



STATUTORY INSTRUMENTS.

S.I. No. 160 of 2017

EUROPEAN UNION (GREENHOUSE GAS EMISSION REDUCTIONS,
CALCULATION METHODS AND REPORTING REQUIREMENTS)
REGULATIONS 2017

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I, DENIS NAUGHTEN, Minister for Communications, Climate Action and Environment, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to Article 7a of Directive (EU) 98/70/EC of the European Parliament and the Council of 13 October 1998¹, as amended by Council Directive (EU) 2009/30/EC of 23 April 2009², and to Council Directive (EU) 2015/652 of 20 April 2015³, hereby make the following regulations:

Citation

1. These Regulations may be cited as the European Union (Greenhouse Gas Emission Reductions, Calculation Methods and Reporting Requirements) Regulations 2017.

Interpretation

2. (1) In these Regulations—

“Act of 2007” means National Oil Reserves Agency Act 2007 (No. 7 of 2007);

“biofuels” means liquid or gaseous fuel for transport produced by biomass;

“biomass” means the biodegradable fraction of products, waste and residues from biological origin from agriculture (including vegetal and animal substances), forestry and related industries including fisheries and aquaculture, as well as the biodegradable fraction of industrial and municipal waste;

“Council Directive (EU) 2015/652” means Council Directive (EU) 2015/652 of 20 April 2015³;

“Directive 98/70/EC” means Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998¹ as amended by Directive 2009/30/EC;

“Directive 2009/30/EC” means Directive 2009/30/EC of the European Parliament and of the Council of 23 April 2009²;

“European Environment Agency” means the European Environment Agency (within the meaning of Regulation (EC) No. 401/2009 of the European Parliament and of the Council of 23 April 2009⁴);

¹OJ No. L.350, 28.12.1998, p.58

²OJ No. L.140, 05.06.2009, p.88

³OJ No. L.107, 25.04.2015, p.26

⁴OJ No. L.126, 21.05.2009, p.13

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 21st April, 2017.*

“fuel baseline standard” means a fuel baseline standard based on the life cycle greenhouse gas emissions per unit of energy from fossil fuels in 2010;

“greenhouse gas emissions per unit of energy” means the total mass of CO₂ equivalent greenhouse gas emissions associated with the fuel or energy supplied, divided by the total energy content of the fuel or energy supplied (for fuel, expressed as its low heating value);

“life cycle greenhouse gas emissions” means all net emissions of CO₂, CH₄ and N₂O that can be assigned to the fuel (including any blended components) or energy supplied. This includes all relevant stages from extraction or cultivation, including land-use changes, transport and distribution, processing and combustion, irrespective of where those emissions occur;

“NORA” means National Oil Reserves Agency;

“SME” means a small and medium sized enterprise which employs fewer than 250 persons and which has an annual turnover not exceeding €50 million, or an annual balance sheet total not exceeding €43 million, or both;

“supplier” means the entity responsible for passing fuel or energy through an excise duty point or, if no excise is due, any other relevant entity designated by NORA.

(2) A word or expression which is used in these Regulations and which is also used in Directive 98/70/EC, or Council Directive (EU) 2015/652 has, unless the context otherwise requires, the same meaning in these Regulations as it has in the Directives.

Scope

3. These Regulations set a target for the reduction of life cycle greenhouse gas emissions per unit of energy from fuel and energy supplied and lay down rules on calculation methods and reporting requirements.

Application

4. These Regulations apply to fuels used to propel road vehicles, non-road mobile machinery (including inland waterway vessels when not at sea), agricultural and forestry tractors, recreational craft when not at sea and electricity for use in road vehicles.

