraph 5(3)(c) ensures that both entities notify the arrangement in writing to the Secretary – this would be through usual information-sharing arrangements for the MSO.

- Paragraph 5(3)(d) allows the Secretary to determine whether importing arrangements have been made to avoid the application of the threshold levels that have been set by section 17 of the Rules. The Secretary will advise entities if they believe the mechanism has been set up for this purpose.
- Paragraph 5(3)(e) captures the relevant importations that are subject to the agreement. All of paragraphs (3)(a) to (e) must be satisfied for any amendment to MSO import values to occur.

Where imports are covered by this section, the volume of imports by the importer for paragraph (a) of the definition of “import” are still relevant to whether the thresholds in section 17 of the Rules are met and so allocating imports to other entities is not a mechanism to avoid being subject to the MSO. The reason why a primary importer would want the second entity to also import the product is that the primary importer would then no longer count the import under subsection 21(6) of the Rules in the calculation of the designated quantity for a subsequent period.

Section 6 – MSO products

This section prescribes certain requirements for gasoline, diesel and kerosene fuels to satisfy the definition of “MSO product” in section 5 of the Act. While the terms gasoline, diesel and kerosene are consistent across Commonwealth legislation, gasoline is commonly known as petrol and kerosene is commonly known as jet fuel.

Subsection 6(2) of the Rules provides that gasoline and diesel must be able to be supplied and used for on-road transport purposes consistent with standards applying under the FQS Act. This ensures a real fuel security benefit, as it guarantees product that can actually be used for road transport in Australia is being maintained. The note under this subsection specifies that some ethanol and biodiesel blends will meet this definition if they are held as finished product, and can therefore be included as MSO product. However, biofuels are unable to be counted as an MSO product if they are being held as pure ethanol (E100) or biodiesel (B100) stock. Further information about the sub-categories of fuel that can be reported as MSO product (including biofuels) consistent with these requirements will be contained in guidance material.

Subsection 6(3) allows for certain circumstances where gasoline and diesel do not initially comply with the relevant fuel quality standards for supply but it could reasonably be expected that the products will comply within 48 hours. A note under this provision states a common example provided by industry of when this may occur – that is, where fuel needs time to settle to meet water and sediment standards.

Subsection 6(4) provides that kerosene must be the same as what is reported under the POFR Rules, and saleable for air transport purposes in Australia. Kerosene standards are aligned with international standards, so this provision remains broad enough to capture any change in these requirements. Subject to the Minister’s approval, MSO reporting will be mandated

through amendments to the POFR Rules, so care has been taken to align the two processes to bring clarity where possible.

However, this section does not preclude other kinds of fuels from being prescribed as MSO product in future as new fuel technologies emerge (see, for example, paragraph (d) of the definition of “MSO product” under section 5 of the Act or if the fuel types for existing MSO product need refinement over time).

Section 7 – Pipeline stocks

This section prescribes that, for subparagraph 20(1)(b)(iii) of the Act, stocks in pipelines are able to be included towards an entity’s MSO so long as the stocks meets certain requirements. These requirements are:

- The MSO product within the pipelines must be under the ownership and control of the entity reporting the stock.
- The MSO product must be able to be accessed in the event there is a fuel security event. This need not be a national liquid fuel emergency declared under the *Liquid Fuel Emergency Act 1984*, but could be a localised fuel security disruption, such as relating to natural disasters.
- The entity’s MSO compliance plan (required under section 36 of the Act) must include the accounting and reporting framework for the MSO products within the pipelines, including specifying how those products may be accessed in a fuel security event.

If these requirements are not met, then MSO product within pipelines is automatically considered to be “excluded stock” for the purposes of an entity’s MSO, as per paragraph 20(1)(b)(iii) of the Act.

Section 8 – Excluded stocks

This section prescribes that, for subsection 20(2) of the Act, stocks of an MSO product are excluded, and therefore cannot be counted towards an entity’s obligation, if they do not meet the standards specified in section 6 of the Rules (see above). No additional standards are prescribed.

Section 9 – Stocks within exclusive economic zone boundary

This section prescribes that stocks of MSO product that are stored on a vessel, are taken as being stored in Australia for the purpose of subparagraph 21(b)(iv) of the Act, and therefore able to be counted towards an entity’s MSO, if they meet certain requirements, including:

- the vessel is within the outer limits of Australia’s exclusive economic zone (EEZ); or
- the vessel:
 - is travelling directly to an Australian port; and
 - has entered Australia’s EEZ on the way to the Australian port; and

- has temporarily moved out of Australia’s EEZ while continuing on its journey to the Australian port. For example, this allows entities whose vessels are using shipping routes across the Great Australian Bight to include any MSO product on board the vessel towards their MSO, despite being outside the EEZ for a short period of time.

If an entity is intending to count stocks on a vessel within the EEZ towards their MSO, they must ensure that these figures can be reported accurately, and provide the relevant data collection, reporting and record keeping framework within their MSO compliance plan (see paragraph 38(1)(b) of the Rules).

The note to section 9 of the Rules advises that EEZ is defined in section 2B of the *Acts Interpretation Act 1901*. This defines the EEZ consistently with the *Seas and Submerged Lands Act 1973*, which in turn defines EEZ as having the same meaning as in Articles 55 and 57 of the United Nations Convention on the Law of the Sea done at Montego Bay on 10 December 1982, and ensures consistency with other Commonwealth laws in the application of this term.

Importantly, the requirements under section 9 of the Rules are in addition to the circumstances in subparagraphs 21(b)(i), (ii) and (iii) of the Act which include stocks on vessels in an Australian port, moored waiting to enter an Australian port or travelling directly from an Australian port to another Australian port.

Section 10 – Jointly owned stocks

This section prescribes that, in a situation where stock of MSO product is held by more than one entity (due to a range of different commercial arrangements), the amount of stock held by each entity must be either:

- allocated via a written agreement between the entities for the purposes of complying with paragraph 10(a) of the Rules; or
- allocated to each entity based on their share of ownership of the stocks.

This ensures that jointly owned stocks cannot be double-counted, and that there must be one of the above mechanisms in place to determine the amount of stock each entity can count towards their MSO, if any. Any allocation of stocks by written agreement between entities must explicitly state that it is an allocation of stocks for the purpose of paragraph 10(a) of the Rules to ensure that the impact of the allocation is understood by each party to the agreement.

Section 11 – Entity entitled to take ownership of stocks

This section prescribes that to comply with the legally enforceable arrangement requirement for paragraph 23(c) of the Act, the arrangement must be in writing and explicitly provide another entity (entity 1) with the legally enforceable right to take possession of the stocks of MSO product and remove them from storage. This would enable entity 1 to count these stocks towards their MSO.

Stock that is held under section 23 of the Act must be reported under the POFR Rules, including the names of the entities who are parties to the legally enforceable arrangement (see section 19E of the POFR Rules).

Section 12 – Reserved stocks

This section prescribes that to comply with the legally enforceable arrangement requirement for paragraph 24(c) of the Act, the arrangement must be in writing and explicitly allocate an amount of stock of MSO product to another entity (entity 1), solely for the purpose of counting that stock towards the MSO of entity 1. This is a time-limited allocation arrangement, and therefore the time period that the stocks are allocated must also be specified in writing.

These provisions ensure that the allocated stock cannot be double-counted. Stock that is held under section 24 of the Act must be reported under the POFR Rules, including the names of the entities who are parties to the legally enforceable arrangement (see section 19E of the POFR Rules).

Subsection 12(2) of the Rules prescribes that a refiner of MSO product that is feedstock is not able to allocate that feedstock to another entity outside of the corporate group of the refiner. Therefore, the only entity that a refiner is able to allocate feedstock (as MSO product according to the requirements in sections 12 and 13 of the Rules) to, for MSO purposes, is the related body corporate importer within the same corporate group.

Section 13 – Refinery feedstocks—crude oil

This section prescribes that the quantity of each MSO product (diesel, gasoline and kerosene) per ML of crude oil feedstock must be calculated by applying the product yields for each refiner previously determined under section 12 of the FSSP Rule (with current applicable yields specified in section 11 of the FSSP Guidelines) or using the current refinery yields, based on at least a month of production volumes. By allowing current refinery yields, it recognises the ability of refiners to use the feedstock to produce one product at a higher rate than usual to meet changing demand. Importantly, the cumulative yields should not be more than 100% of the volume of the crude oil and are likely to be less than 100% due to the production of fuel oil which is not an MSO product and small losses/use of crude in the refining process.

The FSSP Rule is a legislative instrument and the FSSP Guidelines are a notifiable instrument. Both are incorporated as in force from time to time consistent with subsection 84(3) of the Act and are freely available at www.legislation.gov.au. The ability to use the FSSP Rule calculations assists the implementation of the MSO and reduces compliance costs.

Section 14 – Refinery feedstocks—unfinished refinery product

This section prescribes, for the purpose of paragraph 25(3)(c) of the Act, that unfinished refinery products can be counted as refinery feedstock and, in turn, MSO products, if certain requirements are fulfilled. These requirements are:

- the unfinished products can reasonably be expected to be transformed into MSO products at the refinery; and
- once the unfinished products have been transformed into MSO products, the total volume of the calculated MSO products is more than 80% of the original volume of the unfinished products (i.e. the volume of the unfinished products before the transformation occurred); and
- the unfinished refinery product feedstock must only be counted if it is being stored at the refinery (as required by paragraph 25(1)(b) of the Act).

Subsection 14(2) prescribes that if refiners are counting unfinished product towards their designated quantities of stocks of diesel, gasoline and kerosene for MSO purposes, the methodology they are using to calculate the MSO product yields must be specified in their MSO compliance plan (required under section 38(1)(c) of the Rules).

Subsection 14(3) prescribes that the methodology specified in the MSO compliance plan for the purposes of counting unfinished refinery product as MSO products must meet certain requirements.

These requirements are:

- the methodology must be consistent with the reasonable expectation of the transformation and composition of the unfinished refinery product; and
- the methodology must not result in the total volume of MSO products being greater than the total volume of unfinished refinery product that is being counted.

These provisions ensure that Australia’s fuel security is not compromised by any counting of unfinished product towards an entity’s MSO, and that practical and prudent processes are in place to determine the calculation methodology. The processes within the MSO compliance plan are also subject to auditing under section 34 of the Act.

PART 3—Application of MSO

Section 15 – Obligation days

Under section 7 of the Act, the quantity of an MSO product required to be held by an entity must be measured and confirmed on an “obligation day”. While it will be possible for regulated entities to hold less than the required quantity of stock at other times, the minimum stock level (designated under section 13 of the Act) must be confirmed on the obligation day. Section 15 of the Rules prescribes the frequency of the obligation day.

Subsection 15(1) prescribes that the first obligation day, and therefore the starting date for the MSO scheme, is Tuesday 4 July 2023. The obligation day will then fall fortnightly, on each Tuesday from 4 July 2023 (e.g. 18 July 2023, 1 August 2023, etc.) until 1 July 2024.

From 1 July 2024, the obligation day will then fall weekly, on each following Tuesday (e.g. 2 July 2024, 9 July 2024, 16 July 2024, etc.).

A more frequent obligation day would reduce fluctuations in stockholdings of MSO products between measurement dates, creating a more consistent baseline, however this would place a more significant regulatory burden on industry. To achieve a balance between the MSO policy intent (i.e. to ensure industry holds minimum quantities of key transport fuels to guarantee a baseline level of stocks at all times) and minimising impacts on industry, a transitional fortnightly obligation has been set, with the preferred weekly obligation day commencing from 1 July 2024.

Subsection 15(2) prescribes that if the obligation day falls on a public holiday within the Australian Capital Territory, the obligation day is automatically moved to the next day which is not a public holiday. This provision has been added to ensure personnel are not inadvertently required to work on public holidays to comply with the MSO. As the MSO is a national obligation, the Australian Capital Territory has been chosen to standardise the stockholding timing for each regulated entity, ensuring stock levels are maintained nationally and cannot be double-counted. The Australian Capital Territory was also chosen as it is the jurisdiction where the scheme will be administered, it will capture the national public holidays including Christmas Day, New Year's Day and Easter, and it celebrates a number of other public holidays.

A reporting delay of 72 hours has been provided in section 19E of the POFR Rules to enable entities to acquit their MSO product against their MSO. This also enables trading to occur within the intermediary market before the required reporting time.

Section 16 – Trigger assessment period

This section prescribes the time period used by the Secretary to assess whether or not an entity triggers the MSO for an MSO product. This period is referred to as the “trigger assessment period”. To assess whether or not an entity has triggered the MSO for the start of the MSO scheme in 2023, two trigger assessment periods will be used: the 2019 and 2022 calendar years. Fuel information reported by MSO entities under the POFR Rules for those periods will be used to inform the Secretary's assessment, as well as the information provided by the Australian Border Force regarding N10 and N30 import declarations for each MSO product. Using both the 2019 and 2022 calendar years will ensure that significant market players are not excluded from the MSO scheme in the first year of operation as a result of reduced importing or refining activity from the onset of the COVID-19 pandemic in 2020.

For each subsequent year of the scheme's operation, the previous calendar year's data will be used to assess whether an entity will trigger the MSO for an MSO product (e.g. to determine whether an entity will trigger the MSO in 2024, the data from the 2023 calendar year will be used). Relevant information regarding entities' annual MSO activity data is required to be reported by section 19F of the POFR Rules.

Section 17 – Thresholds to trigger MSO

This section prescribes the threshold volumes used by the Secretary to assess whether or not an entity engaging in an MSO activity (i.e. refining or importing) for an MSO product (gasoline, diesel or kerosene) has triggered the MSO for the product.

Subsection 17(1) of the Rules prescribes the annual national import or production volumes in megalitres (ML), that the entity must exceed in order to trigger the MSO for each MSO product. These volumes are only applicable if subsection 17(2) does not apply. The threshold values are:

- Gasoline – 200ML
- Diesel – 250ML
- Kerosene – 250ML

These volumes were chosen with the intent of capturing approximately 98% of each MSO product that is entering the Australian market – balancing risks associated with regulatory avoidance behaviours by industry and the costs to consumers, while delivering a meaningful fuel security outcome. They support the policy intent of setting a baseline of national fuel stocks at pre COVID-19 levels, and ensure a diverse range of stockholdings across multiple storage locations nationally.

