

Oil Stockholding and Reporting Act

(as amended)

**Federal Act of 21 October 1982 on the Holding of
Emergency Reserves of Crude Oil and Petroleum
Products, and on Reporting Duties in the Interest of
Safeguarding Austrian Energy Supply Security (Oil
Stockholding and Reporting Act 1982)¹**
[BGBl. 1982/546]

The National Council has enacted:

The Oil Stockholding and Reporting Act 1982, BGBl. No. 546, as amended by Federal Acts BGBl. No. 266/1984, BGBl. No. 652/1987, BGBl. No. 339/1988, BGBl. No. 383/1992, BGBl. No. 835/1995, BGBl. No. 792/1996, BGBl. I No. 179/1998, BGBl. I No. 150/2001, BGBl. No. 151/2004 and BGBl. No. 106/2006 (Article 4 Energy Security of Supply Act 2006) is hereby amended as follows: (BGBl. No. 53/2008 [NR: GP XXIII RV 436 AB 453 p. 53. BR: 7895 AB 7904 p. 754.]

Article 1 (Constitutional provision)

(1) The enactment and repeal of provisions such as those contained in Articles II, III and IV Oil Stockholding and Reporting Act 1982, BGBl. No. 546 as amended by Federal Acts BGBl. No. 266/1984, BGBl. No. 652/1987, BGBl. No. 339/1988, BGBl. No. 383/1992, BGBl. No. 835/1995, BGBl. No. 792/1996, BGBl. I No. 179/1998, BGBl. I No. 150/2001, BGBl. No. 151/2004, BGBl. I No. 106/2006 and paras. 2–16 Oil Stockholding and Reporting (Amendment) Act, BGBl. I No. 53/2008, as well as the enforcement of such provisions are a federal responsibility, even in matters regarding which the Federal Constitution Act provides otherwise.

(2) This Article shall come into force on 1 January 2008.

(3) The Federal Government is entrusted with the enforcement of this Article.

Article II

1. (1) For the purposes of this Act the term:

1. “IEP Agreement” means the Agreement on an International Energy Program of 18 November 1974, BGBl. No. 317/1976;

2. “Crude oil” means:

a) petroleum oils and oils obtained from bituminous minerals, crude, heading 2709 00 of the Combined Nomenclature, Commission Regulation (EC) No. 1810/2004 of 7 September 2004 amending Annex I to Council Regulation (EEC) No. 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff, except for high-sulphur bituminous shale oil;

b) intermediate products in the “fuel oils” product group, subheadings 2710 19 51, 2710 19 55, 2710 19 71 and 2710 19 75, used for the production of petroleum products in the meaning of para. 3;

3. “Petroleum products and biofuels” means the following goods listed under heading 2710 of the Combined Nomenclature:

a) “Light oils”

aa) goods classified under subheadings 2707 20 10, 2707 30 10, 2707 50 10, 2710 11 11, 2710 11 15, 2710 11 21, 2710 11 25, 2710 11 31, 2710 11 41, 2710 11 45, 2710 11 49, 2710 11 51, 2710 11 59, 2710 11 70, 2710 11 90 of the Combined Nomenclature, other than petroleum ether, n-hexane and n-heptane; as well as

bb) methyl tertiary butyl ether (MTBE) and ethyl tertiary butyl ether (ETBE) where used as automotive fuels; and

cc) biofuels used as gasoline, unless they fall under the above “light oils” subheadings due to their use as additives.

b) “medium oils” under subheadings 2710 19 11, 2710 19 15, 2710 19 21, 2710 19 25 and 2710 19 29 of the Combined Nomenclature;

c) “gas oils” under subheadings 2710 19 31, 2710 19 35, 2710 19 41, 2710 19 45 and 2710 19 49 of the Combined Nomenclature, including specially identified gas oil under section 9 Petroleum Excise Act 1995, BGBl. No. 630/1994 as well as biofuels used as gasoils unless they fall under the above subheadings due to their use as additives;

d) “fuel oils” under subheadings 2710 19 51, 2710 19 55, 2710 19 61, 2710 19 63, 2710 19 65 and 2710 19 69 of the Combined Nomenclature;

e) “lubricating oils and other oils” under subheadings 2710 19 71, 2710 19 75, 2710 19 81, 2710 19 83, 2710 19 85, 2710 19 87, 2710 19 91, 2710 19 93 and 2710 19 99 of the Combined Nomenclature;

3a. “Biofuel feedstocks and biofuels” in the meaning of this Act are:

a) vegetable feedstocks for direct use in the production of biofuels;

b) vegetable and animal fats and oils, including chemically modified products, in the meaning of Chapter 15 of the Combined Nomenclature, as well as waste cooking and frying oils and grease separator fats of animal or vegetable origin, for direct use in the production of biofuels;

c) methyl ester in the meaning of Chapter 38 of the Combined Nomenclature, produced from the goods named in b), where used as a fuel component or biogenic fuel;

d) ethyl alcohol in the meaning of subheading 2207 of the Combined Nomenclature, produced by means of alcoholic fermentation, where used as a fuel component or biogenic fuel;

e) fatty acid methyl ester (FAME).

The Federal Minister of Economics and Labour may, in consultation with the Federal Minister of Agriculture and Forestry, Environment and Water Management, designate by order feedstocks for direct use for the production of biofuels which are subject to stockholding obligations under section 1(1)(3a), in which case a conversion formula (section 8[4]) shall be determined for the respective feedstocks.

4. “Coal and coke” means coal and briquettes manufactured from coal under subheading 2701 of the

¹ Translator’s note: In the legal citations, BGBl stands for *Bundesgesetzblatt* (Federal Law Gazette).

