

**[BOC CUSTOMS MEMORANDUM ORDER NO. 4-
2010, January 29, 2010]**

**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, manufacturers 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 labeled 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: