**DRAFT EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Industry, Energy and Emissions Reduction

*Petroleum and Other Fuels Reporting Act 2017*

*Petroleum and Other Fuels Reporting Amendment (Minimum Stockholding Obligation) Rules 2022*

**Purpose and Operation**

The *Petroleum and Other Fuels Reporting Amendment (Minimum Stockholding Obligation) Rules 2022* (the Rules) amend the *Petroleum and Other Fuels Reporting Rules 2017* (the principal POFR Rules) by prescribing various matters for the purposes of the minimum stockholding obligation (MSO) reporting aspects of the *Petroleum and Other Fuels Reporting Act 2017* (POFR Act).

In particular, the Rules amend the principal POFR Rules by inserting:

* new definitions of several terms to ensure key terminology is defined consistently across the laws establishing the MSO scheme, including under the *Fuel Security Act 2021* (FS Act), the *Fuel Security (Minimum Stockholding Obligation) Rules 2022* (MSO Rules) and the principal POFR Rules, wherever appropriate;
* new reporting provisions to require importers and refinery operators (refiners) who are subject to the MSO under the FS Act, and third-party ‘intermediary market’ participants (e.g. liquid fuel storage providers), to report information concerning:
  + their stockholdings of “MSO products” (as defined under the FS Act, and including stocks of feedstock that meet the requirements of section 25 of the FS Act) on a periodic basis; and
  + storage information, including capacity and location data, relating to the storage of MSO products on a periodic basis; and
  + any Australian controlling corporation of a regulated importer or refiner; and
  + total imports values for each MSO product in the previous calendar year on a yearly basis; and
* new auditing provisions allowing the conduct of audits of reports submitted by refiners, importers and intermediary market participants, where the Secretary holds concerns about the accuracy of information provided in such reports.

**Authority**

This Rule is made pursuant to the POFR Act. In particular, section 41 of that Act includes the power for the Minister to make legislative rules. Additionally, the Rule is authorised under section 13B of the POFR Act, which enables rules relating to compliance audits relating to the FS Act to be made.

**GLOSSARY**

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| Abbreviation | Definition |
| ACCC | Australian Competition and Consumer Commission |
| FS Act | *Fuel Security Act 2021* |
| Minister | The Minister that is responsible for administering the POFR Act and the principal POFR Rules (presently, the Minister for Industry, Energy and Emissions Reduction) |
| MSO | Minimum stockholding obligation |
| MSO Rules | *Fuel Security (Minimum Stockholding Obligation) Rules 2022* |
| NGER (Audit) Determination | *National Greenhouse and Energy Reporting (Audit) Determination 2009* |
| POFR Act | *Petroleum and Other Fuels Reporting Act 2017* |
| principal POFR Rules | *Petroleum and Other Fuels Reporting Rules 2017*, as amended by these Rules |
| the/these Rules | *Petroleum and Other Fuels Reporting Amendment (Minimum Stockholding Obligation) Rules 2022* |
| Secretary | The Secretary of the Department that is responsible for administering the POFR Act and principal POFR Rules (presently, the Department of Industry, Science, Energy and Resources). |

**Details of the *Petroleum and Other Fuels Reporting Amendment (Minimum Stockholding Obligation) Rules 2022***

**PART 1 – PRELIMINARY**

**Section 1 – Name**

This section specifies the name of this instrument made under the POFR Act as the *Petroleum and Other Fuels Reporting Amendment (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**

This section sets out the provision of the POFR Act under which these Rules are made. It references section 41 of the POFR Act, which confers power on the Minister to make legislative rules prescribing matters required or permitted to be prescribed, or necessary or convenient to be prescribed for carrying out the POFR Act. The power to make rules under this section includes the power to amend or revoke rules that have already been made, with any doubt about this resolved by subsection 33(3) of the *Acts Interpretation Act 1901*.

**Section 4 – Schedules**

This section is a machinery clause that provides that the Schedules to the Rules amend or repeal the instruments referred to therein in the manner set out in the Schedules.