It is intended to capture and maintain approximately 98% of the market for each MSO product throughout the operation of the MSO scheme. Therefore these threshold volumes will be reviewed periodically to ensure they remain appropriate.

Subsection 17(2) prescribes an anti-avoidance provision for industry, whereby a lower 10ML threshold applies where the Secretary is satisfied importing or refining is being structured to avoid the thresholds in subsection 17(1). This is an administrative decision and the Secretary's power is only to specify that the threshold value is 10ML, not to determine any other threshold value. This provision is necessary because it would undermine the effectiveness of the scheme if industry participants were able to artificially reduce the volumes of their importing and refining so that they were below the threshold, which may mean that the scheme covers less than the 98 per cent of the market that it is intended to cover. The decision would apply to any entity involved in the avoidance activity. For example, if an importer set up subsidiaries so that each would import less than the applicable 200ML or 250ML thresholds, the threshold value could be reduced to 10ML for the importer and each of its subsidiaries. Once the obligation is triggered under section 10 of the Act, it would only cease if section 11 of the Act applied (primarily by the entity ceasing to import or refine the relevant MSO product). Any decision under this subsection is also a reviewable decision under Division 2 of Part 5 of the Act as part of the decision to trigger the MSO under section 10 of the Act.

Section 18 – Notice window and advice window

The terms “notice window” and “advice window” are defined under the Act (see sections 5 and 16(4)). “Notice window” means a period (as determined by the Rules) within which the Secretary must provide written notice of an entity's MSO. “Advice window” refers to a period (as determined by the Rules) within which a regulated entity must provide notice of their quantity of stocks or any matters that would impact their capacity to hold the amount of stocks required. This advice must be provided before the start of the Secretary's notice window.

This section prescribes the time periods allocated to each of these concepts.

Paragraph 18(1)(a) of the Rules prescribes that during the first year of operation of the MSO scheme, the notice window is from 1 March 2024 until 30 June 2024 (inclusive) – commencing four months before the reset of designated quantities on 1 July 2024. Subsequent years will follow the same notice window period, beginning on 1 March and ending on 30 June of the same calendar year. There is no notice window before the scheme commences on 1 July 2023 as the Secretary will trigger the obligation for entities under section 10 of the Act based on existing information. While the notice period goes until 30 June, entities will get at least three months’ notice of a new designated quantity due to paragraph 15(4)(a) of the Act.

Subsection 18(2) provides that the advice window will apply from the two months before the start of the notice window period. For example, for each year of operation, the advice window will occur from 1 January to the last date in February of that year. This is intended to ensure the Secretary receives an entity’s advice about their expected stockholding obligation before the Secretary determines and gives notice of the minimum quantity of stocks of each MSO product the entity is required to hold over the next compliance period.

Section 19 – Notices to Australian controlling corporation

This section prescribes that the Secretary must take reasonable steps to ensure the Australian controlling corporation for an entity is provided a copy of specific notices under the Act that are provided to the regulated entity themselves. The specified notices from the Act are under subsections 10(1), 15(1), 18(2), 18(5), 29(2), 29(7), 29(8) or 32(3). As the Australian controlling corporation for a regulated entity has responsibility to ensure that the regulated entity complies with their MSO, this will ensure the Australian controlling corporation has appropriate oversight of relevant matters.

PART 4—Designated quantity

Section 20 – Designated quantity to be specified

This section prescribes that the designated quantity of stocks of each MSO product an entity must hold on obligation days (for subsections 10(3), 15(3) and 16(3) of the Act) is calculated in accordance with Part 4 of the Rules.

Part 4 includes section 21, which establishes the usual calculation methodology entities should use when determining their expected designated quantity of stock for section 16 of the Act. The formula in section 21 takes into account the target number of days declared for subsection 14(4) of the Act.

Part 4 also includes sections 22-24, which establish various exceptional circumstances in which an entity’s designated quantity of stocks of MSO product may be reduced.

Section 21 – Designated quantity – general

This section prescribes the usual formula to be used when determining an entity’s designated quantity of MSO product.

Subsection 21(1) of the Rules prescribes that for each MSO product (currently gasoline, kerosene and diesel), the designated quantity is the sum of all of the volume required for importing the specific MSO product under subsection 21(2), and the volume required for refining the product under subsection 21(3), with each being rounded to the nearest megalitre (ML).

Subsection 21(2) prescribes the formula that should be used by importing entities if the MSO is triggered for the activity of importing an MSO product. This calculation should be done for each MSO product that has exceeded the prescribed threshold in section 17 of the Rules:

$$Q_p = TDI_p \times \frac{TI_p}{365}$$

Q_p is defined as the designated quantity of the MSO product, in ML. This will be the final volume an entity will be required to hold of that product for each obligation day.

TDI_p is defined as the target number of days declared by the Minister (under section 14 of the Act) for the activity of importing the specific MSO product. This provision specifies that the target number of days used must be the applicable days that will be relevant to the start of the period when the designated quantity will apply on each obligation day. This ensures that if the target number of days are amended by the Minister, the most up-to-date figure is used in this calculation. However, under paragraph 15(4)(a) of the Act, any notice given by the Secretary regarding quantities required to be held must provide at least three months from the day the notice is given before the notified quantity comes into force. This ensures that entities are given reasonable lead-times to adjust stock as required if there is a change in target number of days. The current target number of days are set out in the *Fuel Security (Target Number of Days) Declaration 2022*, freely available from www.legislation.gov.au. For importing, the target numbers of days are initially 24 days for gasoline, 20 days for diesel and 24 days for kerosene.

TI_p is defined as the total amount of the MSO product that has been imported by the entity for the most recent completed trigger assessment period (defined as a calendar year under section 16 of the Rules), in ML. These figures are subject to subsections 21(5) and 21(6) which specify a particular circumstance in which the figures may be adjusted. Ordinarily, these figures will be determined by the Secretary using two possible data sources:

- As reported under section 19F of the POFR Rules; or
- As reported to the Australian Border Force using the relevant N10 and N30 forms submitted during the trigger assessment period. This recognises that the requirement to report import figures under section 19F of the POFR Rules will begin from 2023 and therefore a different source of information is required for the initial MSO quantity

calculations. It also provides a backup in case there are any issues with self-reported figures (for example, the entity does not meet the requirement to self-report).

Subsection 21(3) prescribes the formula that should be used by refining entities if the MSO is triggered for the activity of refining an MSO product. This calculation should be done for each MSO product that has exceeded the prescribed threshold in section 17 of the Rules:

$$Q_p = TDR_p \times \frac{TR_p}{365}$$

Q_p is defined as the designated quantity of the MSO product, in ML. This will be the final volume an entity will be required to hold of that product for each obligation day.

TDR_p is defined as the target number of days declared by the Minister (under section 14 of the Act) for the activity of refining the specific MSO product. This provision specifies that the target number of days used must be the applicable days that will be relevant to the start of the period when the designated quantity will apply on each obligation day. This ensures that if the target number of days are amended by the Minister, the most up-to-date figure is used in this calculation. However, under paragraph 15(4)(a) of the Act, any notice given by the Secretary regarding quantities required to be held must provide at least three months from the day the notice is given before the notified quantity comes into force. This ensures that entities are given reasonable lead-times to adjust stock as required if there is a change in target number of days. The current target number of days are set out in the *Fuel Security (Target Number of Days) Declaration 2022*, freely available from www.legislation.gov.au. For refining the target number of days are initially 24 days for gasoline, 20 days for diesel and 24 days for kerosene.

TR_p is defined as the total amount of the MSO product that has been refined by the entity for the most recent completed trigger assessment period (defined as a calendar year under section 16 of the Rules), in ML. These figures are subject to subsection 21(5), which lists a specific circumstance in which they may be adjusted.

Subsection 21(4) prescribes that the calculations of MSO products that are imported or refined under subsections (2) and (3) include the volume of these products which do not yet meet the specifications to be an MSO product, but are intended to be sold as an MSO product once they do meet the specifications. This ensures that all relevant MSO products that are being sold to the Australian market are captured for the purposes of the MSO calculation, and avoids a situation where some stock is accidentally excluded from this calculation.

Subsection 21(5) provides for a special calculation if refinery production is curtailed for one or more months due to the Refinery Upgrades Program (established under the *Industry Research and Development (Refinery Upgrades Program) Instrument 2021*). It is possible that to implement improved fuel quality standards a significant shutdown may be necessary and this could result in increased imports of MSO products to meet demand ordinarily supplied by the refinery. The subsection ensures refineries are not disadvantaged if this occurs, with the previous year's refinery production used to calculate the designated quantity

and any additional refinery production deducted from the import volumes (to ensure it is not double counted).

Subsection 21(6) avoids double counting of imports when section 5 results in a second entity importing a product. For example, entity X imports 600 ML of diesel under paragraph (a) of the definition of import. However, 50ML is imported on behalf of entity Y and 50ML is imported on behalf of entity Z. The calculation is done on the basis of 500ML, with the 100ML covered by section 5 imports being taken off the total figure and disregarded.

Section 22 – Designated quantity – circumstances impacting entity during trigger assessment period

This section prescribes specified circumstances in which the designated quantity of stocks of each MSO product an entity must hold on obligation days, as calculated under section 21 of the Rules, may be reduced, and the manner in which such reduction must be calculated,

Specifically, subsection 22(1) prescribes that where the Secretary is satisfied an entity has lost a major customer for one or more MSO products during the most recent trigger assessment period (ordinarily, the previous calendar year – see explanatory note for section 16 above), then subject to certain requirements, the designated amount calculated for the entity under section 21 may be reduced in accordance with subsection 22(2) (for importing an MSO product) and subsection 22(3) (for refining an MSO product).

Subsection 22(1) also requires the Secretary to be satisfied that, as a consequence of having lost a major customer, the entity's requirement to import or refine one or more MSO products for the remainder of the previous trigger assessment period was reduced by more than the lesser of either 20 per cent of the entity's annual importing or refining figures, or 100ML. The requirement for each customer lost to meet this threshold (as opposed to a number of smaller customers) is intended to avoid requests being made in situations where a number of smaller customers are lost and new ones may have been gained through the ordinary course of business, but the entity seeks to have only the lost customers considered.

As noted above, subsection 22(2) prescribes the formula that should be used to calculate the amount by which the designated quantity of an MSO product that an importing entity is required to hold (as calculated in accordance with section 21) may be reduced, in the circumstances provided under subsection 22(1). This calculation should be done for each MSO product that has been impacted by those circumstances.

$$C_p = TDI_p \times \frac{TI_c}{365} \times T$$

C_p is defined as the amount by which the designated quantity may be reduced for the MSO product p.

TDI_p is defined as the target number of days declared by the Minister (under section 14 of the Act) for the activity of importing the specific MSO product. This provision specifies that the

target number of days used must be the applicable days that will be relevant to the start of the period when the designated quantity will apply on each obligation day. This provision operates similarly to the term TDR_p (see explanatory notes for subsection 21(2) above), except the term TDI_p applies in relation to the activity of importing rather than refining MSO product.

TI_c is the total amount of MSO product p that the entity would have imported during the assessment period for the purpose of the contract with the major customer that was lost, in ML.

T is equal to 12 minus the number corresponding to the month of the year in which the entity lost the contract with the major customer, divided by 12. The value of “T” represents the period of time the entity operated without the contract with the major customer during the trigger assessment period. This is important, as only the portion of the assessment period the entity operated while supplying the major customer should be reduced. This ensures the entities are not required to support an MSO based on contracts they no longer are holding, whilst also ensuring only the appropriate portion of the contract is reduced as the importing volume for the assessment period would likely already partially reflect the loss of customer during the year.

The policy intent is that by calculating the reduction for the designated quantity in accordance with this provision, it would reflect the expected operations of the entity during the relevant period.

Subsection 22(3) prescribes the formula that should be used to calculate the amount by which the designated quantity of an MSO product that a refining entity is required to hold (as calculated in accordance with section 21) may be reduced, in the circumstances provided under subsection 22(1). This calculation should be done for each MSO product that has been impacted by those circumstances.

$$C_p = TDR_p \times \frac{TR_c}{365} \times T$$

C_p is defined as the amount by which the designated quantity may be reduced for the MSO product p.

TDR_p is defined as the target number of days declared by the Minister (under section 14 of the Act) for the activity of refining the specific MSO product. This provision specifies that the target number of days used must be the applicable days that will be relevant to the start of the period when the designated quantity will apply on each obligation day. Further explanatory notes for this term are provided above in relation to subsection 21(2) of the Rules.

TR_c is the total amount of MSO product p that the entity would have refined during the assessment period for the purpose of the contract with the major customer that was lost, in ML.

T is equal to 12 minus the number corresponding to the month of the year in which the entity lost the contract with the major customer, divided by 12. Further explanatory notes for this term are provided above in relation to subsection 22(1) of the Rules.

The policy intent is that by calculating the reduction for the designated quantity in accordance with this provision, it would reflect the expected operations of the entity during the relevant period.

Subsection 22(4) provides that where an entity loses more than one major customer for an MSO product during a trigger assessment period, the applicable calculations under subsections 22(2) and 22(3) should be made for each such customer lost during the period, and the totals added together to determine the total amount by which the designated quantity may be reduced for the MSO product (i.e. C_p).

Section 23 – Designated quantity – circumstances impacting MSO entity at commencement

This section prescribes, for subsection 18(6) of the Act, transitional arrangements specifying the circumstances in which the designated quantity of stocks of each MSO product an entity must hold on obligation days (as calculated under section 21 of the Rules) may be temporarily reduced, and the manner in which such temporary reduction must be calculated.

