

Excise Amendment Regulations 1998 (No. 2) 1998 No. 275

EXPLANATORY STATEMENT

STATUTORY RULES NO. 275

Issued by the authority of the Minister for Customs and Consumer Affairs

Excise Act 1901

Excise Amendment Regulations 1998

Section 164 of the *Excise Act 1901* ("the Act") provides the Governor-General with the power to make regulations not inconsistent with the Act prescribing all matters which by the Act are required or permitted to be prescribed or as may be necessary or convenient to be prescribed for giving effect to the Act or for the conduct of any business relating to the Excise.

Subsection 78AAAA(1) of the Act provides that:

"A person who produces naphtha from shale mined in Australia may, subject to this section and to the regulations, apply in writing to the CEO (of the Australian customs Service) for payment of amounts in respect of the naphtha so produced worked out by reference to the amount of excise duty payable on the volume of unleaded gasoline that can be obtained from that naphtha."

Subsection 78AAAA(4) of the Act provides for certain matters to be prescribed in the Excise Regulations ("the Regulations") for the purpose of subsection 78AAAA(1). These are:

- * the approval of a plant producing naphtha;
- * the manner of working out the volume of unleaded gasoline that can be obtained from naphtha;
- * the manner of applying to the CEO of the Australian Customs Service for a payment; and
- * the conditions and restrictions to which a payment is subject.

Purpose of Regulations

The Regulations therefore:

- * provided for the Minister for Primary Industries and Energy to approve a plant at which naphtha is produced (sub regulations 52AAAA(1) and (2));
- * set out the requirements with which an application made under subsection 78AAAA(1) of the Act must comply (sub regulation 52AAAA(5));
- * set out the formula for determining the volume of unleaded gasoline that can be obtained from a volume of naphtha (sub regulation 52AAAA(6));
- * set out the method by which the amount of excise duty payable on the volume of unleaded gasoline obtainable from a volume of naphtha is to be worked out (sub regulation 52AAAA(7));
- * set out the condition for entitlement to a payment under sub section 78AAAA(1) of the Act with which an applicant must comply (sub regulation 52AAAA(8)); and

* allowed a Collector of Customs to require an applicant to produce records or give further information within a specified period and states the effect of a failure to comply with that requirement (sub regulations 52AAAA(9) and (10))

Background

Naphtha is an intermediary product obtained in the production of gasoline. As well as being derived from crude oil, it can: be extracted from oil shale. The process involved in that extraction is more expensive than the traditional method of obtaining petroleum products. The purpose of making a payment to a naphtha producer under subsection 78AAAA(1) of the Act is to provide assistance to demonstration projects concerned with the extraction of shale oil naphtha which, when scaled up, have the potential to prove commercially competitive with established gasoline production from crude oil.

The regulations are explained in greater detail in the Attachment.

The regulations commenced on gazettal.

ATTACHMENT

Regulation 1 provided that the regulations will be called the *Excise Amendment Regulations 1998*.

Regulation 2 provided that the Excise Regulations are amended as set out in the Regulations.

Regulation 3 provided for the commencement of these regulations on gazettal.

Regulation 4 renamed the Excise Regulations by omitting Regulation 1 (Citation) and substituting it with a new Regulation 1 so that the regulations are now called the *Excise Regulations 1925*.

Regulation 5 inserted regulation 52AAAA after regulation 52.

Naphtha

Sub regulation 52AAAA(1) allows the Minister for Primary Industries and Energy to approve a plant at which naphtha is produced if the plant is designed to demonstrate the application of particular technology for the extraction of hydrocarbons from shale.

Sub regulation 52AAAA(2) provides that the approval of a plant is not affected by the commencement of production of naphtha by a separately operating commercial plant, which make use of the same technology as the approved plant.

Sub regulation 52AAAA(3) defines the term "separately operating commercial plant" used in proposed sub regulation (2) to mean "a plant, the operations of which are performed independently of those of the approved plant despite any degree of commonality of ownership and any sharing of premises by the plants.

Sub regulation 52AAAA(4) states that the following provisions of the proposed regulation are made for subsection 78AAAA(1) of the Act.

Sub regulation 52AAAA(5) requires an application made under subsection 78AAAA(1) of the Act to:

- (a) be signed by or on behalf of the applicant;
- (b) state the volume of naphtha that is the subject of the application ('the application volume');
- (c) state the amount of unleaded gasoline that can be obtained from the application volume according to whether the refinery in Australia where the gasoline was obtained includes an isomerisation unit; and
- (d) be given to a Collector within 12 months of delivery of the application volume to the refinery in Australia where the amount of unleaded gasoline was obtained.

Sub regulation 52AAAA(6) sets out the formula for determining the volume of unleaded gasoline that can be obtained from a volume of naphtha as follows:

- (a) for gasoline obtained with equipment that includes an isomerisation unit - by taking 89.73% of the volume of naphtha; or
- (b) for gasoline obtained with equipment that does not include an isomerisation unit by taking 90.11 % of the volume of naphtha.

Sub regulation 52AAAA(7) provides for the method by which the amount of excise duty payable on the volume of unleaded gasoline that can be obtained from a volume of naphtha is to be worked out - by using the rate of duty applying on the date of the delivery of that volume of naphtha to the refinery where it was used to obtain gasoline.

Sub regulation 52AAAA(8) provides that an applicant is not entitled to a payment for naphtha unless the application volume was used to obtain unleaded gasoline at a refinery in Australia.

Under sub regulation 52AAAA(9), a Collector may, for the purpose of assessing an application under subsection 78AAAA(1), give an applicant a notice to produce records or give further information, or both, within the period specified in the notice or such further period as the Collector, in writing, allows.

Sub regulation 52AAAA(10) states the effect of the failure to comply with a notice given under new sub regulation 52AAAA(8). The failure would result in the applicant being taken to have withdrawn the application.