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STATUTORY INSTRUMENTS

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**2007 No. 1640**

**EXCISE**

**The Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc) (Amendment) Regulations 2007**

<i>Made</i>	- - - -	<i>8th June 2007</i>
<i>Laid before Parliament</i>		<i>8th June 2007</i>
<i>Coming into force</i>	- -	<i>30th June 2007</i>

The Commissioners for Her Majesty's Revenue and Customs<sup>(1)</sup> make the following Regulations in exercise of the powers conferred by section 118A(1) and (2) of the Customs and Excise Management Act 1979<sup>(2)</sup>, sections 6AC(1)(a) and (4), 6AF(1)(a) and (4), 21(1)(a) of, and paragraphs 3 and 11 of Schedule 3 to the Hydrocarbon Oil Duties Act 1979<sup>(3)</sup>, section 1(1), (3)(a) and (6)(a) of the Finance (No 2) Act 1992<sup>(4)</sup> and regulation 3(1)(e) of the Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc) Regulations 2004<sup>(5)</sup> :

**Citation and commencement**

1. These Regulations may be cited as the Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc) (Amendment) Regulations 2007 and come into force on 30th June 2007.

2. The Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc) Regulations 2004 are amended as follows.

**Amendment of Part 1**

3.—(1) Amend regulation 2 as follows.

(2) Renumber regulation 2 as paragraph (1) of regulation 2.

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- (1) The functions of the Commissioners of Customs and Excise were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5(2) of the Commissioners for Revenue and Customs Act 2005 (c. 11). Section 50(1) of that Act provides that a reference to the Commissioners of Customs and Excise shall be taken to be as a reference to the Commissioners for Her Majesty's Revenue and Customs.
- (2) 1979 c.2; section 1(1) defines "the Commissioners" as meaning the "Commissioners of Customs and Excise". Section 118A was inserted by the Finance Act 1991, Schedule 5 (c.31); there are amendments not relevant to this instrument.
- (3) 1979 c.5; section 27(3) applies the definition of "the Commissioners" in section 1(1) of the Customs and Excise Management Act 1979 (c.2). Section 6AC was added by section 5(4) of the Finance Act 2002 (c.23). Section 6AF was added by section 10(3) of the Finance Act 2004 (c.12). Paragraph 11 of Schedule 3 was amended by the Finance Act 1985, Schedule 4, paragraph 4 (c.54).
- (4) 1992 c.48.
- (5) S.I. 2004/2065.

- (3) In the definition of “entered premises for “regulation 8” substitute “regulation 8A or 8E”.
- (4) After the definition of “entered premises” insert—

““exempt producer” means a producer who is not liable under regulation 8A or 8E to make entry of production premises;”.
- (5) After the definition of “fuel substitute duty” insert—

““large producer” means a producer whom the Commissioners have notified is a large producer in accordance with regulation 19A(1) (and that notification has not been withdrawn);”.
- (6) In the definition of “production premises” omit “, and which, if not entered by him, are required by regulation 8 to be entered”.
- (7) After the definition of “production premises” insert—

““quarter” means the period of three calendar months commencing on 1st January, 1st April, 1st July and 1st October in any year;

“section 108” means section 108 of the Customs and Excise Management Act 1979;”.
- (8) After regulation 2(1) insert—

“(2) References to “making entry” are references to making entry under section 108 of the Customs and Excise Management Act 1979.”.

#### **Amendment of Part 4**

- 4.—(1) For regulation 8 substitute the following—

“**8.**—(1) Regulation 8A applies to a producer of biofuel with respect to whom either the first condition or the second condition is satisfied.

(2) The first condition is that at the end of any calendar month the producer has produced 2,500 litres or more of biofuel in the previous 12 months.

(3) The second condition is that at any time there are reasonable grounds to believe that the producer will produce 2,500 litres or more of biofuel in the following 12 months.

**8A.**—(1) A producer to whom this regulation applies is liable to make entry of all premises at which he has produced or will produce biofuel, but this is subject to regulations 8B and 8C.

(2) A producer liable to make entry of premises must make entry of them not later than the day specified in paragraph (3).

(3) The specified day is—

- (a) in the case of a producer with respect to whom the first condition is satisfied, the thirtieth day following the end of the calendar month in question;
- (b) in the case of a producer with respect to whom the second condition is satisfied, the thirtieth day following the day on which reasonable grounds arise for believing that he will produce that quantity.