Combined Nomenclature, and coke and semi-coke of coal under subheadings 2704 00 11 and 2704 00 19 thereof;

5. "Natural gas" means goods under subheadings 2711 11 00 and 2711 21 00 of the Combined Nomenclature;

5a. "Chemical feedstocks" means goods under subheadings 2707 10 90 (benzol for other purposes), 2711 14 00 (ethylene, propylene, butylene and butadiene), 2901 21 00 (ethylene), 2901 22 00 (propene) and 2901 24 10 (Buta-1,3-diene) of the Combined Nomenclature;

6. "Counterparties under section 4 (1)(3)" means all natural persons, legal entities or commercial law partnerships, who/which have undertaken under private law contracts to keep available a given quantity of compulsory emergency reserves. Such persons do not have the rights and duties of compulsory stockholders, but do have those of stockholders (para. 15);

7. "Third-party stockholders" means all natural persons, legal entities or commercial law partnerships who/which assume the stockholding obligations of a compulsory stockholder in full or in part in accordance with section 5;

8. "Bonded storage facility proprietor" means the owner of an oil storage facility licensed under sections 27 or 29 Petroleum Excise Act 1995, BGBl. No. 630/1994;

9. "Geographical area of application" means federal territory with the exception of the municipalities of Jungholz (Tyrol) and Mittelberg (Vorarlberg);

10. "Third country" means any territory outside that of the European Union;

11. "Importing" means the movement of the goods in the categories designated under paras. 2 and 3 into the geographical area of application from a member state of the European Union, in free circulation, or the release of such goods, travelling from a third country, for free circulation;

12. "Exporting" means the movement of the goods in the categories designated under paras. 2 and 3 from the geographical area of application into a member state of the European Union, in free circulation, or the release of such goods, travelling to a third country, for free circulation;

13. "Importer" means

a) a natural person, legal entity or commercial law partnership:

aa) who/which is the consignee for customs purposes of goods in the categories designated under paras. 2 and 3, introduced from a third country and released for free circulation;

or

bb) in the event that goods in the categories designated under paras. 2 and 3 are introduced into the geographical area of application from a member state of the European Union, the first domestic invoicee; in the case of chain transactions in which the last customer collects the goods itself or has them collected from another member state, the person for whose account and in whose name the goods are shipped to a domestic bonded storage facility in the meaning of the Petroleum Excise Act 1995, or, in the case of procurement by a rightful domestic consignee (section 32 Petroleum Excise Act 1995) such consignee;

b) in all other cases in which goods in the categories designated under paras. 2 and 3 are introduced into the geographical area of application, the first domestic consignee;

c) where a number of companies which are centrally managed by an incorporated company (parent company) domiciled in Austria in the meaning of section 244 (1) Austrian Business Code are importers in the meaning of paragraphs a or b and have designated the parent as the importer in writing in the notification under section 14, the parent company;

14. "First-time importer" means persons in the meaning of para. 13 importing crude oil or petroleum products for the first time in the current calendar year and not having carried out such activities in the previous calendar year;

15. "Stockholders" means all natural persons, legal entities or commercial law partnerships holding compulsory emergency reserves as compulsory stockholders under section 4 (1)(1 and 2) or as counterparties under section 4(1)(3).

(2) Where reference is made in this Act to provisions of other federal acts or Community legal instruments these provisions shall be applied in their amended versions.

(3) This Act transposes Council Directive 68/414/EEC of 20 December 1968 imposing an obligation on Member States of the EEC to maintain minimum stocks of crude oil and/or petroleum products (OJ L 308 of 23 December 1968, p. 14) as amended by Council Directive 98/93/EC of 14 December 1998 (OJ L 358 of 31 December 1998, p. 100).

2.(1) Importers of crude oil, petroleum products, biofuels or feedstocks for direct use in the production of biofuels shall hold compulsory emergency reserves (as compulsory stockholders) in accordance with sections 3–10. In the case of importers domiciled in third countries or other EU member states the first domestic consignee is obliged to hold stocks. The stockholding duty is only fulfilled by crude oil, petroleum products, biofuels or feedstocks for direct use in the production of biofuels, owned either by the third-party stockholder (section 1 1)[7] or stockholder ((section 1[1][15]).

(2) The carriage of fuels imported in vehicle standard tanks or reserve tanks does not constitute an import or export in the meaning of sections 1(1)(11) and 1(1)(12), respectively.

(3) The goods listed in section 1 1)(3)(e) are exempt from stockholding obligations if:

1. they are shipped into the geographical area of application in containers of up to 200 litres; or

2. the importer furnishes proof that bulk goods transported into the geographical area of application are not to be used as a source of energy.

[BGBl. 1995/835]

(4) The goods classified as "light oils" under subheadings 2710 11 11, 2710 11 21, 2710 11 25 and 2710 11 90, listed in section 1(1)(3)(a) and those classified as "medium oils" under subheading 2710 19 11, listed in section 1(1)(3)(b), are exempt from stockholding obligations if the importer furnishes proof that goods

transported into the geographical area of application are not to be used as a source of energy. This also applies by extension to feedstocks used for the direct production of biofuels.

(5) A deduction of 50% of the output of goods classified as “chemical feedstocks”, listed in section 1(1)(5a), manufactured from crude oil or petroleum products within the geographical area of application, may be made from the volume of crude oil imports if a deduction under section 2(4) has not already been made.

“3. (1) From 1 April of each year compulsory stockholders must hold 25% of their imports of crude oil, petroleum products, biofuels and feedstocks used for the direct production of biofuels in the previous calendar year as compulsory emergency reserves, in Austria.

[BGBl. 1992/383]

(2)² The Federal Minister of Economics and Labour may change the percentage named in subsection 1 by order if this is necessary for the fulfilment of obligations under international law. [BGBl. 1992/383]

(3) The Federal Minister of Economics and Labour may, contrary to subsection 1, redetermine by order the level of the compulsory emergency reserves to be held at given times if this is Necessary to replenish the reserves subsequent to the exercise of emergency powers. [BGBl. 1992/383]

(4) The Federal Minister of Economics and Labour may, contrary to subsections 1 and 2, upon application of a compulsory stockholder, determine by notice the level of the compulsory emergency reserves to be held by such stockholder and prescribe the time to be taken by him to replenish such reserves if compulsory emergency reserves have been destroyed by warfare, terrorist attacks, sabotage, technical failures, acts of God or other causes.

[BGBl. 1992/383]

(5) The previous year’s imports shall be determined by the quantities of crude oil, petroleum products, biofuels or feedstocks used for the direct production of biofuels imported during the previous calendar year (import period). The quantities of crude oil and petroleum products, biofuels or feedstocks used for the direct production of biofuels exported by the compulsory stockholder during the same period shall be deducted. Domestic supplies of fuel held intended for international aviation or barge bunkers are not deductible as exports.

[BGBl. I 2001/150]:

Exports of crude oil and petroleum products may be deducted from crude oil imports using the conversion set out in section 8(4). Exports of the following categories of petroleum products may be deducted from imports:

1. light oils and test spirits;
2. medium oils and gas oils;
3. fuel oils, spindle oils and lubricants (except for lubricants intended for lubrication purposes), other oils and residues.

² In BGBl. I 2001/150 the Federal Ministry of Economics and Labour is substituted for the Federal Ministry of Economic Affairs. These amendments are included without quotation marks or reference to the place in the text.

[BGBl. 1988/339]

(6) **(Constitutional provision)** Without prejudice to subsection 1, the Federal Minister of Economics and Labour may, upon application, authorise the third-party stockholder under section 5 (6) by notice to hold compulsory emergency reserves at the Trieste tank farm of the Transalpine Ölleitung (TAL) in order to fulfil stockholding obligations delegated to such stockholder, under the existing treaty between Austria and Italy on the use of facilities at the Trieste oil terminal, BGBl. No. 228/1987, having regard to the domestic tankage available for emergency stockpiling. Such authorisation shall be conditional on the furnishing by the stockholder of an irrevocable private law undertaking to grant the Federal Ministry of Economics and Labour staff entrusted with inspecting compulsory emergency reserves or independent third parties entrusted with inspecting the crude oil stocks held at the Trieste tank farm access to the crude oil stocks held by such stockholder at the said tank farm at all times during normal business hours. The stockholder shall bear any expenses arising from such inspections.

(7) **(Constitutional provision)** The stockholder shall, at the request of the Federal Minister of Economics and Labour, at any time furnish the Minister with proof that the crude oil stocks held in Trieste are constantly available, and can be conveyed to Austria via the TAL pipeline system and the Adria-Wien Pipeline GmbH (AWP) in reasonable time.

(8) **(Constitutional provision)** The Federal Minister of Economics and Labour may rescind the authorisation to hold crude oil stocks at the Trieste tank farm by notice if the stockholder fails to fulfil its obligations under subsections 6 and 7.

4. (1) The stockholding obligation may be fulfilled in the following ways, at the discretion of compulsory stockholders:

1. by holding compulsory emergency reserves;
2. by recourse to joint holding of compulsory emergency reserves by two or more compulsory stockholders;
3. by recourse to a private law contract obliging the counterparty to keep a certain amount of crude oil or petroleum products available (these amounts must be owned either by the compulsory stockholder or by the counterparty);

[BGBl. 1995/835]

4. by assuming the stockholding obligation in accordance with section 5.

[BGBl. 1992/383]

(2) In the case of stockholding under subsection 1(3) the contracts must have terms of at least one year. Appropriate documentary proof of the conclusion of such contracts must be furnished to the Federal Ministry of Economics and Labour by the time of the commencement of the stockholding period. Compulsory emergency reserves held in accordance with subsection 1(3) may only be maintained at tank farms with a minimum capacity of

500 cu m. Third parties undertaking to hold stocks under private law contracts may not assign this obligation.

[BGBl. 1988/339]

Upon application of a compulsory stockholder a shorter term than that determined by subsection 2 may be approved by notice for contracts under subsection 1(3) if this is necessary for commercial or technical reasons, and if compliance with the term provided for by subsection 2 would impose an unreasonable economic burden on the compulsory stockholder.

(4) Section 4(3) applies by extension to third-party stockholders under section 5. The Federal Minister of Economics and Labour may, upon application of a third-party stockholder, approve by notice the conclusion of contracts with terms of less than one year in accordance with section 4(1)(3) provided that this serves to meet the stockholding obligations undertaken by such stockholder under section 5.

Final consumers with stockholding obligations who/which have not been supplied with more than 1,000 litres of crude oil, petroleum products or biofuel by a merchant subject to a stockholding obligation under section 2(1) shall conclude a contract under section 4(1)(3) or 4). Such contract may be concluded by the merchant on their behalf. Said merchant shall include a reference to the stockholding obligation under 2 Oil Stockholding and Reporting Act in the invoice.

5. (1) Third-party stockholders may assume stockholding obligations in full or in part, subject to subsections 2–7, thereby exempting the compulsory stockholders therefrom.

(2) Stockholders wishing to assume the stockholding obligations of third parties require an authorisation from the Federal Minister of Economics and Labour to perform this function. Such authorisation shall be granted if the stockholder's technical expertise, internal organisation and previous behaviour provide an assurance of proper maintenance of compulsory emergency reserves in accordance with this Act. An assurance of the proper maintenance of compulsory emergency reserves is, in particular, lacking if:

1. the stockholder is, or has in the past been in breach of his stockholding or reporting duties;

2. the stockholder is under the controlling influence of a compulsory stockholder who is, or has in the past been in breach of his stockholding or reporting duties;

3. the stockholder exercises a controlling influence over a compulsory stockholder who is, or has in the past been in breach of his stockholding or reporting duties; or

4. the stockholder and a compulsory stockholder who is, or has in the past been in breach of his stockholding or reporting duties are under the controlling influence of a third party.

A controlling influence shall always be deemed to exist if a company holds an interest of 50 per cent or more in another undertaking. The Austrian Federal Economic Chamber, the Presidential Conference of Austrian Chambers of Agriculture, the Austrian Federal Chamber

of Labour and the Austrian Trade Union Federation shall be consulted prior to the issue of an authorisation.

[BGBl. 1995/835]

(3) Third-party stockholders are required to issue confirmations of the assumption of stockholding obligations, stating the extent thereof, and in particular the amount of compulsory emergency reserves to be held, as well as the duration of such assumption. Third-party stockholders shall report the issue of such confirmations to the Federal Minister of Economics and Labour without delay.

(4) Upon confirming the assumption of a stockholding obligation a third-party stockholder shall be deemed to be a compulsory stockholder in the meaning of section 2 to the extent set forth in the confirmation.

