

No. 90

THE CUSTOMS AND EXCISE DUTIES ORDINANCE 2003
(Ordinance 31 of 2003)

REGULATIONS MADE UNDER SECTION 8(3)

In exercise of the powers conferred upon him by section 8(3) of the Custom and Excise Duties Ordinance 2003, the Administrator hereby makes the following Regulations:-

**PART I
PRELIMINARY**

Citation

1. These Regulations may be cited as the Customs and Excise (Duty-free Diesel) Regulations 2003.

Interpretation

2. In these Regulations, unless the context otherwise requires-

“agricultural machinery” means machinery falling within any of the C.N. Codes and descriptions of machinery mentioned in Schedule A to these Regulations;

“agricultural purposes” means any of the activities described in Schedule B to these Regulations:

Provided that the activities described in Part V of Schedule B shall not be considered to be activities for agricultural purposes, unless-

- (a) the person performing them also carries out activities falling within one or more of Parts I to IV of that Schedule; and
- (b) in carrying out the activities described in Part IV of Schedule B -
 - (i) he performs them by himself, or they are performed by his employees (or both), and
 - (ii) any equipment he uses in carrying them out or hires to another person for agricultural purposes, is equipment which he also uses for carrying out his other agricultural activities;

“diesel” means gas oil and kerosene, classified under any of C.N. Codes 2710 19 25 00, 2710 19 45 00 and 2710 19 49 00;

“fishing boat” means any boat equipped for the commercial exploitation of the resources of the sea;

“marked diesel” means diesel which has had added to it a marker or colouring substance (or both) in accordance regulation 6;

“resources of the sea” means the available and accessible living creatures of the sea including anadromous fish (fish that go up-river to spawn) and catadromous fish (fish that go down-river to spawn) while they are in the sea.

PART II
EXEMPTIONS AND RESTRICTIONS

Entitled persons, licences and delivery booklets

3. - (1) The Fiscal Officer shall license an entitled person to use marked diesel for use as fuel in agricultural machinery used for agricultural purposes or for use as fuel in a fishing boat used for fishing or fish farming, and the Fiscal Officer may issue to a person so licensed a deliveries booklet for use in connection with his licence.

(2) The following shall be entitled persons for the purposes of these Regulations –

- (a) an individual who is a farmer for the purposes of the Republican laws relating to social insurance
- (b) any person registered for the purposes of VAT and who only carries on activities of a description falling within Schedule B or any person certified by the Commissioner of Value Added Tax under section 42 of the Value Added Tax Ordinance 2001 (farmers' special regime);
- (c) any person who owns a vessel within the meaning of the Fisheries (Consolidation) Ordinance 1982 ("the 1982 Ordinance") as amended by the Fisheries (Consolidation) (Amendment) (No. 1) Ordinance 1991, the Fisheries (Consolidation) (Amendment) Ordinance 1994 and the Fisheries (Consolidation) (Amendment) Ordinance 2002, who has obtained in relation to his vessel a fishing licence issued under section 3 of the 1982 Ordinance or under the provisions of the law of the Republic corresponding to that section;
- (d) any person having a permit or deemed to have a permit under the Fish Farming Ordinance 2001 to establish and operate a fish farm.

Obligations of licensee

4. Any person licensed under section 3 above shall –

- (a) whenever he receives a delivery of marked diesel, produce to his supplier his licence and deliveries booklet;
- (b) provide the proper officer with any information that the proper officer may reasonably request relating to his purchases and use of marked diesel, and produce to the proper officer invoices relating to such purchases;
- (c) retain such invoices for at least two years after the marked diesel has been delivered to him;
- (d) keep a record of his production arising from such of his activities as are of a description falling in Schedule B; and
- (e) inform the Fiscal Officer without delay of any change in the facts that were notified to the Fiscal Officer for the purposes of being issued with a licence under section 3 above.

Restrictions in the use of marked diesel

5. A person shall not, in relation to any marked diesel –

- (a) use it for any purpose other than one described in Schedule B;
- (b) use it in any vehicle or appliance which is not agricultural machinery or a fishing boat;
- (c) store it for use for any purpose other than for one of the purposes described in Schedule B; or
- (d) transport or deliver it for use for any purpose other than for one of the purposes described in Schedule B.

