



# Customs and Excise Amendment Regulations 2016

Patsy Reddy, Governor-General

## Order in Council

At Wellington this 5th day of December 2016

Present:

Her Excellency the Governor-General in Council

These regulations are made under sections 71 and 286 of the Customs and Excise Act 1996 on the advice and with the consent of the Executive Council.

### Contents

	Page
1 Title	2
2 Commencement	2
3 Principal regulations	2
4 Regulation 2 amended (Interpretation)	2
5 New regulation 2A inserted (Transitional, savings, and related provisions)	2
2A Transitional, savings, and related provisions	2
6 Regulation 6 amended (Areas required to be licensed as Customs controlled areas)	3
7 Regulation 52 amended (Time for lodgement of entry for excisable goods)	3
8 Regulation 52A amended (Circumstances in which entry to be made by owner)	3
9 Regulation 57 amended (Payment of excise duty)	3
10 New regulations 57A to 57C inserted	4
57A Specified alcoholic products: time for lodgement of entry	4
57B Specified alcoholic products: time for payment of excise duty	4

	57C	Specified alcoholic products: conditions for extension of time for lodgement of entry and payment of excise duty	5
11		Regulation 59 amended (Business records)	6
12		Regulation 60 amended (Goods damaged or deteriorated in condition)	6
13		Regulation 63 amended (Goods of faulty manufacture)	7
14		New regulation 64A inserted (Refunds and remissions of excise-equivalent duty)	8
	64A	Refunds and remissions of excise-equivalent duty	8
15		New Schedule 1AA inserted	8
16		Schedule 2, forms 2 and 2B amended	8
		<b>Schedule</b>	9
		<b>New Schedule 1AA inserted</b>	

## Regulations

### 1 Title

These regulations are the Customs and Excise Amendment Regulations 2016.

### 2 Commencement

These regulations come into force on 1 February 2017.

### 3 Principal regulations

These regulations amend the Customs and Excise Regulations 1996 (the **principal regulations**).

### 4 Regulation 2 amended (Interpretation)

In regulation 2(1), insert in their appropriate alphabetical order:

**biofuel or biofuel blends** means biofuel or biofuel blends specified in item 99.75 of Part A of the Excise and Excise-equivalent Duties Table

**ethanol and petrol blends** means ethanol and petrol blends specified in item 99.75 of Part A of the Excise and Excise-equivalent Duties Table

**specified alcoholic products** means goods specified in items 99.10 to 99.50 of Part A of the Excise and Excise-equivalent Duties Table

### 5 New regulation 2A inserted (Transitional, savings, and related provisions)

After regulation 2, insert:

#### 2A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 1AA have effect according to their terms.

**6 Regulation 6 amended (Areas required to be licensed as Customs controlled areas)**

Replace regulation 6(a) with:

- (a) the storage, by or for 1 of the following, of specified alcoholic products manufactured in a manufacturing area, where the specified alcoholic products cannot be physically accommodated within the manufacturing area:
  - (i) the manufacturer of the specified alcoholic products:
  - (ii) the first owner of the specified alcoholic products, if that person is not also the manufacturer of the specified alcoholic products:

**7 Regulation 52 amended (Time for lodgement of entry for excisable goods)**

- (1) In regulation 52(1)(a), replace “subclause (3) or (4)” with “regulation 57A”.
- (2) In regulation 52(1)(b), replace “biofuel, or biofuel blends,” with “biofuel or biofuel blends”.
- (3) Revoke regulation 52(2) and the heading above regulation 52(2).
- (4) Revoke regulation 52(3) and (4) and the heading above regulation 52(3).

