

EXPLANATORY STATEMENT

Issued by Authority of the Minister for Climate Change and Energy

Fuel Security Act 2021

*Fuel Security (Minimum Stockholding Obligation) Amendment (2023 Measures No. 1)
Rules 2023*

Legislative Authority

The *Fuel Security Act 2021* (the Act) supports Australia's fuel security by establishing a minimum stockholding obligation (MSO) to ensure industry holds minimum quantities of key transport fuels to guarantee a baseline level of stocks at all times. The MSO is intended to act as a buffer against any local and global supply disruptions.

Subsection 84(1) of the Act provides that the Minister may make rules prescribing matters that are required or permitted by the Act to be prescribed by the rules; or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *Fuel Security (Minimum Stockholding Obligation) Amendment (2023 Measures No. 1) Rules 2023* (the Amendment Rules) are made under subsection 84(1) of the Act. The Amendment Rules rely on subsection 33(3) of the *Acts Interpretation Act 1901* to amend the *Fuel Security (Minimum Stockholding Obligation) Rules 2022* (the Principal Rules).

Purpose

The Amendment Rules amend the Principal Rules to:

- clarify the criteria used to determine exceptional circumstances to reduce an entity's designated quantity where there is a loss of a major customer during a trigger assessment period;
- clarify the formulas that are to be used to calculate such reductions where the circumstances have been met; and
- clarify the criteria used to determine whether the Secretary may grant a temporary reduction of quantity of stocks that an entity must hold on obligation days.

The amendments are minor and technical in nature and are intended to correct irregularities in the existing criteria and formulas. The amendments are not intended to alter the intended policy outcome.

Background

Part 2 of the Act sets out that if a regulated entity undertakes an MSO activity in relation to an MSO product (broadly, if the entity refines or imports certain fuels), the entity may become subject to the MSO. The obligation will be triggered if the entity's activities in relation to the product exceeds a threshold that is prescribed by the Principal Rules.

Once triggered, the entity must hold a minimum quantity of stocks of the MSO product. The amount of the minimum quantity of stocks is provided to the entity via written notice. The

quantity that is specified in that notice is known as the ‘designated quantity’ and is calculated in accordance with the Principal Rules.

Part 4 of the Principal Rules sets out how the designated quantity of stocks of each regulated product an entity must hold on specified days is calculated. It establishes the formulas that should be used when determining the designated quantity of stock and also sets out the exceptional circumstances where an entity’s designated quantity of stocks of product may be reduced.

Part 5 of the Principal Rules sets out an application and approval process for an entity to temporarily reduce the quantity of stocks it must hold on obligation days.

Consultation

The Office of Impact Analysis have advised an Impact Analysis is not required as the Amendment Rules are not likely to create any significant impacts on the regulated community.

No specific consultation was conducted on the Amendment Rules due the minor and machinery nature of the amendments. Industry stakeholders raised with the Department of Climate Change, Energy, the Environment and Water the irregularity in the formulas in the existing Principal Rules which the Amendment Rules correct.

Details and Operation

The Amendment Rules are a legislative instrument for the purposes of the *Legislation Act 2003*.

Details of the Amendment Rules are set out in Attachment A.

The Amendment Rules are compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in Attachment B.

Details of the *Fuel Security (Minimum Stockholding Obligation) Amendment (2023 Measures No. 1) Rules 2023*

Section 1 – Name

1. This section provides that the name of the instrument is the *Fuel Security (Minimum Stockholding Obligation) Amendment (2023 Measures No. 1) Rules 2023* (the Amendment Rules).

Section 2 – Commencement

2. This section provides that the Amendment Rules commence on the day after registration on the Federal Register of Legislation.

Section 3 – Authority

3. This section provides that the Amendment Rules are made under subsection 84(1) of the *Fuel Security Act 2021* (the Act).

Section 4 – Schedules

4. This section provides that each instrument that is specified in a Schedule to the Amendment Rules is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.
5. This enables the amendment of the *Fuel Security (Minimum Stockholding Obligation) Rules 2022* (the Principal Rules).

Schedule 1 – Amendments

Fuel Security (Minimum Stockholding Obligation) Rules 2022

Item 1 – Section 22

6. The minimum stockholding obligation (MSO) is established under the Act to ensure industry holds minimum quantities of key transport fuels to guarantee a baseline level of stocks at all times.
7. Part 2 of the Act sets out that if a regulated entity undertakes an MSO activity in relation to an MSO product (broadly, if the entity refines or imports certain fuels), the entity may become subject to the MSO. The obligation will be triggered if the entity's activities in relation to the product exceeds a threshold that is prescribed by the rules.
8. Once triggered, the entity must hold a minimum quantity of stocks of the MSO product. The amount of the minimum quantity of stocks is provided to the entity via written notice. The quantity that is specified in that notice is known as the 'designated quantity' and is calculated in accordance with the rules.

