



January 29, 2010

CUSTOMS MEMORANDUM ORDER

No. 4-2010

TO: The District Collector of Customs,
Subic Special Economic and Freeport Zone,
Clark Special Economic and Freeport Zone,
Port of Batangas
All Importers and Exporters, Bunkerers, Sellers and Buyers of
Petroleum Products
All Others Concerned

**SUBJECT: Implementation of the Regularization of the Fuel Marking
Program Pursuant to Department Order No. 43-09 dated
December 21, 2009.**

Pursuant to Department Order No. (DO) 43-09 dated 21 December 2009 the following instructions are hereby issued amending CMO 16-08 which is the implementing regulations to the Fuel Marking Program under DO 23-07, as amended by DO 06-08.

Section 1. Coverage

In addition to the Ports covered by CMO 16-08 on the pilot implementation of the Fuel Marking Program, this Order shall also cover ports with importations of diesel and kerosene, whether or not duty and tax paid.

Section 2. Objectives

- 2.1 To properly identify and track kerosene and diesel entered into the Philippines without payment of duties and taxes, whether the same are legitimately entered free and/or exempt from duties and taxes, or illegally entered into the Philippines;
- 2.2 To plug the leakage of duties and taxes due on kerosene and diesel initially entered into the country without payment of duties and taxes and which are eventually diverted to the domestic market, or for other use which will subject the kerosene and diesel to duties and taxes; and
- 2.3 To provide the necessary tools and evidence required for the prosecution of parties who do not pay the proper duties and taxes for kerosene and diesel introduced into the domestic market.

Section 3. Administrative Provisions

- 3.1 The following shall be marked with the official marking agent designated by the Department of Finance in accordance with existing rules:
- 3.1.1 All kerosene, including dual purpose kerosene (DPK), subject to zero excise tax; and
 - 3.1.2 All diesel oil entered duty and tax free.
- 3.2 Responsibility for the Marking of Kerosene and Diesel and its Cost:
- 3.2.1 In case of kerosene subject to zero excise tax referred to in subsection 3.1.1., the person, entity or taxpayer who owns or enters the product or to whom it is consigned, or whoever brings the same into the country, shall cause the marking of said duty and/or tax free kerosene/diesel with the official marking agent, and shall bear the cost of marking the same.
 - 3.2.2 In case of diesel referred to in subsection 3.1.2., the person, entity or taxpayer who imports, manufactures and/or refines said diesel shall cause the marking thereof with the official marking agent and shall bear the cost of marking the same.
- 3.3 Refusal of Person/Entity Responsible to Cause Marking –
- 3.3.1 The failure or refusal of the person, entity or taxpayer responsible for the marking of kerosene and diesel oil as herein required to cause the marking within a period of fifteen (15) days from due notice shall subject such owner, consignee or importer and the articles to such sanctions as may be imposed in accordance with the Tariff and Customs Code of the Philippines, as amended, and other relevant existing laws, and rules and regulations issued pursuant to law.
- 3.4 Presumption of illegal Importation/Withdrawal –
- 3.4.1 In the event that diesel oil containing the official marker signifying exemption is found in the domestic market or in the possession of anyone or under any situation where said diesel oil is subject to duties and taxes, it shall constitute prima facie evidence that the same was imported or withdrawn with the intention to evade the payment of duties and taxes due thereon and enough to establish the existence of probable cause for the institution of seizure and forfeiture proceedings under the Tariff and Customs Code of the Philippines, as amended, and other related laws, rules and regulations.
 - 3.4.2 The same presumption shall apply in the event that kerosene subject to zero excise tax containing the official marker is found being used, transported, stored or otherwise labelled as aviation fuel in the domestic markets or in possession of anyone or under any situation where said kerosene is subject to duties and taxes.

3.5 Implementation Roll-Out

3.5.1 The mandatory marking prescribed in this Order shall be implemented at the Subic Bay Free Port and the Clark Special Economic Zone for diesel and kerosene and at the Port of Batangas for imported kerosene.

3.5.2 The District Collectors of ports already included in the implementation of the marking program shall submit monthly a list of diesel and kerosene shipments with the following particulars below:

I. Arrivals/Admissions:

- . bill of lading number
- . vessel and registry number
- . date of arrival
- . consignee
- . volume in liters per b/l
- . volume in liters per survey report @air (if available)
- SBMA Permit to Bring Out and CDC Permit to Bring In (for pipeline transfers to Port of Clark)

II. Duty/Tax Paid Deliveries

- . Entry Number
- . Date filed
- . BL Number
- . Vessel and Registry Number
- . volume in liters
- . amount paid
- . local buyer if different from importer

III. Exempt and Free Deliveries

- . Clearance Document Number
- . Date filed
- . BL Number
- . Vessel and Registry Number
- . volume in liters
- . local buyer if different from importer

In the case of pipeline transfers of diesel from the Port of Subic to the Port of Clark, the report to be submitted must also include the volume of diesel obtained resulting from the "interphase" of diesel and aviation fuel in the pipeline.