PART III MARKING AND COLOURING OF DIESEL

Marking and colouring of diesel

6.-(1) Any delivery of diesel intended for use for one of the purposes described in Schedule B without the payment excise duty on diesel is prohibited unless a marker and a colouring substance has been added to the diesel in accordance with regulation 7 below.

(2) Diesel which is to be marked or coloured shall be marked or coloured before it is delivered to home use, at a place of storage ("storage premises") approved by the Fiscal Officer as a place suitable for the storing of mineral oils.

Description of markers and colouring substances

7. The substances which may be used as a marker and as colouring substances respectively under these Regulations are –

- (a) as a marker, N-ethyl-N-[2-(1-isobutoxyethoxy)ethyl]-4-(phenylazo)aniline in a proportion of not less than 6 milligrams of marker per 1.000.000 litres of diesel; and
- (b) an appropriate colouring substance in a proportion of not less than 6 milligrams of colouring substance per 1.000.000 litres of diesel.

Obligations of an occupier of storage premises

8. The occupier of storage premises where diesel has a marker or colouring substance added to it shall -

- (a) store the marker and colouring substance in a safe place -
 - (i) separately from any other substances, and
 - (ii) in containers bearing a description of their contents unless the contents are being transported for immediate use;
- (b) keep a daily account of his stocks of markers and colouring substances and of the quantities of these that he has used;
- (c) carry out any chemical analyses required by the Fiscal Officer in the course of the marking or colouring process.

Storage and transport of marked diesel

9. – (1) Marked diesel shall be stored separately from diesel which is not marked.

(2) Marked diesel shall be transported in tankers which are used solely for the purpose of transporting marked diesel.

(3) Any tank, container, storage place, pipe or pump used for the delivery of marked diesel must bear an indelible indication that it contains diesel for agricultural purposes.

Prohibitions

10. - (1) The marking or colouring of diesel is prohibited unless it is carried out in accordance with these Regulations.

(2) It shall be prohibited to remove a marker or colouring substance from marked diesel.

(3) It shall be prohibited to add any mineral oil or any other substance to marked diesel so as to alter the identity of the marker or colouring substance used in marking the diesel.

PART IV AUTHORISED SELLERS

Licence to possess and dispose of marked diesel

11. - (1) Unless otherwise provided by these Regulations, it shall be prohibited for any person to possess or dispose of marked diesel for agricultural purposes, unless he holds a licence as an authorised seller granted to him by the Fiscal Officer:

Provided that the occupier of approved storage premises shall be treated as being also as an authorised seller.

(2) The Fiscal Officer may require an authorised seller to provide a guarantee or other security that he will comply with any terms or conditions relating to the possession and disposal of marked diesel.

(3) The Fiscal Officer may by notification publish the terms and conditions relating to the possession and disposal of marked diesel.

Allowance for certain losses

12. - (1) Where marked diesel is used for any purpose other than one mentioned in regulation 3(1) then the duty which would have been charged on the diesel if it had not been marked shall be so charged and shall be payable by the person who used the diesel for such other purpose.

(2) Where an authorised seller cannot satisfy the Fiscal Officer that a shortage exceeding 0,5% of the authorised seller's stock of marked diesel cannot be attributed to the nature of the product, then marked diesel in excess of 0,5% of the stock shall be treated as having been used for a purpose other than one mentioned in regulation 3(1).

Obligations of authorised seller

13. Any authorised seller shall -

- (a) dispose of marked diesel only to another authorised seller or to an entitled person and shall issue an invoice to the recipient containing a statement to the effect that the marked diesel to which the invoice relates may not be used for any purpose other than an agricultural purpose or as fuel for a fishing boat;
- (b) keep accounts of marked diesel delivered to and by him each month and submit to the Fiscal Officer a return in such

formas the Fiscal officer shall direct, of such deliveries by the tenth working day of the following month;

- (c) declare to the Fiscal Officer the tankers that he uses for transporting marked diesel;
- (d) keep, in each such tanker during the transport of marked diesel, a record (showing dates, quantities and places of loading and unloading) of all marked diesel loaded into and unloaded from that tanker;
- (e) provide the proper officer with any information that he may reasonably request and produce to him the accounts and any other books or documents relating to the marked diesel transported by the authorised seller;
- (f) keep all such documents, books and other records for at least seven years following the completion of the actions mentioned in them, unless the Fiscal Officer otherwise allows;
- (g) notify the Fiscal Officer without delay about any change in the information that was given to the Fiscal Officer for the purposes of obtaining the licence as an authorised seller.