Functions of NORA

5. The functions assigned to NORA under these Regulations are functions of NORA for the purposes of the Act of 2007.

Greenhouse Gas Emission Reductions

6. NORA shall designate the supplier or suppliers responsible for monitoring and reporting life cycle greenhouse gas emissions per unit of energy from fuel and energy supplied. In the case of providers of electricity for use in road vehicles, such providers may choose to become a contributor to the reduction obligation laid down in Regulation 8 if they can demonstrate that they can adequately measure and monitor electricity supplied for use in those vehicles.

Reports to NORA

7. (1) Suppliers shall report to NORA, in accordance with guidelines to be issued by NORA, on the greenhouse gas intensity of fuel and energy supplied within the State by providing, as a minimum, the following information—

- (a) the total volume of each type of fuel or energy supplied, indicating where purchased and its origin, and
- (b) life cycle greenhouse gas emissions per unit of energy.

(2) NORA shall ensure that reports received under paragraph (1) are subject to verification.

Reduction of lifecycle greenhouse gas emissions

8. Suppliers shall reduce life cycle greenhouse gas emissions per unit of energy from fuel and energy supplied by up to 10 per cent by 31 December 2020, compared with the fuel baseline standard. This reduction shall consist of—

- (a) 6 per cent by 31 December 2020;
- (b) an indicative additional target of 2 per cent by 31 December 2020, subject to Article 9(1)(h) of Directive 98/70/EC, to be achieved through one or both of the following methods:
 - (i) the supply of energy for transport supplied for use in any type of road vehicle, non-road mobile machinery (including inland waterway vessels), agricultural or forestry tractor or recreational craft;
 - (ii) the use of any technology (including carbon capture and storage) capable of reducing life cycle greenhouse gas emissions per unit of energy from fuel or energy supplied;
- (c) an indicative additional target of 2 per cent by 31 December 2020, subject to Article 9(1)(i) of Directive 98/70/EC, to be achieved through the use of credits purchased through the Clean Development Mechanism of the Kyoto Protocol, under the conditions set out in Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003⁵, for reductions in the fuel supply sector.

Calculation of lifecycle greenhouse emissions — biofuels

9. Life cycle greenhouse gas emissions from biofuels shall be calculated as follows:

- (a) where a default value for greenhouse gas emission savings for the biofuel production pathway is laid down in Part A or B of Annex IV to Directive 98/70/EC and where the e1 value for those biofuels calculated in accordance with point 7 of Part C of Annex IV to that Directive is equal to or less than zero, by using that default value;

⁵OJ No. L.275, 25.10.2003, p.32

- (b) by using an actual value calculated in accordance with the methodology laid down in Part C of Annex IV to Directive 98/70/EC, or
- (c) by using a value calculated as the sum of the factors of the formula referred to in point 1 of Part C of Annex IV to Directive 98/70/EC, where disaggregated default values in Part D or E of Annex IV to that Directive may be used for some factors, and actual values, calculated in accordance with the methodology laid down in Part C of Annex IV to that Directive, for all other factors.

Calculation of lifecycle greenhouse emissions — non-biofuels

10. Life cycle greenhouse gas emissions from other fuels and energy shall be calculated using the methodology set out in Regulations 12 or 14.

Joint obligation

11. A group of suppliers may choose to meet the reduction obligation pursuant to Regulation 8 jointly. In such case, they shall be considered a single supplier for the purposes of Regulation 8.

Method for Calculating Greenhouse Gas Intensity of Fuels and Energy Supplied (Other than Biofuels) and Reporting by Suppliers

12. For the purposes of Regulation 8, suppliers shall use the calculation method set out in Annex I to Council Directive (EU) 2015/652 to determine the greenhouse gas intensity of the fuels they supply.

Reports of data by suppliers

13. For the purposes of Regulations 7 and 8, suppliers shall report data using the definitions and the calculation method set out in Annex I to Council Directive (EU) 2015/652. The data shall be reported in accordance with guidelines to be issued under Regulation 7 so as to ensure parameters set out in Annex IV to Council Directive (EU) 2015/652 are included.