[BGBl. 1992/383]

(5) The Federal Minister of Economics and Labour shall, by order, establish a maximum rate per 1,000 crude oil units for the assumption of stockholding obligations. Such rate shall be calculated to cover the costs associated with holding the compulsory emergency reserves. The order shall come into force at the start of each stockholding period. It shall be published in the official gazette section of the Wiener Zeitung.³ [BGBl. 1992/383]

(6) The following additional provisions⁴ shall apply to third-party stockholders on behalf of whom the Federal Government extends guarantees under special federal legislation to secure loans to finance the establishment and maintenance of compulsory emergency reserves:

1. Such stockholders must be incorporated companies domiciled in Austria, the object of whose business is the assumption of stockholding obligations under this Act. They must have supervisory boards, the membership of which includes one representative, respectively, of the Federal Ministry of Economics and Labour and of the Austrian Federal Association of Energy Dealers. Such undertakings are exempt from the Trade Code 1973. In the event that they make profits they may only use them to create equity or strengthen their equity base. Gains on the disposal of inventories shall be allocated to an appropriated, untaxed reserve. If such reserve is not employed for the procurement of inventories in accordance with section 5(6)(7) within five years of its creation then it shall be reversed, and such reversal recognised for tax purposes. The procurement of inventories shall conform to the principles of frugality, efficiency and expediency, having regard to the current market situation. Sections 74, 75, 77–83, 353, 355 (first sentence), section 359(1–2) and section 360(2–4) Trade Code 1973 are applicable, subject to the responsibility of provincial governors for licensing industrial facilities.

³ See the Order of the Federal Ministry of Economic Affairs of 27 February 1991, published in the official gazette section of the Wiener Zeitung on 5 March 1991: this set the maximum charge for the assumption of stockholding obligations under section 5(5) Oil Stockholding and Reporting Act at ATS 691 ex VAT per 1,000 crude oil units/year with effect from 1 March 1991.

⁴ See the Crude Oil Stockholding Financial Support Act, BGBl. 1977/161 as amended by BGBl. 1988/339.

Section 69 Bankruptcy Order⁵ is inapplicable to such companies.

2. Third-party stockholders may not engage in business activities that do not directly or indirectly serve their object of business.

3. Third-party stockholders shall have regard to regional supply considerations in their choice of locations for storage facilities. This shall be reviewed by the Federal Minister of Economics and Labour who shall consult the provincial governments.

4. Third-party stockholders shall draw up general terms and conditions for the assumption of stockholding obligations which shall require the approval of the Federal Minister of Economics and Labour, and shall be published in the official gazette section of the Wiener Zeitung⁶. Such approval shall be granted if such general terms and conditions fulfil the requirements set forth in subsection 2.

[BGBl. 1992/383]

5. Third-party stockholders shall conclude stockholding contracts, in accordance with the rates required by subsection 5 and their general terms and conditions (para. 4), with any compulsory stockholders making such offers.

6. Third-party stockholders shall annually submit their balance sheets, annual reports, auditors' reports and income statements to the Austrian Federal Economic Chamber, the Austrian Federal Chamber of Labour and the Federal Ministry of Economics and Labour. They shall provide the Austrian Federal Economic Chamber, the Austrian Federal Chamber of Labour and the Federal Ministry of Economics and Labour with information on the conduct of their business.

[BGBl. 1995/835]

7. The procurement and disposal of inventories, and the award of contracts for over EUR 200,000 must normally take place by invitation to tender. Only where an invitation to tender would conflict with the principle of efficiency may a contract be awarded by way of a limited invitation to tender or direct agreement.

[BGBl. I 2001/150];

8. Third-party stockholders shall conduct their business in accordance with the principles of frugality, efficiency and expediency. [BGBl. 1988/339]

9. Third-party stockholders may only divulge information on stockholding obligations wholly or partly delegated to them by compulsory stockholders to the authorities.

[BGBl. 1992/383]

10. Third-party stockholders are entitled to build up inventories to meet future compulsory stockholding obligations, subject to paras. 7 and 8. The amount of such inventories may not exceed 10% of the compulsory stockholding obligations undertaken by them as of the cut-off date (1 April of each year). The Federal Minister of Economics and Labour may increase this percentage to 20% by order. The above arrangements also apply by

extension to the holding of inventories which have ceased to be subject to delegated compulsory stockholding obligations.

(7) The Federal Minister of Economics and Labour shall rescind the authorisation under subsection 2 if the third-party stockholder fails to fulfil its duties under this Act in due manner or if the conditions for such authorisation are no longer met. In such case the Federal Minister of Economics and Labour shall, in application of section 3(4) by extension, require the compulsory stockholders which have delegated their stockholding obligations to hold compulsory emergency reserves.

[BGBl. 1995/835]

6. In the event that a compulsory stockholder permanently ceases to import crude oil, petroleum products, biofuels or feedstocks used for the direct production of biofuels he may dispose of the compulsory emergency reserves as he sees fit upon the fulfilment of his stockholding obligations. Such obligations are fulfilled as of 31 March of any year succeeding a year in which no imports have been made.

[BGBl. 1995/835]

7. Persons commencing activities giving rise to stockholding obligations are not required to maintain emergency reserves during the first calendar quarter after initiating the imports. Reserves equal to 25% of the imports in all preceding quarters shall be held during the second calendar quarter and each subsequent calendar quarter. From the end of the calendar year coinciding with or following the end of the fourth calendar quarter after the commencement of the importing activities the size of the compulsory emergency reserves shall comply with section 3. [BGBl. 1992/383]

8. (1) Provided that the quantity of compulsory stocks, calculated in units of crude oil in accordance with subsection 4, remains the same, a compulsory stockholder may stock crude oil in the meaning of section 1(1)(2a) in place of petroleum products or exchange up to 20% of the product groups set forth below, in volume terms, for each other:

1. Light oils and test spirits;

2. Medium oils and gas oils;

3. Fuel oils, spindle oils and lubricants (except for lubricants intended for lubrication purposes), other oils and residues.

The compulsory stockholder may also stock petroleum products in place of crude oil in the meaning of section 1(1)(2)(a). However,

1. light oils and test spirits; and

2. medium oils and gas oils

may not represent less than 20% and 30%, respectively, of the compulsory emergency crude oil reserves, expressed in crude oil units in accordance with subsection 4, substituted by petroleum products. Neither may fuel oils, spindle oils and lubricants (except for lubricants intended for lubrication purposes), other oils and residues exceed

⁵—Since the Bankruptcy (Amendment) Order, BGBl 1982/370, section 67 of the Order.

