



THE NEWFOUNDLAND GAZETTE

EXTRAORDINARY

PUBLISHED BY AUTHORITY

ST. JOHN'S, FRIDAY, NOVEMBER 16, 2001

NEWFOUNDLAND REGULATIONS

79/01



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Petroleum Products Regulations
under the
Petroleum Products Act
(O.C. 2001-705)

(Filed November 16, 2001)

Under the authority of section 23 of the *Petroleum Products Act*, the Lieutenant-Governor in Council makes the following regulations.

Dated at St. John's, November 16, 2001.

Deborah E. Fry
Clerk of the Executive Council

REGULATIONS

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Short title

1. These regulations may be cited as the *Petroleum Products Regulations*.

Definitions

2. In these regulations

- (a) "benchmark" means, with respect to a type of heating fuel or motor fuel, the corresponding product classification utilized by Platts under the heading "Product Price Assessments, New York Cargo", and as set out in the Schedule;
- (b) "Bloombergs" means Bloombergs Oil Buyers Guide;
- (c) "maximum retail price" means the petroleum product base price for a type of heating fuel or motor fuel, which constitutes the maximum price chargeable by a retailer to a consumer for that type of heating fuel or motor fuel;
- (d) "maximum wholesale price" means the petroleum product base price for a type of heating fuel or motor fuel, which constitutes the maximum price chargeable by a wholesaler to a retailer for that type of heating fuel or motor fuel;
- (e) "Platts" means Platts Oilgram Price Report; and
- (f) "point of sale" means
 - (i) with respect to the sale of heating fuel or motor fuel by a wholesaler to a retailer, the location of the outlet from which the retailer intends to sell the heating fuel or motor fuel to consumers, or
 - (ii) with respect to the sale of heating fuel or motor fuel by a retailer to a consumer, the location at which the heating fuel or motor fuel is delivered to the consumer.

Information to be provided

3. (1) Within 30 days after these regulations come into force, every wholesaler and retailer shall provide the commissioner, in writing, with

- (a) the name of an individual and his or her position title, designated by the wholesaler or retailer, to receive all notices, decisions, requests, correspondence and other communications from the commissioner on behalf of that wholesaler or retailer; and
- (b) contact information for the wholesaler or retailer, including where possible

- (i) a mailing address;
- (ii) a telephone number,
- (iii) a facsimile number, and
- (iv) an electronic mail address.

(2) A person who becomes a wholesaler or retailer after these regulations come into force shall provide the commissioner with the information set out in subsection (1) within 30 days of becoming a wholesaler or retailer.

(3) Where the Act or these regulations require the commissioner to inform a wholesaler or retailer of a decision taken by the commissioner, the commissioner shall inform the wholesaler or retailer in the manner that the commissioner considers appropriate after considering the information provided under subsection (1) or (2).

(4) Where a decision of the commissioner affects all retailers or wholesalers or a number of either, the commissioner may inform them of the decision by using a general means including a newspaper in circulation in the province.

(5) A wholesaler or retailer shall inform the commissioner of any changes to the contact information submitted under subsection (1) or (2).

Periodic reports

4. (1) The commissioner may require wholesalers to submit written reports on a quarterly basis containing:

- (a) the name, location, zone or sub-zone, and type of retailer to whom motor fuels or heating fuels are sold or held for reselling to consumers;
- (b) the volumes of each product sold to each retailer by outlet totalled in litres on a monthly basis;
- (c) the average monthly price of each product identified in paragraph (b) including taxes and excluding taxes; and
- (d) the amounts of each type of taxes identified in the totals referred to in paragraph (c).

(2) The commissioner may require retailers to submit written reports for retail motor fuel outlets on a quarterly basis containing

- (a) the name, location, zone or sub-zone, and type of each retail outlet at which petroleum fuels are sold to consumers;
- (b) the type and capacity in litres of each storage tank at each outlet by type and grade of product;
- (c) the volumes of each type or grade of fuel sold totalled in litres on a monthly basis;
- (d) the volume of each product sold through self-serve pumps and through full service pumps totalled in litres on a monthly basis; and
- (e) the daily pump prices for each type, grade and service mode for each product for the period.

(3) The commissioner may require retailers to submit written reports for retail heating fuels on a quarterly basis as follows:

- (a) the name, location, and operating zone or sub-zone areas of each retailer of heating fuels;
- (b) a description of the method by which the retailer purchases products from a wholesaler;
- (c) the name of each wholesaler and volumes purchased from each by product type and volume in litres on a monthly basis;
- (d) the capacity in litres of each tank-truck the heating fuel retailer uses to deliver products to consumers;
- (e) the capacity in litres of each storage tank if the retailer draws product from a designated bulk storage plant;
- (f) the volumes of each type or grade of fuel sold totalled in litres on a monthly basis; and
- (g) the delivered tank wagon price for each type and grade of heating fuel sold to consumers for the period.

(4) A retailer shall record the starting price for the period and then indicate the changes and effective dates, if any, of price adjustments during the reporting period.

(5) The commissioner shall keep confidential all information supplied to him or her by wholesalers and retailers of heating fuel and motor fuel under this section except where the release of the information is approved by the wholesaler or retailer who provided it.

