



Explanatory Statement

Excise (Volume – Captive Use Recycled Oil) Determination 2026

General outline of instrument

1. This instrument is a determination made under subsection 65(1) of the *Excise Act 1901* (the Act).
2. Excise is generally payable on excisable goods at the time they are entered for home consumption. However, a licensed manufacturer who pays excise on recycled oil products they manufacture and use in running their enterprise may find it difficult to accurately measure the volume of these products at the time they are entered for home consumption. This instrument provides these manufacturers with appropriate methods to use to work out the volume of this recycled oil.
3. The instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.
4. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws) the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Date of effect

5. This instrument commences on the day after it is registered on the Federal Register of Legislation.

Background

6. Excisable goods (that is, goods subject to excise duty) under excise control generally cannot be used or sold domestically until they are 'entered for home consumption'. Excise duty is payable on an excisable good when it is entered for home consumption (see section 54 of the Act).
7. Used oils may be processed through oil recycling to produce a recycled oil product suitable for re-use. Where the recycling process results in a product that has a new or different character or use from the used oil from which it was derived, the process constitutes excise manufacture, and the recycled oils are excisable goods.
8. In these circumstances the manufacturer of the recycled oil is required to have an excise manufacturer's licence and to pay excise duty on the recycled oil at the time it is entered for home consumption. For a recycled oil product that is used or consumed by the manufacturer of the recycled oil, in the course of running their own enterprise, this oil will be entered for home consumption at that time it is used or consumed.
9. The rate of duty that applies to the recycled oil is specified in the sub-item in Schedule to the *Excise Tariff Act 1921* (Tariff Act) that describes the oil. Where a recycled oil product that is derived from a petroleum source (for example, used lubricating oil) does not fit within a product specific sub-item, the recycled oil product will be covered by sub-item 10.28 in the Schedule to the Tariff Act.

10. To calculate the amount of duty payable, a manufacturer must be able to accurately measure the volume of recycled oil. Where the manufacturer recycles oil for use in carrying on its own enterprise, the recycled oil will generally not be stored in calibrated tanks or placed into containers which facilitate the measurement of volume (for example, the recycled oil may be temporarily stored in a holding tank or consumed directly after recycling). This may make it difficult for the manufacturer to accurately measure the volume of the recycled oil and therefore determine the correct amount of duty to be paid.

11. Subsection 65(1) of the Act allows the CEO (that is, the Commissioner of Taxation) to determine rules for working out the volume of excisable goods. The worked-out quantity is then used, with the specified rate, to calculate the amount of excise duty payable (see section 59 of the Act).

12. The *Excise (Volume – Recycled Waste Oil) Determination 2016 (No. 1) 2016* (2016 instrument) provides manufacturers with appropriate methods to accurately work out the volume of recycled oil they use in the course of running their enterprise.

13. This instrument repeals and replaces the 2016 instrument which would otherwise sunset on 1 October 2026. The instrument has the same substantive effect as the one it is replacing.

Effect of this instrument

14. Section 6 provides licensed manufacturers with acceptable methods they can use to measure the volume of recycled oil they manufacture and use in the course of running their own enterprise.

15. Recycled oil has the meaning given by section 6 of the *Product Stewardship (Oil) Act 2000* (PSOA) and includes goods that are produced from used oil or used oil that is restored to its former state.

16. For the purposes of this instrument the oils that can be recycled are specified in section 6 of the PSOA, and include certain petroleum based oils (or their synthetic equivalent) such as lubricant base oils, greases, brake fluids and transmission oil. However, certain oils are excluded from this definition, including diesel, blends containing diesel, and other goods ordinarily used as fuels.

17. A licensed manufacturer must use one of the following methods to work out the volume of recycled oil at the time it is entered for home consumption by:

- (a) measuring the recycled oil using a properly calibrated flow meter,
- (b) using a method that allows the volume of the recycled oil to be worked out by reference to historical data from similar feedstock, or
- (c) any other method that produces a similarly accurate result.

18. A method in subsection 6(1) can only be used if it produces a true and accurate measurement of the volume of the recycled oil. If a method would not produce an accurate measurement for some reason, for example because the historical data being relied upon is not recent or relates to a different feedstock, the method cannot be used. Before using a method, the manufacturer will therefore need to consider whether the method will produce an accurate measurement, particularly in circumstances where there is a change in the recycling equipment, processes utilised, or to the nature or source of the feedstock oil.

Example

Ross Oil Recycling (ROR) operates a continuous refining process that processes used oil to produce a range of recycled oil products. These products predominantly include base oils (used for lubricants), light fuel oil, heavy fuel oil, and residual oils used in bitumen. For consistency, each

recycled oil product is required to meet ROR's published product specifications, which are used for advertising and sale.

The tank containing light fuel oil is connected to the refinery's burners and supplies the fuel required to generate heat for the operation of the separating column. Because the refinery operates on a continuous basis, ROR measures the quantity of light fuel oil used to power the refinery over four consecutive weekly periods. As the variation in fuel consumption across those four weeks is within 0.5 per cent (indicating weekly fuel use does not materially fluctuate), ROR adopts the average weekly volume as the basis for completing its excise returns and paying the appropriate amount of excise duty on an ongoing basis. As part of its operational controls to maintain efficient refinery performance, ROR reviews and validates the quantity of light fuel oil used for heating purposes every six months.

After two years of continuous operation, ROR expands its facility by installing a second separating column. As the additional column also requires heating, the refinery's fuel consumption profile changes. From that point, ROR can no longer rely on historical fuel-use data, as it no longer reflects current operating conditions. ROR must therefore re-measure the amount of light fuel oil used in the refinery and apply the updated measurements for the purposes of its excise calculations.

Compliance cost assessment

19. Compliance cost impact: To be advised

Consultation

20. Subsection 17(1) of the *Legislation Act 2003* requires that the Commissioner is satisfied that appropriate and reasonably practicable consultation has been undertaken before they make a determination.

21. As part of the consultation process, you are invited to comment on the draft determination and its accompanying draft explanatory statement.

Please forward your comments to the contact officer by the due date.

Due date:	5 June 2026
Contact officer:	Anthony Barnard
Email:	Anthony.Barnard@ato.gov.au
Phone:	03 9285 1974

Statement of compatibility with human rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Excise (Volume – Captive Use Recycled Oil) Determination 2026

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

Used oils may be processed through oil recycling to produce a recycled oil product suitable for re-use. Where the recycling process results in a product that has a new or different character or use from the used oil from which it was derived, the process constitutes excise manufacture, and the recycled oils are excisable goods.

However, it may be difficult for a manufacturer who produces recycled oil products from used oil and who uses these products in running their enterprise to accurately measure the volume of these products at the time they are entered for home consumption. This instrument provides these manufacturers with appropriate methods to work out the volume of the recycled oil.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms as it merely provides manufacturers of recycled oil products that they use in running their own enterprise with appropriate methods for measuring the volume of the recycled oil.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.