The mandatory submission of the monthly report must be received at the Office of the Deputy Commissioner for Intelligence on or before the 10th of the following month for consolidation and transmittal to the PIO.

3.5.3 Report of Districts Not Yet Included in the Implementation

District Collectors of Ports not yet included in the marking program but with diesel and kerosene arrivals must submit reports

following the structure in 3.5.2 above. The initial report to be submitted shall cover the whole year of 2009 and must be received at the Office of the Deputy Commissioner for Intelligence on or before 15 February 2010. Subsequent submissions must be on a monthly basis and only when there is/are such arrival/s for the month.

3.6 Program Implementation Office (PIO) -

3.6.1 The PIO established and empowered under Department Order No. 23-07, shall have the following duties and responsibilities:

3.6.1.1 Commence the implementation at the Subic Bay Free Port, Clark Special Economic Zone, Port of Batangas and other Ports with tax and duty free importations of diesel or with importations of kerosene, whether duty and tax paid or not upon effectivity of this Order;

3.6.1.2 Ensure that all operational and technical written instructions are in place and properly disseminated to all concerned;

3.6.1.3 Identify and resolve any operational and technical difficulties encountered during the regular implementation and propose measures to enhance the effectivity of the Program;

3.6.1.4. Submit monthly progress report to the Secretary of Finance on the pilot implementation.

Section 4. Operational Provisions

4.1 Notice of Arrival – For kerosene shipments, the importers or their authorized agents shall submit at least three (3) days prior to the arrival of the carrying vessel a Notice of Arrival to the customs authorities, copy furnished the designated marking service provider. The Notice shall contain the following data: ETA, Vessel Name, Pier/Port of Destination, and Quantity of Product (in volume liters).

4.2 Notification of Purchase.- Buyers from suppliers in freeports and other similar sources of duty/tax free or exempt diesel (PEZA and other ecozone locators, bunkering entities as well as gasoline stations operating in freeports/special ecozones) shall file with the designated marking service provider at least seven (7) working days from the expected date of marking a Notification of Purchase Tax and Duty Free Diesel using the amended form ("Annex A"). The notification shall be directed to the supplier who shall be responsible for coordinating with the marking service provider and the Bureau of Customs office in scheduling the date of the marking for the diesel being purchased.

Prior to the filing of the Notification of Purchase with the designated service provider, copies thereof shall be given the Customs Collector concerned, the authorized representative of the Deputy Commissioner for Intelligence and the SBMA Office concerned who shall acknowledge receipt thereof in the original copy of the Notification which will be given to the service provider.

- 4.3 Instructions to Mark and Required Coordination.-The concerned Customs Office, prior to processing the Customs declaration filed for the clearance and release of the diesel shall verify if the Notice to Purchase required in 4.2 has been provided. The Customs declaration (entry/transit/transshipment) shall then be clearly marked/stamped with the words " SUBJECT TO MARKING PURSUANT TO DEPARTMENT ORDER 23-07 as amended ". The same Customs office shall have responsibility for notifying Customs gatekeepers of any releases for which marking is required in order that they can effectively discharge their responsibilities described in 4.4.3.

The Customs office concerned shall utilize risk assessment techniques in deciding whether or not to be actually present during the marking taking into account available manpower and the need to insure that there will be no delay in the marking process.

4.4 Certificate of Marking.

- 4.4.1 The service provider, after completing the marking of the kerosene/Diesel for withdrawal, shall issue the corresponding Certificate of Marking (COM) following the format prescribed in Annex "B" hereof;
- 4.4.2 The supplier shall demand presentation of the duly accomplished Certificate of Marking, as basis for its issuance of the corresponding Petroleum Gate Pass to authorize withdrawal of the Kerosene/Diesel indicating the COM number therein; and
- 4.4.3 The customs personnel assigned at the facility exit/s or Customs Guard/Inspector, in case of tankers or sea vessel, shall demand presentation of the relevant Certificate of Marking and, if satisfied of its sufficiency and validity, shall authorize the exit/departure of the carrying tankers (over-land or by sea) from the facility. He shall likewise retain a copy of the Certificate of Marking presented for the withdrawn shipment and shall indicate in the said Certificate the date and time of the actual exit of the marked fuel shipment in the gate/s or the port as the case may be. It shall be his responsibility to provide the Port Reconciliation Team created hereunder with copies of the COMs submitted to him.
- 4.5 Kerosene and Diesel imported free from payment of duties and taxes into the Subic Bay Free Port and the Clark Special Economic Zone applied for transfer to the Philippines Economic zone Authority (PEZA) or other ecozones must be covered by an import Permit issued by the receiving ecozone authority. For transfer of such petroleum products to the Joint Oil companies Aviation Storage Plant (JOCAS), a prior approval from the government office with jurisdiction over the facility must be required on top of the transshipment application
- 4.6 Transfer of said PP from SBMA/CSEZ imported conditionally-free from payment of customs duties and taxes for bunkering/loading into foreign ships, vessels or aircraft must be covered by a corresponding export declaration together with a duly issued bunkering permit. Copies of the sub gate-pass shall be submitted to the Customs Office prior to the actual exit of the shipment covered therein.