Taking of samples

14. - (1) Without prejudice to the provisions of the Customs and Excise Ordinance 1969 concerning the powers of officers to inspect vehicles, boats and premises, any officer taking a sample for the purposes of these Regulations -

- (a) from a vehicle, shall do so if possible, in the presence of the person who appears to be the owner or the person having charge of the vehicle;
- (b) at any premises, shall do so if possible, in the presence and with the consent of the occupier or the person in charge of the premises.

(2) The results of any sample tested for the purposes of these Regulations shall not be admissible -

- (a) in any civil or criminal proceedings; or
- (b) in any procedure initiated by the Fiscal Officer,

unless the testing is carried out by the General Chemical Laboratory of the Republic or such other chemical laboratory as the Fiscal Officer may approve.

(3) An officer taking a sample shall divide it into three separate parts, each of which shall be sealed and labelled. One of the parts shall be subjected to testing, another part shall be delivered to the person (if any) in whose presence the sample had been taken, if he so requests, and the third part shall be kept by the Fiscal Officer for possible future reference.

(4) Where it is not possible to take a sample in the presence of any of the persons mentioned in subsection (1) above, the officer taking the sample shall send a notification to the owner or person in charge of the vehicle concerned, or to the occupier or person in charge of the premises concerned, as the case may require, notifying him that a sample has been taken and that a part thereof is available of he requests it, at such place and at such time as shall be specified in the notification.

**PART VI
OTHER PROVISIONS**

Obtaining of licences

15. An application to obtain a licence as an entitled person within the meaning of regulation 3(2) or as an authorised seller under regulation 11 shall be submitted to the Fiscal Officer in such form and manner as the Fiscal Officer may direct.

Cancellation or revocation of licences

16. The Fiscal Officer may revoke or suspend a licence granted under these Regulations if –

- (a) it is established that the licence was granted as a result of untrue or inaccurate information supplied to the Fiscal Officer who would not have granted the licence if he had been supplied with true or accurate information;
- (b) the conditions subject to which a licence of the kind in question may be granted were wholly or partly absent;
- (c) the holder of the licence fails to comply with these Regulations;
- (d) the holder of the licence dies or becomes insolvent;
- (e) the holder of the licence ceases to carry out any of the activities described in Parts I to IV of Schedule B;
- (f) the holder of the licence is shown not to be making use of the licence granted to him.

SCHEDULE A

(Regulation 2)

C.N. Code	Description
EX 8408	Compression-ignition internal combustion piston engines (diesel or semi-diesel engines) suitable for extracting water
EX 8412	Other engines and motors suitable for agricultural use
EX 8413	Pumps for liquids, whether or not or not fitted with a measuring device. Liquid elevators suitable for agricultural use
EX 8422 40 00 00	Machinery for the wrapping of fodder or straw bales for agriculture
EX 8424 20 00 00	Spray guns operating with compressed air or steam and other similar appliances for agricultural use
EX 8424 81	Improved types of motor engine self propellant sprayers (mist blowers, fumigation sprayers)
EX 8424 81	Watering appliances and other appliances for agricultural use.
EX 8428	Platforms for collecting fruit
EX 8428	Lift for rectangular bales
EX 8428	Loader/transporter for boxes of fruit, potatoes and for
EX 8431	use in live stock units
EX 8432	Rotary lubricators
EX 8432	Machinery, appliances for agricultural, horticultural or forestry machinery for soil preparation or cultivation

EX 8432	Compound machinery for multiple use for the cultivation of cereals and other cultivations
EX 8432	Rotary cultivator with coil shanks or rotary ploughs
EX 8432	Mounted half turn ploughs
EX 8432	Single-axis tractor (rotary cultivator with coil shanks)
EX 8432	Mould board
EX 8432	Harrow fork
EX 8432	Cereal seeder with a harrow fork and mould board
EX 8432	Seeder for pistachios and blossoms
EX 8432	Linear and pneumatic seeders for small vegetable seeds (not potatoes)
EX 8432	Planter of sporophyte vegetables with or without simultaneous fixing of plastic for covering the soil.
EX 8432	Planter (potato seeder) (automatic improved type)
EX 8433	Harvesting or threshing machinery, including straw or fodder balers, grass or hay fodder, machines for cleaning, sorting or grading eggs, fruit or other agricultural produce, other than machinery for mowing grass
EX 8433	Harvesting machinery (vibrators) for almonds, walnuts, olives etc.
EX 8433*	Beans thresher
EX 8433*	Bean mower
EX 8433*	Linear bean collector
EX 8433	Peanuts thresher
EX 8433	Tomato harvesting machinery
EX 8433	Machinery for sorting tomatoes
EX 8433	Machinery for sorting olives
EX 8433	Baler for rectangular or cylindrical bales
EX 8433	Hay collector
EX 8433	Hay mower
EX 8433	Hay conditioner
EX 8433	Silage hay mower
EX 8433	Unit for the destruction of potato foliage and wrapping of irrigation hoses.
EX 8433	Up rooter- potato lift (improved type)