⁶ Official gazette section of the Wiener Zeitung, 10 February 1988 as amended on 21 December 1989, 16 February 1991, 13 December 1992 and 13 March 1998.

35% of the compulsory emergency crude oil reserves, expressed in crude oil units in accordance with subsection 4, substituted by petroleum products. Crude oil fractions used in downstream processing, residues, intermediates and other components used in the production of the aforementioned products shall be attributed to the latter upon substitution, according to their properties.

The substitution arrangements shall also apply by extension to biofuels and feedstock for direct use in the production of biofuels.

(2) The Federal Minister of Economics and Labour may, upon application of a compulsory stockholder, approve by notice temporary exemptions from the restrictions on substitution under subsection 1 if compliance therewith would impose an unreasonable economic burden on such stockholder or represent an obstacle to the supply of consumers with petroleum products.

(3) The Federal Minister of Economics and Labour may, upon application of a compulsory stockholder — if necessary, under certain appropriate conditions or on a temporary basis — determine by notice whether and to what extent reserves of other energy sources or capacity for the production of other energy sources for use only in emergencies may be held in place of compulsory emergency reserves of crude oil or petroleum products for exceptional operational reasons. The Minister shall, in so doing, have regard to the energy supply situation, the possibilities for substitution and the technical characteristics of the unused production capacity, as well as the time required to bring it into operation.

(4) The calculation of substitute quantities under subsections 1–3 and section 2(5) shall be based on the following conversions:

| Energy source | Units of crude oil |
|---|--------------------|
| 1 kg of crude oil in the meaning of section 1(2)(a) and feedstocks used for the direct production of biofuels | 1 |
| 1 kg of petroleum products, chemical feedstocks and biofuels (inc. intermediates in the meaning of section 1(2)(b)) | 1.150 |
| 1 kg of coal or coke | 0.760 |

In the event of the determination of a conversion for feedstocks used for the direct production of biofuels in the meaning of section 1(1)(3a) by order of the Federal Minister of Economics and Labour the calculation of substitute quantities shall be based on such conversion instead of the conversion stipulated by subsection 4.

9. (1) Those stocks which can be technically determined as being absolutely unavailable in even the most severe emergency (Art. 1 section 2 of the annex to the IEP Agreement) shall not be credited towards the compulsory emergency reserves.

(2) The stocks referred to in subsection 1 shall be assumed to be equal to 10% of the stocks, and deducted from the latter. The Federal Minister of Economics and Labour may reduce this percentage upon application of a compulsory stockholder if the latter furnishes proof that a lower percentage accords with the technical characteristics

of his operations. Obligations under international law may not be infringed as a result.

(3) The Federal Minister of Economics and Labour may change the percentage named in subsection 2 by order in the interests of the fulfilment of obligations under international law.

10. (1) Compulsory emergency reserves shall be so stored that the properties of the stocks remain unchanged. They may be comingled with other inventories. In such case appropriate precautions shall be taken to ensure that the compulsory emergency reserves are maintained at all times. The correspondence of the actual to the required level of compulsory emergency reserves must be evidenced by bookkeeping records, verified by physical inspections.

(2) Crude oil, petroleum products, biofuels and feedstocks used for the direct production of biofuels may only be stored in tanks approved in accordance with the relevant legislation, which must be fitted with measurement instrumentation. Storage facilities must be equipped with vehicle loading systems.

(3) Stockholding obligations cannot be met by supplies of crude oil, petroleum products, biofuels and feedstocks used for the direct production of biofuels present in road tankers, oil tank wagons, filling stations or pipeline systems.

11. (1) Any person intending to import crude oil, petroleum products, biofuels or feedstocks used for the direct production of biofuels subject to this Act shall notify the Federal Ministry of Economics and Labour thereof in writing prior to commencing such activity. Importers are, further, obliged to report the instigation of bankruptcy proceedings against them or the rejection of a bankruptcy petition on grounds of insufficient assets to the Federal Ministry of Economics and Labour without delay. [BGBl. 1995/835]

(2) In the event of a merger the rights and duties under this Act shall pass to the legal successor. Mergers of third-party stockholders under section 5(6) are impermissible.

12. (1) Compulsory stockholders have until the last day of February of each year to report the previous year's imports (section 3[1]) of crude oil, petroleum products, biofuels or feedstocks used for the direct production of biofuels to the Federal Ministry of Economics and Labour, using the official forms provided for this purpose. [BGBl. 1995/835]

Such reports shall be accompanied by appropriately evidenced information as to:

1. whether the manner in which the stocks are held conforms to section 4 (1)(1,2 or 3);

2. whether the stockholding obligation has been undertaken under section 5, and if so to what extent.

(2) The persons subject to reporting requirements referred to in subsection 1 shall report their monthly imports of crude oil, petroleum products, biofuels and feedstocks used for the direct production of biofuels to the Ministry of Economics and Labour in writing by the 15th

day of the following month, using the official forms provided for this purpose.

[BGBl. 1992/383]

13. Compulsory stockholders shall report the level of their emergency reserves on the last day of each month to the Federal Ministry of Economics and Labour in writing by the 15th day of the following month, using the official forms provided for this purpose.

[BGBl. 1992/383]

14. Compulsory stockholders shall annually notify the Federal Ministry of Economics and Labour of the location, name, capacity and suitability of the storage facilities partly or exclusively used to hold their emergency stocks.

The cut-off date for such reports shall be 31 December of the year under review, and they shall be submitted by the last day of February in the following year. [BGBl. 1995/835]

15. Compulsory stockholders shall, on an ongoing basis, maintain records clearly and transparently indicating the levels of their overall stocks and compulsory emergency reserves. If compulsory emergency reserves are comingled with other inventories (section 10 [1]) then the stock level shall be measured at least once every working day; otherwise it shall be measured once a month. In the event that such measurements reveal that the compulsory emergency reserves are below the required level the Federal Ministry of Economics and Labour shall be notified of same not later than the day after such measurements.