- 4.7 The current practice of allowing a PP supplier to file one (1) customs declaration for his total distribution requirements covering a period of time or for the requirements of many customers with each partial withdrawal covered by a sub-gate pass shall be allowed only for tax and/or duty paid withdrawals
- 4.8 Every withdrawal of petroleum products subject to marking shall be covered by one customs declaration (import entry, export entry, or transshipment/transit permit).
- 4.9 Marking of diesel and kerosene (including DPK) initially stored in a bonded facility at the Port of Batangas the payment of duties and taxes of which is suspended and then transferred, under customs control, by pipeline or other means to the Pandacan Oil Terminal shall be undertaken in the course of the withdrawal of such products from the Pandacan Terminal. The Collection District which has jurisdiction over the Pandacan Oil Terminal shall be responsible for the proper implementation of this Order, to include the administrative arrangements for the designated marking service provider.
- 4.10 Port Reconciliation Team (PRT).- All gate passes issued covering releases without payment of duties and taxes must be subjected to post audit by the PRT chaired by the District Collector of Customs and with the marking service provider and the fuel suppliers as members. The District Collector shall designate other members to the PRT as he may deem needed. PRT must on the basis of available data and information identify/ ascertain the following:
- (i) releases without duties and taxes paid but have not been marked pursuant to this Order
 - (ii) diversions of free and exempt releases to the domestic market or abuses in the availment of the privilege
 - (iii) in general that all arrivals of diesel and kerosene in the district have been disposed of in accordance with law.
- 4.11 Port Implementation Team (PIT).- For the proper implementation of this Order, the District Collector shall likewise establish a PIT chaired by the District Collector with representatives from the Freeport/Ecozone Authority (i.e. SBMA, CDC), all importers of petroleum products at the port, the port operator, the fuel storage facility owner/operator, all suppliers and concerned shipping lines as members.
- The PIT shall inform the Secretary of Finance (Attn: Program Implementation Office) difficulties encountered and remedies applied as well as systems/procedures improvements.

Section 5. Disposition of Seized Marked Fuel

Pending the conduct of the seizure and forfeiture proceedings against any marked fuel seized for being sold in the domestic market, the District Collector shall cause the immediate disposition of the shipment pursuant to Section 2607 of the TCCP, as amended, taking into account the objectives of the Fuel Marking Program. The proceeds of the auction sale shall be held in trust until final termination of the case.

If the seized fuel shipment remains unsold after two failed biddings, the District Collector shall immediately report the matter to the Committee on Negotiated Sale who shall dispose of the same pursuant to the provisions of CAO 10-2007. In cases where the shipment remains unsold despite offers for negotiated sale by the Bureau, the same shall be disposed through the other modes of disposition authorized under the TCCP, as amended.

Section 6. Liability of Customs Personnel, Importers, Brokers, etc,

Customs Personnel, importers, brokers and other individuals found violating any provisions of this Order and CMO 16-2008 shall be dealt with accordingly pursuant to existing laws, rules and regulations.

Section 7. Transitory Provisions

Pending the nationwide roll-out of the Program, the services of the existing nominated service provider shall be retained during the regular implementation of the Fuel Marking Program in the ports covered by this Order.

Section 8. Repealing Clause

All orders, circulars, memoranda, and other issuances or parts thereof which are inconsistent with this Order are hereby deemed repealed or modified accordingly.

Section 9. Effectivity

This Order shall take effect upon its publication. Upon effectivity of this Order, no Diesel entered free or exempt from duties and taxes in whole or in part shall be removed from their place of storage without having been marked pursuant to this Order.

No kerosene shipment arriving in any port for which fuel marking has been implemented shall be cleared and/or released without having been marked accordingly.

NAPOLEON D. MORALES
Commissioner

