

2002 No. 1928

CUSTOMS AND EXCISE

The Biodiesel and Bioblend Regulations 2002

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| <i>Made</i> - - - - - | <i>25th July 2002</i> |
| <i>Laid before Parliament</i> | <i>25th July 2002</i> |
| <i>Coming into force</i> - - | <i>26th July 2002</i> |

The Commissioners of Customs and Excise, in exercise of the powers conferred upon them by sections 6AC(1)(a) and (b), (2) and (4), 21(1)(a) and (2) and 24(1) of, and paragraph 11 of Schedule 3 and paragraph 3 of Schedule 4 to, the Hydrocarbon Oil Duties Act 1979(a), section 118A(1) and (2) of the Customs and Excise Management Act 1979(b) and of all other powers enabling them in that behalf, hereby make the following regulations:

Citation and commencement

1. These Regulations may be cited as the Biodiesel and Bioblend Regulations 2002 and come into force on 26th July 2002.

Interpretation

2. In these Regulations—

“biodiesel duty” means the duty of excise charged on biodiesel by section 6AA(1) of the Oil Act(c);

“biodiesel record” has the meaning given in regulation 7;

“business day” means a day that is a business day within the meaning of section 92 of the Bills of Exchange Act 1882(d);

“chargeable use” means use of biodiesel—

(a) as fuel for any engine, motor or other machinery, or

(b) as an additive or extender in any substance so used;

“his premises” means any premises in relation to which a person is a producer, and which, if not entered by him, are required by regulation 4 to be entered;

“the Oil Act” means the Hydrocarbon Oil Duties Act 1979;

(a) 1979 c. 5; section 6AC was added by section 5(4) of the Finance Act 2002 (c. 23); section 21(1) was amended by Part I(4) of Schedule 23 to the Finance Act 1993 (c. 34); amendments not relevant to these Regulations have been made to section 24(1); paragraph 11 of Schedule 3 was amended by paragraph 4 of Schedule 4 to the Finance Act 1985 (c. 54); paragraph 3 of Schedule 4 was substituted by section 6(3) of the Finance Act 1981 (c. 35) and relevant amendment was made by paragraph 4(2) of Schedule 2 to the Finance Act 2002; section 1(2) defines “hydrocarbon oil”; section 2AA(1) (inserted by section 5(2) of the Finance Act 2002) defines “biodiesel”; section 6AB(2) (inserted by section 5(2) of the Finance Act 2002) defines “bioblend”; section 27(2) provides for the Hydrocarbon Oil Duties Act 1979 to be construed as one with the Customs and Excise Management Act 1979 (c. 2) and section 27(3) applies the definition of “the Commissioners” in section 1(1) of that Act, namely “the Commissioners” means “the Commissioners of Customs and Excise”.

(b) 1979 c. 2; section 118A was added by Schedule 5 to the Finance Act 1991 (c. 31).

(c) Section 6AA was added by section 5(4) of the Finance Act 2002.

(d) 1882 c. 61 (45 and 46 Vict); section 92 was amended by sections 3 and 4 of the Banking and Financial Dealings Act 1971 (c. 80).

“producer” means a person who, within the meaning of section 6AA of the Oil Act—

- (a) sets aside biodiesel for a chargeable use, or
- (b) makes a chargeable use of biodiesel,

with a consequence that biodiesel duty is charged.

Construction of references to hydrocarbon oil in the Oil Act

3.—(1) The references to hydrocarbon oil in the following provisions of the Oil Act are to be construed as including references to biodiesel—

- (a) section 15(1) (drawback of duty on exportation etc.) (a);
- (b) section 19(3) (fuel used in lifeboats etc.) (b);
- (c) section 21(1)(a) and (2) (regulations with respect to hydrocarbon oil);
- (d) paragraph 11 of Schedule 3 (subjects for regulations).

(2) The references to hydrocarbon oil in the following provisions of the Oil Act are to be construed as including references to bioblend—

- (a) section 3 (hydrocarbon oil as an ingredient in imported goods);
- (b) section 15(1) (drawback of duty on exportation etc.);
- (c) section 19(3) (fuel used in lifeboats etc.);
- (d) section 20(1)(a) and (3)(a) (contaminated oil).

(3) The reference to the duty on hydrocarbon oil in section 15(1) of the Oil Act is to be construed as including reference to the duty under—

- (a) section 6AA, and
- (b) section 6AB,

of the Oil Act.