16. (1) Where necessary for the fulfilment of obligations under international law, the Federal Minister of Economics and Labour shall, by order, direct that surveys relating to oil companies (in the meaning of Art. 26 IEP Agreement) be conducted on the following subjects:

1. the supply of crude oil, petroleum products, biofuels and feedstocks used for the direct production of biofuels, including forecasts of supply in individual months of the following calendar year;

2. the availability and use of means of transport for crude oil, petroleum products, biofuels and feedstocks used for the direct production of biofuels;

3. other matters, in particular those specified by Arts. 25–36 IEP Agreement.

[BGBl. 1992/383]

(2) Orders under subsection 1 shall, in particular, determine:

1. the commencement of the reporting requirements;

2. the persons subject to reporting requirements;

3. the matters reported on;

4. the reporting dates and the periods to which reports shall relate.

(3) In order to assist in monitoring the substitution obligations under sections 11 and 26a Motor Vehicles Act 1967, BGBl. No. 267, as amended by Federal Act BGBl. I No. 6/2008 and the order enacted to implement it, as well

as compliance with the annual reporting requirements under Directive 2003/30/EC on the promotion of the use of biofuels or other renewable fuels for transport, the company survey data related to biofuels and feedstocks used for the direct production of biofuels shall be forwarded to the Federal Ministry of Agriculture and Forestry, Environment and Water Management.

17. (1) The Federal Minister of Economics and Labour may verify the level of the compulsory emergency reserves, their specifications, and the characteristics and equipment of the storage facilities at any time during normal business hours. To this end the Minister may have recourse to the general state administration, and also consult or engage suitable experts. The inspectors must be granted unrestricted access to the storage facilities and all inventory records during normal business hours. Inspections may include the taking of samples, which must be permitted provided that it is within reasonable limits.

(2) In the event of a reasonable suspicion of false reporting of stock levels or the specifications of the compulsory emergency reserves the inspectors may require the conduct of a physical inventory, and temporarily suspend the transfer of crude oil, petroleum products, biofuels and feedstocks used for the direct production of biofuels to and from tanks in which compulsory emergency reserves are held for as long as is necessary to investigate the stock levels.

18. (1) Where necessary for the fulfilment of obligations under international law, persons subject to reporting requirements designated by an order under section 16 shall be obliged to provide information to the authorities entrusted with the enforcement of this Act.

[BGBl. 1992/383]

(2) If petroleum from other EU member states is imported into the geographical area of application for commercial purposes or by mail order, then a declaration made out in duplicate in the form specified in the Annex shall be lodged with the customs office responsible for official supervision for the purpose of enforcing this Act, together with the accompanying document respectively required by sections 35 or 42 Petroleum Excise Act 1995.

(3) The customs office under subsection 2 shall inspect the particulars in the declaration for conformity with those in the accompanying document, and thereafter forward a copy to the Federal Ministry of Economics and Labour. The other copy shall remain with the customs office. In the event that the particulars in the declaration do not conform to those in the accompanying document the customs office shall require the declarant to correct such particulars. If the declarant fails to correct the particulars or refuses to furnish the revised declaration the customs office shall report this to the Federal Ministry of Economics and Labour within four weeks. At the same time the customs office shall report the required particulars in the declaration, corrected on the basis of the accompanying document, to the Federal Ministry of Economics and Labour.

(4) In the event that the presentation of an accompanying document under subsection 2 is not required, the petroleum excise debtor shall furnish the declaration when making the excise duty return.

(5) 1. The Federal Minister of Finance shall transmit the required particulars in the declaration regarding releases of crude oil or petroleum products for free circulation to the Federal Minister of Economics and Labour not later than the 15th day of the following month.

2. In the case of declarations under the simplified procedures specified by Art. 76 (1)(b or c) Community Customs Code (Council Regulation [EEC] No. 2913/92 of 12 October 1992, OJ L 302 of 19 October 1992), the particulars named in in para. 1 shall be transmitted to the Federal Ministry of Economics and Labour by the end of the following month, and the customs authorities may require the declarant to lodge declarations together with the supplementary declaration (section 59 [2] Customs Law Implementation Act, BGBl. No. 659/1994).

(6) 1. The Federal Minister of Economics and Labour is entitled, for the purposes of this Act, to require the Federal Minister of Finance and the customs authorities to provide information on particulars in declarations.

2. The Federal Minister of Finance and the customs authorities may employ electronic data processing and data transmission to record and transmit the data referred to in this section and to provide information requested under para. 1.

3. The Federal Minister of Finance may, in consultation with the Federal Minister of Economics and Labour, waive the requirement to furnish a declaration with respect to some or all procedures if there is an assurance that electronic reporting will provide the Federal Ministry of Economics and Labour with the necessary data.

[BGBl. 1995/835]

19. The results of surveys under sections 11–18 may only be used to implement this Act and may not be employed for statistical surveys or studies under section 25.

20. With respect to goods subject to stockholding obligations under this Act, the cost burden, per tonne, imposed by the obligation to establish and maintain compulsory emergency reserves shall be fully taken into account in the event of official price fixing under the Prices Act 1992, BGBl. No. 145.

[BGBl. 1992/383]

21. (1) Any person failing to fulfil his stockholding obligations under section 2 commits an administrative offence unless the act constitutes a criminal offence subject to the jurisdiction of the courts, and shall be fined up to EUR 58,120 or, in the event of negligent commission, up to EUR 29,060 by the district administrative authority.

[BGBl. I 2001/150];

(2) If the offender has unlawfully enriched himself or a knowing party by committing an offence subject to the

penalties set forth in subsection 1, then he or such party shall be required to pay a penalty equal to the amount of such enrichment. Such third party shall also be obliged to pay a sum corresponding to the amount of the enrichment if such party ought to have been aware of the enrichment brought about by the action.

(3) The authority may refrain from imposing a penalty under subsection 2 if the pecuniary advantage is minor or if the effect on those concerned would be unduly harsh.

(4) The limitation period (section 31[2] Administrative Penal Act) is one year.