9. Part 4 of the Principal Rules sets out how the designated quantity of stocks of each regulated product an entity must hold on specified days is calculated. It establishes the formulas that should be used when determining the designated quantity of stock and also sets out the exceptional circumstances where an entity's designated quantity of stocks of product may be reduced.
10. Item 1 repeals existing section 22 of the Principal Rules and replaces it with a new section 22. New section 22 sets out where an entity's designated quantity of stocks may be reduced due to circumstances impacting the entity during the trigger assessment period. This amendment seeks to clarify these circumstances and the formulas used for calculating the relevant reductions. It is not intended to be a change in policy on the application of section 22.
11. New subsection 22(1) sets out the circumstances that the Secretary must be satisfied of for the designated quantity for an MSO product to be reduced. Both of the following circumstances must apply:
 - during the most recent completed trigger assessment period, the entity lost a major customer for the importation or refinement of the MSO product;
 - as a result of that loss, the amount of MSO product that the entity will need to import or refine for the period when the designated quantity will apply is reduced.
12. If both of the circumstances outlined in subsection 22(1) apply, the amount that the designated quantity may be reduced by is no more than the amount calculated under new subsections 22(3) and 22(4), whichever is relevant.
13. New subsection 22(2) provides for the meaning of *lost a major customer* for the purposes of section 22. An entity is taken to have lost a major customer in relation to an MSO product only if:
 - the entity ceased to have a contract with the customer for the importing or refining of the MSO product; and
 - the total amount of MSO product that the entity imported or refined for the customer during the period exceeded the lesser of the following:
 - 20% of the total amount of the MSO product that the entity imported or refined during the relevant period;
 - 100 megalitres.
14. The note under subsection 22(2) clarifies that in determining whether an entity lost a major customer in relation to an MSO product, it is not relevant whether the entity continued to have a contract with that customer for the importing or refining of a different MSO product.

15. For example, Entity X may be eligible to be considered for a reduction of their designated quantity under section 22 if the following circumstances apply:
- Entity X has multiple contracts with Customer Y for the import of MSO products A, B and C;
 - during the most recent completed trigger assessment period, Entity X lost all contracts with Customer Y relating to the import of MSO product A;
 - Entity X had already imported 30 megalitres of MSO product A for Customer Y during that trigger assessment period. The total amount of MSO product A that Entity X has already imported (for all its customers) during this period was 100 megalitres;
 - out of the total amount of MSO product A that Entity X has already imported, 30% was for Customer Y. The threshold at subparagraph 22(2)(b)(i) would apply as the lesser amount under paragraph 22(2)(b) which has been exceeded;
 - due to that loss of contract, the amount of MSO product A that Entity X will need to import for the applicable designated quantity period is reduced.
16. New subsection 22(3) sets out the formula for calculating the amount that the designated quantity is to be reduced by where the MSO is triggered for the activity of importing an MSO product.
17. In calculating the amount by which the designated quantity may be reduced for the MSO product, the following values are relevant:
- the target number of days for importing the MSO product declared under section 14 of the Act and applicable to the start of the period when the designated quantity will apply. Section 14 of the Act requires the Minister to declare a target number of days for the purposes of the MSO by notifiable instrument;
 - the total amount of MSO product that the entity imported for the relevant customer during the most recent completed trigger assessment period, in megalitres.
18. New subsection 22(4) sets out the formula for calculating the amount that the designated quantity is to be reduced by where the MSO is triggered for the activity of refining an MSO product.
19. In calculating the amount by which the designated quantity may be reduced for the MSO product, the following values are relevant:
- the target number of days for refining the MSO product declared under section 14 of the Act and applicable to the start of the period when the designated quantity will apply. Section 14 of the Act requires the Minister to declare a

target number of days for the purposes of the MSO by notifiable instrument;

- the total amount of MSO product that the entity refined for the relevant customer during the most recent completed trigger assessment period, in megalitres.

20. New subsection 22(5) clarifies how the formulas in subsections 22(3) and 22(4) are to be applied if the entity lost more than one major customer during the most recent trigger assessment period. The relevant formula may be applied in respect of each major customer lost, and the values calculated by those formulas may be added together. The final value would be the total amount by which the designated quantity may be reduced for the MSO product.

