

**2010 No. 984**

**EXCISE**

**The Biodiesel Duty (Biodiesel Produced From Waste Cooking Oil) (Relief) Regulations 2010**

<i>Made</i> - - - -	<i>24th March 2010</i>
<i>Laid before Parliament</i>	<i>26th March 2010</i>
<i>Coming into force</i> - -	<i>1st April 2010</i>

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred on them by sections 6AC(1)(a) and (b), (2) and (4), and 20AA(1) and (2) of the Hydrocarbon Oil Duties Act 1979(a):

**Citation, commencement and effect**

1.—(1) These Regulations may be cited as the Biodiesel Duty (Biodiesel Produced From Waste Cooking Oil) (Relief) Regulations 2010.

(2) They come into force on 1st April 2010 and are effective until 31st March 2012.

**Interpretation**

2. In these Regulations—

“approved person” has the meaning given in regulation 4 of the “the Deferment Regulations”;

“biodiesel” has the meaning given by section 2AA of the Hydrocarbon Oil Duties Act 1979(b);

“the Biofuel Regulations” means the Biofuels and Other Fuel Substitutes (Payment of Excise Duties Etc.) Regulations 2004(c);

“the Deferment Regulations” means the Excise Duties (Deferred Payment) Regulations 1992(d);

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(a) 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 1(1) was amended by the Commissioners for Revenue and Customs Act 2005 (c.11), Schedule 4, paragraph 20 and 22(b) and defines “the Commissioners” as meaning the Commissioners for Revenue and Customs. Section 1(2) defines “hydrocarbon oil”. By virtue of section 6A(4) (inserted by section 11(1) of the Finance Act 1993 (c. 34)), the references to “hydrocarbon oil” in the provisions of the Act shall be construed as including references to any substance on which duty is charged under section 6A and references to duty on hydrocarbon oil shall be construed, where a substance is to be treated as such oil, as including references to duty under section 6A. Section 6AC was added by section 5(4) of the Finance Act 2002 (c. 23). Section 20AA was inserted by section 2(1) of the Finance Act 1989 (c. 26) and amended by Part 1(4) of Schedule 23 to the Finance Act 1993 (c. 34), paragraph 54 of Schedule 4 to the Finance Act 1994 (c. 9) and section 10(3) of the Finance Act 2002 (c. 23).

(b) Section 2AA was inserted by section 5(1), (2) of the Finance Act 2002.

(c) S.I. 2004/2065; relevant amending instrument SI2007/1640.

(d) S.I. 1992/3152; amended by S.I. 1996/2537; further relevant amending instruments S.I.2004/2065 and S.I.2005/3472.

“duty” means any duty of excise;

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

“producer” has the meaning given by regulation 2(1) of the Biofuels Regulations;

“qualified claimant” means a producer of biodiesel from waste cooking oil who is an approved person, or who is liable to pay biofuels duty in accordance with regulation 18 of the Biofuels Regulations.

### **Construction of references to hydrocarbon oil in the Oil Act**

3.—(1) The reference to duty on hydrocarbon oil in section 20AA (1)(a) of the Oil Act (power to allow reliefs) is to be construed as including a reference to duty under section 6AA of that Act (excise duty on biodiesel).

(2) The reference to hydrocarbon oil in section 20AA (2)(f) of the Oil Act is to be construed as including a reference to biodiesel.

### **Relief**

4.—(1) Relief is afforded in accordance with these Regulations if a quantity of biodiesel has been—

- (a) charged with duty, and
- (b) has been produced from waste cooking oil.

(2) No relief is allowed in respect of duty that is the subject of any other application or claim for repayment, remission or drawback.

### **Form of relief**

5. Relief shall be in the form of an allowance to be set-off against duty payable to the Commissioners by the qualified claimant.

### **Amount of relief**

6. The amount of relief shall be calculated in accordance with the following formula—

$$(A - B) \times V$$

where—

A is the rate of duty charged on biodiesel specified in section 6AA of the Oil Act;

B is the rate of duty charged on biodiesel minus £0.20 a litre ( $B = A - 20$ ); and

V is the volume, in litres, of biodiesel produced from waste cooking oil.

### **Set-off**

7.—(1) If, at the time that the claim is made, the qualified claimant is an approved person, the claimant must set-off the relief in accordance with regulation 6 of the Deferment Regulations.

(2) If, at the time that the claim is made, the qualified claimant is a biodiesel producer who is not an approved person, the claimant must set-off the relief against the biofuels duty that the claimant is obliged to pay under regulation 19(1A)(b) of the Biofuels Regulations.

### **Applications**

8.—(1) Applications for relief that is set-off in accordance with regulation 7(1) must be made by submitting the claim for set-off governed by regulation 7(2) of the Deferment Regulations.

(2) Applications for relief that is set-off in accordance with regulation 6(2) must be made on the return governed by regulation 19(1) or 19A(3) of the Biofuels Regulations that the claimant is obliged to furnish in respect of biofuels duty.

### **Cancellation of relief**

9.—(1) If there is a contravention of, or failure to comply with, any condition imposed by or under regulation 10, 11 or 12, the relief allowed shall be cancelled.

(2) Where any relief is cancelled, any person who is a qualified claimant in relation to the application for relief shall, on demand, be liable to repay the amount of the relief.

### **General conditions**

10.—(1) Relief is allowed subject to the following conditions.

(2) The qualified claimant must, on being so required by the Commissioners, furnish to their satisfaction evidence that—

- (a) the biodiesel that is the subject of the application for relief has been produced from waste cooking oil, and
- (b) the duty that is the subject of the application for relief has been charged and is not the subject of any other application or claim for repayment, remission or drawback.

(3) The amount of relief applied for must not exceed the amount of relief that may be allowed by regulation 6.

### **Samples**

11. For the purposes of regulation 10, the qualified claimant may be required to provide samples of the biodiesel in respect of which relief is claimed under these Regulations.

### **Conditions imposed by the Commissioners**

12. Relief is allowed subject to such conditions (if any) as the Commissioners impose on a qualified claimant.

*Steve Lamey*  
*Bernadette Kenny*

24th March 2010

Two of the Commissioners for Her Majesty's Revenue & Customs

## EXPLANATORY NOTE

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

These Regulations provide for a relief from biodiesel duty in respect of biodiesel produced from waste cooking oil. Relief is allowed upon application by a qualified claimant, who is defined in Regulation 2 as a person who produces biodiesel from waste cooking oil, who is an approved person, or who is liable to pay biofuels duty in accordance with regulation 18 of the Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc) Regulations 2004. Regulation 3 construes a reference to duty on hydrocarbon oil as including a duty on biodiesel. Regulation 4 sets out the scope of the relief.

Regulations 5 and 6 set out the form that the relief will take and how the relief shall be calculated. The relief is in the form of an allowance to be set-off against duty payable to the Commissioners for Her Majesty's Revenue and Customs.

Regulation 7 describes how the relief is to be set-off against liability to duty of the qualified claimant. Regulation 8 provides for the way that applications for relief must be made.

Regulation 9 requires the repayment of any relief where there is contravention of, or failure to comply with, the conditions under which the relief is granted.

Regulation 10 imposes conditions that claimants for relief must, on demand, produce evidence that the biodiesel has been produced from waste cooking oil and that the duty claimed has not been subject to any other relief.

Regulation 11 states that for the purposes of regulation 10, samples of the biodiesel for which relief is being claimed, may be required.

Regulation 12 provides for the imposition of further conditions on qualified claimants.

A full and final Impact Assessment has not been produced for this instrument as a negligible impact on the private or voluntary sectors is foreseen.

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