

2023 No. 1187

EXCISE

**The Hydrocarbon Oil (Marking and Designated Markers)
(Amendment) Regulations 2023**

Made - - - - *7th November 2023*

Laid before Parliament *8th November 2023*

Coming into force in accordance with regulation 2

The Commissioners for His Majesty’s Revenue and Customs make the following Regulations in exercise of the powers conferred by sections 24(1) and 24A(3) of, and Schedule 4 to, the Hydrocarbon Oil Duties Act 1979(a).

Citation

1. These Regulations may be cited as the Hydrocarbon Oil (Marking and Designated Markers) (Amendment) Regulations 2023.

Commencement

- 2.—(1) Subject to paragraph (2), these Regulations come into force on 1st December 2023.
(2) Regulations 5 and 6 come into force on 18th January 2024.

Amendment of the Hydrocarbon Oil (Designated Markers) Regulations 1996

3. In the Hydrocarbon Oil (Designated Markers) Regulations 1996(b), in regulation 2 (designation of markers), in paragraph (2), after the third designated marker, insert “n-butyl phenyl ether;”.

(a) 1979 c. 5. Section 27(3) gives “the Commissioners” the meaning in the Customs and Excise Management Act 1979 (c. 2) (“CEMA”). Section 1(1) of CEMA defines “the Commissioners”; the definition of “the Commissioners” was substituted by paragraph 22(b) of Schedule 4 to the Commissioners for Revenue and Customs Act 2005 (c. 11). Section 24(1) was amended by section 6(1) and (2) of the Finance Act 1981 (c. 35), section 7(2) of, and Part 1 of Schedule 41 to, the Finance Act 1996 (c. 8), section 3(2) of the Finance Act 2001 (c. 9) and paragraph 20(2) of Schedule 5 and paragraph 16 of Schedule 6 to the Finance Act 2008 (c. 9). Section 24A was inserted by section 7(1) of the Finance Act 1996 and subsection (3) was amended by paragraph 19(3) of Schedule 21 to the Finance Act 2021 (c. 26). Schedule 4 was amended by section 6(3) of, and Part 3 of Schedule 19 to, the Finance Act 1981, section 4(6) of the Finance Act 1982 (c. 39), Part 1 of Schedule 41 to the Finance Act 1996, paragraph 23 of Schedule 5 to the Finance Act 2008, paragraph 13 of Schedule 11 to the Finance Act 2020 (c. 14) and paragraph 23 of Schedule 21 to the Finance Act 2021.

(b) S.I. 1996/1251; amended by S.I. 2002/1773, 2015/36, 2022/234 and 2022/238.

Amendment of the Hydrocarbon Oil (Marking) Regulations 2002

4. The Hydrocarbon Oil (Marking) Regulations 2002(a) are amended in accordance with regulations 5 to 8.

5.—(1) Paragraph (1) of regulation 2 (interpretation) is amended as follows.

(2) Omit the definition of “Colour Index”.

(3) Omit the definition of “the common fiscal marker”.

(4) For the definition of “coumarin” substitute—

““coumarin” means 1,2-benzopyrone”.

(5) In the appropriate places insert—

““the general marker” means N-Ethyl-N-[2-(1-isobutoxyethoxy)ethyl]-4-(phenylazo)aniline;”;

““solvent orange” means 1-[(2-methylphenyl)azo]-2-naphthol;”.

(6) For the definition of “solvent red” substitute—

““solvent red” means a dye that consists of at least 50% 1-(2-methyl-4-(2-methylphenylazo)phenylazo)-2-naphthol, with any remainder consisting of one or more of—

(a) 1-(4-(phenylazo)phenylazo)-2-naphthol;

(b) 1-[[3-methyl-4-[(3-methylphenyl)azo]phenyl]azo]-2-naphthol;

(c) 1-[[2,5-dimethyl-4-[(2-methylphenyl)azo]phenyl]azo]-2-naphthol;

(d) 1-[[4-[(dimethylphenyl)azo]dimethylphenyl]azo]-2-naphthol.”.

6.—(1) Regulation 3 (prescribed markers and colouring substance) is amended as follows.

(2) In paragraph (1)—

(a) in sub-paragraph (a), for “paragraph (2)(a), (b) and (d)” substitute “paragraph (2)(a), (b), (d) and (e)”;

(b) in sub-paragraph (b), for “paragraph (2)(a), (c) and (d)” substitute “paragraph (2)(a), (c), (d) and (e)”;

(c) in sub-paragraph (c), for “paragraph (2)(a), (b) and (d)” substitute “paragraph (2)(a), (b), (d) and (e)”;

(d) in sub-paragraph (d), for “paragraph (2)(a), (c) and (d)” substitute “paragraph (2)(a), (c), (d) and (e)”.

(3) In paragraph (2)—

(a) For paragraph (a), substitute—

“(a) the general marker added in the proportion of not less than 3 kilograms per 1,000,000 litres of oil;”;

(b) in sub-paragraph (d), for “oil.” substitute “oil;”;

(c) after sub-paragraph (d), insert—

“(e) n-butyl phenyl ether added in the proportion of not less than 9.5 kilograms and not more than 14.25 kilograms per 1,000,000 litres of oil.”.