Specifically, subsection 23(1) of the Rules sets out the requirements that must be satisfied before the Secretary can make a decision to temporarily reduce an entity's MSO for any MSO product during the transitional period in which the MSO scheme is being established. In particular, all of the following requirements need to be satisfied:

- the temporary reduction of designated quantity of product must only relate to the period before 1 July 2025 (paragraph (1)(a));
- the entity must have taken all reasonable steps since the commencement of the Rules to prepare for meeting the MSO that would otherwise apply to them (paragraph (1)(b)). This would include investigating secondary market opportunities to bring the entity into compliance and considering storage capacity under the control of the entity;
- at the time of making an application for temporary reduction under section 17 of the Act, the entity's storage capacity is insufficient to meet its MSO (subparagraph (1)(c)(i));
- there are no cost effective options for the use of the secondary market to meet the MSO, verified by market testing (subparagraph (1)(c)(ii));
- the entity's MSO compliance plan provides a credible path to compliance within the next two years (paragraph (1)(d));
- sufficient evidence backs up the above (paragraph (1)(e)), including information about prices paid or offered for section 24 arrangements (paragraph (1)(f));
- the application for temporary reduction for the first financial year is submitted by 28 February 2023 and applications for the period from 1 July 2024 are submitted with the entity's advice for subsection 16(1) of the Act (paragraphs (1)(g) and (h)).

These tests ensure that the reductions in the MSO are only provided to entities that have done everything they could to comply, but have limited options as the market is developing. These

are transitional arrangements only and it is expected that the entities will make necessary investments or contractual arrangements to bring themselves into compliance.

Subsection 23(2) caps the possible temporary reduction amount that the Secretary may decide to grant, taking into account all of the relevant circumstances. Where the Secretary is satisfied the entity is committed to constructing additional storage infrastructure for MSO products that will enable the entity to comply with their MSO in future, so that such works will be substantively completed by 1 July 2025, the relevant cap is 25% of the designated quantity for the MSO product calculated under section 21 of the Rules, rounded to the nearest megalitre. This will require the entity to provide evidence of their capital investment relating to building or upgrading storage infrastructure, and that their MSO compliance is dependent on these works being completed.

In all other circumstances where subsection 23(1) applies, the temporary reduction amount is the lesser of either 25% of the amount that would otherwise be the designated quantity for the product (rounded to the nearest ML), or 15ML. For example:

- If the designated quantity for diesel under section 21 of the Rules would be 100ML, 25% of that amount would be 25ML and so the reduction would be capped at the lesser amount of 15ML.
- If the designated quantity for diesel was 50ML, the reduction would be capped at the lesser amount of 13ML (i.e. 25 % of 50ML rounded to the nearest ML).

The relevant cap is determined for each MSO product separately.

Section 24 – Designated quantity – entity consistently below threshold

This section prescribes a circumstance where an entity is consistently below the thresholds in subsection 17(1) or (2) of the Rules for 3 previous calendar years such that the designated amount can be set at zero. This caters for circumstances where section 11 of the Act does not apply because the entity has not permanently or indefinitely ceased the MSO activity. It recognises that if new entities operated at the same levels they would not trigger the MSO, but also avoids entities moving in and out of the MSO for temporary changes in activity.

For example, if the 2021, 2022 and 2023 calendar years were below the trigger threshold for an MSO product, the designated quantity for the financial year starting 1 July 2024 would be set at zero for the MSO product. This would only be applicable if the Secretary has not applied the lower threshold capture volumes according to section 17(2) of the Rules. If imports or production volumes in the 2024 calendar year were above the threshold, liability would resume from 1 July 2025.

PART 5—Temporary reduction in designated quantities

Section 25 – Applications for temporary reduction in quantity of stocks

This section prescribes that any application for a temporary reduction in quantity of stocks must satisfy certain criteria before it can be considered.

These criteria are:

- the application must be in a form that has been approved in writing by the Secretary; and
- the application must include evidence to prove that the necessary criteria within section 26 or 27 of the Rules are met.

This will ensure that all applications are in a standard format, and clarifies that any claims made to support section 26 or 27 need to be supported by evidence.

Section 26 – Criteria for temporary reduction in quantity of stocks

Subsection 26(1) of the Rules prescribes that for subsection 18(6) of the Act, regarding the Secretary's decision on a temporary reduction application, the Secretary may only grant an application if they are satisfied under either subsection 26(2) or (3), or section 27 of the Rules.

Subsection 26(2) prescribes circumstances where the Secretary may grant an application for a temporary reduction in quantity of MSO stocks required to be held by an entity, as long as the Secretary is satisfied that the reduction is necessary and that the specific circumstance was beyond reasonable control of the entity. These circumstances are where:

- there is a need to carry out a fuel tank inspection as required by law, or to comply with relevant maintenance standards for the equipment;
- a significant shipping disruption has occurred due to unforeseen circumstances (such as natural disasters and severe weather events);
- there is a need to repair infrastructure damage where the applicant is not responsible, or did not contribute to, the damage (such as severe weather events); and
- where a supplier of imported fuel has supplied the regulated entity (i.e. importer) with an MSO product which is not compliant with the applicable fuel quality standards (and the MSO product is not expected to become compliant within the next 48 hours, as per subsection 5(3) of the Rules).

Subsection 26(3) prescribes that another reason the Secretary may grant an application for a temporary reduction is if the Secretary is satisfied that the applicant has lost one or more major customers for one or more MSO products. This is clarified in paragraph 26(3)(b), where the impact of losing the major customer/contract is defined as a reduction totalling the lesser of 20% or 100ML of the importing or production volumes for the particular MSO product/s required for the remainder of the period. This recognises the potential impact on imports and stock levels that are likely to occur if a major contract (e.g. a major mining contract) were to change hands, as businesses adjust their practices to accommodate the change.

Subsection 26(4) prescribes that any reduction in quantity approved by the Secretary cannot be more than is necessary to address the applicable circumstance (under subsection 25(2)), and can be for no longer than is necessary. This aims to ensure that the fuel security benefit of the MSO is not significantly degraded through any reduction in an entity specific MSO, while allowing flexibility for industry when circumstances change beyond their reasonable control.

There is no minimum notice period to apply for a temporary reduction to an entity's quantity of stocks, and subsection 18(3) of the Act specifies that a temporary reduction period may start before the notice has been given to an entity. However, it is intended that entities would put in an application as soon as practicable to ensure they are compliant with their MSO at all times.

Section 27 – Additional transitional reduction in quantity of stocks

Section 27 prescribes, for subsection 18(6) of the Act, an additional transitional provision that will apply temporarily to address possible administrative issues with the calculation of an entity's MSO where inaccurate data has been used in the calculation.

Specifically, section 27 prescribes that the Secretary may grant an application for a temporary reduction in quantity of MSO stocks required to be held, if all of the following criteria apply:

- The designated quantity to be reduced relates to a period before 1 July 2024.
 - From 1 January 2023, it is expected that importing and refining entities will be able to accurately report their volumes of MSO products through section 19F of the POFR Rules. However we are allowing for potential discrepancies in data in the first year of reporting while entities will be learning the new Liquid Fuels Gateway reporting system and education and guidance materials are being refined. From 1 July 2024 it is anticipated that these processes will be finalised with specific guidance materials addressing any reporting issues arising in the first year of operation.
- The Secretary is satisfied the data used to determine the initial designated quantity of stock was incorrect.
 - This will require the entity to provide evidence that the data obtained by the Department was incorrect.
- The reduction in quantity must be consistent with the quantity that would have been correct, if the correct information or data was used.
 - This ensures that Australia's domestic fuel security is maintained, with no extra reduction in quantity being applied to an entity, excepting the necessary amendments required to address any data or information issues.

An example provided under the paragraph 27(c) explains how this section works in practice.

PART 6—Suspension of MSO

Section 28– Suspension by Minister

Section 28 of the Rules prescribes further requirements about which the Minister must be satisfied when determining whether to suspend the MSO for all regulated entities under section 27 of the Act.

Paragraph 28(a) prescribes that any suspension by the Minister must be no longer than is reasonably necessary to prevent or alleviate the disruption or likely disruption to supply. This allows stored MSO product to be used as intended by being available for release to the market, thereby increasing supply, when there is a likely disruption to fuel supply or a disruption is already occurring. It is intended relevant circumstances may include (but not be limited to) where there is an actual or likely national liquid fuel emergency, or where the International Energy Agency has triggered the collective action provisions of the Agreement on an International Energy Program done at Paris on 18 November 1974, as in force for Australia from time to time. Suspension of the MSO in these circumstances would be consistent with Australia’s treaty obligations and the objects of the Act.

However, paragraph 28(a) limits the magnitude of the suspension to ensure fuel security is maintained to the greatest extent possible (by maintaining reserves of MSO products), and stocks are increased as quickly as possible after the disruption has ended. Suspensions will be long enough to allow entities to get back to complying with their designated quantity of MSO products by the end date of the suspension, rather than allowing a grace-period to increase stock levels after the suspension has ended.

Paragraph 28(b) requires the Minister to be satisfied that State and Territory Energy Ministers (within the meaning of the *Liquid Fuel Emergency Act 1984* (LFE Act)) have been informed before the MSO is suspended by the Minister. This is to ensure that any interactions with the LFE Act are as seamless as possible, acknowledges the responsibility of States and Territories to plan for and co-ordinate the response to fuel shortages within their territorial boundaries. This is congruent with the requirement that the Minister must consider suspending the MSO if requested to do so by another Energy Minister under subsection 27(4) of the Act.

Section 29 – Application for suspension by Secretary

Section 29 of the Rules prescribes the mandatory requirements for an application for suspension of an entity’s MSO for an MSO product. The information required to be provided in a suspension application includes:

- the proposed end date for the suspension. It is intended the end date should allow adequate time for the entity to return to compliance with the designated quantity of stock of MSO product by the end date; and
- the reasons why the MSO should be suspended, which satisfy the grounds on which the Secretary may grant an application for suspension under section 30 of the Rules; and

- an estimate of when it is expected stock levels of the MSO product will comply with the designated quantities for the product, if the suspension were to be granted, and the reasons for this estimate; and
- evidence to substantiate the applicant’s asserted reasons for suspension and the estimated return to compliance timeframe; and
- details of any other entities who should (or should not) be subject to any suspension of the MSO granted by the Secretary. This will facilitate the Secretary’s decision whether to suspend the MSO for a specified class of entities (including the applicant) who may also be affected by the same circumstances as the applicant, in accordance with subsection 29(3) of the Act; and
- a copy of the latest MSO compliance plan for the entity, which should be updated to include the intended path to return to compliance with the MSO, if a suspension is granted; and
- reasons why implementing the entity’s MSO compliance plan would not avoid a breach of the MSO without the requested suspension. The MSO compliance plan should have contingency planning in place to try and avoid any applications for suspension where possible; and
- The application must also be in a form approved by the Secretary. This is likely to be a standardised application form available on the Department’s website or through the Liquid Fuels Gateway – the new reporting system administered by the Department.

The information is intended to allow the Secretary to apply the relevant criteria in section 30 to approve or refuse the suspension.

Section 30 – Secretary’s decision on suspension

This section prescribes, for the purpose of subsection 29(2) of the Act, the requirements for when the Secretary may suspend the MSO following an application by an entity under section 28 of the Act.

Subsection 30(2) of the Rules prescribes that the Secretary may only grant an application for suspension if satisfied that:

- if the entity were to remain compliant with the MSO, it would result in the supply of one or more MSO products to fuel users being, or having been, disrupted; and
- the applicant substantiates the need to suspend the MSO.

Subsection 30(3) prescribes that the Secretary must not grant a suspension application if satisfied that:

- the reason the entity will be unlikely to meet their MSO is due to a situation or circumstance that was caused (either partially or wholly) by deficiencies in the entity’s MSO compliance plan. As the entity’s MSO compliance plan is expected to mitigate against the risk of a fuel supply disruption, it is anticipated that many of the

potential risks to supply will be addressed and managed by implementing the entity's MSO compliance plan in the first instance; or

- the reasons for seeking the suspension specified by the entity in its application are more appropriately dealt with by a decision to temporarily reduce the quantity of stocks of the product the entity must hold on obligation days (under section 18 of the Act), which has a lesser impact on the fuel security position of Australia than a full suspension of the MSO for particular stocks.

The note to paragraph 30(3)(b) advises the reader that each entity would need to make a separate application under section 17 of the Act for the Secretary to be able to make decisions whether to temporarily reduce quantities of stocks for each entity.

Subsection 30(4) prescribes the matters the Secretary must take into account when deciding whether to grant or refuse a suspension application in circumstances covered by subsection 30(2). The mandatory considerations are:

- The likelihood and impacts of a disruption to fuel supply without a suspension of the applicant's MSO. The entity's application for suspension, as well as data collected by the Department (under these rules, the POFR Rules, and through information-sharing arrangements with other agencies) will help the Secretary determine this issue.
- Whether the applicant has taken all reasonable steps to avoid the need to suspend the MSO, including through the use of the intermediary market (i.e. where other entities can hold stock of MSO products on the applicant's behalf). Considering a suspension of an entity's MSO could significantly reduce the national fuel security position, this mandatory consideration intends to ensure that, in the first instance, an entity has attempted to maintain their MSO through a range of mechanisms (including by engaging another entity to hold, reserve, or quarantine the stocks on behalf of the applicant, as per section 24 of the Act).
- Any impacts on competition in the markets for MSO products. This will also be a determining factor for the Secretary when deciding whether the suspension should extend to a class of entities competing in the same market, rather than just applying to a single entity.
- That the period of any suspension should not be longer than what is reasonably necessary to address the reasons for the suspension. This includes any time required to get stock levels back up to the MSO operational levels. This reflects the policy intent to limit the suspension period to what is necessary in order to maintain Australia's fuel security position.
- Whether implementing the MSO compliance plan will bring the applicant back into compliance in a timely manner; It is expected that an entity's MSO compliance plan will include contingency planning for unexpected events, where alternative mechanisms to compliance are identified and used in the first instance. Where alternative compliance mechanisms cannot be used, or will not be sufficient to mitigate against the reason a suspension has been requested, an updated compliance plan must be provided to the Secretary outlining the intended pathway to compliance (including timeframes) if a suspension is granted.

- The Secretary must also consider any other matters considered relevant at the time the application is received. This is not prescriptive, as it will depend on the broader fuel security environment, specific situation and the timing of the application.

Subsection 30(5) prescribes that the Secretary must take all reasonable steps to make a decision on the application within 30 days of the application being made or, if further information was required to substantiate the application, within 30 days of the requested information being provided. This balances the need for a swift turnaround time to process an application (considering the serious nature of the circumstances leading an entity to request a suspension), while providing the Secretary sufficient time to conduct due diligence when considering whether or not to grant the application and/or extend a suspension to a class of entities (see section 31). Note, section 78 of the Act provides that if the entity does not comply with a requirement to provide further information in relation to their application (within the period for response specified in the notice), the Secretary may refuse to consider the application, or refuse to take any action (or further action) in relation to the application.

