

# **Product Stewardship (Oil) Amendment Regulations 2004 (No. 1) 2004 No. 74**

## **EXPLANATORY STATEMENT**

Statutory Rules 2004 No. 74

Minute No. \_\_\_\_\_ of 2004 - Minister for the Environment and Heritage

Subject: *Product Stewardship (Oil) Act 2000*

*Product Stewardship (Oil) Amendment Regulations 2004 (No. 1)*

Section 37 of the *Product Stewardship (Oil) Act 2000* (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.

The Act reduces the environmental impact of used oil by imposing a product stewardship (oil) levy on virgin oils and lubricants. The levy is used to fund the payment of product stewardship (oil) benefits to eligible recyclers of used oil for appropriate used oil products recycled and sold in Australia. The *Product Stewardship (Oil) Regulations 2000* (the Principal Regulations) specify benefit payments for seven items. An additional eighth item provides a benefit payment for a product with a specific end-use that does not create a recyclable waste stream and represents only low levels of risk to the environment.

The Regulations prescribe a new item that attracts product stewardship (oil) benefits. Benefits are payable to producers of a specific recycled oil product that is produced by blending industrial burning oil with used oil. The used oil must meet the criteria mentioned in Schedule 2. Schedule 2 defines a fuel oil with specific properties for use in industrial burners (i.e. the oil may not be used in vehicles). The amount of product stewardship (oil) benefit that may be claimed on this new item is 9.557 cents per litre.

Prior to 1 February 2004, specific fuel oils that were not used in internal combustion engines did not have to pay excise duty under the *Excise Regulations 1925*. As of 1 February 2004, the *Excise Regulations 1925* were changed to require these particular fuel oils to pay excise duty at a rate applicable to diesel fuel and a 'refund' for the excise duty paid was provided to the end-user of these fuel oils through the *Energy Grants (Credit) Scheme Regulations 2003*. However, the concession does not fully cover the excise duty paid, and results in oil recyclers paying an additional 9.557 cents per litre for the used oil added to their high or low grade industrial burning oils. This has potential to make production of the recycled fuel oil uncompetitive, reducing the market for used oil and hence increase the potential for adverse environmental impacts from non-recycled used oil.

Details of the proposed Regulations are set out in the Attachment.

The Act specifies no conditions that need to be met before the power to make the proposed Regulations may be exercised.

The Regulations commenced on the date of their notification in the Gazette and provide that the product stewardship (oil) benefits under item 9 may be claimed from the date of excise amendments under the *Excise Tariff Act 1921* (1 February 2004). The Regulations will therefore have a specified retrospective effect. While subsection 48(2) of the *Acts Interpretation Act 1901* provides that a regulation has no effect if it would take effect before the date of notification and, as a result, liabilities would be imposed, or rights would be affected so as to disadvantage a person, other than the Commonwealth, the Commonwealth would be the only party to bear a cost in relation to the effective retrospectivity of the Regulations. Therefore, the Regulations satisfy subsection 48(2) of the *Acts Interpretation Act 1901*, and may be validly made with retrospective effect.

Authority: Section 37 of the *Product Stewardship (Oil) Act 2000*

## **ATTACHMENT**

### **Details of the *Product Stewardship (Oil) Amendment Regulations 2004 (No. 1)***

**Regulation 1** would provide that the name of the Regulations is the *Product Stewardship (Oil) Amendment Regulations 2004 (No. 1)*.

**Regulation 2** would provide for the Regulations to commence on the date of their notification in the Gazette.

**Regulation 3** would provide that Schedule 1 amends the *Product Stewardship (Oil) Regulations 2000*.

### **Schedule 1 Amendments.**

#### **Item 1**

**Paragraph 4(1)(a)**--The paragraph is substituted.

The new paragraph specifies the categories of recycled oil products that may attract benefits under the *Product Stewardship (Oil) Act 2000*.

New subparagraph 4(1)(a)(ii) provides that two categories of benefit may apply to used oil eligible for new item 9 (see item 2 below).

#### **Item 2**

**Table in paragraph 4(1)**--A new item (item 9) is inserted into the table.

The new benefit item is for a recycled oil product produced by blending high or low grade industrial burning oils with used oil. The used oil would be required to meet the criteria mentioned in Schedule 2, which defines a fuel oil with specific properties and one that may not be used in internal combustion engines. The benefit amount (cents per litre) of product stewardship (oil) benefit would be 9.557 cents per litre.

### **Item 3**

**Example for paragraph 4(1)(a)(iii)**--An example for item 9 is inserted after examples for item 2.

The example illustrates the type and volume of oil on which a benefit is payable under items 1 to 7 and under item 9 as defined by paragraph 4(1)(a)(iii).

### **Item 4**

**Paragraph 4(2)(b)**--The paragraph is amended to accommodate new paragraph 4(2)(c) (see item 5 below).

### **Item 5**

**After paragraph 4(2)(b)**--A new paragraph 4(2)(c) is inserted.

This new paragraph reflects that some producers of a blended product eligible for a product stewardship (oil) benefit under item 9 might not have to pay excise duty for that product.

### **Item 6**

**Regulation 5 Period for claiming amount in item 9**--A new regulation is inserted. This new regulation provides relief to oil recyclers from the time that the excise remission ceased, i.e. 1 February 2004. A sunset clause is also included, to take effect on 1 July 2006.

### **Item 7**

**Schedule 2 Petroleum product criteria**--A new schedule is inserted.

The new schedule defines the petroleum product to meet specifications for a fuel oil that may not be used in an internal combustion engine, for the purposes of new item 9 in the table under subregulation 4(1). The new schedule also stipulates that excise duty on the product must have been paid at a rate that is applicable to diesel fuel, in order to be eligible to claim the benefit.