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### Schedule 1—Amendments

***Petroleum and Other Fuels Reporting Rules 2017***

**Item 1 – Section 4**

This item inserts new definitions of key phrases relating to the MSO scheme into the definitions provision of the principal POFR Rules. The primary purpose of these amendments is to ensure phrases such as “*MSO product*”, “*MSO activity*” and “*obligation day*” are defined consistently across the laws establishing the MSO scheme, including under the FS Act, the MSO Rules and the principal POFR Rules.

The *Fuel Security (Minimum Stockholding Obligation) Rules 2022* is a legislative instrument incorporated from time to time and available at [www.legislation.gov.au](http://www.legislation.gov.au).

**Item 2 – At the end of section 5**

This item amends section 5 of the principal POFR Rules. That section prescribes additional categories of covered activities for the purposes of paragraph (g) of the definition of “*covered activity*” in subsection 5(1) of the POFR Act. The effect of this amendment is to prescribe the activity of storing stocks as a “covered activity” under the POFR Act (noting the activities of refining and importing covered products are already covered activities under the POFR Act). This, in turn, enables reporting obligations under the POFR Act and principal POFR Rules to be extended to require reporting by an entities that store stock for the MSO which are held by an entity subject to the MSO, such as an intermediary market participant.

The POFR Act defines the covered activity of ‘holding stock’ as both keeping a covered product in storage (subject to some exceptions), or holding a contractual right to take possession of a covered product. The addition of an extra ‘covered activity’ of storing stock does not refer to holding a contractual right to take possession of the product, but only physically keeping the product in storage. It also covers storage that may be relevant to the MSO but would be covered by the exceptions in the POFR Act, such as certain pipeline storage.

**Item 3 – Paragraph 19C(4)(a)**

This item corrects a minor typographical error in paragraph 19C(4)(a) of the principal POFR Rules, by inserting the word ‘than’.

**Item 4 – At the end of Division 3 of Part 2**

*New Subdivision D—Reports related to MSO products*

This item inserts new Subdivision D (Reports related to MSO products) into Division 3 (Reports) of Part 2 (Reports of fuel information) of the principal POFR Rules. The new subdivision comprises new sections 19D-19J, which provide for:

* giving reports to the Secretary concerning:
  + MSO obligation day stockholding data;
  + MSO annual activity data;
  + New MSO entities;
  + Intermediary market participants;
  + Potential intermediary market participants; and
* the reporting timeframes;
* the conduct of audits of any reports which give rise to concerns about the accuracy of information reported under the new subdivision.

Appropriately, the new subdivision follows from:

* Subdivision B (Reports) of the principal POFR Rules, relating to other kinds of matters required to be reported by regulated entities regarding covered activities undertaken in relation to covered products under the principal POFR Rules; and
* Subdivision C (Reports related to Fuel Security Services Payment), which establishes other reporting obligations under the FS Act.

*New section 19D MSO reporting*

This item inserts new section 19D into the principal POFR Rules.

Subsection 19D(1) provides that new Subdivision D sets out additional reporting requirements for section 11 of the POFR Act, and auditing arrangements for section 13B of that Act, to support the MSO scheme established under the FS Act.

Subsection 19D(2) provides some flexible options for calculating volumes of MSO stocks, which are required to be reported under new Subdivision D, in megalitres. During consultation on the draft Rules, some stakeholders requested that reported volumes of stocks for the MSO be reported in megalitres, rather than tonnes (i.e. the alternative unit of measurement required to be reported under other provisions of the principal POFR Rules). However, as megalitre volumes can change with temperature, pressure and density, subsection 19D(2) allows for possible alternative calculation and conversion mechanisms. It aims to reduce regulatory burden for industry, while still ensuring accurate and consistent reporting of stock volumes, by providing for conversion of data already used by regulated entities. Specifically, subsection 19D(2) allows reporting entities to choose the most appropriate calculation mechanism to align with their current reporting practices. They can either:

* choose to convert the volumes of fuel stocks to megalitres from other measurements in a way that is consistent with their reporting arrangements for excise or customs duty for those fuel products, or
* use a calculation that is consistent with standard industry practice used by the entity for other commercial or business reporting requirements.