Subsection 30(6) prescribes that the Secretary is able to start the suspension period from a time after the reason for a suspension arose, but before the decision is made. This ensures that any suspension period for an entity (or class of entities) can be backdated to the point it was required from, rather than the date the Secretary makes their final decision. For example, if there was a natural disaster, an entity may need to apply for a suspension of their MSO for one or more products. If the Secretary decides to grant the suspension, they can backdate it to the date of the natural disaster if required.

Section 31 – Class of entities included in a suspension

This section prescribes, for the purpose of subsection 29(3) of the Act, that the Secretary may include a class of entities in any suspension if they are satisfied that:

- the class of entities that the suspension is being extended to are in the same situation as the entity that applied for the suspension, or are likely to be similarly affected; and
- by not including the entities in the class in the suspension, it could impact competition in one or more markets for MSO products. The potential impacts on competition must be considered by the Secretary under paragraph 30(4)(c) of the Rules when an entity applies for a suspension and will help the Secretary to determine whether the suspension should be extended to a class of entity.

The note to paragraph 31(b) of the Rules advises the reader that the Secretary is able to extend a suspension to a class of entities on the Secretary's own initiative and is not dependent on who the original applicant identifies as another entity that should (or should not) be granted a suspension.

PART 7—Notice of intention to cease all MSO activities in relation to MSO product

Section 32 – Requirements for notice of intention to cease MSO activities

This section prescribes the requirements for subsection 31(2) of the Act regarding an entity's notice of intent to permanently or indefinitely cease all MSO activities (i.e. both refining and

importing) in relation to one or more MSO products. If an entity is ceasing their operations for an MSO product, they must:

- Set out which MSO products the entity will cease to refine or import. This can be a single MSO product or multiple/all MSO products.
- Explain the reasoning behind the entity's decision to stop refining or importing any products notified under paragraph 32(a) of the Rules. This will allow the Secretary to better understand any impacts of the impending cessation on the market. The entity must also specify the timeframe in which they intend to stop importing or refining the MSO products.
- Identify any entity that is likely to take over the importing and/or refining operations in place of the entity providing the notice of intention to cease, so that the fuel security outcome may be maintained where possible. Therefore, the new owner/s name/s should be provided, as well as any information regarding what level of obligation should be designated to each new owner.
- Provide evidence to substantiate any claims made in the notice.

PART 8—Audit

Section 33 – Conduct of audits under section 33 or section 34 of the Act

Subsection 33(1) of the Rules prescribes the requirements under subsection 35(1) of the Act which must be met by registered greenhouse and energy auditors that carry out audits under sections 33 or 34 of the Act.

Subsection 33(2) prescribes that an audit report must be prepared by a registered greenhouse and energy auditor, recognising the significant skills this category of auditors have with energy auditing. These auditors already apply the NGER (Audit) Determination standard for greenhouse and energy audits, safeguard audits and audits under the Emissions Reduction Fund. Subsection 33(2) also prescribes that the auditor prepares an audit report in accordance with the requirements for reasonable assurance engagements or limited assurance engagements under the NGER (Audit) Determination (see sections 1.6 and 1.7, respectively), as specified in the relevant notice for paragraph 33(3)(a) or paragraph 34(2)(c) of the Act.

The NGER (Audit) Determination is defined in section 4 of the Rules and incorporated as in force from time to time. It is freely available from www.legislation.gov.au.

Subsection 33(3) prescribes that a registered auditor must take all reasonable steps to ensure there is no unauthorised use or disclosure of information obtained while conducting an audit. This reflects the fact that information obtained or produced in the course of an audit will likely be commercially sensitive and should be handled on a confidential basis and protected from unauthorised use or disclosure.

PART 9—MSO compliance plan

Section 34 – Operation of this Part

This Part prescribes the information that must be prepared for, and kept up to date in, an entity's MSO compliance plan under section 36 of the Act.

The note to section 34 of the Rules advises the reader that the Secretary may also ask that an entity's MSO compliance plan covers specific matters in addition to those specified in this Part.

Section 35 – What an MSO compliance plan must contain—outline

This section prescribes key high-level matters that must be included in an entity's MSO compliance plan, including:

- the entity's organisational structure;
- list of key people in the entity, including their role and contact details;
- a check list showing where the plan implements the requirements in these Rules;
- processes for periodic review of the plan and how it will be kept current; and
- a signed confirmation of the entity's commitment to the plan.

This information will provide a broad overview of the entity to help the Secretary understand the entity's corporate structure, as well as the processes and commitment by the entity to keep the compliance plan relevant to the organisation and updated.

Section 36 – What an MSO compliance plan must contain—overview of current practices

This section prescribes that an entity's MSO compliance plan must contain the following information about the entity's current practices for managing each MSO activity (refining and/or importing) it undertakes:

- the frequency of imports of MSO products;
- the entity's volumetric storage capacity for each MSO product;
- locations of storage facilities for MSO products;
- information about the usual fluctuations in the storage of MSO products; and
- a description of the entity's significant ongoing contractual obligations for the supply of MSO products.

This information will provide Government with a greater understanding of how an entity will manage the MSO, and the broader fuel security implications of the entity's activities for Australia.

Section 37 – What an MSO compliance plan must contain—compliance pathway

This section prescribes the steps and strategies required to be included in an entity’s MSO compliance plan to confirm the entity has arrangements in place to comply with the MSO, as well as any contingency plans it will follow if it is likely to be non-compliant to bring it back to compliance.

This section aims to ensure entities have thought about the different means to comply with their MSO (as specified in paragraphs 37(2)(a) – 37(2)(d) of the Rules), and recognises that there may be situations when an entity will need to activate contingency plans to remain compliant. By requiring pre-planning to be undertaken in these areas, Australia’s fuel security it is more likely to be maintained.

Section 38 – What an MSO compliance plan must contain—data collection, reporting and record keeping

This section prescribes that an entity’s MSO compliance plan must set out the entity’s current methodology and practice for counting stock of MSO products, including the specific methods an entity will use to:

- count stock within the EEZ or pipelines (if required) and measures to ensure accuracy; and
- count unfinished product as MSO product at a refinery (if required).

If these specific matters are not described in the entity’s MSO compliance plan, these kinds of stocks cannot be counted towards the entity’s MSO. See also explanatory notes above for sections 7, 9 and 14 of the Rules.

Further information is also required to be included in an entity’s MSO compliance plan regarding:

- the accuracy of the data collected, to ensure the data can be reasonably relied upon;
- the quality and assurance and approval processes, to understand the organisation’s process to manage the MSO and oversight of the data reported;
- how the reporting of an entity’s legally enforceable arrangements with another entity (under sections 23 or 24 of the Act) are managed, considering the entities involved in the arrangement need to be identified in the MSO compliance plan, to ensure stock is not double-counted;
- arrangements for record keeping and how those records can be accessed, in case there are discrepancies in the data that need to be amended, or if the entity is being audited; and
- the process for providing advice to the Secretary regarding expected designated quantities of stock of MSO products and any matters that may affect the entity’s capacity to hold that stock. This will be required from the second year of operation of the MSO (in 2023) (under section 18 of the Rules).

Section 39 – What an MSO compliance plan must contain—schedule of future outages

This section prescribes that, where an entity knows about future scheduled maintenance of refineries, storage tanks or pipelines, and expects that this may lead to a request for a temporary reduction of the entity's MSO (under section 17 of the Act), these matters should be specified in the entity's MSO compliance plan. This forward-planning and notification should help streamline the approval process for the plan.

Section 40 – Provision of MSO compliance plan to Secretary

This section prescribes, for the purpose of section 36(3) of the Act, that an entity required to have an MSO compliance plan on 4 July 2023 must make available to the Secretary a completed MSO compliance plan by 31 July 2023.

However, if an entity has an approved transitional arrangement in place impacting them at commencement (under Part 4 of the Rules), or intends to count stock within the EEZ or unfinished product at a refinery, the MSO compliance plan would be made available before the commencement of the MSO scheme on 1 July 2023 as part of approving those arrangements.

PART 10—Assumption or division of MSO

Section 41 – Assumption or division

This section prescribes, for the purpose of subsection 37(7) of the Act, the requirements that apply to any determination by the Secretary that an entity's (the divesting entity's) MSO in relation to an MSO product is being assumed by, or divided with, another entity or entities (the receiving entity or receiving entities). For example, the divesting entity's MSO may be assumed by a receiving entity or divided among multiple receiving entities in circumstances where the divesting entity has been wholly or partially bought out by the receiving entity/entities.

Subsection 41(1) of the Rules prescribes that the Secretary can make a determination of assumption or division of the MSO in a range of ways, including one or more of the following:

- A notice in force under section 10 (notifying the initial designated MSO for an MSO product), section 15 (notifying the designated MSO for an MSO product for an entity already subject to the MSO) or section 18 (notifying a temporary reduction of the designated MSO for an MSO product) of the Act can be taken to have been given to more than one entity. This would occur, for example, when:
 - one entity buys another entity. The MSO for the divesting entity could be varied to zero through this determination process, with the full MSO being transferred to the receiving entity.
 - there is a partial assumption of one entity's business by another receiving entity
 - there is more than one receiving entity.

In each of the circumstances above, all entities involved in the process (including the divesting entity and all receiving entities) are likely to receive notices of a new designated quantity of MSO for all applicable MSO products.

- A notice in force under section 10, 15 or 18 of the Act may be taken to have been given to a different entity. Where the Secretary becomes aware of changes in the ownership of a regulated entity due to applications made under this section by either the divesting or receiving entity, or through the Secretary's own initiative, the Secretary may make a determination for assumption or division of the MSO for any entity. If a notice in force for one entity under section 10, 15 or 18 of the Act are directly representative of the quantities that should be assumed or divided with a different entity, then it would be possible for the Secretary to make a determination that this original notice is transferred to a different entity without any further amendments.
- A notice in force under section 10, 15 or 18 of the Act may be taken to specify a different designated MSO quantity for an MSO product. This may occur where the Secretary believes the original designated quantities in any of the notices will not represent the appropriate quantity for any assumption or division of stock, and needs to change the original MSO quantities listed for one or more MSO products.

Subsection 41(2) prescribes the matters the Secretary must take into account before making a determination under section 37 of the Act, including:

- the desirability that the total level of MSO from all notices after the determination be no less than the total level of the MSO before the determination. The intention is to ensure Australia's national fuel security position is maintained to the extent possible despite any changes to the fuel market; and
- designated MSO quantities should reflect each entity's likely importing and refining activities, so that entities are not allocated quantities unfairly.

PART 11—Monitoring secondary markets and assisting compliance

Section 42 – Monitoring secondary market activity and assisting compliance

This section ensures that the Secretary takes approach steps to monitor the secondary market and assist entities comply with the MSO.

Subsection 42(1) of the Rules ensures that the Secretary, through the Department, takes reasonable steps to monitor the availability and price of section 24 arrangements which allow MSO products to be held by other parties for MSO compliance purposes. This secondary market is important for the efficient operation of the MSO and the Australian Government has already taken a number of steps to boost the available storage. The purpose of this subsection is not to confer additional powers on the Secretary or the Department, but to reflect that this monitoring function is one which must be carried out based upon existing powers and information collection processes.

Subsection 42(2) makes clear that in regulating the scheme, the Secretary need not be passive, but may actively assist entities in their compliance and publish information to assist them with the scheme.

PART 12—Publication of information

Section 43 – Information publication

This section ensures that the Secretary publishes key market information about the operation of the scheme for transparency.

Subsection 43(1) of the Rules requires that before 1 July each year, the Secretary must publish:

- the number of entities subject to the MSO for each MSO product; and
- the total volume in ML of product required to be held on the first obligation day of the financial year; and
- an aggregated percentage estimate of all importing and refined MSO product captured by the scheme in order to compare it against the policy objective of capturing 98% of each fuel supplied to the Australian market. This calculation will be based upon the volumes of each MSO product imported and refined by entities subject to the MSO in the previous financial year.

These figures will be published on the Department's website.

Subsection 43(2) allows the Secretary to publish general information about decisions to suspend the MSO or grant temporary reductions. Such general information would include who was issued such decisions, but not the quality of the reductions approved or information that would be commercially sensitive.

Subsection 43(3) makes it clear that, consistent with the prohibitions on publication of certain kinds of sensitive information applying under subsection 16(3) of the POFR Act, any information likely to enable the identification of an individual, or commercial in confidence information, must not be caused to be published under this section.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Fuel Security (Minimum Stockholding Obligation) Rules 2022

This instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The *Fuel Security (Minimum Stockholding Obligation) Rules 2022* (the Rules) prescribes various technical and administrative matters for the purposes of the minimum stockholding obligation (MSO) aspects (primarily under Part 2) of the *Fuel Security Act 2021* (the Act). In particular, the Rules prescribes requirements for:

- the start date of the MSO scheme;
- triggering the MSO, including:
 - thresholds to trigger the MSO; and
 - trigger assessment periods;
- calculating designated quantities of MSO products;
- “obligation days” on which designated quantities of MSO products must be held;
- making an application to temporarily reduce or suspend the MSO;
- meeting the definition of an “MSO product” and stock holding under the Act;
- reporting by regulated entities of the MSO; and
- information in an entity’s MSO compliance plan.

As set out in the explanatory memorandum to the Fuel Security Bill 2021 which became the Act, Part 2 of the Act establishes a national level obligation for corporate entities that undertake certain activities (generally, importing and refining) in relation to certain transport fuels to hold a minimum quantity of those fuels nationally. The Minister for Climate Change and Energy (the Minister) has set a national consumption day target under the *Fuel Security (Target Number of Days) Declaration 2022*. Each entity will have a specific MSO determined by reference to the national target and their historical operations. The major transport fuels are gasoline, diesel and kerosene. Gasoline and kerosene MSOs have been set at the average of the 2018 and 2019 calendar years (pre-COVID-19) levels, and the diesel MSO has been increased by 40% on pre-COVID-19 levels from mid-2024. Consistent with subsection 14(4) of the Act, Part 4 of the Rules takes into account the *Fuel Security (Target Number of Days) Declaration 2022* by using the relevant target number of days in the calculation of the designated quantities for subsections 10(3), 15(3) and 16(3) of the Act.

Given the thresholds prescribed by section 17 of the Rules and the definition of “regulated entity” in the Act, the MSO will only capture activities by corporations and not individuals.

General human rights issues with the MSO are covered in the Statement of Compatibility with Human Rights included in the explanatory memorandum to the Fuel Security Bill 2021.

Human rights implications

The Rules engage, or may engage, the following rights:

- the right to an adequate standard of living and to continuous improvement of living conditions – Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)
- the right to privacy – Article 17 of the International Covenant on Civil and Political Rights (ICCPR)
- the right to freedom of expression – Article 19 of the ICCPR
- the right not to incriminate oneself – Article 14(3)(g) of the ICCPR.

The Rules will primarily regulate entities rather than individuals

As noted at paragraph 1.11 of the Parliamentary Joint Committee on Human Rights – Guide to Human Rights, published in June 2015, which is a freely available document that outlines the key human rights that form part of the Parliamentary Joint Committee on Human Rights’ mandate (available at

https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Guidance_Notes_and_Resources):

“Under the UN human rights treaties, human rights belong to individuals and groups of individuals. The treaties do not confer rights on companies or other incorporated bodies.”

While the Rules purport to place various obligations on “entities” that are subject to the MSO, and regulated entities have the potential to cover some non-corporate entities, the entities that will be subject to the MSO based on the relevant import and refining data are all corporations. As such, there are very few (if any) provisions of the Rules that regulate and consequently limit the human rights of individuals.

Right to an adequate standard of living – Article 11 ICESCR

Despite the fact the Rules do not generally regulate the conduct of individuals, they nevertheless engage positively with the right to an adequate standard of living and to continuous improvement of living conditions. This is achieved by alleviating the risks to fuel supply currently borne by Government and consumers. The Rules will mandate the holding of stocks of key transport fuels, with mechanisms to allow those stocks to be deployed to avert or address fuel security issues.

These arrangements support fuel-dependent and critical industries as well as Australian households. They will offer protection during extreme disruptions to fuel supply to Australia. The proposed reforms are therefore likely to ensure the availability and accessibility of the energy resources that are essential to the realisation of the right to an adequate standard of living. They will also help to fulfil Australia’s obligation under

Article 2.1 of the ICESCR to take reasonable measures within its available resources to progressively secure broader enjoyment of this right.

Right to privacy – Article 17 ICCPR

While noting that the Rules will primarily regulate the conduct of entities that are unlikely to be individuals, out of an abundance of caution, consideration has been given to the possibility that the Rules engage the right to privacy of individuals.

Under the Rules entities may apply to the Secretary for various decisions, such as suspension, may be subject to audit in accordance with Part 8 and need an MSO compliance plan meeting requirements in Part 9. Certain general scheme information is also made public under Part 12 of the Rules.

The nature of the information required to be provided under these clauses will almost solely relate to refinery operations, importing, stockholding, fuel production volumes, and other matters relating to the business of refining or importing fuel.

It is unlikely any personal information about identifiable individuals will be collected or published under any of the abovementioned provisions of the Rules. The *Privacy Act 1988* would apply to any personal information that was collected and various personal or commercial-in-confidence information would also be protected information under the *Petroleum and Other Fuels Reporting Act 2017*. Where audits are undertaken, subsection 33(3) of the Rules includes protections on the use or disclosure of information obtained by auditors during such as audit. Similarly, under Part 12 of the Rules the Secretary must not cause to be published information about the annual operation of the MSO scheme that is likely to identify an individual. Therefore, it is unlikely the Rules engage or limit the right to privacy.

Right to freedom of expression – Article 19 ICCPR

As noted in the explanatory memorandum to the Fuel Security Bill 2021, Division 7 of Part 2 of the Act (MSO) engages the right to freedom of expression in Article 19 of the ICCPR.

Under the Act regulated entities will be subject to various auditing requirements. Specifically, the Secretary could require an independent registered greenhouse and energy auditor to undertake audits of entities' compliance with the MSO obligations under the Act. Part 8 of the Rules prescribes the manner in which such audits must be carried out, the form of audit report, the nature of the matter to be included in such reports, and auditors' use or disclosure of information obtained in the course of conducting audits under Part 2 of the Act. This therefore engages the right to freedom of expression by establishing measures that may restrict the communication or publication of certain information collected in the conduct of such audits. In particular, subsection 33(3) of the Rules requires auditors to take reasonable steps to prevent unauthorized use or disclosure of information obtained when conducting an audit.

However, the limitations on freedom of expression imposed by these measures are reasonable and proportionate, as they will ensure that audits are conducted consistently with international standards and are of sufficient quality and rigor to provide a meaningful assessment of the accuracy of data reported by entities. The veracity and accuracy of such data will be crucial to the integrity of the proposed MSO scheme.

Article 19(3) of the ICCPR permits restrictions on the freedom of expression as provided by law and necessary to protect the rights of others and national security or public order, and this would extend to the right to protection of sensitive commercial-in-confidence information.

Given the above, the restrictions are considered compatible with Article 19 of the ICCPR because they will promote the integrity of the MSO scheme and ensure businesses' commercial-in-confidence information is sufficiently protected when used by the Department to assess their compliance with the obligations under Part 2 of the Act.

Right not to incriminate oneself – Article 14(3)(g) ICCPR

While noting the matters referred to above regarding the fact the Rules will primarily regulate entities that are not individuals, for completeness consideration has been given to whether the obligations established under the Rules to include matters in an MSO compliance plan potentially engage the right not to incriminate oneself.

It is noted that any obligation to include matters in an MSO compliance plan is intended to only relate to information relevant to the MSO scheme and it is not the policy intention that the relevant sections (see Part 9 of the Rules) would abrogate ordinary common law privileges, such as the privileges against self-incrimination, self-exposure to a civil penalty and legal professional privilege. Accordingly, the Rules do not limit the right of individuals not to incriminate oneself.

Conclusion

This instrument is compatible with human rights because it considerably promotes the protection of the rights to an adequate standard of living and to continuous improvement of living conditions. While there are very few provisions of the Rules that regulate or engage the human rights of individuals, to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

The Hon Chris Bowen MP
Minister for Climate Change and Energy

Regulation Impact Statement (RIS) Addendum – Minimum Stockholding Obligation

Securing Australia's Domestic Fuel Stocks and Refining
Capacity

October 2022

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Disclaimer:

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Executive Summary

The Minimum Stockholding Obligation (MSO) will quickly provide a positive financial impact to the national economy in the event of a major disruption to fuel supplies, with the benefits outweighing the expected relatively smaller costs.

The MSO scheme is equivalent to comprehensive insurance. In the same way as asset owners insure their property against hazards, it involves a small ongoing cost to deliver adequate mitigation, providing resilience in instances where unpredictable events occur.

The MSO aims to provide certainty of fuel stocks and confidence to fuel users and government about our resilience to potential supply disruptions. It delivers a level of assurance that when a significant disruption occurs, there is sufficient fuel stock in place to keep Australia and the economy going for longer.

The net benefits of the scheme can be derived through determining the anticipated benefits of the scheme during a hypothetical major disruption, and comparing them to estimated costs of industry compliance.

Background

On 26 May 2021, the Australian Government published a Regulation Impact Statement (RIS) in relation to Australia's Fuel Security Package and the *Fuel Security Act 2021* (the Act). This RIS addendum provides additional information and analysis on one measure of the Act, the MSO.

While the Act introduces the legislative framework for the MSO, the *Fuel Security (MSO) Rules 2022* (the Rules) provide further detailed policy settings related to the scheme.

The MSO is an important fuel security measure that will protect fuel consumers and the Australian economy by delivering a domestic fuel stockholding, improving Australia's capability to respond to significant liquid fuel supply disruptions. The MSO has been specifically designed to safeguard minimum levels of key transport fuels to ensure the Australian economy is able to keep moving in the face of international or local supply issues.

The MSO adds an extra 'tool' to the Australian Government's emergency response options and gives greater oversight of actual fuel stock levels. This transparency is key in the lead up to and during an emergency situation. The fuel stocks established by the MSO can be relied upon in times of supply disruption, emergencies, and if fuel demand unexpectedly increases. It will provide certainty to fuel consumers and governments as to sovereign resilience and fuel availability. Setting a fuel stockholding obligation is a common international practice.

As outlined in the main RIS in relation to the Act, liquid fuel security is about making sure Australia has the fuel it needs to meet its economic, environmental, social and national security objectives. For many Australians, fuel security means having the confidence there will be enough fuel for their journey to work, and ensuring businesses large and small can keep running day to day. It also means knowing when things go wrong, there is a plan in place to keep Australia moving.

This addendum sets out the key policy settings, outlines engagement with fuel industry in the development of the policy, and estimates and assesses the regulatory costs and benefits of the MSO to the Australian economy.

Modelling supporting the addendum draws from various sources, including departmental data and data provided by industry through formal reporting mechanisms and consultations.

About the MSO policy

Affected entities

The scheme requires Australia's largest fuel importers and refiners to maintain a certain level of key transport fuels comprising gasoline (petrol), kerosene (jet fuel) and diesel. Additionally, from mid-2024, a 40 per cent increase in diesel stockholdings will be required for importers.

The MSO introduces an ongoing regulatory requirement on Australia's most significant fuel market entities—the entities who are currently responsible for supplying approximately 98 per cent of all imported and refined MSO products in each of the key transport fuel categories into the Australian market.

An entity will be subject to a MSO once its annual volumes (in megalitres (ML)), either importing or refining, exceed a threshold level (for each product) prescribed in the Rules. Threshold levels are set to ensure only entities in a position to meaningfully contribute to domestic fuel security are regulated, reduce regulatory burden on smaller entities, and ensure competition in the market is maintained. With this in mind, the threshold levels will be monitored closely and can be adjusted in the future to maintain the 98 per cent principle in order to reflect a changing fuel market and evolving security context.

How the MSO is calculated

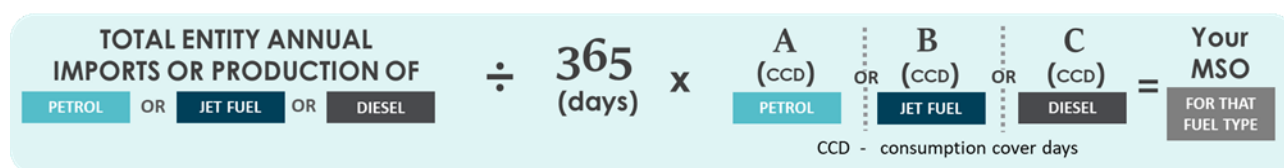
Each entity will have a fuel specific obligation, determined in reference to two factors:

1. the national Consumption Cover Day (CCD) target set by the Minister for Climate Change and Energy (the Minister)
2. their importing/production volumes from the previous calendar year.

CCDs are an indicator of how long fuels would last under normal demand if all refining and import activity were to stop. The CCD metric is based on historical fuel consumption/supply and is easily relatable to maintaining fuel supply security.

Figure 1 below represents how the MSO is calculated, which is based on an entity's total imports and/or production divided by 365, then multiplied by the CCD set by the Minister for each fuel type.

Figure 1: MSO formula



Obligation day

Under the Act, the MSO quantity of a fuel required to be held by an entity must be confirmed on an 'obligation day'. While it is possible for regulated entities to hold less than the required quantity of stock at other times, the minimum stock level must be held and recorded on this day. The obligation day frequency (explained below) is important in ensuring the national baseline is maintained in the event of a disruption, and does not enable significant periods of time where holdings could fall below the expected minimum holdings.

Stocks able to be counted towards the MSO

When recording stockholdings on an obligation day, holdings must be stored under defined parameters. MSO products are considered as stockholdings if they are:

- stored at a refinery, import terminal or inland storage facility
- held on incoming vessels moored at/just outside port or within coastal shipping
- held on incoming vessels entering Australia's exclusive economic zone (EEZ), which may temporarily exit Australia's EEZ while on route to an Australian port
- outside an entity's direct control, but held by another entity under a legally enforceable arrangement
- within pipelines where the fuel can be extracted if required.

The ability to count crude is limited to stockholdings at a refinery.

Consultation on the MSO policy

The Department has engaged with the fuel industry and representative bodies on the MSO policy and design on a regular basis. The key inputs and assumptions underlying this RIS addendum, were also subject to industry consultation to confirm their appropriateness.

Following the introduction of the Act, entities likely to be subject to the MSO were provided an opportunity to review and comment on key policy elements to be determined by the Rules.

All affected stakeholder entities and representative bodies engaged, provided written and/or verbal submissions on the key policy elements.

The Department also held ongoing regular discussions with the fuel industry throughout the policy development cycle.

On 31 January 2022, a public exposure period on the draft Rules commenced for industry, consumers and state and territory governments to consider the proposed policy settings in their entirety. Public consultation was held for four weeks, concluding on 28 February 2022. Extensions were provided where stakeholders requested additional time.

On 8 August 2022, affected stakeholders were provided the opportunity to comment on the key assumptions and inputs for the modelling of the RIS addendum. Views on an appropriate commencement date for the scheme were also sought.

Comments received through the consultation stages have informed the inputs for the RIS addendum's financial modelling and the MSO Rules.

Industry feedback on policy settings

The majority of industry feedback related to a number of common themes. In general, industry comments sought to:

- minimise regulatory burden where possible
- seek sufficient flexibility in stockholding options to reduce impact on current operations
- ensure existing competitive balance within the market is maintained.

Within these themes, the main policy settings of interest were the:

- threshold levels for each fuel type
- frequency of the obligation day

- level of the national CCDs target
- stocks able to be counted toward the obligation (i.e. EEZ inclusion, stocks stored in pipelines)
- depth and maturity of the intermediary trading market.

Response to industry feedback and changes

In a number of instances industry feedback led directly to changes to the draft policy settings (see Appendix A, B and C).

A key takeaway from industry consultation was the concern of differential impacts to entities. As such, recommendations from industry to address some of their concerns were often in conflict with each other. Differing views of entities stemmed from variations in business models, storage infrastructure and its availability, and contractual arrangements with clients, amongst other matters.

Given the variations in perspectives from across industry, the final settings are designed to deliver a balanced policy position, delivering on the fuel security objectives and ensuring competition impacts are minimised.

The key mechanisms to respond to industry concerns include transitional arrangements, which have been built into the settings. These arrangements are designed to reduce regulatory burden, allow time to adapt to the new scheme as necessary and assist industry to comply with an eased burden through the MSO's infancy.

Key elements of the MSO policy settings and Rules

Transitional settings applicable from commencement until 30 June 2024 include:

- a fortnightly obligation day (Section 15)
- the CCD for importers and refiners: required to hold stocks of at least 24, 24, and 20 days of gasoline, kerosene and diesel, respectively.
- EEZ stocks allowed to be counted toward MSO for imported product (excluding crude or condensate), without an increase to CCDs. (Section 9)

Note: other application based transitional provisions have also been incorporated into the Rules and are available until 30 June 2025.

From 1 July 2024, the key ongoing settings will include:

- a weekly obligation day. (Section 15)
- the CCD (importers): required to hold stocks of at least 27, 27, and 32 days of gasoline, kerosene and diesel respectively. This includes:
 - an additional 3 CCDs for gasoline and kerosene accounting for stocks held in the EEZ
 - an additional 12 CCDs for diesel comprising 8 CCDs as a 40 per cent uplift in stocks plus 4 CCDs accounting for stocks held in the EEZ.
- the CCD (refiners): required to hold stocks of at least 24, 24, and 20 days of gasoline, kerosene and diesel respectively.
- EEZ stocks allowed to be counted toward MSO for imported product (excluding crude or condensate). (Section 9)
- thresholds for affected entities remain at 200 ML, 250 ML and 250 ML gasoline, kerosene and diesel respectively. (Subsection 17(1))

Table 1: National Consumption Cover Day (CCD) target set by the Minister

MSO Activity and MSO Product	CCD (1 July 2023 to 30 June 2024)	CCD (from 1 July 2024)
Importing—gasoline	24	27
Importing—kerosene	24	27
Importing—diesel	20	32
Refining—gasoline	24	24
Refining—kerosene	24	24
Refining—diesel	20	20

National benefits of the MSO scheme

Australia’s diversified supply chain provides an effective buffer in the case of minor disruptions to fuel supplies. However, due to a largely demand driven importing model, fuel companies generally operate on a ‘just-in-time’ basis and do not hold sufficient stocks to cover moderate to severe disruption events. This places fuel users at risk of facing fuel restrictions and significant price disruptions during major stock interruptions.

Australia imports around 90 per cent of its fuel products. As a result, we are a price taker in the international fuel market. Refined product prices experienced at the bowser are linked to import parity pricing. During supply disruptions, Australia’s position as a price taker will remain. Additional stockholding through the MSO will simply ensure access to fuel lasts longer in instances where demand outweighs supply.

The MSO will ensure adequate levels of stocks are held in Australia. The availability of all the major transport fuels underpins our economy, including road and rail freight, mining and agriculture. A major supply disruption would have significant economic implications.

Providing additional days of coverage affords a significant financial benefit via avoidance of future loss to the economy, should a significant disruption occur. Temporary interruptions to supply can result in significant losses, the MSO will protect industries reliant on liquid fuels including agricultural, manufacturing, transport and emergency service sectors.

Australia’s state and territory governments have constitutional responsibility for planning and co-ordinating the response to fuel shortages within their territorial boundaries and have appropriate legislation and associated response plans in place to manage such emergencies.

In the event of an actual or likely fuel shortage with national implications, the *Liquid Fuel Emergency Act 1984* (LFE Act) enables the Government to take management action in the event of a national emergency. This includes suspending the MSO at a request of a state Energy Minister.

Approach to determining the financial benefit of the MSO

The benefits of the MSO will arise in a disruption event, where demand outpaces supply. To determine the financial benefits attributable to the MSO, a plausible non-specific major fuel supply disruption on a national level is envisaged as a reference case in two scenarios:

1. the first reference case assumes the MSO is not in place.
2. the same event is then modelled assuming the MSO is in place, where the impact of the event or events are ameliorated by additional fuel held by the MSO being released into the market.

The value of the additional number of days' supply (demonstrated in the second scenario) is an indicator of the economic benefit of the MSO. The benefits are quantified as the expected avoidance loss in real GDP.

A non-specific supply disruption on a national level is used. Due to the nature of our reliance on imports, disruptions can arise from a number of international or domestic sources affecting supply, whether environmental, geopolitical, demand driven, etc.

Economic impacts are non-linear

The economic impact of a supply disruption is non-linear with respect to the magnitude of the reduction and duration of the event. That is, a disruption event that reduces consumption by 25 per cent instead of 50 per cent will have less than half of the daily economic impact.

Assumptions of a reference disruption event

Several assumptions have been applied in the modelling, including:

- the event occurs in the near future (2027 has been assumed for modelling purposes)
- the production and/or import of product are restricted for a period of time due to some event that causes a disruption in supplies to Australian consumers
- liquid fuel supply to essential services, agriculture and mining will continue
- private household use of diesel will be disproportionately curtailed as with all other non-critical industries
- the nature of the event is such that the Minister directs a suspension of the MSO under the Act and allows stocks to be drawn down for a period of time to meet product demand
- the event lasts longer than can be supplied from pre-MSO BAU stocks.

Detailed formulations of the disruption were prepared, and price effects estimated using current oil prices and exchange rates.

Outcomes of modelled supply restrictions

Due to the various uncertainties of the magnitude of a potential disruption, elasticities between 20 per cent and 50 per cent were modelled for diesel at a normal consumption rate. Diesel is used as the main transport fuel as it is the fuel most affected by the MSO, with petrol and jet fuel levels less affected.

The model estimates the benefit per additional day of consumption cover (expected avoidance of loss in GDP) ranges between:

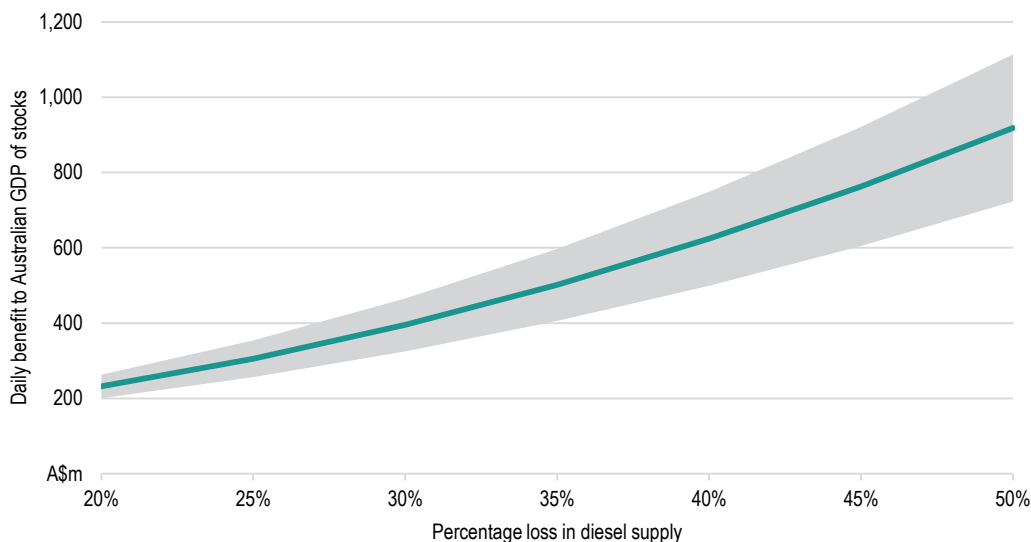
- \$232.0 million a day, based on a 20 per cent supply disruption to diesel
- \$305.5 million a day, based on 25 per cent supply disruption to diesel
- \$918.2 million a day, based on a 50 per cent supply disruption to diesel.

In CCD terms, the MSO will permit Australians to continue to consume diesel for:

- an additional ~43 days of normal consumption in the event of a 20 per cent supply disruption beyond which could be accommodated from industry's stocks without the MSO. Total value to the economy of \$9.9b.
- an additional ~34 days of normal consumption in the event of a 25 per cent supply disruption beyond which could be accommodated from industry's stocks without the MSO. Total value to the economy of \$10.4b.
- an additional ~17 days of normal consumption in the event of a 50 per cent supply disruption beyond which could be accommodated from industry's stocks without the MSO. Total value to the economy of \$15.6b.

Figure 2 below shows the results of the modelled supply reductions. The solid line is a fitted curve to the results of various simulations, with the greyed area around the solid line representing the range of outcomes based on changes to the assumptions.

Figure 2: Daily economic benefit associated with holding stocks to cover various losses in diesel supply (estimated impact based on 2027 projected diesel consumption and economy)



The results show there is significant benefit to the economy of holding stocks to cover temporary losses in fuel supply. This is because temporary interruptions to supply can result in significant costs, including to importers and refiners themselves.

Breakeven analysis

In light of the number of variables of possible major disruption scenarios, a breakeven analysis has been conducted to identify the disruption points at which the MSO will provide a net benefit to the Australian economy.

This breakeven analysis provides an estimate of the severity of events where Australians will see a net benefit of the MSO out to 2040.

In the case of a 25 per cent supply disruption, the benefit of one day of additional stockholdings is estimated to be \$305.5 million. Taking the estimated total cost of complying with the MSO of \$1066.9 million, this implies if the supply interruption lasts for more than 3.5 days beyond pre-MSO BAU levels (i.e. \$1066.9 divided by \$305.5), then the benefits of holding the additional days of stocks (achieved through the MSO) will outweigh the costs.

As a further example, taking the estimated total cost of complying with the MSO, and comparing it to the daily economic benefits presented in Figure 2, it is possible to calculate the minimum number of days of MSO stocks (the additional stocks held compared to the BAU), needed to be released for the total costs to equal the total benefits across the range of supply interruptions modelled. This is presented in Figure 3 below.

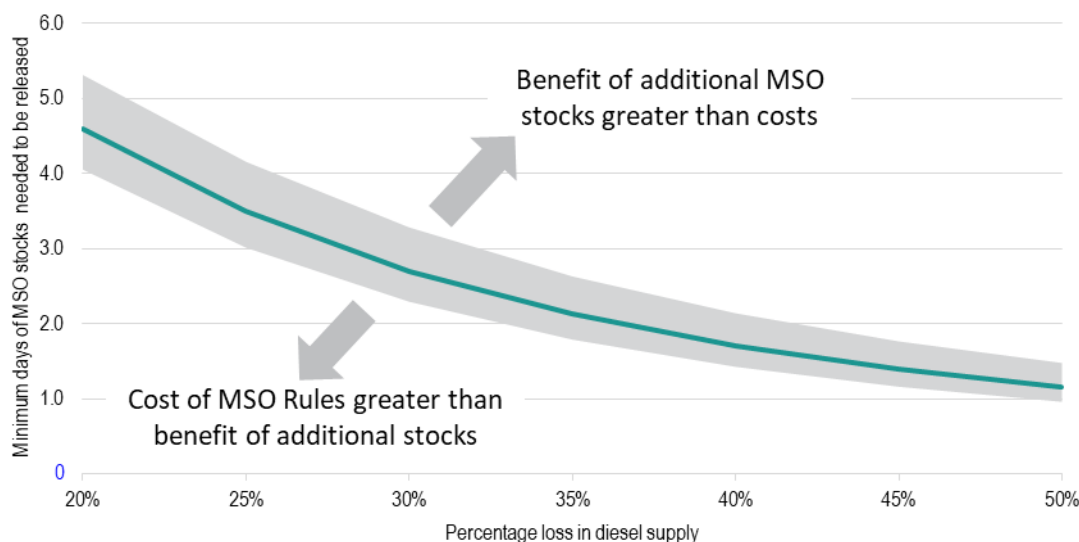


Figure 3: Breakeven analysis of minimum number of days of MSO stocks needed to be released to cover the cost of complying with the MSO Rules (2023–2040)

Considering the likelihood of disruptions in supplies

A key consideration in assessing the benefits of the MSO policy is the likelihood of a major disruption event in the future that requires the established stockholding to support a managed fuel release.

In analysing the benefits of the MSO, it could be considered akin to a type of ‘comprehensive insurance’ covering a range of circumstances. The MSO puts arrangements in place to prepare for a situation, whether it be known or unknown to reduce the economic and social impact should an event (or culmination of events) occur.

Global supply shocks

History has demonstrated major fuel events do occur globally, and Australia is not immune from future disruptions. Events including natural disasters, geopolitical conflicts, and interruptions to global shipping can cause disruptions to the international fuel market.

Australia’s fuel security has relied on the diversity of import supply chains and the availability of sufficient production capacity internationally to manage supply shocks when they occur. With Australia reliant on imports to support demand for fuels, it remains susceptible to global fuel crises, either as one-off events or as an occurrence of simultaneous conflating events.

Over the past 50 years, there have been a number of incidents in oil markets that have affected the availability of global oil supplies. These include the:

- first oil crisis: Arab-Israeli War and repudiation of agreements, 1973-74
- second oil crisis: Iranian revolution and Iran-Iraq war, 1979-80
- withdrawal of Saudi Arabian support for oil price, 1985-86
- first Gulf war: Iraq's invasion of Kuwait, 1990-91
- Venezuelan oil supply disruption and invasion of Iraq (second Gulf war), 2002-03
- multiple oil shocks, 2003-14 including
 - loss of 1.5 million barrels per day which was 25 per cent of then US crude oil production with Hurricanes Katrina and Rita in 2002¹
 - diesel shortfall in Victoria in 2012 from refinery problems
- 50 per cent cut in production from Saudi Arabia after a drone attack in 2019
- oil price war between Russia and Saudi Arabia (2020)
- Suez Canal obstruction (2021).

Hurricane Katrina significantly affected global fuel prices and supply chains. In a study undertaken shortly after Katrina, it was estimated there is a 4-7 per cent chance of a hurricane of that magnitude or greater occurring in any year along the US Gulf Coast and east coast respectively.²

The Russia-Ukraine conflict has had an effect on international oil prices, rather than impacting Australian supply chains.

While such events don't always cause a shutdown or a disruption to Australian industry, it is one indicator of the probability of potential disruptions to oil supplies and its uncertainty.

