

Statutory Instrument No 567 of 2007

REGULATIONS

entitled

National Oil Reserves Agency Act 2007 (Returns and Levy) Regulations 2007

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S. I. No 567 of 2007

National Oil Reserves Agency Act 2007 (Returns and Levy) Regulations 2007

I, Eamon Ryan , Minister for Communications, Marine and Natural Resources in exercise of the powers conferred on me by sections 44 and 59 of the National Oil Reserves Agency Act 2007 (No 7 of 2007), hereby make the following regulations:

Citation and commencement

1. (1) These Regulations may be cited as the National Oil Reserves Agency Act 2007 (Returns and Levy) Regulations 2007.

(2) These Regulations come into operation on 1 August 2007.

Interpretation

2. In these Regulations -

“Agency” means National Oil Reserves Agency;

“biofuels” has the same meaning as in EU Directive 2003/30/EC of the European Parliament and of the Council of 8 May 2003 on the promotion of the use of biofuels or other renewable fuels for transport¹;

“levy” means the levy payable to the Agency under Regulation 4(4);

“levy assessment notice” means a notice issued by the Agency under Regulation 4(3);

¹ OJ No. L 123, 17 May 2003, p. 42.

“litres” means standard litres, that is the volume that oil occupies at a temperature of 15 degrees Celsius;

“Minister” means the Minister for Communications, Marine and Natural Resources;

“return”, in relation to returns submitted to the Minister for the purposes of Regulation 3, means a return covering a specified calendar month which is so submitted in writing by-

- (a) the Agency,
- (b) an oil company, or
- (c) an oil consumer.

Returns

3. (1) A return submitted to the Minister for the purposes of paragraph (2), (3) or (4) shall –

- (a) be submitted to the Minister in a manner and form specified by the Minister and shall be so submitted not later than the 18th day of the calendar month subsequent to the month to which it refers, and

(b) be approved by a director or the secretary, or by another person acceptable to the Minister, acting on behalf of-

(i) the Agency;

(ii) an oil company, or

(iii) an oil consumer,

as the case may be, and in a manner that is acceptable to the Minister.

(2) A return submitted to the Minister by the Agency shall contain-

(a) the following information with respect to oil (including biofuels), expressed in tonnes or litres, as the Minister directs-

(i) the stocks of oil held by the Agency at the beginning of the month the subject of that return, including stocks held at the disposal of the Agency under holding contracts;

(ii) all purchases of oil received by the Agency during that month;

(iii) all imports into, and exports from, the State of oil made by the Agency during that month;

(iv) the stocks of oil held by the Agency at the end of that month, including stocks held at the disposal of the Agency under holding contracts;

(v) the total sales of oil made by the Agency during that month;

and

(b) such other information as the Minister may from time to time direct.

(3) A return submitted to the Minister by an oil company with respect to oil (including biofuels) shall contain-

(a) the following information, expressed in litres -

(i) the stocks of oil held by the company at the beginning of the month the subject of that return at facilities in the State;

(ii) the stocks of oil held by the company under clause (i) that are held by the company in its own storage facilities;

(iii) the stocks of oil held by the company at the beginning of that month in the form of swaps and drawings the subject of that return at facilities in the State;

- (iv) the stocks of oil held by the company at the beginning of that month on behalf of the Agency at facilities in the State or at facilities outside the State;
- (v) the stocks of oil held by the company at the beginning of that month in the State under any bilateral agreement to which section 62 of the National Oil Reserve Agency Act 2007 relates;
- (vi) all purchases of oil received by the company during that month;
- (vii) all imports into, and exports from, the State of oil made by the company during that month;
- (viii) the stocks of oil held by the company at the end of that month at facilities in the State;
- (ix) the stocks of oil held by the company under clause (viii) that are held by the company in its own storage facilities;
- (x) the stocks of oil held by the company at the end of that month in the form of swaps and drawings the subject of that return at facilities in the State;
- (xi) the stocks of oil held by the company at the end of that month on behalf of the Agency at facilities in the State or at facilities outside the State;
- (xii) the stocks of oil held by the company at the end of that month in the State under any bilateral agreement to

which section 62 of the National Oil Reserve Agency Act 2007 relates;

- (xiii) the total sales of oil made by the company during that month;
- (xiv) the total sales by the company during that month of marine bunkers and aviation fuel, including jet fuel of the Kerosene type and biofuels;
- (xv) the company's consumption of oil during that month,

and

- (b) such other information as the Minister may from time to time direct.

