

EXC 2006/18 - Explanatory statement -



Explanatory Statement

Excise Act 1901

Excise (Denatured spirits) Determination 2006 (No. 2)

Revocation and replacement of previous instrument

1. *Excise (Denatured spirits) Determination 2006 (No. 2)* revokes and replaces *Excise (Denatured spirits) Determination 2006 (No. 1)* (the original instrument).
2. The original instrument contained an error at item 8 of the Schedule. The reference to 'sodium nitrate' at item 8 of the Schedule should have read 'sodium nitrite'. As CAS number¹ 7632-00-0 at item 8 is allocated to sodium nitrite, item 8 of the Schedule was ambiguous.
3. This determination corrects the error but otherwise has the same effect as the original instrument.

General Outline

4. This Explanatory Statement is provided in accordance with section 26 of the *Legislative Instruments Act 2003*.
5. The original instrument and *Excise (Denatured spirits) Determination 2006 (No. 2)* have been made as a result of amendments to the Excise legislation effected by *Excise Laws Amendment (Fuel Tax Reform and Other Measures) Act 2006*, *Excise Tariff Amendment (Fuel Tax Reform and Other Measures) Act 2006* and Excise Amendment Regulations 2006 (No. 3).
6. The amendments came out of the Review of the Schedule to the *Excise Tariff Act 1921* (the Review) initiated by Treasury on 2 June 2005 with the release of an industry discussion paper and a targeted consultation process. The principal objects of the Review were to streamline the Schedule to the *Excise Tariff Act 1921* (the Excise tariff) and make it more user-friendly, make excise law clearer and less complex, and improve the integrity of the excise system.
7. The amendments include new provisions for concessional spirit and the repeal of the *Spirits Act 1906*.
8. Up to 30 June 2006, certain methylated spirits were delivered for home consumption duty-free and without permit under item 2(N) of the Excise tariff. Regulation 17 of the *Spirits Regulations 1926* (Spirits Regulations) prescribed formulas for this purpose.
9. Commencing 1 July 2006, the CEO (Commissioner of Taxation) may determine a formula for denatured spirits that can be delivered into home consumption duty-free without a permit under subitem 3.8 of the revised Excise tariff.

¹ See paragraph 22.

10. The relevant provision for determining a formula is section 77FG of the *Excise Act 1901* (Excise Act).

11. Paragraph 2.67 of the Explanatory Memorandum to the amending Bills provides commentary on the intended operation of substituted section 77FG of the Excise Act.

Date of effect

12. *Excise (Denatured spirits) Determination 2006 (No. 2)* commences on the day after registration, in accordance with subsection 12(1) of the Legislative Instruments Act. The original instrument commenced on 1 July 2006. It is considered that there is no sufficient reason to make this determination apply retrospectively to 1 July 2006.

Purpose and effect of the instrument:

13. Subitem 3.8 of the revised Excise tariff is reliant on the existence of a determination of formulas for denatured spirit.

14. By determining a formula under section 77FG, the CEO allows a person to deliver denatured spirit for home consumption duty-free. From this point the denatured spirit passes out of CEO's control.

15. The formula is expressed in a generic form. The only requirement for spirit to be denatured for the purposes of subitem 3.8 of the Excise tariff is that it contains one of the substances listed in the Schedule at or above the specified minimum concentration. The addition of other substances beyond that requirement is not relevant.

16. Specifying minimum concentrations means that spirits containing, for example, 15%, 10% or 5% methanol are covered by the formula under item 11 in the Schedule to the determination.

17. For simplicity, conciseness and ease of administration, denaturants have not been assessed in relation to their cumulative effect.

18. If none of the listed denaturants is present at or above the specified minimum concentration, the spirits cannot be delivered under subitem 3.8. However, depending on the user's eligibility, spirits may be delivered duty-free under either subitem 3.6 or 3.7 for an industrial, manufacturing, scientific, medical, veterinary or educational purpose. A person who is a member of a determined class of persons for the purposes of subitem 3.6 may receive spirit up to the maximum quantity permitted by the relevant determination. Alternatively, a person may apply to the CEO for an approval to use spirit. The *Excise concessional spirit approvals guidelines 2006 (No. 1)* apply to such approvals.

19. Denaturants are included in the Schedule according to currency of use in industry (pyridine, for example, is no longer in use) and their effectiveness at the specified concentration in deterring the use of spirits as a beverage. In addition, the suitability of certain denatured spirits for fuel use has been taken into account.