**8 Regulation 52A amended (Circumstances in which entry to be made by owner)**

- (1) Replace regulation 52A(1) with:

- (1) This regulation applies if—
  - (a) specified alcoholic products are removed from a Customs controlled area that is required to be licensed solely because of regulation 6(a); and
  - (b) the specified alcoholic products were manufactured in New Zealand; and
  - (c) as permitted by regulation 56, no entry was made in respect of the specified alcoholic products when they were taken into that Customs controlled area; and
  - (d) at the time of their removal from that Customs controlled area, the specified alcoholic products are owned by a licensee of an area licensed for the purpose described in section 10(a) of the Act.

- (2) In regulation 52A(2), replace “wine” with “specified alcoholic products” in each place.

**9 Regulation 57 amended (Payment of excise duty)**

- (1) In regulation 57(1), heading above paragraph (a), delete “: *estimated liability levels*”.
- (2) Replace regulation 57(1)(a) and (b) with:
  - (a) in respect of any specified alcoholic products that are removed from a Customs controlled area, the time specified in regulation 57B:

- (3) In regulation 57(1)(g), delete “specified alcoholic products,”.
- (4) In regulation 57(1)(g), replace “paragraphs (a) to (f)” with “paragraphs (c) to (f)”.
- (5) In regulation 57(1)(g), delete “or any area licensed for a purpose specified in regulation 6”.
- (6) Revoke regulation 57(2).

#### **10 New regulations 57A to 57C inserted**

After regulation 57, insert:

##### **57A Specified alcoholic products: time for lodgement of entry**

- (1) The time within which specified alcoholic products that are removed from a Customs controlled area must be entered is—
  - (a) 15 working days from the end of the month in which those products are removed; or
  - (b) in any case where the total excise duty liability of the licensee for any year commencing on 1 July is estimated by the licensee to be \$50,000 or less, in respect of specified alcoholic products removed from the Customs controlled area concerned in that year, the 15th working day of July immediately following that year; or
  - (c) in any case where the total excise duty liability of the licensee for any year commencing on 1 July is estimated by the licensee to be more than \$50,000 but less than \$100,000,—
    - (i) in respect of specified alcoholic products removed from the Customs controlled area concerned in the period of that year that commences with 1 July and ends with the close of 31 December, the 15th working day of January immediately following that period;
    - (ii) in respect of specified alcoholic products removed from the Customs controlled area concerned in the period of that year that commences with 1 January and ends with the close of 30 June, the 15th working day of July immediately following that period.
- (2) This regulation is subject to regulation 57C.

##### **57B Specified alcoholic products: time for payment of excise duty**

- (1) The time within which excise duty must be paid in respect of specified alcoholic products that are removed from a Customs controlled area is—
  - (a) the last working day of the month following the month in which those products are removed; or
  - (b) in any case where the total excise duty liability of a licensee for any year commencing on 1 July is estimated by the licensee to be \$50,000 or less,

in respect of specified alcoholic products removed from the Customs controlled area concerned in that year, the last working day of July immediately following that year; or

- (c) in any case where the total excise duty liability of a licensee for any year commencing on 1 July is estimated by the licensee to be more than \$50,000 but less than \$100,000,—
  - (i) in respect of specified alcoholic products removed from the Customs controlled area concerned in the period of that year that commences with 1 July and ends with the close of 31 December, the last working day of January immediately following that period;
  - (ii) in respect of specified alcoholic products removed from the Customs controlled area concerned in the period of that year that commences with 1 January and ends with the close of 30 June, the last working day of July immediately following that period.

(2) This regulation is subject to regulation 57C.