The note to paragraph 19D(2)(b) advises the different information (e.g. standard temperature and pressure) that may be required when converting MSO stock volumes from tonnes into megalitres.

*New section 19E Reports—MSO obligation day stockholding data*

This item also inserts new section 19E into the principal POFR Rules.

Subsection 19E(1) provides that regulated entities that are subject to the MSO under the FS Act (i.e. the importers and refiners operating in Australia that have triggered the obligation under section 10 of the FS Act), must report specified information to the Secretary within 72 hours from the end of each obligation day. Under section 14 of the MSO Rules, the obligation day frequency is fortnightly from 4 July 2022 – 1 July 2024, before changing to weekly from 1 July 2024. The report must be provided by the entity that undertook the covered activity of refining or importing the MSO product (as applicable).

Subsection 19E(2) provides that the 72 hour reporting timeframe excludes any periods that are public holidays in the Australian Capital Territory. As the MSO is a national obligation, the Australian Capital Territory has been chosen to standardise the reporting timing for each regulated entity; as it is the jurisdiction where 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.

Subsection 19E(3) sets out the specific categories of fuel information that is required to be reported by regulated entities, relating to an entity’s MSO obligation day stockholding. This includes a breakdown of stocks for each MSO product held by a regulated entity in accordance with Division 5 of Part 2 of the FS Act. For importers, this includes:

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| Provision of the FS Act | MSO product/s (to the nearest megalitre) |
| Holder and owner of stocks (s22) | Gasoline, Kerosene and Diesel |
| Entitled to take ownership of stock (s23) | Gasoline, Kerosene and Diesel |
| Reserved or quarantined stock (s24) | Gasoline, Kerosene and Diesel |
| Pipeline stock (s20(1)(b)(iii)) | Gasoline, Kerosene and Diesel |
| Exclusive Economic Zone stock (s21(b)) | Gasoline, Kerosene and Diesel |

For refiners, this includes:

|  |  |
| --- | --- |
| Provision of the FS Act | MSO product/s (to the nearest megalitre) |
| Holder and owner of stocks (s22) | Gasoline, Kerosene and Diesel |
| Entitled to take ownership of stock (s23) | Gasoline, Kerosene and Diesel |
| Reserved or quarantined stock (s24) | Gasoline, Kerosene and Diesel |
| Pipeline stock (s20(1)(b)(iii)) | Gasoline, Kerosene and Diesel |
| Crude stock (s25) | Gasoline, Kerosene and Diesel |
| Unfinished product stock (s25) | Gasoline, Kerosene and Diesel |

This information is required to be reported, along with the total volumes of each MSO product, so that the figure can be compared against the entity’s MSO for each product to determine whether they are compliant or non-compliant under the FS Act.

If any stock is being held by another entity through a legally enforceable arrangement under section 23 or section 24 of the FS Act, the names of the entities who are holding the stock (i.e. the intermediary market participant) must also be reported.

Further, regulated entities must also report if they are holding stock on behalf of another regulated entity under section 23 or section 24 of the FS Act, by providing the names and volumes of each MSO product being held on the other entity’s behalf on the obligation day. This will be used to cross-check the volumes and ensure there is no double-counting of stock.

Regulated entities must report the volumes for crude oil and unfinished refinery product if feedstocks at a refinery are treated as stocks of an MSO product under section 25 of the FS Act. They must also report the volumes of any MSO products stored in the pipeline or in a vessel covered by section 8 of the MSO Rules, which are excluded stocks within the meaning of section 20 of the FS Act. This will provide information about the type and volume of MSO products that are held by regulated entities but do not count towards the stock they hold for the minimum stockholding obligation.

Finally, if a regulated entity has become aware of any errors in their previous MSO obligation day stockholding data report, this must be disclosed to the Secretary, and updated figures must be provided.

Subsection 19E(4) clarifies that the classes of information required to be reported under new paragraphs 19E(3)(b) and (e) satisfy the reporting requirements for paragraph 24(d) of the FS Act.

*New section 19F Reports—MSO annual activity data*

This item also inserts new section 19F into the principal POFR Rules.

Subsection 19F(1) provides that regulated entities that are subject to the MSO under the FS Act (i.e. the importers and refiners operating in Australia who have triggered the obligation under section 10 of the FS Act), must report specified information to the Secretary within 21 days after the end of the calendar year. The report must be provided by the entity that undertook the covered activity of refining or importing the MSO product (as applicable).

Subsection 19F(2) sets out the specific categories of fuel information that is required to be reported by regulated entities. This includes:

* The total import and/or production volumes for each MSO product (gasoline, kerosene and diesel) from the previous calendar year. These figures must be reported to the nearest megalitre.

This information will be used to check whether the MSO trigger thresholds have been exceeded for each MSO product, and if so, to calculate the entity’s designated quantity for each MSO product in accordance with sections 10 or 15 of the FS Act.

* Storage information regarding the total storage capacity for each MSO product, the location of any storage site the entity owns, leases or uses, the breakdown of the storage capacity for each MSO product at each site, whether the site is owned, leased or used, and whether the site is open-access (i.e. it is also possible for other entities to store MSO products at the site).

This data was previously collected by the ACCC and shared with the Department under s 95ZPA of the *Competition and Consumer Act 2010*, which gives an authorised entrusted person the discretion to disclose information that will assist the Department to exercise its functions under the POFR Act and FS Act. However, under new arrangements to streamline the process, the Department will now be collecting the data and share it with the ACCC. This aligns with the objectives of the FS Act, as it will give the Department a greater understanding of the overall fuel storage capacity, and therefore fuel security capacity, for Australia.

* Further details of any legally enforceable arrangements entered into by regulated entities regarding storage of stocks by another entity, including the identities of the contracting parties (including any intermediary market participant who stores the stock on behalf of the importer or refiner that is subject to the MSO), volumes of MSO products being stored, and time periods for the arrangements. This will give the Secretary an understanding of how the intermediary fuel market is operating, to complement the snapshot of data (i.e. names of other entities holding stock on behalf of a regulated entity and volumes of such stock) provided under new paragraphs 19E(3)(c) and 19E(3)(d) of the principal POFR Rules.
* Any changes to the Australian controlling corporation (defined under section 8 of the FS Act), including name and contact details for the new entity.

If this information has not already been shared with the Department at the time of the change, this provides an opportunity for the entity to update these details. As the Australian controlling corporation is also liable for any failure to comply with the MSO, this provides the necessary information for the Department to get in touch with them if required.

Paragraph 19F(2)(a) specifies that, for annual reports submitted by importers, the total import values should be based on the import declaration (N10) and the import declaration out of warehouse (N30) forms provided to the Australian Border Force (ABF). This can then be cross-checked against the data that ABF shares with the Department under section 31 of the POFR Act.

It is intended that the values reported by a refiner under paragraph 19F(2)(b) will be able to be calculated by adding the monthly production data for the previous year that will have already been reported under Subdivision B of Division 3 of Part 2 of the principal POFR Rules (with the expectation that this data reporting field will be automatically populated in the Department’s online reporting system).

Subsection 19F(3) specifies that the new annual reporting requirements apply in relation to the 2022 calendar year and subsequent calendar years, so that they do not start until 2023, i.e. after the first year of operation of the MSO scheme.

*New section 19G Reports—New MSO entities*

This item also inserts new section 19G into the principal POFR Rules.

Subsection 19G(1) provides that importers and refiners operating in Australia who have imported or refined more than the threshold value of an MSO product during a calendar year (i.e. 300 megalitres of gasoline, 350 megalitres of diesel and/or 400 megalitres of kerosene, per section 16 of the MSO Rules), must report specified information to the Secretary within 21 days after the end of the calendar year. This subsection specifically applies to entities that were not subject to the MSO during the financial year, but have refined or imported the quantities of MSO product that will trigger the MSO under section 10 of the FS Act during the previous calendar year. The report must be provided by the entity that undertook the covered activity of refining or importing the MSO product (as applicable).

