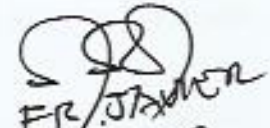




MAR 14 2008

CUSTOMS MEMORANDUM ORDER
NO. 16-2008

All Deputy Commissioners
All District/Port Collectors
All Service/Division Chiefs
All Importers/Exporters/Bunkerers/Sellers/Buyers of
Petroleum Products
All Others Concerned


F.R. JAVIER
03-17-08

SUBJECT: Rules and Regulations Implementing Department Order No. 23-07 dated 26 July 2007, as Amended by Department Order No. 6-08 dated 15 February 2008, entitled: "Mandating the Marking of Imported Kerosene and Diesel Which are Entered Tax and Duty Free to Prevent the Unauthorized Diversion Thereof into the Domestic Market"


Pursuant to Section 11 of Department Order No. 23-07, the following BOC regulations covering the importation and marking of kerosene and diesel entered tax and duty free are hereby promulgated:

1. SCOPE:

This Order shall cover the implementation of the Department of Finance Program on the marking of imported kerosene and diesel whether imported or manufactured/refined in the Philippines, which under Philippine laws are exempt from payment of duties and taxes, whether the same was by reason of importation or manufacturing in a free zone, as proof that these petroleum products were legitimately entered into the Philippine territories and/or refined in the Philippines and are, by law, exempt or not required to pay duties and taxes.

2. OBJECTIVES:

- 2.1. To properly identify and track kerosene and diesel entered into the Philippines without payment of duties and taxes, whether the same are legitimately entered free and/or exempt from duties and taxes, or illegally entered into the Philippines;
- 2.2. To plug the leakage of duties and taxes due on kerosene and diesel initially entered into the country without payment of duties and taxes and which are eventually diverted to the domestic market, or for other use which will subject the kerosene and diesel to duties and taxes; and
- 2.3. To provide the necessary tools and evidence required for the prosecution of parties who do not pay the proper duties and taxes for kerosene and diesel introduced into the domestic market.

 (08-01465) 1

3. ADMINISTRATIVE PROVISIONS

3.1 The following shall be marked with the official marking agent designated by the Department of Finance (DOF) in accordance with existing rules:

3.1.1 All kerosene, including dual purpose kerosene (DPK), subject to zero excise tax; and

3.1.2 All diesel oil entered duty and/or tax free.

3.2 Responsibility for the Marking of Kerosene and Diesel and its Cost:

3.2.1 In case of kerosene subject to zero excise tax referred to in subsection 3.1.1., the person, entity or taxpayer who owns or enters the product or to whom it is consigned, or whoever brings the same into the country, shall cause the marking of said duty and/or tax free kerosene/diesel with the official marking agent, and shall bear the cost of marking the same.

3.2.2 In case of diesel referred to in subsection 3.1.2., the person, entity or taxpayer who imports, manufactures and/or refines said diesel shall cause the marking thereof with the official marking agent and shall bear the cost of marking the same.

3.3 Refusal of Person/Entity Responsible to Cause Marking –

3.3.1 The failure or refusal of the person, entity or taxpayer responsible for the marking of kerosene and diesel oil as herein required within a period of fifteen (15) days from due notice shall subject such owner, consignee or importer and the articles to such sanctions as may be imposed in accordance with the Tariff and Customs Code of the Philippines, as amended, and other relevant existing laws, and rules and regulations issued pursuant to law.

3.4 Presumption of Illegal Importation/Withdrawal –

3.4.1 In the event that diesel oil containing the official marker signifying exemption is found in the domestic market or in the possession of anyone or under any situation where said diesel oil is subject to duties and taxes, it shall be presumed that the same was imported or withdrawn with the intention to evade the payment of duties and taxes due thereon and shall be proceeded against pursuant to law, unless the contrary be proven through the presentation of valid documents and/or evidence to the contrary.

3.4.2 The same presumption shall apply in the event that kerosene subject to zero excise tax containing the official marker is found being used, transported, stored or otherwise labeled as aviation fuel in the domestic markets or in possession of anyone or under any situation where said kerosene is subject to duties and taxes.