Item 2 – Subsections 26(3) and (4)

21. Part 5 of the Principal Rules sets out an application and approval process for an entity to temporarily reduce the quantity of stocks it must hold on obligation days.

22. Subsection 26(1) of the Principal Rules provides that the Secretary may grant the application only if satisfied of the criteria set out in subsections 26(2) or (3), or section 27.

23. Item 2 repeals existing subsection 26(3) and (4) of the Principal Rules and substitutes it with new subsections 26(3), (4), (5) and (6). This amendment seeks to clarify the operation of these provisions. It is not intended to be a change in policy in relation to temporary reductions in designated quantities.

24. New subsection 26(3) provides one of the criteria the Secretary must be satisfied of in order to grant an application under section 26. The Secretary may grant an application if satisfied that the applicant lost a major customer for the importing or refining of the MSO product.

25. New subsection 22(4) sets out that an applicant is taken to have *lost a major customer* in relation to an MSO product only if:

- the entity ceased to have a contract with the customer for the importation or refinement of the MSO product; and
- as a result of the contract ceasing, the amount of MSO product that the applicant will need to import or refine for the remainder of the MSO period is reduced by more than the lesser of the following:
 - 20% of the total amount of the MSO product that the entity expected to import or refine during the MSO period, before the major customer was lost;
 - 100 megalitres.

26. The note under subsection 22(4) clarifies that in determining whether an entity lost a major customer in relation to an MSO product, it is not relevant whether the entity

continued to have a contract with that customer for the importing or refining of a different MSO product.

27. For the purposes of section 26, *MSO period* means the period covered by the most recent notice given to the applicant under sections 10 or 15 of the Act (subsection 26(5)). These notices refer to the notice that informs the entity that the MSO has been triggered (section 10 notice) and the notice that specifies the quantity of stocks of the product the entity must hold on the applicable obligation days (section 15 notice).
28. New subsection 26(6) provides that the reduction in the quantity of stocks under subsections (2) and (3) must be no more than necessary, and for no longer than is necessary, to address the circumstance covered by the relevant subsection. While this new subsection is equivalent to existing subsection 26(4), it also clarifies that this restriction on the reduction also applies to subsection 26(3).

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) Amendment (2023 Measures No. 1)
Rules 2023*

This Legislative 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 Act 2021* (the Act) supports Australia's fuel security by establishing a minimum stockholding obligation (MSO) to ensure industry holds minimum quantities of key transport fuels to guarantee a baseline level of stocks at all times. The MSO is intended to act as a buffer against any local and global supply disruptions.

Part 2 of the Act sets out that if a regulated entity undertakes an MSO activity in relation to an MSO product (broadly, if the entity refines or imports certain fuels), the entity may become subject to the MSO. The obligation will be triggered if the entity's activities in relation to the product exceeds a threshold that is prescribed by the rules.

Once triggered, the entity must hold a minimum quantity of stocks of the MSO product. The amount of the minimum quantity of stocks is provided to the entity via written notice. The quantity that is specified in that notice is known as the 'designated quantity' and is calculated in accordance with the rules.

Part 4 of the *Fuel Security (Minimum Stockholding Obligation) Rules 2022* (the Principal Rules) sets out how the designated quantity of stocks of each regulated product an entity must hold on specified days is calculated. It establishes the formulas that should be used when determining the designated quantity of stock and sets out the exceptional circumstances where an entity's designated quantity of stocks of product may be reduced.

The *Fuel Security (Minimum Stockholding Obligation) Amendment (2023 Measures No. 1) Rules 2023* amends the Principal Rules to clarify the formulas used to:

- clarify the criteria used to determine exceptional circumstances to reduce an entity's designated quantity where certain circumstances impact the entity during a trigger assessment period;
- clarify the formulas that are to be used to calculate such reductions where the circumstances have been met; and
- clarify the criteria used to determine whether the Secretary may grant a temporary reduction of quantity of stocks that an entity must hold on obligation days.

The amendments are minor and technical in nature and are intended to correct irregularities in the existing criteria and formulas. The amendments are not intended to alter the intended policy outcome.

Human rights implications

The Amendment Rules do not engage any of the applicable rights or freedoms.

Conclusion

The Amendment Rules are compatible with human rights as they do not raise any human rights issues.

**The Hon. Chris Bowen MP
Minister for Climate Change and Energy**