Subsection 19G(2) sets out the specific categories of fuel information that is required to be reported in the above circumstances. This includes:

* The total import and/or production volumes for each MSO product (gasoline, kerosene and diesel) from the previous calendar year. These figures must be reported to the nearest megalitre.

This information will be used to check whether the MSO trigger thresholds have been exceeded for each MSO product and, if so, it will be used to calculate the entity’s designated quantity for each MSO product in accordance with section 10 of the FS Act.

* Storage information regarding the total storage capacity for each MSO product as well as the breakdown of the storage capacity at each location.

By collecting this information the Department will gain a greater understanding of the overall fuel storage capacity, and therefore fuel security capacity, for Australia.

Paragraph 19G(2)(a) specifies that the total import values should be based on the import declaration (N10) and the import declaration out of warehouse (N30) forms provided to the Australian Border Force (ABF). This can then be cross-checked against the data that ABF shares with the Department, as permitted by section 31 of the POFR Act.

Subsection 19G(3) specifies that the new reporting requirements apply in relation to the 2022 calendar year and subsequent calendar years, so that they don’t start until 2023 i.e. after the first year of operation of the MSO scheme.

*New section 19H Reports—Intermediary market participants*

This item also inserts new section 19H into the principal POFR Rules.

Under subsection 19H(1) the owner of stocks of MSO products that have been stored, in the previous 6-month period (i.e. 1 July – 31 December or 1 January – 30 June), by an entity that is not subject to the MSO for those products for another entity that is subject to the MSO – and such storage is pursuant to a legally enforceable arrangement under section 23 and/or section 24 of the FS Act – must report specified information to the Secretary within 21 days from the end of the relevant 6-month period.

Subsection 19H(2) sets out the specific categories of fuel information that is required to be reported in the above circumstances. This includes:

* Storage information regarding the total storage capacity for each MSO product, the location of any storage site the entity undertaking the covered activity of storing stocks owns, leases or uses, the breakdown of the storage capacity for each MSO product at each site, whether the site is owned, leased or used, and whether the site is open-access (i.e. it is also possible for other entities to store MSO products at the site).

This data was previously collected by the ACCC and shared with the Department pursuant to section 95ZPA of the *Competition and Consumer Act 2010*, however under new arrangements to streamline the process, the Department will now be collecting the data and sharing it with the ACCC. This aligns with the objectives of the FS Act, as it will give the Department a greater understanding of the overall storage capacity, and therefore fuel security capacity, for the country.

* Details regarding any legally enforceable arrangements that were in place over the previous 6-month period including the identities of the contracting parties (including any intermediary market participant who stored the stock on behalf of the importer or refiner that is subject to the MSO), the volumes of each MSO product stored, and the time periods of the arrangements.

This data will be used to cross-check the information that importers and refiners provide under new sections 19E and 19F of the principal POFR Rules.

Subsection 19H(3) specifies that the 6-month periods that will require reports start from 1 July 2022 to 31 December 2022 (so that the first such reports will need to be submitted to the Secretary by no later than 21 January 2023). Each subsequent 6-month period from 1 January to 30 June and from 1 July to 31 December will require a report if the conditions referred to above have been met.

*New section 19I Reports—Potential intermediary market participants*

This item also inserts new section 19I into the principal POFR Rules.

Subsection 19I(1) provides that entities are subject to reporting obligations under this section if they undertake the covered activity of holding stocks at any time from 1 July 2022 to 30 June 2023, and are capable of storing stock of MSO products on behalf of another entity. Unlike section 19H, this section specifies that the reporting requirement will only be triggered once, where an entity is not subject to the MSO under the FS Act, and has not stored MSO products on behalf of another entity that is subject to the MSO under the FS Act. If the entity is captured by these conditions, they must report specified information to the Secretary by 21 July 2023 (21 days after the end of the financial year). The report must be provided by the entity that undertook the covered activity of holding stocks of covered products that are MSO products.