Growing complexity in potential disruption events

More recently, the COVID-19 pandemic has had implications for the global oil market and for supply chains. In 2020 this led the IEA to categorise the threat to the entire supply chain of oil refining, freight and storage as one of the most ferocious shocks to occur in the global oil market.

While the latest outlook is more favourable, the experience with responses to the COVID-19 pandemic has exposed the importance of preparedness to support unforeseen fragility within supply chains, and the growing probability of disruption events occurring.

Due to the growing interconnectedness of the global fuel market, it is becoming more and more difficult to predict the likelihood, origin or trigger of a major disruption in oil and liquid fuel supplies. However, given Australia's strong reliance on imported fuel products, the current geopolitical climate and a history of global fuel disruption events, it is reasonable to expect and prepare for an event of significant magnitude in the near future.

Benefits conclusion

It is the Government's role to ensure resilience to potential supply disruptions and to protect consumers and the economy. The MSO will bring with it a net benefit, through increased and prolonged resilience to a wider range of disruption events that will outweigh costs when a major event occurs.

¹ Energy Information Administration, Data, <https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=pet&s=mcrfpus2&f=maccessed> 13 February 2022

² Elesner et al, Hurricane Katrina Return Period, Geophysical Research Letters, Vol 33, April 2006

The outcomes of the breakeven modelling conclude a supply disruption of 25 per cent only requires the drawdown of at least 3.5 days' worth (i.e. \$1,066.9 million divided by \$305.5 million) of the additional stocks held due to the MSO to deliver a net benefit out to 2040.

Similarly, a supply disruption of 50 per cent requires a drawdown of only 1.2 days' worth (i.e. \$1,066.9 million divided by \$918.2 million) of the additional stocks held due to the MSO for the benefits to outweigh the costs.

A greater frequency or magnitude of drawdowns will result in the benefits of the MSO significantly outweighing the costs.

Modelling does not include the additional benefits that may arise to business confidence from an increased reliability of fuel supply. These benefits persist regardless of an event occurring or not.

Cost impacts

This section provides an analysis of the estimated costs to potential affected entities resulting from the MSO.

The estimated cost of the MSO has been formulated by identifying likely additional regulatory, capital, and operating costs necessary for industry wide compliance. These costs are then compared to projected equivalent costs without the MSO.

The additional capital costs are expected to be comprised of the purchasing and holding of additional stocks where required, and the cost of increasing storage capacity if required. Additional regulatory costs are also expected, due to the nature of increasing reporting and measuring requirements.

The cost impacts are based on historical data and demand projections to 2040 and do not reflect those of a specific entity, but rather the average total costs expected.

In conducting this analysis, care has been taken to appropriately reflect the cost of the MSO settings on entities based on:

- historical imports or production of gasoline, kerosene and diesel
- a projection of their future sales, based on each entity's historical market share
- future oil price assumptions
- current available estimated total storage capacity by product (including storage of crude, condensate and unfinished products for refiners)
- anticipated construction of new storage capacity (including storage capacity currently or expected to be built under the Australian Government's *Boosting Australia's Diesel Storage Program* (BADSP)).
- historically observed pattern of drawing down and refilling stocks based on market conditions
- the ability for importers to count stocks of product stored on vessels within Australia's EEZ
- the ability for refiners to count the volume able to be produced from crude and unfinished products held in storage at the refinery
- the ability for entities that are both a refiner and an importer to acquit stocks across both to meet their obligations
- the ability of entities to trade stocks through a functioning intermediary market to meet their obligations

- the cost of entities building additional storage capacity and purchasing and holding additional stocks of product to meet their obligations.

Elements not included in the cost analysis are:

- stocks held within pipelines – not considered material in volume
- storage capacity operated by entities without an MSO
- potential costs associated with the loss of flexibility by affected entities to manage their stockholdings below their MSO.

MSO total costs

The projected total cost to MSO entities for each product are presented in Table 2 below.

While Net Present Value (NPV) results are presented for a range of discount rates, when considering the results of the analysis, NPV figures of 7 per cent have been used for cost to the consumers.

Over the period to 2040, the MSO settings are expected to add total costs of:

- \$136.8 million (with an NPV7 of \$74.6 million) to **gasoline** importers and refiners
- \$219.1 million (with an NPV7 of \$140.5 million) to **kerosene** importers and refiners
- \$711.1 million (with an NPV7 of \$562.9 million) to **diesel** importers and refiners.

Capital costs

At a national level, no additional product storage is expected to be required across the total group of MSO entities. A large part of this is due to the availability of storage industry-wide and the additional storage capacity being built under the BADSP. Storage availability is anticipated industry-wide through the expectation of a functioning intermediary market, and the flexibility borne by the ability to count stocks held on vessels within the EEZ.

In some cases, affected importers and refiners are likely to be required to increase the stocks of kerosene and diesel product they hold to ensure compliance with their respective MSO (business-as-usual stocks of gasoline are likely to be sufficient to meet their MSO).

Over the period to 2040, it is expected the group of affected importers and refiners will be required to purchase an additional:

- \$102.7 million of **kerosene** (with a NPV7 of \$78.8 million) over 17 years to 2040.
- \$519.8 million of **diesel** (with a NPV7 of \$460.4 million) over 17 years to 2040.

Additional operating costs associated with the holding of additional stocks have also been assumed.

Operating and regulatory costs

Regulatory costs (associated with undertaking set-up and ongoing reporting, auditing, etc.) will depend on the number of affected entities by product.

For this analysis, the same unit costs have been assumed to be incurred irrespective of the number of products any individual entity has to comply with. In total, additional operating and regulatory costs over the period to 2040 are expected to be:

- \$136.8 million for **gasoline** (with a NPV7 of \$76.9 million) over 17 years to 2040
- \$116.4million for **kerosene** (with a NPV7 of \$40.7 million) over 17 years to 2040
- \$191.3 million for **diesel** (with a NPV7 of \$102.5 million) over 17 years to 2040.

Table 2: Estimated cost of the MSO Rules by product (industry wide)

	Total (2023-2040)	NPV3	NPV7	NPV10
	Real A\$m	Real A\$m	Real A\$m	Real A\$m
Gasoline				
Capital costs – storage	0	0	0	0
Capital costs – product stock	0	0	0	0
Operating costs	0	0	0	0
Regulatory costs	136.8	103.6	74.6	60.0
Total gasoline	136.8	103.6	74.6	60.0
Kerosene				
Capital costs – storage	0	0	0	0
Capital costs – product stock	102.7	92.0	78.8	70.0
Operating costs	0	0	0	0
Regulatory costs	116.4	87.1	61.7	49.1
Total kerosene	219.1	179.1	140.5	119.1
Diesel				
Capital costs – storage	0	0	0	0
Capital costs – product stock	519.8	497.8	460.4	430.8
Operating costs	0	0	0	0
Regulatory costs	191.3	143.7	102.5	81.9
Total diesel	711.1	641.5	562.9	512.8
Total all fuels	1,066.9	924.2	778.0	692.0

Notes: All years are financial years ending June 30. All dollar values are in real 2022 terms. Figures are rounded.

Cost to consumer

As outlined above, the MSO will mean some costs to industry. It is anticipated any additional financial cost to affected entities resulting from industry compliance with the MSO will be passed on to the consumer, ultimately impacting price at the bowser. In estimating the pass-through, operating costs have been passed through in the year they are incurred, while capital expenses have been assumed to be amortised over a period of 20 years with a real rate of return on capital assumed to be 7 per cent a year. GST of 10 per cent has been added.

The average consumer price increase over the period to 2040 due to the MSO (including GST) is estimated to be:

- 0.0015 \$/litre (or 0.15 c/litre weighted average of all fuels).

Functioning intermediary market

What is the intermediary market?

To ease the burden of MSO compliance, the Act establishes an intermediary (or secondary trading) market for stocks outside of an entity's direct control to be counted toward their MSO. (See Subsection 23(c) and Subsection 24(c) of the Act).

Flexibility in meeting the MSO through third party arrangements will provide opportunity for companies to minimise compliance costs (mostly through reducing the need for capital costs such as additional storage) and/or adjust the size and location of their fuel stocks.

The intermediary market will be industry led and not be heavily regulated in the first instance. Industry is considered best placed to establish and manage these arrangements through innovation and flexibility without additional costs imposed by market regulation.

An intermediary market for a stockholding obligation, is a common approach in overseas fuel markets, with several OECD countries like the United Kingdom and Sweden implementing an intermediary market scheme to balance surpluses and shortfalls in a regulated entity's MSO.

A number of international arms of Australian fuel stakeholders will have significant experience with similar intermediary market schemes.

Cost implications of a functioning intermediary market

The modelling suggests that where shortfalls arise, entities will be able to meet their obligations through the use of an efficiently operating intermediary market.

The regulatory costs of utilising the intermediary market to meet an entity's MSO are expected to be significantly lower than capital costs of building additional storage, de-optimising shipping cycles or holding additional stock.

It is assumed each entity will rationally choose the lowest cost option if they have insufficient stocks to meet the MSO on an obligation day. That option will be to rely on the intermediary market.

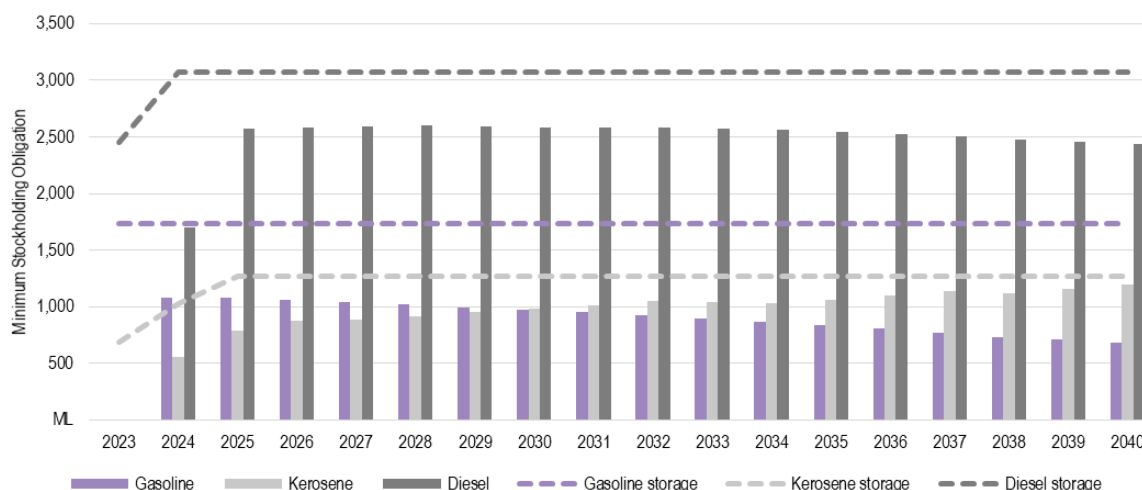
The MSO's transitional arrangements ensure significant surplus stocks are available for 'trading' through the market in the scheme's infancy. Arrangements will allow time for the market to mature and operate effectively. But also provides governments an opportunity to monitor and evaluate its effectiveness.

As such, the costs reflect a functioning intermediary market.

Depth of the intermediary market

Forecasts on storage capacity, stockholdings and projected MSO figures modelled for this analysis show there will be sufficient storage and stockholding available in the intermediary market with adequate participation. (see Figure 4 below).

Figure 4: Forecast aggregate industry position against projected demand



Source: ACIL Allen estimates based on data provided by the Department

Sensitivity analysis

Throughout the development of the policy and this assessment, various sensitivity analysis were undertaken about various costs and alternatives to the MSO Rules.

This section presents the impacts on costs of two meaningful alternatives considered:

1. removal of transitional arrangements for CCDs and obligation day in the period to 1 July 2024.
2. capping the ability for importers to count stocks of product stored on vessels within the EEZ boundary to no more than 4, 3 and 3 days of an entities required minimum consumption cover for diesel, gasoline and kerosene, respectively.

A summary of the cumulative costs under these two alternatives to the MSO settings is shown in Table 5 below. Compared to the costs of the final settings, removing transitional arrangements would increase the costs of the MSO for:

- **gasoline** by \$3.4 million, or an increase in costs of around 5 per cent
- **kerosene** by \$2.3 million, or an increase in costs of around 2 per cent
- **diesel** by \$31.8 million, or an increase in costs of around 6 per cent.

In contrast, capping the ability for importers to count stocks of product stored on vessels within the EEZ would increase the cost of the rules by:

- \$152.4 million in costs to **kerosene**, or an increase of 59 per cent.
- \$149.9 million in costs to **diesel**, or an increase in costs of 24 per cent.
- \$0 in cost to **gasoline** as their business-as-usual stocks of gasoline are likely to be sufficient to meet their MSO.

Table 3: Sensitivity analysis of two key changes to the MSO Rules

	MSO Rules		Without transitional arrangements		With capped allowance of EEZ stocks	
	Total (2023-2040)	NPV7	Total (2023-2040)	NPV7	Total (2023-2040)	NPV7
	Real A\$m	Real A\$m	Real A\$m	Real A\$m	Real A\$m	Real A\$m
Gasoline						
Capital costs – storage	0	0	0	0	0	0
Capital costs – product stock	0	0	0	0	0	0
Operating costs	0	0	0	0	0	0
Regulatory costs	136.8	74.6	140.7	78.0	136.8	74.6
Gasoline – total	136.8	74.6	140.7	78.0	136.8	74.6
Kerosene						
Capital costs – storage	0	0	0	0	109.6	60.1
Capital costs – product stock	102.7	78.8	102.7	78.8	218.9	164.3
Operating costs	0	0	0	0	15.8	6.8
Regulatory costs	116.4	61.7	119.0	64.0	116.4	61.7
Kerosene – total	219.1	140.5	221.7	142.8	460.7	292.9
Diesel						
Capital costs – storage	0	0	0	0	0	0
Capital costs – product stock	519.8	460.4	543.1	487.6	704.0	610.3
Operating costs	0	0	0	0	0	0
Regulatory costs	191.3	102.5	196.5	107.1	191.3	102.5
Diesel – total	711.1	562.9	739.6	594.7	818.8	712.8
Total – all fuels	1066.9	778.0	1,101.9	815.4	1,492.7	1,080.4

Notes: All years are financial years ending June 30. All dollar values are in real 2022 terms. Figures are rounded

In terms of the impact of these alternative scenarios on consumers, as shown in Table 4 below, the average increase in consumer prices over the period to 2040 (including GST) due to the MSO Rules is estimated to be:

- **slightly higher** for all fuels if transitional arrangements are not allowed
- **higher** for diesel (**by 0.05 c/litre**) and kerosene (**by 0.07 c/litre**) if caps are introduced for stocks of product stored on vessels within the EEZ boundary.