*All three machines form the mechanisation system of bean harvesting.

8434 10 00 00	Milking machines
EX 8435 10 00 00	Electric crusher - grapes stemmer
EX 8436	Other agricultural, horticultural, forestry, poultry-keeping or bee-keeping machinery, including germination plant fitted with mechanical or thermal equipment, poultry incubators and brooders
EX 8436	Special carriage for collecting and feeding hay
EX 8436	Special carriage for loading and transporting hay for silage
EX 8436	Special mower for silage hay
EX 8436	Units for the production of condensed mixtures (silo, scale, mills, mixers, various screws etc.) as a complete system
EX 8436	System of automatic feeding bags
EX 8436	Mechanical pruning units

EX 8436	Machines for grinding the residues of plant cultivations after pruning.
EX 8436	Mechanical pruners for almonds, pistachios etc.
EX 8436	Machinery for fixing plastic to cover the soil
EX 8438	Scutching machine - nut peelers (for the separation of the kernel, mainly of pistachios etc.)
EX 8501	Electric generators
EX 8701	Biaxial tractors (tractors)
EX 8701 10	Pedestrian-controlled tractors for agricultural use. Agricultural tractors and wheeled forestry tractors: new, of an engine power:
EX 8701 90 11 00	Not exceeding 18kw
EX 8701 90 20 00	Exceeding 18 kw but not exceeding 37 kw
EX 8701 90 25 00	Exceeding 37 kw but not exceeding 59 kw
EX 8701 90 31 00	Exceeding 59 kw but not exceeding 75 kw
EX 8701 90 35 00	Exceeding 75 kw but not exceeding 90 kw
EX 8701 90 39 00	Exceeding 90 kw
EX 8701 90 50 00	Used
EX 8716 20 00 00	Self-loading or self-unloading trailers and semi-trailers for agricultural purposes

- Heating and air conditioning appliances/systems (fan heaters, burners and other)
- Machinery for the production of steam for disinfecting soil
- Boats for servicing fish farming cages
- Systems for heating water used in aquaculture.

SCHEDULE B

(Regulation 2)

PART I - AGRICULTURE

1. General agriculture, including viticulture.
2. Cultivation of fruit-bearing trees (including olive trees), vegetables, blossoms and ornamental plants.
3. Production of mushrooms, spices, seeds for sowing and propagating materials, and nurseries.

PART II - STOCK FARMING

1. General stock farming.
2. Poultry farming.
3. Rabbit- farming.
4. Beekeeping.
5. Silkworm farming
6. Snail farming.

PART III - FORESTRY

1. Growing, felling and general husbandry of trees in a forest or wood.

PART IV - FISHING

1. Fishing.
2. Fish farming.

PART V - SERVICES

1. Manual work, cultivation, reaping, mowing, threshing, baling, collecting, harvesting, sowing and planting.
2. Packing and preparing for sale (including drying, cleaning, grinding, disinfecting and ensilaging) of agricultural products.
3. Storage of agricultural products.
4. Stock minding, rearing and fattening.
5. Combating weeds and pests, dusting and spraying of crops and land.
6. Operation of irrigation and drainage equipment.
7. Lopping, tree felling and other forestry services.

Dated this 9th day of September 2003.

By the Administrator's Command,

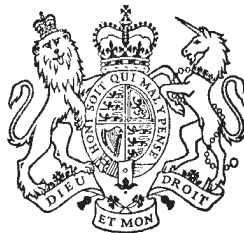
P. D. Draycott

Chief Officer,

Sovereign Base Areas.

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SUPPLEMENT No. 3
TO
THE SOVEREIGN BASE AREAS GAZETTE
No. 1304 of 23rd September 2003
SUBSIDIARY LEGISLATION

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