(4) For paragraph (3), substitute—

“(3) The colouring substance is not less than 4 kilograms of solvent red per 1,000,000 litres of oil and not less than 0.4 kilograms of solvent orange per 1,000,000 litres of oil.”.

7. After regulation 9 (use of composite solution) insert—

(a) S.I. 2002/1773; amended by S.I. 2007/1416, 2008/753, 2015/36, 2022/234 and 2022/238.

“Production of composite solution

9A.—(1) A solution containing the markers intended for use in marking oil, biodiesel or bioblend in accordance with these Regulations may be produced by the addition of markers to a base of oil, biodiesel or bioblend in a proportion greater than that specified in regulation 3(2) and (3).

(2) The markers may be added to the base of oil, biodiesel or bioblend at a time later than that specified in regulation 8(a), in the case of oil and bioblend, and later than that specified in regulation 8(b), in the case of biodiesel.

Requirement for even mixing

9B. When oil, biodiesel or bioblend is marked, whether by the addition to it of a solution containing the markers or otherwise, the markers must be so mixed into the oil, biodiesel or bioblend that the markers are evenly distributed throughout the oil, biodiesel or bioblend.”.

8.—(1) In regulation 15 (prohibition relating to other markers), in paragraph (1), after “marker” insert “or n-butyl phenyl ether”.

(2) This regulation ceases to have effect on 18th January 2024.

*Penny Ciniewicz
Jonathan Athow*

7th November 2023

Two of the Commissioners for His Majesty’s Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Hydrocarbon Oil (Marking) Regulations 2002 (S.I. 2002/1773) (“the principal Regulations”) and the Hydrocarbon Oil (Designated Markers) Regulations 1996 (S.I. 1996/1251) (“the designated markers Regulations”). There are amendments concerning the requirement to add a new marker, n-butyl phenyl ether, to oil, bioblend and biodiesel as a condition of the rebate of fuel duty on these products and other amendments concerning fuel marking and colouring.

Regulation 1 provides for citation.

Regulation 2 provides for commencement. The Regulations come into force on 1st December 2023 except for regulations 5 and 6 which come into force on 18th January 2024.

Regulation 3 amends the designated markers Regulations to provide for the designation of a new marker, n-butyl phenyl ether, for the purposes of identifying marked oil that is not to be used other than for an excepted machine (as defined by section 27(1) of the Hydrocarbon Oil Duties Act 1979).

Regulations 4 to 8 amend the principal Regulations.

Regulation 5 amends the definitions to define certain dyes which form part of the colouring substance prescribed in regulation 3 of the principal Regulations using chemical names, rather than by reference to the Colour Index. The marker previously referred to as the common fiscal marker, N-Ethyl-N-[2-(1-isobutoxyethoxy)ethyl]-4-(phenylazo)aniline, is now referred to as “the general marker”. The definition of coumarin is amended to correct an error in the chemical name used, but the chemical referred to remains the same.

Regulation 6 amends the provision which prescribes the required combination of markers and colouring substance for oils, biodiesel and bioblend to include the stated quantity of the new

marker, n-butyl phenyl ether. It halves the quantity of the general marker which is required and removes the upper limit on the allowed quantity. It changes the combination of dyes which are included in the colouring substance from a requirement for 4 kilograms of solvent red 24 per 1,000,000 litres oil to a requirement for 4 kilograms of red dye in total, referred to by the defined term “solvent red”. Of the 4 kilograms of red dye, at least 2 kilograms must be solvent red 24 (now referred to by its chemical name, 1-(2-methyl-4-(2-methylphenylazo)phenylazo)-2-naphthol). Any remainder of the 4 kilograms of dye must consist of one or more of four other specified red dyes, in any combination. As before, 0.4 kilograms of 1-[(2-methylphenyl)azo]-2-naphthol must also be added, which is now referred to by the defined term “solvent orange”.

Regulation 7 inserts a provision to the principal Regulations allowing the production of a composite solution for fuel marking by the addition of the markers to an oil, biodiesel or bioblend base in a greater proportion than is otherwise permitted, and after the point at which marking of fuel is otherwise allowed. It also inserts a requirement for markers to be evenly mixed into the oil, biodiesel or bioblend.

Regulation 8 amends regulation 15 of the principal Regulations so that, from commencement of the provision on 1st December 2023 until it ceases to have effect on 18th January 2024, it will not be contrary to regulation 15 to add the new marker to oil, biodiesel or bioblend. This allows, but does not require, n-butyl phenyl ether to be used during the period from 1st December 2023 until 18th January 2024, when regulation 6 comes into force.

The addition of n-butyl phenyl ether reflects Council Directive 95/60/EC of 27 November 1995 on fiscal marking of gas oils and kerosene (OJ L 291, 6.12.1995, p.46-47) and Commission Implementing Decision (EU) 2022/197 of 17 January 2022 establishing a common fiscal marker for gas oils and kerosene (OJ L 31, 14.2.2022, p.52-55).

A Tax Information and Impact Note covering this instrument will be published on the website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>.

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