**57C Specified alcoholic products: conditions for extension of time for lodgement of entry and payment of excise duty**

- (1) A licensee (A) may use the time periods in regulations 57A(1)(b) or (c) and 57B(1)(b) or (c) for a year commencing on 1 July only if,—
  - (a) as at the beginning of that year, A has—
    - (i) held A's Customs controlled area licence for at least 6 months; and
    - (ii) not been suspended under subclause (2) from using the time periods in regulations 57A(1)(b) or (c) and 57B(1)(b) or (c) at any time during the previous 6 months; and
  - (b) as at 1 August in that year, A has, within the time prescribed by these regulations,—
    - (i) made all entries required to be made by A in the previous 12 months in respect of specified alcoholic products that have been removed from A's Customs controlled area at any time; and
    - (ii) paid all excise duty required to be paid by A in the previous 12 months in respect of specified alcoholic products that have been removed from A's Customs controlled area at any time; and
  - (c) A has provided specified evidence to the chief executive at any time before the beginning of that year.
- (2) Despite subclause (1), A's right to use the time periods in regulations 57A(1)(b) or (c) and 57B(1)(b) or (c) is suspended if—
  - (a) the chief executive requests A to provide specified evidence; and

- (b) A fails to provide the specified evidence to the chief executive within the time specified in the request (which must be at least 20 working days after the date of the request).
- (3) Any suspension under subclause (2) lasts until A provides specified evidence to the chief executive.
- (4) If A has the right to use the time periods in regulations 57A(1)(b) or (c) and 57B(1)(b) or (c) for a year commencing on 1 July but, at any point during that year, is suspended from doing so under subclause (2),—
  - (a) any specified alcoholic products removed in that year (or, if regulations 57A(1)(c) and 57B(1)(c) apply, in the relevant time period of that year) up until the suspension must be entered within 15 working days from the end of the month in which the suspension took effect; and
  - (b) the time within which excise duty must be paid, in respect of any specified alcoholic products removed in that year (or, if regulations 57A(1)(c) and 57B(1)(c) apply, in the relevant time period of that year) up until the suspension, is the last working day of the month following the month in which the suspension took effect.
- (5) In this regulation, **specified evidence** means reasonable evidence that A has adequate and effective systems that provide reasonable assurance that—
  - (a) all entries required to be made in respect of specified alcoholic products removed from A's Customs controlled area will be made within the time prescribed by these regulations; and
  - (b) all excise duty payable in respect of specified alcoholic products removed from A's Customs controlled area will be paid within the time prescribed by these regulations.

## 11 Regulation 59 amended (Business records)

- (1) After regulation 59(1)(c), insert:
  - (ca) that any goods have been damaged, destroyed, pillaged, or lost, or have diminished in value or deteriorated in condition, prior to their release from the control of the Customs; or
  - (cb) that any goods are of faulty manufacture; or
- (2) After regulation 59(2)(c)(vi), insert:
  - (vii) evidence that any goods have been damaged, destroyed, pillaged, or lost, or have diminished in value or deteriorated in condition:
  - (viii) evidence that any goods are of faulty manufacture:

## 12 Regulation 60 amended (Goods damaged or deteriorated in condition)

- (1) Revoke regulation 60(c).
- (2) In regulation 60, insert as subclauses (2) to (4):

- (2) Despite subclause (1)(b), duty on any goods must not be refunded or remitted in full unless—
- (a) the goods have been destroyed under the supervision of the Customs in accordance with any directions issued by the chief executive; or
  - (b) the goods have been exported; or
  - (c) subclause (3) applies.
- (3) This subclause applies if—
- (a) the goods are specified goods; and
  - (b) the goods were manufactured in a manufacturing area; and
  - (c) the goods have never been released from the control of the Customs; and
  - (d) the chief executive is satisfied that the licensee of the manufacturing area—
    - (i) has adequate and effective systems for recording and verifying whether specified goods have been damaged or have deteriorated in condition; and
    - (ii) has adequate and effective systems for recording whether specified goods have been destroyed; and
    - (iii) has records that reasonably verify that, following the deterioration or damage, the goods were destroyed prior to their release from the control of the Customs.
- (4) In this regulation, **specified goods** means—
- (a) any goods specified in item 99.60 or 99.65 of Part A of the Excise and Excise-equivalent Duties Table (tobacco products); or
  - (b) any specified alcoholic products.