**8B.** A producer is not liable to make entry of production premises under regulation 8A if he has already entered the premises in accordance with section 108 for—

- (a) the purposes of that regulation; or
- (b) purposes treated as having effect under that regulation, and that entry has not been cancelled by the Commissioners under regulation 8F.

**8C.** A producer who meets the first condition specified in regulation 8(2) ceases to be liable to make entry of production premises if he satisfies the Commissioners that he will

produce less than 2,500 litres of biofuel in the 12 months immediately following the date he becomes liable.

**8D.** A producer to whom regulation 8A applies must not send out from any premises a consignment of biofuel, which is charged with biofuels duty because it is set aside for chargeable use, before he makes entry of those premises.

#### **Requirement to make entry of production premises used by several producers**

**8E.—**(1) This regulation applies to two or more producers of biofuel with respect to whom—

- (a) the first and second conditions are satisfied; and
- (b) either the third condition or the fourth condition is satisfied.

(2) The first condition is that the producers produce biofuel at the same premises or at the same sets of premises (“those premises”).

(3) The second condition is that the producers have not previously made entry of those premises for the purpose of this regulation or the purposes specified in regulation 8(B); or, if they have made such entry, that entry has been cancelled by the Commissioners under regulation 8F.

(4) The third condition is that at the end of any calendar month the total quantity of biofuel produced by all of those producers at all of those premises in the previous 12 months is 2,500 litres or more.

(5) The fourth condition is that at any time there are reasonable grounds to believe that the total quantity of biofuel produced by all of those producers at all of those premises will be 2,500 litres or more in the following 12 months.

(6) Each producer of biofuel to whom this regulation applies is liable to make entry of all those premises at which he has produced or, there are reasonable grounds to believe, will produce biofuel, but this is subject to paragraph (10).

(7) A producer liable to make entry of those premises under paragraph (6) must make entry of them not later than the day specified in paragraph (8).

(8) The specified day is—

- (a) in the case of a producer with respect to whom the third condition is satisfied, the thirtieth day following the end of the calendar month in question;
- (b) in the case of a producer with respect to whom the fourth condition is satisfied, the thirtieth day following the day on which reasonable grounds arise for believing that quantity will be produced.

(9) Each producer to whom this regulation applies must not send out from any of those premises a consignment of biofuel, which is charged with biofuels duty because it is set aside for chargeable use, before he makes entry of those premises.

(10) A producer who meets the third condition ceases to be liable to make entry of those premises if he satisfies the Commissioners that the total quantity of biofuel produced by all of those producers at all of those premises will be less than 2,500 litres of biofuel in the 12 months following the date on which he becomes liable.

#### **Cancellation of an entry of production premises**

**8F.—**(1) The Commissioners may at any time cancel an entry made by a producer in respect of production premises if the Commissioners are satisfied that the producer—

- (a) has produced less than 2,500 litres of biofuel in the 12 months immediately preceding the proposed date of cancellation; or
  - (b) will produce less than 2,500 litres of biofuel in the 12 months immediately following the proposed date of cancellation.
- (2) Where two or more producers produce biofuel at the same premises or same sets of premises and the Commissioners are satisfied that the total quantity of biofuel produced by all those producers at all those premises—
- (a) is less than 2,500 litres in the 12 months immediately preceding the proposed date of cancellation; or
  - (b) will be less than 2,500 litres in the 12 months immediately following the proposed date of cancellation,
- they may cancel the entries of those premises.
- (3) The Commissioners must give a producer at least 30 days notice that they propose to cancel an entry before cancelling it.”.

#### **Amendment of Part 5**

5.—(1) Amend regulation 13 as follows.

(2) In paragraph (1) after “producer” insert “, other than an exempt producer,”.

6.—(1) After regulation 13 insert—

“13A.—(1) Every exempt producer must keep and preserve at production premises such records as may be specified in a notice published by the Commissioners and not withdrawn by a further notice.

(2) The records required to be preserved by virtue of paragraph (1) must be preserved by the exempt producer for 6 years, or such lesser period as the Commissioner may allow, starting on the day the record is made.”.

#### **Amendment of Part 6**

7.—(1) Amend regulation 17 as follows.

(2) In paragraph (1) after the word “biofuel” (where it appears a second time) insert the words “produced by a producer liable to make entry of premises under regulation 8A or 8E(6), who has not made such entry,”.

8.—(1) Amend regulation 19 as follows.