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3.5 Pilot Implementation

- 3.5.1 The mandatory marking herein prescribed shall be implemented by the Bureau of Customs (BOC) on a pilot basis at the Subic Bay Free Port and the Clark Special Economic Zone and likewise at the Port of Batangas for imported kerosene;
- 3.5.2 The BOC shall provide a monthly report and evaluation to the DOF on the progress of the pilot program with the end in view of having the marking program implemented on a nationwide basis.

3.6 Program Implementation Office (PIO) -

- 3.6.1 The PIO, headed by a Senior Officer of the DOF, and the Commissioners of the Bureau of Customs and the Bureau of Internal Revenue, as established and empowered under Department Order No. 23-07, shall have the following duties and responsibilities:
- 3.6.1.1 Commence the pilot implementation at the Subic Bay Free Port, the Clark Special Economic Zone, and the Port of Batangas upon effectivity of this Order;
- 3.6.1.2 Ensure that all operational and technical written instructions are in place and properly disseminated to all concerned;
- 3.6.1.3 Issue the Terms of Reference and Engagement of the pilot test marking provider;
- 3.6.1.4 Identify and resolve operational and technical difficulties identified in the course of pilot implementation;
- 3.6.1.5 Complete the pilot test within three (3) months from commencement and submit recommendation on the nationwide roll-out within the pilot test period;
- 3.6.1.6 Submit monthly progress report to the Secretary of Finance on the pilot implementation.

4. OPERATIONAL PROVISIONS

- 4.1. Notice of Arrival – For kerosene shipments, importers or their agents shall submit at least three (3) days prior to the arrival of the carrying vessel a Notice of Arrival to the customs authorities, copy furnished the designated marking service provider. The Notice shall contain the following data: ETA, Vessel Name, Pier/Port of Destination, and Quantity of Product

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- 4.2. Notification of Purchase – The buyer/s (PEZA and outside ECOZONE locators, bunkerers, exempt entities, as well as gasoline stations operating in Freeports/Special Ecozones) shall file a Notification of Purchase – Tax and Duty Free Fuel Oils/Kerosene (Please see Annex "A") with the designated provider of marker and marking service at least seven (7) working days from the expected date of marking. The notification shall be coursed through the Subic/Clark/ Batangas supplier who shall be responsible for coordinating with the designated service provider in scheduling the date of the marking of the said petroleum products (PP).
- 4.3. Instruction to Mark – The concerned customs officials, prior to releasing the customs declaration and the corresponding customs gate pass, shall clearly stamp on the customs declaration (entry, transit/transshipment permit) the words "SUBJECT TO MARKING PURSUANT TO DEPARTMENT ORDER 23-07 DATED JULY 26, 2007, AS AMENDED BY D.O. NO. 6-08 DATED 15 FEBRUARY 2008."
- 4.4. Certificate of Marking
 - 4.1.1 The service provider, after completing the marking of the Kerosene/Diesel for withdrawal, shall issue a Certificate of Marking (see Annex "B");
 - 4.1.2 The supplier shall demand presentation of the duly accomplished Certificate of Marking, as basis for its issuance of the corresponding Petroleum Gate Pass to authorize withdrawal of the Kerosene/Diesel; and
 - 4.1.3 The customs gate keepers at the facility exit/s shall demand presentation of the relevant Certificate of Marking and, if satisfied of its sufficiency and validity, shall authorize the exit of the carrying tankers (over-land or by sea) from the facility.
- 4.5. Kerosene and Diesel imported free from payment of duties and taxes into the Subic Bay Free Port and the Clark Special Economic Zone applied for transfer to the Philippine Economic Zone Authority (PEZA) or other ecozones must be covered by an Import Permit issued by the receiving ecozone authority. For transfer of such petroleum products to the Joint Oil Companies Aviation Storage Plant (JOCAS), a prior approval from the government office with jurisdiction over the facility must be required on top of the transshipment application.
- 4.6. Transfer of said PP imported conditionally-free from payment of customs duties and taxes from SBM/CSEZ for bunkering/loading into foreign ships, vessels or aircraft must be covered by a corresponding export declaration together with a duly issued bunkering permit.
- 4.7. The current practice of allowing a PP supplier to file one (1) customs declaration for his total distribution requirements covering

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a period of time or for the requirements of many customers with each partial withdrawal covered by a sub-gate pass shall be allowed only for tax and/or duty paid withdrawals.