### 13 Regulation 63 amended (Goods of faulty manufacture)

- (1) In regulation 63, replace “conditions” with “condition”.
- (2) Revoke regulation 63(b).
- (3) In regulation 63, insert as subclauses (2) to (4):
- (2) Despite subclause (1), duty on any goods must not be refunded or remitted in full unless—
- (a) the goods have been destroyed under the supervision of the Customs in accordance with any directions issued by the chief executive; or
  - (b) the goods have been exported; or
  - (c) subclause (3) applies.
- (3) This subclause applies if—
- (a) the goods are specified goods; and
  - (b) the goods were manufactured in a manufacturing area; and

- (c) the goods have never been released from the control of the Customs; and
- (d) the chief executive is satisfied that the licensee of the manufacturing area—
  - (i) has adequate and effective systems for recording and verifying whether specified goods are of faulty manufacture; and
  - (ii) has adequate and effective systems for recording whether specified goods have been destroyed; and
  - (iii) has records that reasonably verify that the goods were destroyed prior to their release from the control of the Customs.
- (4) In this regulation, **specified goods** means—
  - (a) any goods specified in item 99.60 or 99.65 of Part A of the Excise and Excise-equivalent Duties Table (tobacco products); or
  - (b) any specified alcoholic products.

**14 New regulation 64A inserted (Refunds and remissions of excise-equivalent duty)**

After regulation 64, insert:

**64A Refunds and remissions of excise-equivalent duty**

- (1) The chief executive must not refund or remit any excise-equivalent duty under section 113(1) of the Act in relation to any specified goods if, prior to their importation, the goods were exported from New Zealand under drawback (*see* section 117 of the Act).
- (2) In this regulation, **specified goods** means—
  - (a) any goods specified in item 24.02 or 24.03 of Part B of the Excise and Excise-equivalent Duties Table (tobacco products); or
  - (b) any goods specified in items 22.03 to 22.08 of Part B of the Excise and Excise-equivalent Duties Table (alcoholic products).

**15 New Schedule 1AA inserted**

Insert the Schedule 1AA set out in the Schedule of these regulations as the first schedule to appear after the last regulation of the principal regulations.

**16 Schedule 2, forms 2 and 2B amended**

- (1) In Schedule 2, form 2, delete “set out in the Procedure Statement”.
- (2) In Schedule 2, form 2B, delete “set out in the procedure statement”.



**Schedule**  
**New Schedule 1AA inserted**

r 15

**Schedule 1AA**  
**Transitional, savings, and related provisions**

r 2A

**Part 1**  
**Provisions relating to Customs and Excise Amendment Regulations**  
**2016**

**1 Interpretation**

In this Part,—

**existing licence** means a Customs controlled area licence or (as the case requires) a CASE licence granted by the chief executive before 1 February 2017

**new licence** means a Customs controlled area licence or (as the case requires) a CASE licence granted by the chief executive on or after 1 February 2017.

**2 Application of regulation 57C (specified alcoholic products: conditions for extension of time for lodgement of entry and payment of excise duty)**

Regulation 57C applies in respect of the year commencing 1 July 2017 and later years.

**3 Specified alcoholic products: time for lodgement of entry and payment of excise duty**

A licensee who holds an existing licence is deemed, for the purposes of regulation 57C(1)(c), to have provided specified evidence to the chief executive.

**4 Form of licence**

(1) Forms 2 and 2B, as amended by regulation 16 of the Customs and Excise Amendment Regulations 2016, apply only in respect of new licences.

(2) However, regulations 9 and 11B do not prevent the chief executive from revoking a procedure statement in an existing licence and imposing new terms, conditions, or restrictions otherwise than in a procedure statement.

Michael Webster,  
Clerk of the Executive Council.

## Explanatory note

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations, which come into force on 1 February 2017, amend the Customs and Excise Regulations 1996 (the **principal regulations**).

*Regulation 4* inserts a number of definitions into regulation 2 of the principal regulations. These definitions were previously contained elsewhere in the principal regulations.