Entry of premises

4.—(1) Subject to the following provisions of this regulation, a producer shall—

- (a) before he sends out from any premises a consignment of biodiesel in respect of which a delivery note would be required to be issued by virtue of regulation 5, or
- (b) as soon as practicable after he makes a chargeable use of biodiesel at any premises with the consequence that biodiesel duty is charged,

enter those premises in accordance with section 108 of the Customs and Excise Management Act 1979(c).

(2) But paragraph (1) does not apply where the producer has already entered the premises in accordance with section 108 for the purposes of these Regulations.

(3) Where—

- (a) this regulation applies, and
- (b) the time by which the producer must make entry in accordance with paragraph (1) falls before 1st August 2002,

he shall make entry on or before 15th August 2002 rather than at the time prescribed by paragraph (1).

Delivery notes

5.—(1) Subject to paragraph (2), a producer shall, in respect of each consignment of biodiesel sent out from his premises, issue to the consignee a serially numbered delivery note containing the particulars specified in Schedule 1.

(2) Paragraph (1) only applies in the case of biodiesel that is charged with biodiesel duty because it is set aside for chargeable use when on those premises from which it is sent out.

(a) Sections 15 and 17 to 19 were modified by section 12(3) of the Finance Act 1993; section 15 was amended by section 12(7)(b) of the Finance Act 1993 and by section 4 of the Finance Act 1999 (c. 16).

(b) Relevant amendments were made by section 8(2)(b) of the Finance Act 1996 (c. 8) and by section 6(4) of the Finance Act 1981.

(c) Section 108 was amended by paragraphs 1 and 7 of Schedule 4 to the Finance Act 1994 (c. 9).

Returns and payment of biodiesel duty

6.—(1) Subject to paragraph (4), a producer shall, in relation to his premises, not later than the fifteenth day of the month next following the preceding month—

- (a) pay the Commissioners at the specified address the amount of biodiesel duty charged in respect of all biodiesel—
 - (i) sent out from; and
 - (ii) put to a chargeable use at, his premises in the preceding month, and
- (b) furnish the Commissioners, at the specified address, a return in respect of the preceding month on the form set out in Schedule 2 to the Other Fuel Substitutes (Payment of Excise Duty etc.) Regulations 1995^(a) containing full information in respect of the relevant matters and a declaration, signed by him, that the return is true and complete.

(2) In paragraph (1)(b) the “relevant matters” are all matters specified on the form, with the following modifications—

- (a) in the box headed “Address of premises from which fuel substitutes sent out (if different from that shown opposite)” shall be entered the address of the premises from which biodiesel is sent out (if different from that shown opposite);
- (b) no information is required to be entered in the box headed “Registration number”;
- (c) no information is required to be entered in the box headed “Accounting Document Number”;
- (d) no information is required to be entered in the first five rows of the table on the first page;
- (e) in the last row of the table on the first page—
 - (i) in the column headed “Account (Tax Type)” the number “589” shall be inserted after “33”,
 - (ii) the word “Biodiesel” shall be inserted in the next column to the right, and
 - (iii) the quantity in litres and amount of biodiesel duty due shall be entered in the following two columns.

(3) In this regulation, “the specified address” means such address as is specified in directions made by the Commissioners under section 116 of the Customs and Excise Management Act 1979^(b).

(4) Where the fifteenth day of the month would fall on a day that is not a business day, the obligations of paragraph (1) shall be discharged not later than the last business day before that fifteenth day.

Biodiesel record

7. A producer shall keep and preserve at his premises a record, to be known as the biodiesel record, in accordance with the provisions of, and containing the particulars specified in, Schedule 2.

Applications for repayment

8. Applications for repayment under section 17A of the Oil Act^(c) (biodiesel used otherwise than as road fuel)—

- (a) must be made no later than 3 months after the period to which they relate, and that period must not be shorter than 2 months nor longer than 3 years, and
- (b) shall not lie where the amount to be paid is less than £50.

Amendment to other regulations

9. In the Other Fuel Substitutes (Payment of Excise Duty etc.) Regulations 1995—

- (a) in regulation 2(b), for the words “Dorset House” to “or such other address which may be” substitute “such address as is”,

(a) S.I. 1995/2717.

(b) Section 116 was amended by paragraphs 1 and 11 of Schedule 4 to the Finance Act 1994.

(c) Section 17A was added by paragraph 4 of Schedule 2 to the Finance Act 2002.