(2) For paragraph (1) substitute—

“(1) The requirements in paragraph (1A) apply to a producer, other than a large producer, in relation to—

- (a) each of his entered premises, and
- (b) any premises for which he is liable to make entry that have not been entered.

(1A) A producer to whom this paragraph applies must no later than the fifteenth day of each quarter—

- (a) furnish a return of the quantities of biodiesel, bioethanol and fuel substitute, and
- (b) pay the biofuels duty

in respect of which there was an excise duty point in the preceding quarter.”.

- (3) In paragraph (4) for “month” substitute “quarter”.
- (4) After paragraph (7) insert—
- “(8) Every producer who is a producer on 30th June 2007 must, in relation to each of his entered premises, no later than 13 July 2007 —
- (a) furnish a return of the quantities of biodiesel, bioethanol, and fuel substitute; and
- (b) pay the biofuels duty,
- in respect of which there was an excise duty point in June 2007.”.

- 9.—(1) After regulation 19 insert—

**“Large producers**

**19A.**—(1) The Commissioners may at any time notify a producer that he is a large producer if—

- (a) in the 12 months immediately preceding notification the producer has produced 450,000 litres or more of biofuel; or
- (b) they have reasonable grounds to believe that the producer will produce 450,000 litres or more of biofuel in the 12 months following notification.
- (2) The Commissioners may withdraw a notification given to a large producer under paragraph (9) if the producer satisfies them by a statement in writing that—
- (a) he has produced less than 450,000 litres of biofuel in the 12 months immediately preceding that statement, and
- (b) there are reasonable grounds to believe he will produce less than 450,000 litres of biofuel in the 12 months immediately following that statement.
- (3) The requirements in paragraph (4) apply to a producer who is for the time being a large producer in relation to —
- (a) each of his entered premises, and
- (b) any premises for which he is liable to make entry that have not been entered.
- (4) A large producer must no later than the fifteenth day of each month—
- (a) furnish a return of the quantities of biodiesel, bioethanol and fuel substitute, and
- (b) pay the biofuels duty
- in respect of which there was an excise duty point in the preceding month.
- (5) Regulations 19(2) to 19(8) apply to large producers as they apply to producers and in the case of regulation 19(4) it so applies with the substitution of “quarter” for “month”.

8th June 2007

*Paul Gray*  
*Dave Hartnett*  
Two of the Commissioners for Her Majesty’s  
Revenue and Customs

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations, which come into force on 30 June 2007, amend the Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc) Regulations 2004 (“the principal regulations”). They remove the obligations on small producers of biofuels (“exempt producers”) to make an entry of their production premises, make returns of biofuel produced and pay excise duty. They also introduce changes relaxing the frequency with which returns and duty payments must be made by producers other than “large producers”.

Regulation 3 introduces various new definitions into regulation 2 of the principal Regulations including the definition of “exempt producer” and “large producer”.

Regulation 4 amends regulation 8 and inserts regulations 8A to 8F into the principal regulations. The regulations impose a liability on a producer, who meets either of two specified conditions relating to the size of biofuel production, to make entry of those premises within a specified time period. They provide for liability to cease if a producer satisfies the Commissioners that future production will be less than a specified amount. Similar corresponding provision is made in relation to two or more producers producing biofuel in the same premises or sets of premises. A power is conferred on the Commissioners to cancel an entry of premises if they are satisfied that the amount of biofuel produced by producers will be less than specified amounts.

Regulation 5 amends regulation 13. It excludes exempt producers from the requirement to keep a motor fuels record.

Regulation 6 inserts new regulation 13A requiring exempt producers to keep such records as the Commissioners may specify. It stipulates a period of six years for the preservation of these records or such shorter period as the Commissioners permit.

Regulation 7 amends the excise duty point in regulation 17(1). It sets an excise duty point (the time at which duty is payable) for biofuel produced by a producer who has not discharged his liability to make entry of those premises under regulations 8A or 8E(6).

Regulation 8 amends regulation 19. It relaxes the frequency with which producers, other than large producers, must make returns and pay duty from monthly to quarterly.

Regulation 9 inserts regulation 19A. It provides for the Commissioners to notify producers, who meet specified conditions, that they are large producers and a cancellation procedure for producers who no longer fall within the specified conditions. It imposes an obligation on large producers to submit monthly returns and pay excise duty monthly. It applies the provisions of regulations 19(2) to (8) to them.