SMEs

14. For suppliers that are SMEs, NORA shall apply the simplified method set out in Annex I to Council Directive (EU) 2015/652.

Calculation of Fuel Baseline Standard and Greenhouse Gas Intensity Reduction

15. For the purposes of verifying compliance by suppliers with their obligation under Regulation 8, suppliers shall compare their achieved reductions of life cycle greenhouse gas emissions from fuels and from electricity to the fuel baseline standard set out in Annex II to Council Directive (EU) 2015/652.

Reporting

16. For the purposes of reporting to the European Commission and the European Environment Agency, NORA shall make data available in an appropriate format to enable such data to be transmitted in accordance with Annexes III and IV to Council Directive (EU) 2015/652.

Compliance orders

17. (1) Subject to paragraph (2), where NORA finds that a supplier has not complied with these Regulations, NORA may apply by motion to the High Court to make a compliance order under paragraph (4).

(2) NORA may make an application under paragraph (1) only if—

(a) not later than one month before making the application, NORA has served a notice in writing, requiring the supplier concerned to comply with a decision to which paragraph (1) applies and has given the supplier an opportunity to make representations to NORA about the matter and to comply with the Regulation concerned, and

(b) the supplier has failed to so comply.

(3) The High Court may hear the application only if it is satisfied that NORA has complied with paragraph (2)(a) and has served a copy of the application on the supplier concerned. On being served with a copy of the application, that supplier becomes the respondent to the application.

(4) On the hearing of an application made under paragraph (1), the High Court may make an order requiring the respondent to comply with the request of NORA or any part of it not complied with or may refuse the application.

(5) (a) An application for an order under paragraph (1) may be for, or include an application for, an order to pay to NORA such amount, by way of financial penalty, which may include penalties having effect for periods of non-compliance with the decision of NORA, as NORA may propose, being not more than €250,000, as appropriate in the light of the non-compliance or any continuing non-compliance.

(b) Any financial penalty ordered by the High Court to be paid by an operator or undertaking under this paragraph shall be paid to and retained by NORA as income.

(c) In deciding what amount, if any, should be payable, the High Court shall consider the circumstances of the non-compliance, including—

(i) its duration,

(ii) the effect on reporting requirements, or

(iii) any excuse or explanation for the non-compliance.

Authorised officers

18. An authorised officer (within the meaning of the Act of 2007) may exercise the functions conferred on such an officer under sections 47 and 48 of the Act of 2007 for the purposes of obtaining any information necessary for the performance by NORA of its functions under these Regulations and accordingly a reference in that Act to that Act includes a reference to these Regulations.



Given under my Official Seal,
19 April 2017.

DENIS NAUGHTEN,
Minister for Communications, Climate Action and
Environment.

EXPLANATORY NOTE

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

These regulations transpose Article 7a and a number of related provisions of Directive 98/70/EC, as amended by Directive 2009/30/EC. Directive 98/70/EC, as amended, is known as the Fuel Quality Directive (FQD). The FQD sets technical specifications on health and environmental grounds for fuels to be used for vehicles equipped with positive-ignition and compression-ignition engines (e.g. road vehicles, tractors, inland vessels). Directive 2009/30/EC amended a number of the environmental specifications for petrol and diesel and introduced a new grade, low sulphur gas oil for use in non-road mobile machinery. It was transposed, in part, by S.I 155 of 2011 and S.I. 156 of 2011.

Article 7a of the FQD (as inserted by 2009/30/EC) introduces an obligation on fuel suppliers to reduce the greenhouse gas emissions that fuels cause over their life-cycle i.e. when they are refined, transported and used. Under Article 7a, suppliers are required to reduce emissions by up to 10% per unit of energy from fuel and energy supplied. The reduction should amount to at least 6% by 31 December 2020 compared to 2010.

The regulations also transpose Council Directive (EU) 2015/652 which sets out rules on calculation methods and reporting requirements arising out of Directive 98/70/EC, as amended.

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