Table 4: Sensitivity of average consumer price change of tested sensitivities compared to the MSO Rules (including GST)

	Gasoline	Kerosene	Diesel
Average price increase over period to 2040	c/litre	c/litre	c/litre
MSO Rules	0.07	0.15	0.20
Without transitional arrangements	0.07	0.15	0.21
With capped allowance of EEZ stocks	0.07	0.22	0.25

Notes: All years are financial years ending June 30. All dollar values are in real 2022 terms

Implications for current market competition

The scheme (and the Rules) has been designed to minimise, and provide pathways to mitigate disruptions to market competition.

The cost impacts of the policy are seen as proportionate across the market and are expected to safeguard the continuation of the current competitive balance. This is supported by specific provisions to deter regulatory avoidance behaviour.

Additional costs resulting from the MSO are likely to be incurred at differing rates due to the variations in operating models within the industry.

Regulatory costs are expected to be proportionate to market share and are not seen as a material threat to the current competitive balance.

Individual transitional arrangement mechanisms also exist to maintain the current competitive balance and assist individual entities in meeting their obligation when faced with infrastructure or operational market constraints.

Mechanisms to respond to regulatory avoidance behaviour also exist within the rules, allowing the Secretary to set thresholds for individual entities as low as 10ML.

In determining the level of impact from the MSO on the competitive balance within the current market, it has been assumed:

- industry participants manage their stockholdings efficiently within the constraints of meeting their MSO
- intermediary market functions efficiently
- the entity market share remains similar to the 2018-2020 data, to provide a baseline for determining the impact of an entity withdrawing from the market.

Stock purchases

Where there is a need to purchase and hold additional fuel stocks, no significant competition impacts in the presence of an effective intermediary market are expected.

Analysis shows the need for additional fuel stocks required is not likely to be materially disproportionate across relative smaller or larger groups of MSO-affected entities.

Given the transitional arrangements under the MSO Rules, much of the additional purchases of fuel stocks is expected to occur in the lead up to FY2024-25. Not all entities will be required to purchase additional product. The modelling indicates some entities, to be compliant, may be required to purchase an additional:

- 0.6-0.7 per cent of their annual imports of **gasoline**
- just over 1 per cent of their annual imports of **kerosene**
- around 3 per cent of the annual imports of **diesel**.

Need for additional storage capacity

Analysis shows industry as a whole will have sufficient existing storage capacity to comply with the MSO in the first year. In order to comply, some entities will require access to additional storage capacity or stockholdings through leasing spare capacity of a third party or acquiring stocks in a third party's facility through the intermediary market.

It is expected with sufficient product within the intermediary market, those with existing spare capacity and those that need to acquire additional capacity will seek a return on capital employed. It is more likely than not, there will be limited disadvantage and limited impact on competition, noting in the early years of the scheme, transitional arrangements will reduce the overall necessity for the intermediary market by individual regulated entities.

Impact on shipping cycles

The economics of import terminals requires a balance between the cost of storage and the cost of shipping. Under commercial operations an importer will increase shipping cycles up to the point where the marginal cost of increased shipping cycles exceeds the marginal cost of investing in or acquiring access to additional storage.

The presence of an effective intermediary market should reduce the need for a shift in the commercial operations deemed to be optimal. This is based on industry feedback, demonstrating de-optimisation costs would be significantly larger than the costs of operating in the intermediary market.

Regulation impact summary

The aim of the MSO is to protect fuel consumers and the economy by ensuring fuel availability in the event of significant liquid fuel supply disruptions.

The MSO will quickly provide a positive financial impact to the national economy in the event of a major disruption to fuel supplies, with the potential benefits far outweighing the relatively smaller costs. The MSO is equivalent to comprehensive insurance, providing national resilience in the event of an extended disruption to fuel supplies.

Given Australia's strong reliance on imported fuel products, the current geopolitical climate and a history of global fuel disruption events, it is reasonable to expect and prepare for an event of significant magnitude in the near future.

This addendum to the main fuel security RIS determines:

- a \$305.5 million benefit per day (calculated as the costs to GDP avoided) in the case of a 25 per cent disruption to fuel supplies, for each extra day of fuel delivered through the MSO.
- in a situation where Australia is subject to an extended disruption of a 25 per cent supply loss exhausting all stockholdings, the present value of the benefit would be \$10.4 billion.
- in comparison, the total cost of the scheme is estimated to be \$1,066.9 million in absolute terms and \$691.8 million in NPV terms discounted at 7 per cent (real) to 2040.
- on average fuel users pay an additional 0.0015 \$/litre out to 2040.

Appendix A: Overview of key policy changes as result of industry consultation

The below policy amendments were made as result of industry engagement on a policy paper issued to industry in September 2021.

Obligation day

- Stock measurement day (section 15) – in response to industry feedback that a ‘weekly’ obligation day would be too onerous from day 1 of the scheme, a transitional arrangement was included to give industry time to adjust to the new reporting scheme.
- The obligation day is set to fortnightly until 30 June 2024, reverting to an ongoing position of weekly from 1 July 2024.

Holding stock

- Exclusive Economic Zone (EEZ) stocks (section 9) – ability to count stocks on water within the EEZ was incorporated. 100 per cent of refined MSO products under the ownership/control of an entity can now be counted toward an entity’s MSO.
 - Products that have entered the EEZ, but due to shipping routes have temporarily left the EEZ on course for an Australian port, are now considered to be within the EEZ.
 - The CCD instrument was changed to include a transitional period where the allowance of EEZ stock to be counted towards an MSO will not correspond to an increase in CCDs until 1 July 2024. See the ‘consumption cover days’ section below.
- Pipeline stocks (section 7) – in response to requests for all stocks held within a pipeline under the control of an entity to be counted toward an entity’s MSO, this is now reflected within the Rules.
 - The Rules allow MSO products within a pipeline to be included towards an entity’s MSO where entities confirm adequate arrangements for access to the stocks in the event of a fuel emergency, and accurate reporting capabilities within their MSO plans.

Thresholds

- Provision to protect against entities purposely avoiding the threshold (subsection 17(2)) – the Rules now introduce a mechanism for the Secretary to change the threshold for an individual entity down to 10ML (for each MSO product) if the entity’s refining or importing is considered to be carried out with a purpose or object of purposely avoiding the threshold.
- Ensuring entities are captured based on pre COVID-19 import/refining activity (section 16) – for the first year of the scheme, whether or not an entity meets the threshold (and is subject to an MSO) is determined from both the 2019 and 2021 entity import/refining volumes, while the actual volume obligation will be based on 2021 import/refining data.
 - This ensures significant market participants are not excluded from the scheme in the first year, as result of reduced importing or refining activity due to COVID-19.
 - However, entities will benefit from a reduced obligation through the scheme’s infancy/transitional period where they imported or refined less than normal during 2021.
- Ensuring the principle that 98 per cent of all products are captured by the MSO is maintained post COVID-19, and further disincentives for avoidance behaviour – the Explanatory Statement supporting the Rules now makes it clear the target aim of capturing the majority (defined as approximately 98 per cent) of total products in the market is to be

maintained, and thresholds should be reviewed periodically to ensure this principle is achieved.

- This provides a mechanism to address a concern that currently smaller importers of fuels (existing or new entrants) could increase their market share up to the thresholds for each fuel type, or that several new entrants could access the market with a view to remaining below the thresholds at all times, resulting in a larger proportion of the market not being covered by the obligation.

Consumption cover days

- Additional CCDs relating to crude at refineries – in response to concerns around increased burden, the previously proposed additional CCDs relating to the allowance of crude (held at a refinery) to be counted as stock held by refiners is not included in the CCDs.
- Additional CCDs relating to EEZ Stocks (refer draft notifiable instrument, also listed below) – in response to concerns around ensuring appropriate transitional provisions are provided, the increase of CCDs related to the inclusion of refined products within the EEZ in stocks counted towards the MSO is moved from commencement to 1 July 2024. This transitional period will afford industry a significantly reduced regulatory burden through the scheme's infancy and provide flexibility for industry meeting the obligation in the first year.

Reductions/adjustments to an entity's MSO

- Temporary reductions due to maintenance, repair, shipping delays and off-spec fuel (sections 25 and 26) – provisions are now included in the Rules to support a temporary reduction (by application) of the MSO for certain scheduled and unscheduled occurrences.
- Process to ensure the first year MSO is able to be adjusted if import/refining data was inaccurate (section 27) – noting the first year of the MSO is based on Customs data instead of data reported directly through POFR, some inaccuracies may arise. As such, the Rules now enable a mechanism to adjust the MSO for an entity based on supporting evidence that demonstrates the right figures.
- Process to reduce the MSO over the transitional period where entities are unable to meet the MSO due to physical storage constraints and where the intermediary market is not a viable option (section 23) – an entity's MSO can now be reduced subject to the criteria in the Rules. This provides further support and flexibility where a path toward full compliance is evidenced.

Appendix B: Overview of further changes as result of public consultation on exposure draft Rules

The below policy changes were incorporated into the MSO Rules as amendments in response to 31 January – 28 February 2022 public consultation.

Importer definition

- Additional clarification on the importing definition (section 5) – where importation of an MSO product is done on behalf of a second entity, a provision is now included to allow the ability of the imported quantity to be shifted from the first party if mutually agreed by both parties.
 - For these commercial practices to be covered, the Rules introduce that the Secretary must not have informed both parties that their actions are considered a means to avoid the threshold amount.
 - If both MSO parties do not agree in writing with the change in importing quantities, the importing amount attributed to the MSO will be the signee of the N10 and N30 forms.

Holding stock

- Yield rates for refineries (section 13) – provisions are now included to provide refiners flexibility to use either their current refining yields or the FSSP Rule yields.
 - Yield rates are required in a refiner's MSO compliance plan and adjusted accordingly with any changes to the yield rates. The Rules require the current yield rates to be based on at least a month of production volumes.

Obligation day

- Obligation day changed to Tuesday (subsection 15(1)) – the obligation day is shifted from Monday to Tuesday at the request of industry.

Thresholds

- Volumes lowered for each fuel product (subsection 17(1)) – in response to industry concerns on the thresholds being too high, they were reduced by 100ML for gasoline and diesel, and reduced by 150ML for kerosene. This has no material impact on the number of entities at commencement.

Transitional arrangements and temporary reductions

- Percentages increased for transitional arrangements (subsection 23(2)) – to support industry adjust to the new scheme, the amount an entity may apply for a temporary reduction has increased from 20 per cent to 25 per cent, with the 15ML cap remaining.
- MSO reduction as result of loss of contract (subsection 22(1)) – an amendment was added to the Rules so that larger MSO regulated entities are not disproportionately affected by the percentage threshold values for the loss of contract/s.
 - The Rules were amended to include either a 100ML change in future importing volumes for the MSO period to be considered a significant loss of contract or a 20 per cent reduction (whichever is the lesser).

Intermediary market monitoring

- Provisions monitoring the intermediary market (subsection 42(1)) – additional provisions require the Secretary to take reasonable steps to monitor the price and availability of stock available on the intermediary market.
- Publication of intermediary market information (subsection 42(2)) – to assist entities with their MSO compliance, the Rules provide that the Secretary may publish information about the intermediary market.

Publication of information by the Secretary

- Publication of aggregate MSO products (subsection 43(1)) – to provide transparency for industry and consumers, the Rules now establish a requirement for the Secretary to publish:
 - The number of entities subject to the MSO.
 - The aggregate MSO volume of product required to be held by all entities in the previous financial year.
 - An estimate of the percentage of each MSO product captured in the previous financial year and the entities captured to reach this percentage. This enables industry to have visibility whether 98 per cent of the fuel market has been captured, with the understanding that thresholds will be periodically reviewed to ensure the principle is maintained.
- Inclusion of publication of Secretary's decision of reducing or suspending the MSO (subsection 43(2)) – new provisions in the Rules include that the Secretary may publish general information relating to a temporary reduction of an entity's MSO or a suspension of the MSO.

Other minor changes

- Adjustments to MSO from outages stemming from standards upgrades (subsection 21(5)) – in recognition of circumstances relating specifically to the Refinery Upgrades Program curtailing production, the Rules provide that an entity who refines and imports can subtract the difference between their previous refining trigger assessment period and their current importing MSO.
 - The entity must provide in writing the length of the outage and written notice informing when the upgrades are occurring.
- Scheduled maintenance information within MSO compliance plans (section 39) – this section introduces that if an entity is anticipating applying for a temporary reduction relating to scheduled maintenance, the entity must provide the known future outages in the MSO compliance plan.

Appendix C: Overview of changes arising from August 2022 consultation

The below policy amendments were made as result of final industry engagement in August 2022.

Commencement date

- Commencement date changed to 1 July 2023 – The scheme will begin from 1 July 2023, which will align with the standard contracting cycle, where long-term commitments typically commence in line with the new financial year.
 - The 1 July 2023 start date will also provide sufficient time to prepare for the necessary reporting, compliance systems and market information.

Reductions/adjustments to an entity's MSO

- Extension of section 23 transitional arrangements to be applicable until 30 June 2025 – Section 23 arrangements have been extended for a further 12 months in order to support industry through a transitional period.
- Arrangements able to be further reduced where an entity's compliance is depended on the finalisation of capital investment (subsection 23(2)) – An MSO may be reduced by greater than 15ml for any fuel type (but less than 25 per cent of an entities MSO) under the circumstance where the entity is making a capital investment relating to building or upgrading storage infrastructure, and their compliance is dependent on these works being completed.
- Loss of major customer during an MSO assessment period (subsection 22(2)) – Process introduced to enable a reduction to an entity's MSO where entities lose one or more major customer during an MSO assessment period in order to more accurately determine their obligation for the new MSO period.