

Energy Grants (Credits) Scheme Amendment Regulations 2003 (No. 2) 2003 No. 371

EXPLANATORY STATEMENT

STATUTORY RULES 2003 No. 371

Issued by authority of the Minister for Revenue and Assistant Treasurer

Energy Grants (Credits) Scheme Act 2003

Energy Grants (Credits) Scheme Amendment Regulations 2003 (No. 2)

The purpose of the Energy Grants (Credits) Scheme (EGCS) is to provide a grant for the purchase of diesel and like fuels, and some alternative fuels, for use in certain eligible on-road and off-road activities.

Section 58 of the *Energy Grants (Credits) Scheme Act 2003* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 4 of the Act provides that off-road diesel fuel means diesel fuel or any other like fuel of a kind that is specified in the regulations.

Paragraph 53(6)(b) of the Act provides that the regulations may specify various uses of off-road diesel fuel, other than those specifically provided for in section 53 of the Act, that qualify for an off-road credit.

Paragraph 53(7)(b) of the Act provides that the regulations may specify certain kinds of off-road diesel fuel that qualify for an off-road credit when used other than in an internal combustion engine.

Section 57 of the Act provides that the amount of energy grant per litre for off-road diesel fuel may be prescribed by the regulations.

The purpose of the Regulations was to deal with a number of issues identified in the course of administering the EGCS from its commencement on 1 July 2003 to the present. The principal issue was the migration to the *Energy Grants (Credits) Scheme Regulations 2003* (the Principal Regulations) of a number of approved non-fuel uses of diesel currently eligible for a remission of duty under the *Excise Regulations 1925*.

In addition, a small number of technical amendments were required to clarify issues such as the appropriate grant rate for eligible off-road use of diesel/biodiesel blends, entitlement to a grant for fuel specified by paragraph 9(1)(c) of the Principal Regulations (essentially light fuel oil), and the meaning of the phrase "another appropriate measure" used in Schedule 8 to the Principal Regulations.

The proposed Regulations commenced on gazettal.

ATTACHMENT

Regulation 1 Name of Regulations

Regulation 1 provides that the name of the regulations is the *Energy Grants (Credits) Scheme Amendment Regulations 2003 (No. 2)*.

Regulation 2 Commencement

Regulation 2 provides that the regulations commence on gazettal.

Regulation 3 Amendment of *Energy Grants (Credits) Scheme Regulations 2003*

Regulation 3 provides that Schedule 1 amends the *Energy Grants (Credits) Scheme Regulations 2003* (the Principal Regulations)

Schedule 1

Item [1] Paragraph 9(1)(d)

Item 1 makes a formatting change to accommodate the insertion of new paragraph 9(1)(e), by Item [2], below.

Item [2] After paragraph 9(1)(d)

Item 2 inserts the new paragraph 9(1)(e), which specifies that a fuel that is an excisable blended petroleum product, consisting of diesel and another substance or substances, on which duty has been paid at a rate applicable to diesel fuel, is defined as off-road diesel fuel for uses eligible under subsection 53(6) of the *Energy Grants (Credits) Scheme Act 2003* (the Act). This is discussed further under Item [4] below.

Item [3] After subregulation 9(3)

Item 3 inserts new subregulation 9(4) to define the term "excisable blended petroleum product" used in the new paragraph 9(1)(e), inserted by Item [2] above.

Item [4] Regulation 10

Item 4 substitutes a new Regulation 10 for the existing one, to allow for additional non-fuel uses of diesel currently eligible for a remission of duty under the *Excise Regulations 1926* (the Excise Regulations) to qualify for an off-road credit under subsection 53(6) of the Act. It was intended when the Energy Grants (Credits) Scheme (EGCS) legislation was originally drafted that all non-fuel uses of diesel that were approved for a remission of duty under the Excise Regulations would attract an off-road credit under subsection 53(6) of the Act.

Since the commencement of the EGCS, however, a number of additional approved non-fuel uses have been identified which were inadvertently omitted from the EGCS legislation.

Some examples of the additional non-fuel uses of off-road diesel fuel to be made eligible are:

- use as an ingredient in the manufacture of products such as solvents, degreasers and other cleaning agents, agricultural and veterinarian products, emulsifiers, bitumen cutters and fluxes, diesel injector concentrate, and paint dryers; and
- use in road maintenance activities.

As a result, a revision to the existing clause dealing with non-fuel uses in the Principal Regulations is necessary so that its coverage extends to these uses. The revision also addresses compliance concerns regarding the correct payment of duty on excisable blended petroleum

products in which diesel is used as an ingredient, by excluding diesel used in the manufacture of blended petroleum products except where the product is exempt from excise.

The new regulation specifies that the use of off-road diesel fuel other than as a fuel will be eligible for an off-road credit, except when it is used as an ingredient in the manufacture of a blended petroleum product, in which case it is only eligible if the product is an exempt blended petroleum product not suitable for use as a fuel.

In order to maintain equivalent entitlements under the EGCS for excisable blended petroleum products that were subject to remission of duty on the diesel component under the Excise Regulations, the Regulations add such fuels to the definition of 'off-road diesel fuel' (see Item [2] above). This effectively transfers entitlement to a credit for the use of such products in non-fuel applications under subsection 53(6) of the Act from the manufacturer to the end-user.

Item [5] Schedule 7, Part 3, after table 3

Item 5 inserts two new tables in Part 3 of Schedule 7 to the Principal Regulations, to establish grant rates for off-road diesel fuel specified in paragraphs 9(1)(d) and (e). Table 4 establishes the rates for fuel specified in paragraph 9(1)(d), that is a blend of diesel and biodiesel consisting primarily of diesel, and table 5 establishes the rates for fuel specified in the new paragraph 9(1)(e), inserted by Item [2] above.

Item [6] Schedule 8, subclause 1.2 (4), at the foot

Item 6 inserts a note following subclause 1.2 (4) of Schedule 8 to the Principal Regulations, that clarifies the meaning of the phrase "another appropriate measure" for the purposes of apportioning fuel between qualifying and disqualifying uses, in working out the amount of grant to which a claimant is entitled.