[BGBl. 1995/835]

22. 1) Any person commits an administrative offence unless the act constitutes a criminal offence subject to the jurisdiction of the courts, and shall be fined up to EUR 2,180 by the district administrative authority if such person [BGBl. I 2001/150]:

1. contravenes the provisions of section 4(2) regarding the prohibition of the assignment of an obligation assumed under section 4(1)(3);

2. performs the function of a stockholder without an authorisation under section 5;

3. fails to issue or report the confirmations required under section 5(3);

4. in his capacity as a stockholder makes a charge for the assumption of stockholding obligations exceeding the maximum rate under section 5(5);

5. in his capacity as a stockholder on behalf of whom a federal guarantee has been extended infringes the provisions of section 5(6); 6. fails to submit the notifications and reports required by sections 11, 12, 13, 14 and 18, or fails to submit timely, correct or complete notifications and reports;

7. fails to observe the provisions of section 15 on the maintenance of records;

8. contravenes the obligation to permit inspections under section 17;

9. fails to observe the obligation to furnish a declaration under section 18;

10. 10. fails to collaborate with statistical surveys conducted by order of the Federal Minister of Economics and Labour under section 25(2); [BGBl. I 2001/150];

11. 11. fails to observe the obligation under section 4(5) to include a reference to the stockholding obligation in an invoice.

Section 21(4) shall apply.

[BGBl. 1995/835]

12. fails to observe the obligation to furnish proof under section 3(7).

23. (1) Any person unlawfully disclosing or exploiting for gain information entrusted to him or becoming available to him exclusively as a result of his function as a stockholder under section 5, the disclosure or exploitation of which is likely to prejudice the rightful interests of the person affected, shall be liable to imprisonment for up to one year.

(2) Such offender may only be prosecuted upon an application by the person whose interest in confidentiality has been infringed or by the Data Protection Commission.

(3) The public shall be excluded from the court hearing if:

1. the prosecution, the defendant or a civil party to the proceedings applies therefor; or
2. The court holds such exclusion to be necessary to protect the interests of persons not party to the proceedings.

[BGBl. 1988/339]

24. The Federal Gendarmerie shall, as the law enforcement agency of the district administrative authority, participate in measures required for the initiation and conduct of administrative prosecutions under this Act. [BGBl 1988/339]

25. (1) The Federal Minister of Economics and Labour is empowered to order and conduct statistical surveys and other statistical studies relating to the storage and distribution of coal, crude oil, petroleum products, biofuels and feedstocks used for the direct production of biofuels. These powers do not include statistical surveys related to the production of coal and liquid hydrocarbons.

(2) Directions to carry out statistical surveys shall be made by order. Apart from the direction to conduct a statistical survey such orders shall, in particular, specify:

1. the survey population;
2. the statistical units;
3. the form of statistical survey;
4. the variables;
5. the variable units;
6. the frequency of data collection;
7. the class of persons required to give information;
8. whether and to what extent the results are to be published, whereby the Minister shall have regard to the provisions of section 19 (2) Federal Statistics Act 2000, BGBl. I No. 163/1999.

(3) The transmission of individual classes of data to Statistics Austria for the purpose of compiling federal statistics is permissible.

(4) When conducting such surveys and processing data acquired therefrom, the provisions of the Federal Statistics Act 2000, BGBl. I No. 163/1999 shall be applied by extension.

[BGBl. I 2001/150]

(5) In order to assist in the review of the substitution obligations under sections 11 and 26a Motor Vehicles Act 1967, BGBl. No. 267, as amended by Federal Act BGBl. I No. 6/2008 and the order enacted to implement it, as well as compliance with the annual reporting requirements under Directive 2003/30/EC on the promotion of the use of biofuels or other renewable fuels for transport, the company survey data related to biofuels and feedstocks used for the direct production of biofuels shall be forwarded to the Federal Ministry of Agriculture and Forestry, Environment and Water Management.

26. The electronic transmission of data collected on the basis of the reporting duties and statistical surveys under Arts. II and III to the Federal Ministry of Economics and

Labour is permissible if the formats provided by the Ministry are complied with.

[BGBl. I 2001/150]:

Article III Fuel stockholding by power stations

(1) In the interests of electricity supply security operators of fossil fuel fired power stations shall maintain sufficient fuel stocks to permit the continued supply of electrical energy at maximum capacity and meet own use requirements for 30 days.

(2) The fuel stocks must meet the following requirements:

1. The stocks must be located at the site of the power station. The Federal Minister of Economics and Labour may, upon application, permit a different storage location if this is in the vicinity of the power station, and if there is a transport link via which a quantity of fuel corresponding to the power station's daily demand can be transported to it within one day.

2. Power station operators subject to stockholding obligations must, at all times, be entitled to use the stocks without the approval of any third party.

3. The inventories may not be maintained for the purpose of meeting stockholding obligations under the other provisions of this Act, other legislation or contracts with third parties.

4. The inventories may not be required for the reasonable stocking of other facilities operated by the power station operator.

5. The specifications of the stocks must conform to the existing legal requirements.

(3) The stockholding obligation does not apply to autogeneration plants with maximum electric capacities of less than 50 megawatts.

(4) The stockholding obligations do not apply to power stations which:

1. are fired with natural gas, the supply of which is contractually assured for the period specified by subsection 1;

2. are fired with gas other than natural gas, or waste;

3. are fired with lignite from a nearby mine with which there is a transport link via which a quantity of coal corresponding to the power station's daily demand can be transported to it within one day.

(5) In order to prevent impending or overcome existing difficulties affecting the electricity supply provided by a power station operator subject to stockholding requirements or its customers, the Federal Minister of Economics and Labour may, upon application of such operator, temporarily release fuel stocks for a period of not more than six months from enactment of the notice. This is only permissible to the extent that, and for as long as the difficulties cannot be overcome in any other reasonable way [BGBl. 1992/383]

(6) Withdrawals from stocks in the absence of a prior release under subsection 5 are permissible if such release is not received in time and disruption to electricity

supplies cannot be averted in any other manner. Such withdrawals shall be notified to the Federal Minister of Economics and Labour without delay, and a retroactive release applied for.