(6) A request by the commissioner under this section shall be made in writing and shall indicate the date on which a response to the request must be submitted to the commissioner.

Zone criteria

5. (1) The commissioner for the purpose of dividing the province into zones shall consider

(a) the prices that have been charged to retailers and consumers for heating fuel and motor fuel throughout the province, for the period of time that the commissioner considers appropriate;

(b) those factors and costs that may explain the differences, if any, between the prices that have been charged to retailers and consumers for heating fuel and motor fuel throughout the province for the period of time considered appropriate by the commissioner under paragraph (a), including,

(i) transportation costs,

(ii) volume of sales,

(iii) storage costs,

(iv) distributions costs, and

(v) inventory turnover rates; and

(c) the other considerations that the commissioner considers relevant.

(2) The commissioner shall inform wholesalers and retailers as to the zones he or she has established.

Point of sale

6. (1) A wholesaler shall not charge a price to a retailer for heating fuel or motor fuel greater than the maximum wholesale price for the zone within which the point of sale is located.

(2) A retailer shall not charge a price to a consumer for heating fuel or motor fuel greater than the maximum retail price for the zone within which the point of sale is located.

(3) Notwithstanding subsections (1) and (2), the commissioner may, in accordance with the Act and these regulations, set a different maximum wholesale price or retail price that a wholesaler or retailer may charge for heating fuel or motor fuel within a zone.

Components of the maximum price

7. (1) For each type of heating fuel and motor fuel, the maximum retail price shall be the sum of

- (a) the benchmark price;
- (b) the total allowed mark-up;
- (c) applicable taxation; and
- (d) any allowed service costs.

(2) For each type of heating fuel and motor fuel, the maximum wholesale price shall be the sum of

- (a) the benchmark price;
- (b) the allowed wholesale mark-up; and
- (c) applicable taxation.

(3) For the purpose of establishing the maximum wholesale price or maximum retail price of heating fuel or motor fuel, the commissioner may hold a hearing where he or she considers one is desirable.

Confidentiality

8. Unless authorized by the commissioner, a wholesaler or retailer shall not disclose to any other person a price established by the commissioner before the date on which the price comes into force.

Initial setting of the benchmark price

9. (1) For each type of motor fuel and heating fuel, the benchmark price shall be the average of the average of the daily high and low product prices for the benchmark, as reported in Platts or Bloomburgs during the 4 week period immediately preceding the date on which the maximum wholesale price or maximum retail price is to take effect.

(2) The commissioner shall use daily noon exchange rates published by the Bank of Canada for the purpose of converting United States currency to Canadian currency.

(3) The benchmark price determined by the commissioner shall be expressed in Canadian cents per litre or other unit of measurement appropriate to the petroleum product.

Initial setting of the total allowed mark-up

10. (1) For each type of motor fuel and heating fuel, the commissioner shall, for the purpose of establishing the total allowed mark-up, consider

- (a) the historical margin between product prices for the benchmark and the prices that have been charged to consumers within the province or zone for the type of heating fuel or motor fuel, excluding applicable taxation, for the period of time that the commissioner considers appropriate;
- (b) whether the historical margins identified as a result of paragraph (a) are reasonable, taking into account
 - (i) transportation costs,
 - (ii) volume of sales,
 - (iii) storage costs,
 - (iv) distributions costs, and
 - (v) inventory turnover rates; and
- (c) that the maximum retail price only sets a maximum price for the sale of motor fuel and heating fuel by retailers to consumers and should, to the extent possible, allow competition between retailers within a zone or the province; and

- (d) the other considerations that the commissioner considers relevant.

(2) The commissioner may establish a different maximum retail price that a retailer may charge for a type of heating fuel or motor fuel within a zone by establishing a different total allowed mark-up for that retailer by taking into consideration

- (a) whether a different total allowed mark-up would be fair and reasonable taking into account the

- (i) transportation costs,

- (ii) volume of sales,

- (iii) storage costs,

- (iv) distributions costs, and

- (v) inventory turnover rates

of the retailer in comparison to other retailers within the zone; and

- (b) the other considerations that the commissioner considers relevant.

(3) The total allowed mark-up shall be expressed in Canadian cents per litre or other unit of measurement appropriate to the petroleum product.

Initial setting of the allowed wholesale mark-up

11. (1) After the total allowed mark-up for a type of heating fuel or motor fuel has been established, the commissioner shall establish the allowed wholesale mark-up for that type of heating fuel or motor fuel by taking into consideration,

- (a) the historical margin between the benchmark price and the prices that have been charged to retailers within the province or a zone for the type of heating fuel or motor fuel, excluding applicable taxes, for the period the commissioner considers appropriate;

- (b) whether the historical margins identified as a result of paragraph (a) are reasonable, taking into account
 - (i) transportation costs,
 - (ii) volume of sales,
 - (iii) storage costs,
 - (iv) distribution costs, and
 - (v) inventory turnover rates; and
- (c) that the maximum wholesale price only sets a maximum price for the sale of motor fuel and heating fuel by wholesalers to retailers and should, to the extent possible, allow competition between wholesalers within a zone or the province.