4.8. Every withdrawal of petroleum products subject to marking shall be covered by one customs declaration (import entry, export entry, or transshipment/transit permit).

4.9. Marking of diesel and kerosene (including DPK) initially stored in a bonded facility at the Port of Batangas the payment of duties and taxes of which is suspended and then transferred, under customs control, by pipeline or other means to the Pandacan Oil Terminal shall be undertaken in the course of the withdrawal of the fuel oil from the Pandacan Terminal. The Collection District which has jurisdiction over the Pandacan Oil Terminal shall be responsible for the proper implementation of this Order, to include the administrative arrangements for the designated marking service provider.

4.10. Port Reconciliation Team (PRT) –

The concerned District Collector of Customs shall establish the Port Reconciliation Team (PRT) chaired by the District Collector with the marking service provider and the SBMA/CDC/Batangas Port operator as members, for purposes of monitoring and reconciling all data pertinent to the tax and duty-free lifting from Subic, Clark, Batangas, and the Pandacan Oil Terminal. The PRT shall submit to the Secretary of Finance (Attention: Program Implementation Office) a Monthly Reconciliation Report for the purpose as stated in Section 7 of DO 23-07.

4.11. Port Implementation Team (PIT) –

For the implementation of this Order, the District Collector shall likewise establish in his district a Port Implementation Team (PIT), chaired by the District Collector, with the following as members: all importers of petroleum products, SBMA/CDC/Batangas port operator/s, a provider, coastal petroleum representative, and concerned shipping agents.

The PIT shall exercise the following functions:

1. Issue supplemental instruction/s for the proper implementation of the Department Order and this Order;
2. Identify and resolve implementation issues; and
3. Prepare and submit a monthly progress report to the Secretary of Finance (Attn: Program Implementation Group) with the following details:
 - a. Withdrawals/lifting marked for the month, showing the declaration number, supplier, buyer, amount (quantity and value), date of marking, COM number issued;
 - b. Difficulties encountered and solutions made; and
 - c. Recommendations on systems/procedures improvement

5. REPEALING CLAUSE:

All orders, circulars, memoranda, and other issuances or parts thereof which are inconsistent with this Order are hereby deemed repealed or modified accordingly.

6. EFFECTIVITY:

This Order shall take effect fifteen (15) days from its complete publication in two (2) newspapers of general circulation.

Upon effectivity of this Order, no Kerosene and Diesel entered tax and duty free shall be removed from their place of storage without having been marked pursuant to this Order.

NAPOLEON L. MORALES
Commissioner



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Department of Energy

Annex A

**Notification of Purchase
Tax and Duty Free Kerosene/Diesel**

(Pursuant to Department Order No. 23-2007 as amended by DO No. 6-2008 and
Implemented by CMO ___-2008)

_____ Date

TO : The Marking Service Provider
DO 23-2007 as amended by DO No. 6-2008

THRU : The Supplier - Locator

Sir:

Please be notified that we are withdrawing tax and duty free petroleum product/s pursuant to DO 23-2007 as amended by DO No. 6-08 with particulars as follows:

Port of Withdrawal: _____
Supplier: _____
Type of Petroleum Product/s _____
Volume: _____
Weight: _____

BUYER:

SUPPLIER LOCATOR:

Signature over Printed Name

Signature over Printed Name

Designation: _____

Date of Withdrawal _____

Telephone: _____

Date of Marking _____

ACKNOWLEDGMENT

We hereby acknowledge receipt of the Notification to Purchase and will make available a team to undertake the marking for this purpose.

Signature over Printed Name

Telephone: _____

Annex B

CERTIFICATE OF MARKING

(Pursuant to Department Order 23-2007 as amended by DO No. 6-08 and
Implemented by CMO ___-2008)

Date

The petroleum product/s with particulars below have been marked pursuant to
Department Order 23-2007 as amended by DO No. 6-08:

Name of Buyer: _____
Type of Petroleum Product/s: _____
Declaration Number: _____
Date of Declaration: _____
Port of Withdrawal: _____
Address of Destination: _____

Identity of Carriers (if by truck, list down all the plate numbers and owners; if watercraft,
name of vessel and registry numbers)

Signature over Printed Name

[Handwritten mark]