



Explanatory Statement

Excise (Denatured spirits) Determination 2016 (No. 3)

Revoking of previous instrument

1. This Explanatory Statement is provided in accordance with subsection 15G(4) and section 15J of the *Legislation Act 2003* (Legislation Act)
2. Excise (Denatured spirits) Determination 2006 (No. 2) ('previous instrument') was registered on 30 June 2006 and is scheduled to be repealed on 1 October 2016 under the sunset provisions prescribed in Part 4 of Chapter 3 of the Legislation Act.
3. Excise (Denatured spirits) Determination 2016 (No. 3) ('determination') revokes and replaces the previous instrument.
4. The determination is made under subsection 77FG(1) of the Excise Act and is intended to be a restatement of the previous instrument.
5. The determination sets out the formula for denaturing spirits so that the spirit can be delivered for home consumption at a rate of duty of free under subitem 3.8 of the Schedule to the *Excise Tariff Act 1921* (Excise Tariff Act).

Date of effect

6. The determination commences on the day after registration.

Effect of the determination

7. Under section 77FG(1) of the *Excise Act 1901* ('Excise Act') the CEO may determine a formula for denaturing spirits, so that the spirit can be delivered for home consumption at a rate of duty of free under subitem 3.8 of the Schedule to the Excise Tariff Act.
8. Where spirit has been denatured in accordance with the determination, (and the spirit is not for use as a fuel in an internal combustion engine) the spirit may be entered at a duty rate of free under subitem 3.8 of the Schedule to the Excise Tariff Act.
9. This determination preserves and continues the formula (and Schedule) previously prescribed for that purpose.
10. The formula is expressed so that if spirit contains at least one of the substances listed in the Schedule at or above the minimum concentration specified for that substance then it is denatured according to the formula. The addition of other substances beyond that requirement is not relevant.

11. For ease of administration the formula does not consider the cumulative effects of denaturants. If the spirit does not contain at least one substance listed in the Schedule at or above the specified minimum concentration for that substance then the spirit cannot be delivered under subitem 3.8.
12. However, the spirit may instead be delivered duty-free under subitem 3.6¹ or 3.7² to an eligible user for an industrial, manufacturing, scientific, medical, veterinary or educational purpose.
13. Under section 77FJ of the Excise Act it is an offence to remove all or part of a denaturing substance from spirit delivered for home consumption classified to subitem 3.8 unless the person has written permission from the CEO.

	Denaturant	CAS registry number	Minimum concentration 100% ethanol	Risk mitigation
1	acetaldehyde	75-07-0	1.0% v/v	Detectable at less than 1ppm
2	n-propanol	71-23-8	1.0% v/v	Detectable at approx 20ppm
3	n-propyl acetate	109-60-4	1.0% v/v	Detectable at approx 20ppm
4	acetone	67-64-1	2.0% v/v	Detectable at approx 1000ppm
5	denatonium benzoate	3734-33-6	5 ppm	Taste threshold 1:20,000,000
6	ethyl acetate	141-78-6	1.0% v/v	Detectable at approx 1ppm
7	propylene glycol mono-methyl ether	107-98-2	1.0% v/v	Detectable at approx 100ppm
8	sodium nitrite	7632-00-0	0.25% v/v	Toxic at 85ppm
9	methyl ethyl ketone	78-93-3	0.5% v/v	Detectable at approx 10ppm
10	methoxy propyl acetate	108-65-6	0.5% v/v	Detectable at approx 150ppm
11	methanol	67-56-1	5.0% v/v	Detectable at approx 2000ppm
12	isopropanol	67-63-0	5.0% v/v	Detectable at approx 2500ppm
13	tertiary butyl alcohol	75-65-0	0.25% v/v	Detectable at approx 73ppm
14	methyl isobutyl ketone	108-10-1	0.25% v/v	Detectable at approx 10ppm

¹ Subitem 3.6 allows delivery of spirit duty-free to determined classes of persons to meet their industrial, manufacturing, scientific, medical, veterinary or educational purposes. See *Excise (Concessional spirits - class of persons) Determination 2014 (No. 1)*.

² Subitem 3.7 allows delivery of spirit duty-free to a person who has received specific approval from the ATO to use the spirit for an industrial, manufacturing, scientific, medical, veterinary or educational purpose or use that is otherwise covered by their approval. See Concessional spirit approval guidelines.

15	n-hexane	110-54-3	1.0% v/v	Detectable at minute levels
16	ethyl ether	60-29-7	1.0% v/v	Detectable at approx 0.33ppm
17	propylene glycol	57-55-6	20.0% v/v	Colourless, odourless but oily liquid
18	sodium hydroxide	1310-73-2	0.25% w/w	Odourless but very corrosive
19	sodium molybdate	7631-95-0	0.25% w/w	Odourless but harmful if inhaled / swallowed
20	sodium tolytriazole	64665-57-2	0.25% w/w	Characteristic odour

Background

14. In determining the formula under section 77FG of the Excise Act, subsection 77FG(2) requires the CEO to give the greatest weight to the protection of the revenue.
15. The formula therefore seeks to reduce the risk of the product being diverted for use as a beverage or fuel.
16. A table is attached at paragraph 13 listing the substances and how they mitigate the risk of diversion. In the determination and this explanatory statement the common names of chemicals are used rather than proprietary names, but to avoid ambiguity CAS registry numbers are also used to identify each denaturant³.
17. Factors that have been taken into account in prescribing denaturants and concentrations in the Schedule include:
 - The degree of difficulty in removing the denaturant from the spirit
 - The effectiveness of the denaturant as a deterrent to using the spirit in a beverage at 5% strength on dilution by the addition of water, cola, lemonade or other beverages. Ways in which the denaturant can achieve this deterrent effect include imparting an unpleasant odour or taste, oily or viscous qualities indicating the presence of a denaturant or toxicity.
 - The relative prices of spirit and fuel.
 - Whether a denaturant is itself a fuel, such as petrol, or an additive typically used in producing fuel ethanol, such as an emulsifier.

Consultation

18. Subsection 17(1) of the Legislation Act requires that the CEO undertake an appropriate level of consultation that is reasonably practicable to undertake before making a legislative instrument.

³ These are unique identifying numbers allocated to the chemical substances. They enable a reliable, common and international identification of the specific substances.

19. Industry input into the formula (and denaturants in the Schedule) was gathered prior to publishing the instrument in 2006.
20. In 2016, prior to publishing the updated instrument, feedback was sought from manufacturers entering significant amounts of goods under subitem 3.8 to ensure that the denaturants specified were up to date.

Legislative references:

Excise Act 1901 section 77FG

Excise Tariff Act 1921, the Schedule, subitem 3.8

Legislation Act 2003

Statement of Compatibility with Human Rights

This Statement is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Excise (Denatured spirits) Determination 2016 (No. 3)

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

This instrument sets out a formula for denatured spirits that can be delivered into home consumption duty-free under subitem 3.8 of the Excise tariff.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms. It is considered to be minor or machinery in nature and continues the current approach.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.