20. The CEO has applied the following criteria in assessing whether a substance sufficiently denatures spirits to eliminate the risk to the revenue through diversion for use as a beverage or a fuel:

- (a) the degree of difficulty in removing the denaturant from spirits based on:
 - (i) differentials in boiling points (less than 40°C signifying an acceptable level of difficulty); or
 - (ii) other means (e.g. agitation);

(b) effectiveness as a deterrent from use as a beverage at 5% strength on dilution by the addition of water, cola, lemonade or other beverage due to:

- (i) unpleasant odour or taste;
- (ii) oily or viscous quality, signalling the presence of the denaturant;
- (iii) toxicity;

Note: toxicity may not be a sufficient deterrent if the presence of the toxic substance is not indicated by other factors.

(c) factors such as price and marketing;

Note: the degree of risk is partially dependent on the price differential between spirit and fuel; the high cost of fuel is a driver for fuel substitution, increasing the risk of concessional spirits being diverted to fuel.

(d) whether a denaturant is itself a fuel, such as petrol, or an additive typically used in producing fuel ethanol, such as an emulsifier.

Note: due to the risk of denatured spirits being diverted to fuel ethanol for use in an internal combustion engine, such formulas are not included in the determination.

21. The common names of chemical substances are used in accordance with ordinary practice in technical literature. Proprietary names are not used.

22. To remove any ambiguity that may exist due to a substance having more than one common name, CAS registry numbers are also used to identify each denaturant. CAS registry numbers are unique numerical identifiers for chemical compounds, polymers, biological sequences, mixtures and alloys as allocated in the registry of the Chemical Abstracts Service, a division of the American Chemical Society.

23. The following table lists the formulas approved by the instrument with the reasons why the CEO considers risk to the revenue has been sufficiently mitigated:

	component	CAS	no less than	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

	component	CAS	no less than	Risk mitigation
				approx 73ppm
14	methyl isobutyl ketone	108-10-1	0.25% v/v	Detectable at approx 10ppm
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

Impact of the instrument

24. The instrument provides a significantly increased range of denatured spirit formulas by specifying minimum concentrations of individual denaturant substances. This overcomes the limitations of regulation 17 of the Spirits Regulations which prescribes a small number of largely outdated formulas based on exact concentrations.

25. Up to 30 June 2006 certain low-risk denatured products have been delivered duty-free without permit under an administrative expedient that characterises the product as a 'solvent' rather than as denatured spirit. This expedient developed as an administrative concession to industry in the face of the inflexibility of the denatured ('methylated') spirits regime.

26. The new provisions remove the need to rely any longer on this expedient and provide the required flexibility to allow the Tax Office to administer the denatured spirits regime in line with modern industry practice and respond to the needs of the industry in a timely way.

27. Under section 77FJ of the Excise Act it is an offence to remove a denaturant from denatured spirits without written permission from the CEO. This replaces the offence under section 15 of the *Spirits Act 1906* (under repeal).

Consultation

14. On 1 June 2006 the Tax Office initiated a 2-week public consultation process on the legislative instruments arising from the Review, with the Assistant Treasurer approving the consultation prior to the related legislation being passed by Parliament.

15. The instruments and explanatory statements were published on the ATO website www.ato.gov.au in the form of drafts for consultation. The determination, together with this explanatory statement, was included in that process.

16. Selected parties in the alcohol industry were contacted and invited to comment on the content, form and language of the determination and explanatory statement.

Commissioner of Taxation

[21 August 2006]

Previous draft:

Related Rulings/Determinations:

Excise (Class of persons—educational institutions) Determination 2006 (No. 1)

Excise (Class of persons—government institutions) Determination 2006 (No. 2)

Excise (Class of persons—medical institutions) Determination 2006 (No. 3)

Excise (Class of persons—health care practitioners) Determination 2006 (No. 4)

Excise (Class of persons—veterinary practitioners) Determination 2006 (No. 5)

Excise concessional spirit approvals guidelines 2006 (No. 1)

Excise (Denatured spirits) Determination 2006 (No. 1)

Subject references:

Excise

Excise tariff

denatured spirits

concessional spirit

concessional spirit specific approvals

methylated spirits

Legislative references:

Excise Act 1901 section 25

Excise Act 1901 section 77FG

Excise Act 1901 section 77FH

Excise Tariff Act 1921, the Schedule, item 2(N) (up to 30 June 2006)

Excise Tariff Act 1921, the Schedule, subitem 3.8 (on or after 1 July 2006)

Excise Laws Amendment (Fuel Tax Reform and Other Measures) Act 2006

Excise Tariff Amendment (Fuel Tax Reform and Other Measures) Act 2006

Excise Amendment Regulations 2006 (No. 3)

Spirits Act 1906 section 15

Spirits Regulations 1926 regulation 17

Other references:

Review of the Schedule to the Excise Tariff Act: industry discussion paper, Treasury, 2 June 2005

Explanatory Memorandum to the Excise Laws Amendment (Fuel Tax Reform and Other Measures)

Bill 2006, Excise Tariff Amendment (Fuel Tax Reform and Other Measures) Bill 2006

ATO references

NO:

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