(2) The commissioner may establish a different maximum wholesale price that a wholesaler may charge for a type of heating fuel or motor fuel within a zone by establishing a different allowed wholesale mark-up taking into consideration

- (a) whether a different allowed wholesale mark-up would be fair and reasonable taking into account the
 - (i) transportation costs,
 - (ii) volume of sales,
 - (iii) storage costs,
 - (iv) distributions costs, and
 - (v) inventory turnover ratesof the wholesaler in comparison to other wholesalers within the zone; and
- (b) the other considerations that the commissioner considers relevant.

(3) The allowed wholesale mark-up shall be expressed in Canadian cents per litre or other unit of measurement appropriate to the petroleum product.

Applicable taxation

12. The applicable taxation shall be the amount of taxation payable by a wholesaler or retailer in respect of a type of heating fuel or motor fuel and shall be expressed in Canadian cents per litre or other unit of measurement appropriate to the petroleum product.

Allowed service costs

13. (1) The commissioner may establish an allowed service cost in respect of a particular service offered by retailers to consumers in relation to a type of heating fuel or motor fuel that is not reflected in the benchmark price, total allowed mark-up or applicable taxation.

(2) When establishing an allowed service cost, the commissioner shall consider the costs to the retailer to provide the service to consumers.

(3) The maximum retail price for a type of heating fuel or motor fuel shall only include the allowed service cost if the particular service has been provided or will be provided to the consumer by the retailer.

(4) The allowed service cost shall be expressed in Canadian cents per litre or other unit of measurement appropriate to the petroleum product.

Periodic adjustment timing

14. (1) The commissioner shall adjust the benchmark price for each type of motor fuel and heating fuel on a monthly basis, but where circumstances warrant, the commissioner may adjust prices at other times.

(2) For each type of motor fuel and heating fuel, the benchmark price shall be adjusted to be the average of the average of the daily high and low product prices for the benchmark, as reported in Platts, during the period immediately following

(a) the date on which the benchmark price was first established by the commissioner; or

(b) where the benchmark price has been previously adjusted, the date on which the benchmark price was last adjusted.

(3) The commissioner may, at any time, adjust the total allowed mark-up or allowed wholesale mark-up for a type of heating fuel or motor fuel taking into consideration

(a) whether an adjustment would be reasonable given changes, if any, to

(i) transportation costs,

(ii) volume of sales,

(iii) storage costs,

(iv) distributions costs, and

(v) inventory turnover rates

since the total allowed mark-up or allowed wholesale mark-up was last established by the commissioner; and

(b) the other considerations that the commissioner considers relevant.

(4) The commissioner may, at any time, adjust the allowed service cost for a type of motor fuel or heating fuel, after considering whether an adjustment would be reasonable given changes to the costs to the retailer to provide the service to consumers since the allowed service cost was last established by the commissioner.

(5) When making an adjustment under this section, the commissioner may hold a hearing where he or she considers one is desirable.

(6) Where the commissioner adjusts the benchmark price, the total allowed mark-up, the allowed wholesale mark-up, or the allowed service cost he or she shall inform wholesalers and retailers of the adjustment and the date on which the new maximum wholesale price or maximum retail price comes into effect.

(7) Where a decision of the commissioner affects all retailers or wholesalers or a number of either, the commissioner may inform them of the decision by using a general means including a newspaper in circulation in the province.

Application for
change in maximum
price

15. (1) Where a wholesaler or retailer applies for a change in price under subsection 8(1) of the Act, the commissioner may set a new maximum wholesale price or maximum retail price that the applicant may charge for a type of heating fuel or motor fuel within a zone by adjusting

- (a) the total allowed mark-up or wholesale mark-up for the applicant;
- (b) the allowed service cost; or
- (c) both the total allowed mark-up and the allowed service cost.

(2) The commissioner may adjust the total allowed mark-up or wholesale mark-up for the applicant, taking into consideration

- (a) whether a change would be reasonable as a result of a change to
 - (i) transportation costs,
 - (ii) volume of sales,
 - (iii) storage costs,
 - (iv) distributions costs, and
 - (v) inventory turnover rates

since the total allowed mark-up or allowed wholesale mark-up was last established by the commissioner; and

- (b) the other considerations that the commissioner considers relevant.

(3) The commissioner may adjust the allowed service cost for an applicant, after considering whether an adjustment would be reasonable as a result of a change to the costs to the retailer to provide the service to consumers since the allowed service cost was last established by the commissioner.

Schedule

Benchmark	Motor Fuel/Heating Fuel
Platts New York Cargo Unl 87	Regular Unleaded Gasoline
Platts New York Cargo Unl 89	Mid-grade Unleaded Gasoline
Platts New York Cargo Super Unl 93	Premium Unleaded Gasoline
Platts New York Cargo LS No. 2	Low Sulphur Diesel
Platts New York Cargo No. 2	Furnace Oil
Platts New York Cargo No. 2	Stove Oil
Bloomberg's Oil Buyers Guide Sarnia Propane	Propane

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