Subsection 19I(2) sets out the specific categories of fuel information that is required to be reported in the above circumstances. This includes:

* Storage information regarding the total storage capacity for each MSO product on 30 June 2023, the location of any storage site the entity owns, leases or uses, the breakdown of the storage capacity for each MSO product at each site, whether the site is owned, leased or used, and whether the site is open-access (i.e. it is also possible for other entities to store MSO products at the site).

This data was previously collected by the ACCC and shared with the Department pursuant to section 95ZPA of the *Competition and Consumer Act 2010*, however under new arrangements to streamline the process, the Department will now be collecting the data and sharing it with the ACCC. This aligns with the objectives of the FS Act, as it will give the Department a greater understanding of the overall storage capacity, and therefore fuel security capacity, for Australia.

* A brief description of why the site/s have not stored stock for MSO entities under legally enforceable arrangements allowed under section 23 or 24 of the FS Act is also required, which will provide a more holistic view of the storage availability in the fuel market. It is expected that some storage sites may never be able to participate in the intermediary market due to other influencing factors, even if they are technically capable of storing MSO products on behalf of another entity.

*New section 19J Audit of MSO reports if concern about reports*

This item also inserts new section 19J into the principal POFR Rules.

Section 19J makes provision for the preparation of audit reports, for the purpose of subsection 13B(1) of the POFR Act, in relation to the auditing of compliance with section 11 of the POFR Act so far as that section relates to the giving of reports that relate to MSO activities undertaken in relation to MSO products by regulated entities.

Section 19J empowers the Secretary to request audits of particular reports made under sections 19E (MSO obligation day stockholding data), 19F (MSO annual activity data) or 19H (Intermediary market participants) of the principal POFR Rules, where the Secretary holds concerns about the accuracy of information provided in any such report. In these circumstances, the Secretary may request the person who submitted the report to obtain an audit report in relation to either the report which is being questioned for accuracy, or the next report that will be submitted under the same section (19E, 19F or 19H). This request must be made in writing.

Subsection 19J(2) provides that the audit report must be prepared by a registered greenhouse and energy auditor in accordance with the requirements for reasonable assurance engagements under the NGER (Audit) Determination.

Subsection 19J(3) provides that the audit report must report whether reported MSO information complied with the requirements of Subdivision D and was fairly presented. This would include (if appropriate in the circumstances) a reasonable assurance conclusion that there is no misstatement in the matter being audited that is material or pervasive enough to affect the matter being audited as a whole. The use of registered national greenhouse and energy auditors recognises the significant skills this category of auditors have with energy auditing relevant to the MSO. These auditors already apply the NGER (Audit) Determination standard for greenhouse and energy audits, safeguard audits and audits under the Emissions Reduction Fund. Whether the information was ‘fairly presented’ would take into account the understanding of that term in auditing, including that matters of substance are reflected in the presentation of the information.

Subsection 19J(4) of the principal POFR Rules requires that the report is provided to the Secretary within specified timeframes; namely:

* if the Secretary has requested an audit of a report that has already been provided under section 19E, 19F or 19H – no later than 90 days after being requested
* if the Secretary has requested an audit of a report that has not yet been provided under section 19E, 19F or 19H – no later than 60 days after the day the report was due to be provided, although an alternative timeframe may be negotiated between the person and the Secretary.

More time is given to prepare audits of past reports as it is understood that digging up older documentation and files may be more time consuming than providing current information.

These audit reporting provisions complement, and are supported by, the duties applying under sections 13C and 13D of the POFR Act for persons to provide reasonable facilities and assistance for audits and to comply with requirements in relation to reports of audits.

Under subsection 19J(5), the Secretary is limited to requesting such an audit once per financial year, unless a significant discrepancy is identified in the fuel information reported which would justify further audit requests to be made.

As the MSO scheme develops over time, the need for audits can be reassessed to ensure they are proportionate and do not impose unnecessary costs or regulatory burden. As these audits are a compliance activity, there is no merits review of the decision to request such reports.

The NGER (Audit) Determination is already defined by the POFR Rules and incorporated as in force from time to time. It is available from [www.legislation.gov.au](http://www.legislation.gov.au).