(7) Power station operators subject to stockholding obligations shall, not later than the end of the following month, use the official forms to report the following statistics for the previous calendar quarter to the Federal Minister of Economics and Labour:

1. the stocks of fossil fuels held for each power station subject to stockholding obligations at the end of each month, stating the storage location and coverage in days;

2. the total inventories held by the operator at the end of the calendar quarter;

3. the operator's total consumption of fossil fuels and the consumption of individual power stations.

(8) Power station operators subject to stockholding obligations shall, on request, furnish the Federal Minister of Economics and Labour with the information and documentation required to monitor compliance with stockholding obligations within a deadline set him.

(9) Any person willfully or negligently failing to hold the prescribed fuel stocks continuously in contravention of subsection 1 commits an administrative offence, punishable by the district administrative authority with a fine of up to EUR 7,000. [BGBl. I 2001/150]:

(10) Any person failing to submit the notifications and reports required by subsections 6 and 7, or failing to submit timely, correct or complete notifications and reports commits an administrative offence, punishable by the district administrative authority with a fine of up to EUR 2,000. [BGBl. I 2001/150]:

Article IV

(1) This Act shall come into force on 1 July 1982. Art. II sections 1 and 2, section 3(5) (first and second sentence), section 4(1)(3), sections 5(2), and 5(6)(6) and 5(7), section 6, section 11, section 12(1) (first sentence), section 14 (second sentence), sections 18, 21 and 22, and Art. IV section 2 as amended by Federal Act BGBl. No. 835/1995 shall come into force on 1 January 1996. The obligation to transmit data and right to receive information under section 18 also extend to imports made after 1 January 1995.

[BGBl. I 2001/150]:

(1a) Art II section 1 (1)(3)(c), section 1 (1)(13), section 2 (1) (last sentence), section 2 (4), Art IV subsection 1 (first sentence) and the annex to section 18 as amended by Federal Act No. 792/1996 shall come into force on 1 January 1997. [BGBl. 1996/792]

(1b) Art IV subsection 1 (first sentence) as amended by Federal Act BGBl. I No. 179/1998 shall come into force on 1 January 1999. [BGBl. I 1998/179]:

(1a) Art II section 1(1)(2), section 1(3), section 3(2–4), section 4(2), sections 5(2,3 and 5), 5(6)(1,3,4, 6 and 7) and 5(7), section 8, section 9(2 and 3), section 11, section 12, sections 13–15, section 16(1), section 17(1), sections 18(3)(5)(1) and 18(6)(1 and 3), section 21(1), and sections

22, 25 and 26, Art. III subsections 2 and 5–8, and Art. IV subsections 1 (first sentence), 2 and 3 as amended by Federal Act BGBl. I No. 150/2001 shall come into force on 1 January 2002. Art. II section 3(5) as amended by Federal Act BGBl. I No. 150/2001 shall come into force on 1 April 2002.

[BGBl. I 2001/150]

(1d) Art. II section 1(1), section 2(1 and 4), section 4(3–5), section 5(6)(1 and 10), section 8 (1 and 4), section 11, section 19, section 22(10 and 11), the annex to Art. II section 18, and Art. IV subsection 1 (first sentence) as amended by Federal Act BGBl. I No. 106/2006 shall come into force on 1 January 2007. Section 2(5) as amended by Federal Act BGBl. I No. 106/2006 shall enter into force on 1 January 2006. The obligation to hold biofuel stocks shall commence on 1 April 2007 in respect of biofuel imported in 2006. The deductibility of chemical feedstocks (section 2[5]) from imported crude oil shall commence on 1 January 2006.

(1e) (**Constitutional provision**) Art. II section 3 (6 and 8) as amended by Federal Act BGBl. I No. 53/2008 shall come into force on 1 April 2008. Art. II section 7 as amended by Federal Act BGBl. I No. 53/2008 shall come into force on the first day of the month after publication.

(1f) Art. II sections 3(1 and 5), section 4(5), section 6, section 8(1), section 10(2 and 3), section 11(1), section 12(1 and 2), sections 16 and 17, and sections 25(1 and 5) as amended by Federal Act BGBl. I No. 53/2008 shall come into force on 1 April 2008. Art. II section 22(12) as amended by Federal Act BGBl. I No. 53/2008 shall come into force on the first day of the month after publication.

(2) The following are entrusted with the enforcement of Article II of this Act:

1. in respect of section 18, the Federal Minister of Finance in consultation with the Federal Minister of Economics and Labour;

2. in respect of section 20, the Federal Minister of Economics and Labour in consultation with the Federal Minister of Finance;

3. in respect of section 23, the Federal Minister of Justice;

4. in respect of section 24, the Federal Minister of Economics and Labour in consultation with the Federal Minister of the Interior;

5. in all other respects, the Federal Minister of Economics and Labour.

(3) The Federal Minister of Economics and Labour is entrusted with the enforcement of Article III of this Act. [BGBl. 1988/339]

DECLARATION

for the import of mineral oils under CN codes

| | |
|--|---------------------|
| Austrian user tariff heading* | Amount (in kg) |
| Trade description | |
| Third country or EU member state from which the goods are being imported | |
| Name and address of importer/consignee** | |
| Date of import/shipment | Corporate signature |

* The Austrian user tariff heading comprises:

- the eight-digit CN code;
- the two-digit TARIC subheading; and
- the single-digit national subheading that appears in the Austrian user tariff code column in the product nomenclature (e.g. aviation spirit: 2710 0026 002).

** Importer:

- a) a natural person, legal entity or commercial law partnership:
 - aa) who/which is the consignee for customs purposes of goods in the categories designated under Art. II section 1(1)(2-3) Oil Stockholding and Reporting Act, introduced from a third country and released for free circulation;or
 - bb) in the event that goods in the categories set forth in Art II section 1(2-3) Oil Stockholding and Reporting Act are transported into the geographical area of application from a member state of the European Union, the first domestic invoicee; in the case of chain transactions in which the last customer collects the goods itself or has them collected from another member state, the party for whose account and in whose name the goods are transported to a bonded storage facility in the meaning of the Petroleum Excise Act 1995, or the rightful domestic consignee (section 32 Petroleum Excise Act 1995) if the goods are procured by same;
- b) in all other cases in which goods designated under Art. II section 1(1)(2-3) Oil Stockholding and Reporting Act are introduced into the geographical area of application the importer is the first domestic consignee.