- (b) in the first box on the second page of the form set out in Schedule 2, omit the address starting with the words “The Collector”, and
- (c) immediately after paragraph 11 of Schedule 3, insert—
 - “**12.** The fuel substitutes record shall be kept and preserved by the producer for 6 years or such lesser period as the Commissioners may require.”.

New King’s Beam House
22 Upper Ground
LONDON
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25th July 2002

Ray McAfee
Commissioner of Customs and Excise

SCHEDULE 1

Regulation 5(1)

PARTICULARS REQUIRED OF THE DELIVERY NOTE

The particulars that are to be specified on the delivery note are as follows—

- (a) the date of sending out of the consignment of biodiesel in respect of which regulation 5 applies;
- (b) the fact that it is biodiesel;
- (c) the quantity of that biodiesel;
- (d) the address from which that biodiesel is sent out and of the place to which it is consigned;
- (e) the name and address of the consignee to whom that biodiesel is sent.

SCHEDULE 2

Regulation 7

PARTICULARS REQUIRED OF THE BIODIESEL RECORD

1. The particulars to be entered in the biodiesel record in the event of biodiesel duty being charged in relation to the producer either setting aside biodiesel for a chargeable use or making chargeable use of biodiesel are—

- (a) in the case of setting aside, the particulars required by paragraphs 4 and 5, and
- (b) in the case of making a chargeable use, the particulars required by paragraphs 6 and 7.

2. Particulars falling within paragraphs 4 and 5 are to be entered before the biodiesel is sent out from his premises.

3. Particulars falling within paragraphs 6 and 7 are to be entered no later than the chargeable use of the biodiesel on his premises.

4. The amount of each consignment of biodiesel set aside for a chargeable use on his premises and sent out from his premises on that basis.

5. In addition to any particulars entered in the biodiesel record under paragraph 4, the following particulars shall be added as corresponding particulars or as cross-referenced particulars—

- (a) the date of the sending out of the consignment of biodiesel;
- (b) the name and address of the consignee to whom that biodiesel is sent;
- (c) the number of the delivery note required by regulation 5 to be issued to the consignee;
- (d) the amount and rate of biodiesel duty charged in respect of that biodiesel.

6. The amount of biodiesel put to chargeable use at his premises.

7. In addition to any particular entered in the biodiesel record under paragraph 6, the following particulars shall be added as corresponding particulars or as cross-referenced particulars—

- (a) the date of the chargeable use;
- (b) the amount and rate of biodiesel duty charged.

8. The biodiesel record shall be kept and preserved by the producer for 6 years or such lesser period as the Commissioners may require.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force on 26th July 2002, regulate the administration and collection of the excise duty charged on biodiesel by section 6AA(1) of the Hydrocarbon Oil Duties Act 1979 c. 5 (“the Oil Act”) and make provision in respect of bioblend charged to excise duty under section 6AB of the Oil Act.

Regulation 2 defines certain terms used in the Regulations, such as “biodiesel record”, “chargeable use” and “producer”.

Regulation 3 provides that certain references to hydrocarbon oil, or to the duty on hydrocarbon oil, in the Oil Act are to be construed to include references to biodiesel or bioblend, or to the duty on biodiesel or bioblend, as the case may be.

Regulation 4 requires producers to make entry of their premises in accordance with section 108 of the Customs and Excise Management Act 1979 in respect of their first chargeable use of biodiesel on those premises. This regulation also prescribes the time when such entry must be made.

Regulation 5 requires producers to issue delivery notes, containing the particulars specified in Schedule 1, in respect of certain consignments of biodiesel sent out from their premises.

Regulation 6 imposes the requirement that producers must pay biodiesel duty and furnish monthly returns to the Commissioners within a prescribed time limit.

Regulation 7 requires producers to maintain at their premises a biodiesel record in accordance with, and containing the particulars specified in, Schedule 2 of the Regulations. Schedule 2 also specifies the time within which the record must be completed and for how long it must be preserved.

Regulation 8 requires claims for repayment of duty made under section 17A of the Oil Act to be made within a prescribed time limit, prescribes the minimum and maximum period of claim and provides that such claims shall not lie where the amount to be paid is less than £50.

Regulation 9 makes consequential amendments to the Other Fuel Substitutes (Payment of Excise Duty etc.) Regulations 1995. It also adds the requirement that the fuel substitutes record that is required to be kept under the Regulations must be preserved for the same time period as is prescribed by Schedule 2 of these Regulations in respect of the biodiesel record.

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