(4) A return submitted to the Minister by an oil consumer with respect to oil (including biofuels) shall contain-

- (a) the following information, expressed in litres -
 - (i) the stocks of oil held by the oil consumer at the beginning of the month the subject of that return at facilities in the State;
 - (ii) the stocks of oil held by the company under clause (i) that are held by the oil consumer in its own storage facilities;

- (iii) the stocks of oil held by the oil consumer at the beginning of that month on behalf of the Agency at facilities in the State or at facilities outside the State;
- (iv) all purchases of oil received by the oil consumer during that month;
- (v) the stocks of oil held by the oil consumer at the beginning of that month in the State under any bilateral agreement to which section 62 of the National Oil Reserve Agency Act 2007 relates;
- (vi) all imports of oil into the State made by the oil consumer during that month;
- (vii) the stocks of oil held by the oil consumer at the end of that month at facilities in the State;
- (viii) the stocks of oil held by the oil consumer under clause (vii) that are held by the company in its own storage facilities;
- (ix) the stocks of oil held by the oil consumer at the end of that month on behalf of the Agency at facilities in the State or at facilities outside the State;

- (x) the stocks of oil held by the oil consumer at the end of that month in the State under any bilateral agreement to which section 62 of the National Oil Reserve Agency Act 2007 relates;
- (xi) the oil consumer's consumption of oil during that month at facilities in the State,

and

- (b) such other information as the Minister may from time to time direct.

(5) The Agency, an oil company or an oil consumer (as the case may be) shall, in compiling a return to the Minister-

- (a) take into account the following if they are in its beneficial ownership-
 - (i) stocks of oil on board oil tankers in ports in the State awaiting unloading after completion of port formalities;
 - (ii) stocks of oil stored in an unloading port in the State;
 - (iii) stocks of oil stored in tanks in the State at the entry to oil pipelines;
 - (iv) stocks of oil stored in refinery tanks in the State (excluding pipes and refinery plant);

- (v) stocks of oil held in storage in the State by refineries (other than stocks falling within clause (iv)), and by importing, storage, or wholesale distribution firms;
- (vi) stocks of oil held in barges and coastal vessels, whether in a port in the State or in the course of transportation from one place in the State to another such place;
- (vii) blending components (including biofuels) in the State intended for processing into petroleum products,

and

- (b) provide such other information as the Minister may from time to time direct.

(6) Where the Agency, an oil company or an oil consumer discovers that an error was made in any return made by it for the purposes of this Regulation, it shall as soon as possible inform the Minister accordingly in writing.

Levy

4. (1) With effect from 1 November 2007, the rate of levy payable per litre of relevant disposals of petroleum products to the Agency by each oil company and oil consumer by virtue of section 44(5) of the National Oil Reserves Agency Act 2007 (No. 7 of 2007) is varied to the rates specified in Schedule 1.

(2) Without prejudice to any other legal requirements relating to the keeping of proper books of account, each oil company and oil consumer shall maintain, for a period of not less than 7 years after the period to which they refer, the following records in respect of matters relating to payment of the levy:

- (a) copies of any returns made for the purposes of Regulation 3;
- (b) a copy of all invoices or bills of sale issued with regard to the relevant disposal of oil by the oil company or oil consumer concerned;
- (c) a copy of all invoices or bills of sale received with regard to the purchase of oil by the oil company or oil consumer concerned;
- (d) copies of any correspondence, memoranda or other supporting documentation relating to subparagraph (a).

(3) As soon as practicable after the end of each month, the Agency shall issue a levy assessment notice to each oil company and oil consumer liable to pay the levy.

(4) Each oil company and oil consumer shall pay to the Agency the amount specified in a notice the subject of paragraph (3) no later than the 5th working day after the date of issue of the levy assessment notice.

(5) Payment of the amount specified in a levy assessment notice by each oil company and oil consumer shall –

- (a) be made in Euro,
- (b) be by cheque or be carried out by means of direct bank transfer or equivalent instantaneous transfer of funds to the bank account specified by the Agency in the notice, and
- (c) be the subject of notification to the Agency, such notification to include details of the date and time on which payment was made, and the name of the bank effecting payment on behalf of the oil company or oil consumer.

(6) Where an oil company or oil consumer pays to the Agency an amount greater than that specified in a levy assessment notice, then the Agency shall either –

- (a) reimburse the oil company or oil consumer concerned the additional amount so paid prior to the date of issue of the levy assessment notice for the month following that specified in the notice, or
- (b) subject to the agreement of the oil company or oil consumer concerned, offset the amount of the overpayment made against the levy assessment notice for the month following that specified in the notice.

(7) Where the oil company or oil consumer concerned–

- (a) does not pay the amount specified in the levy assessment notice concerned, or
- (b) pays less than the amount specified in the levy assessment notice concerned,

then, except where paragraph (8) applies, interest on the unpaid amount shall accrue from the day immediately after the due date specified in that notice, the rate of such interest on the unpaid amount to be calculated by applying the formula specified in Schedule 2.

(8) An oil company or oil consumer shall only be required to pay, in accordance with paragraph (7), interest on any unpaid amount that, following a review carried out in accordance with Regulation 5, is found to be due and owing in respect of any day after the date for the payment to which the levy assessment notice concerned relates.