*Regulations 6 and 8* amend the off-site storage of alcoholic products provisions. *Regulation 6* amends regulation 6 of the principal regulations to increase the types of alcoholic products that the off-site storage provisions in that regulation apply to. The provisions currently apply only to wine, but the scope is being expanded to include all alcoholic products specified in items 99.10 to 99.50 of Part A of the Excise and Excise-equivalent Duties Table. *Regulation 8* amends regulation 52A of the principal regulations (which relates to entries being made by owners) to provide that, if certain alcoholic products are removed from an off-site storage area that is licensed in accordance with regulation 6 (as amended), the owner of the products is responsible for making entries in respect of the products.

*Regulations 7, 9, and 10* amend provisions relating to the payment of excise duty and the time for lodgement of entries of goods subject to excise duty. *Regulation 7* amends regulation 52 of the principal regulations to provide that the time for lodgement of entry in respect of specified alcoholic products is determined under *new regulation 57A*. *Regulation 9* amends regulation 57 of the principal regulations to provide that the time for payment of duty in respect of specified alcoholic products is determined under *new regulation 57B*. *Regulation 10* inserts *new regulations 57A to 57C*, which provide the following:

- *new regulation 57A* sets the time within which specified alcoholic products removed from a Customs controlled area must be entered. The time periods are the same as were previously contained in regulation 52:
- *new regulation 57B* sets the time within which excise duty must be paid in respect of specified alcoholic products removed from a Customs controlled area. The time periods are the same as were previously contained in regulation 57:
- *new regulation 57C* provides that a licensee may use the 6-monthly or annual time periods set out in *new regulations 57A and 57B* only if certain conditions are met. These conditions relate to compliance with the entry and payment provisions. *New regulation 57C* also contains a mechanism for a licensee to be suspended from using the 6-monthly or annual time periods if the licensee does not provide certain information to the chief executive when requested to do so.

*Regulation 11* amends regulation 59 of the principal regulations to provide that business records relating to goods that have been damaged, destroyed, pillaged, or lost, or have diminished in value, deteriorated in condition, or are of faulty manufacture are required to be kept.

*Regulations 12 to 14* relate to the conditions under which the chief executive may refund or remit duty as follows:

- *regulation 12* amends regulation 60 of the principal regulations (which relates to goods damaged or deteriorated in condition) to provide that duty on certain alcoholic and tobacco goods may be refunded or remitted in full without the goods being exported or destroyed under the supervision of the Customs if certain conditions are met:
- *regulation 13* amends regulation 63 of the principal regulations (which relates to goods of faulty manufacture) to provide that duty on certain alcoholic and tobacco goods may be refunded or remitted in full without the goods being exported or destroyed under the supervision of the Customs if certain conditions are met:
- *regulation 14* inserts *new regulation 64A*, which provides that excise-equivalent duty must not be refunded or remitted in relation to certain alcoholic and tobacco goods if, prior to their importation, the goods were exported from New Zealand under drawback.

*Regulation 15* inserts *new Schedule 1AA* (which contains transitional and savings provisions) into the principal regulations.

*Regulation 16* amends 2 forms in Schedule 2 of the principal regulations.

### Regulatory impact statement

The New Zealand Customs Service produced regulatory impact statements to help inform the decisions taken by the Government relating to the contents of this instrument.

Copies of these regulatory impact statements can be found at—

- <http://www.customs.govt.nz/news/resources/customs-and-excise-act-review/Documents/CandEAct1996Review-Excise%20alcohol%20RIS.pdf>
- <http://www.customs.govt.nz/news/resources/customs-and-excise-act-review/Documents/CandEAct1996Review-Excise%20duty%20RIS.pdf>
- <http://www.customs.govt.nz/news/resources/customs-and-excise-act-review/Pages/default.aspx>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

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These regulations are administered by the New Zealand Customs Service.