

Treatment of slops (returns of product which has become contaminated or accidentally mixed in the duty paid environment)

Action Point 11 following the meeting of 13th November 2007

Consideration to be given to the treatment of slops, following the introduction of biofuels into road fuels, and the evidence required to support any claims for duty credit.

Article 23 of Council Directive 2003/96/EC enables Member States to allow a refund of taxation in respect of contaminated or accidentally mixed energy products sent back to a tax warehouse.

In the UK, when HO is delivered to home use on payment of duty and subsequently becomes contaminated, or accidentally mixed, a credit of excise duty may be allowed under the provisions of HODA 1979 Section 20.

Such credit is subject to any conditions, which HMRC see fit to impose (HODA S20(2))

HMRC requirements in this regard are set out in Notice 179 Section 5 (5.8.4 – 5.8.6)

We have been asked to consider the application of these requirements in respect of contaminations, which may contain biodiesel, bioethanol or blends thereof. This is a particular concern as these may not be suitable for re-processing via the refinery units.

Pipeline Interface slops

These will continue to be dealt with under the existing provisions set out in Notice 179 Section 9. Under these provisions interface material is designated as either high flash (heavy oil) or low flash (light oil) and any duty credit will reflect the adjustment made on the Duty Adjustment Statement (DAS). No alteration to these procedures is necessary as a result of biofuels.

Concern – The DAS system needs attention to determine how the introduction of biofuels impacts on the reporting mechanism. Notice 179 paragraph 9.7 refers.

Slops from retail sites

Each time a delivery is made the actual ratio of biofuel and HO present in the sites tanks will alter. It is therefore necessary to adopt a pragmatic approach to establish the level of biofuel present in any returned contamination. The following options are suggested:

Source of contaminated product	Treatment of return
Retail sites served by distribution terminals delivering from blended stock	<ul style="list-style-type: none"> a) Where the originators blend ratio can be established, this should be used e.g. delivery can be traced to stock derived from a particular producer. The producer's blend ratio for the duty period, in which duty had been paid on the delivery, was 4.6% - 4.6% is to be used. b) Where a) above is not practicable the diesel, or petrol element of contamination must be assumed to contain 5% biofuel.
Retail sites served by distribution terminals delivering from unblended stock	Diesel, or petrol element of contamination assumed to contain 0% biofuel
Retail sites served by distribution terminals delivering from both blended and unblended stock	<p>Assumptions cannot be made as to any biofuel content.</p> <ul style="list-style-type: none"> a) If the delivery, resulting in the contamination, can be traced to blended stock proceed as per 1 above. b) If the delivery, resulting in the contamination, can be traced to unblended stock proceed as per 2 above. c) If the delivery cannot be traced to either source, biofuel content should be established by laboratory analysis conducted at the duty suspended premises to which the load is returned.

Contaminations occurring at distribution terminals

In the event of a contamination at a distribution terminal the treatment should mirror that outlined for retail sites above.

Concern – Some distribution terminals are RMPs and have handled contaminations under the procedures covered by Notice 179 Section 5.8.5 and Section 8 (marking the contaminated oil, or flushing it into large volumes of marked stock, and claiming rebate via an HO9 claim). Present legislation dictates that such handling will result in a punitive duty charge.

Record keeping and evidential requirements

The details which must be recorded by the receiving warehousekeeper are set out in Notice 179 paragraph 5.8.4 subsections (i) to (v). There is no change to these requirements as a result of biofuels. However, HMRC do not require analysis by an independent laboratory. An analysis conducted in the laboratory of the receiving duty suspended installation concerned is also acceptable.

When considering the evidential requirements (mentioned in 5.8.4 subsection (vi)) cognisance must be taken of the fact that individual receipts of contaminated product cannot be traced, directly, to a duty payment. Therefore, in our opinion, the requirements in these circumstances should be the same as those applicable in respect of drawback claims. Provided some audit trail can be established, demonstrating that the constituents of the contamination had previously borne excise duty, this requirement will be satisfied. Audit trail documentation may include:

- A suppliers invoice in respect of the related original delivery showing that a duty inclusive price had been paid.
- A statement from the supplying oil company (duty payer) that the delivery into the stock of source location was duty paid – **if possible** giving vessel name or parcel reference with date of arrival Day/Month/Year. If so, the volumes should be matched against a cargo delivery ex-refinery/warehouse to the duty paid location. The oil company will then be able to confirm that duty was paid on the cargo and included in HO10 for the period 15thXX -14th YY with payment on 30thYY
- If it is not possible to match the delivery into the source locations stock with a particular movement: A statement from the supplying oil company, confirming that duty has been paid on all bulk deliveries to the location and that the delivery/deliveries concerned have all been drawn from stock on which duty has been paid via the deferment arrangements

Current consultation proposes a reduction in the level of evidence required for drawback claims in respect of HO. If this is implemented, the above will reflect the change.