Review of levy assessment notice

5. (1) An oil company or an oil consumer may make application to the Minister for a review of the amount specified in a levy assessment notice issued to it on the basis that the amount specified in that notice is, in the opinion of the oil company or oil consumer concerned, erroneous.

(2) An application made in accordance with paragraph (1) shall—

(a) be made within 5 days of the date of issue of the levy assessment notice concerned, and

(b) be accompanied by any documentation, data or other supporting information (including information stored by electronic means) which, in the opinion of the oil company or oil consumer concerned, is relevant to the request for a review.

(3) If, following an examination of an application submitted in accordance with paragraph (1), the Minister is satisfied that the amount specified in the levy assessment the subject of the application is erroneous, the Minister shall instruct the Agency to –

(a) without prejudice to any liability in respect of interest by virtue of paragraphs (7) and (8) of Regulation 4, cancel the levy assessment notice, and

(b) direct the Agency to issue a revised levy assessment notice for the month in question, the amount specified in the revised notice to be specified by the Minister,

and, for the purposes of the revised notice, it may specify the amount of any interest payable by virtue of paragraphs (7) and (8) of Regulation 4.

(4) (a) This paragraph applies where-

- (i) an oil company or an oil consumer informs the Minister pursuant to Regulation 3(6) that a return or returns submitted by it contain or contains an error or errors in respect of the amount or amounts of oil concerned, and
 - (ii) at the date of so informing, there is no amount outstanding and overdue from the oil company or oil consumer in respect of any levy assessment notice issued to it by the Agency as a result of the return or returns so submitted.

 - (b) Where as a consequence of informing the Minister pursuant to Regulation 3(6) an oil company or an oil consumer is liable to pay interest on any outstanding amount, then the Agency may at its discretion and after having regard to-
 - (i) the nature of the error or errors concerned,
 - (ii) the amount of interest that would be involved, and
 - (iii) such other matters that the Agency considers appropriate to take account of in the circumstances,
- waive in whole or in part the interest due and to which paragraphs (7) and (8) of Regulation 4 would otherwise relate.

(5) Paragraphs (1) to (4) of this Regulation do not apply to an application made for the purposes of paragraph (1) in respect of a levy assessment notice where the application or information given pursuant to paragraph (4)–

(a) is, in the opinion of the Minister, vexatious in nature, or

(b) was submitted by an oil company or oil consumer concerned that–

(i) failed to submit a return to the Minister in accordance with Regulation 3 in respect of a period and the levy assessment notice relates to such period, or

(ii) has submitted such a return to the Minister which is, in the opinion of the Minister, inaccurate or incomplete in a material respect.

SCHEDULE 1

Regulation 4(1).

Rate of Levy

Reference number	Petroleum product	Rate of levy per litre €
1	Motor spirit	€ 0.01
2	Gas oil, diesel oil and kerosene (excluding jet fuel of the kerosene type)	€ 0.01
3	Fuel oils	€ 0.01

SCHEDULE 2

Regulation 4(7).

Formula for the calculation of interest on the unpaid amount of any levy under these Regulations.

The rate of interest (expressed as per cent per annum) to be imposed with regard to any unpaid amount owed to the Agency by an oil company or oil consumer, calculated from the day immediately after the due date specified on the levy assessment notice from which the unpaid amount is owed, and which continues to accrue until payment of that unpaid amount is made to the Agency, shall be calculated using the formula:

$$\text{EURIBOR} + \text{CB} + \text{CA}$$

where:

EURIBOR is the prevailing Euro Interbank Offered Rate of interest (expressed as per cent per annum) in force on the due date for one month's funds in Euro on an amount equal to the unpaid amount;

CB is such additional rate of interest (expressed as per cent per annum) as the Central Bank and Financial Services Authority of Ireland shall certify would be necessary to compensate them (without taking into account any deductibility of that cost for purposes of corporation tax), calculated by reference to

circumstances existing on the due date, of making or maintaining one month's funds of an amount equal to the overdue levy, by reason of the then liquidity reserve ratios, special deposits or similar requirements (or other reserve requirements having the same or similar purposes) of the Central Bank and Financial Services Authority of Ireland; and

CA is an additional rate of interest of 2 per cent (expressed as per cent per annum) to take into account the cost of recovering unpaid levy, including any bank charges the Agency may incur in maintaining a bank overdraft to cover a shortfall in funds arising out of unpaid levy.

GIVEN under my Official Seal

30 July 2007

LS

Eamon Ryan
Minister for Communications,
Marine and Natural Resources.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation)

These Regulations set out the information to be provided by the National Oil Reserves Agency (NORA), oil companies and oil consumers to the Minister in monthly statistical returns and provides for the variation in the amount of the NORA levy to be paid with effect from 1 November 2007 together with the procedures for the invoicing and payment of the levy.