



STATUTORY INSTRUMENTS.

**S.I. No. 33 of 2012**



EUROPEAN UNION (BIOFUEL SUSTAINABILITY CRITERIA)  
REGULATIONS 2012

**(Prn. A12/0197)**

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I, PAT RABBITTE, Minister for Communications, Energy and Natural Resources, 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 certain provisions of Directive 2009/28/EC, hereby make the following regulations:

*Citation*

1. These Regulations may be cited as the European Union (Biofuel Sustainability Criteria) Regulations 2012.

*Interpretation*

2. (1) In these Regulations—

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

“Agency” means the National Oil Reserves Agency;

“biofuel” means liquid or gaseous fuel for transport produced from biomass;

“biofuel obligation” has the meaning assigned to it by section 44C of the Act;

“biofuel obligation account” has the meaning assigned to it under section 44E of the Act and references to ‘biofuel obligation account holder’ shall be construed accordingly;

“biofuel producer” means a person who produces biofuel for his or her own use or for sale;

“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;

“Directive” means Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009;

“Directive of 1998” means Directive 98/70/EC of the European Parliament and of the Council of 15 October 1998, as amended by the following:

(a) Commission Directive 2000/71/EC of 7 November 2000;

*Notice of the making of this Statutory Instrument was published in  
“Iris Oifigiúil” of 7th February, 2012.*

- (b) Directive 2003/17/EC of the European Parliament and of the Council of 3 March 2003;
- (c) Regulation (EC) No. 1882/2003 of the European Parliament and of the Council of 29 September 2003;
- (d) Commission Directive 2011/63/EU of 1 June 2011;
- (e) Directive 2009/30/EC of the European Parliament and of the Council of 23 April 2009;

“disposal of biofuel” means a relevant disposal of biofuel (within the meaning of section 44N of the Act).

(2) A word or expression that is used in these Regulations and is also used in the Directive has, in these Regulations, the same meaning as in the Directive.

*Application*

3. These Regulations apply to biofuel obligation account holders who apply for a biofuel obligation certificate under section 44G(1) of the Act.

*National scheme*

4. (1) The Agency shall establish a procedure (as referred to in the second subparagraph of Article 18(4) of the Directive) by which biofuel obligation account holders may demonstrate compliance with Article 17(2) to 17(5) of the Directive for biofuel in respect of which biofuel obligation certificates are being applied for.

(2) In order to meet the sustainability criteria, the procedure referred to at paragraph (1) shall provide that agricultural raw materials cultivated in a Member State (including the State) and used for the production of biofuels shall be obtained in accordance with the requirements and standards under the provisions referred to—

- (a) under the heading “Environment” in part A, and
- (b) in point 9,

of Annex II to Council Regulation (EC) No. 73/2009 of 19 January 2009.

*Statement of compliance with certain provisions of the Directive*

5. (1) A biofuel obligation account holder, in seeking to comply with section 44G(4) of the Act, shall furnish to the Agency a statement of compliance with Articles 17 and 18 of the Directive specifying which of the following methods has been utilised with respect to each disposal of biofuel:

- (a) through completion of the procedure set out in Regulation 4;
- (b) through a bilateral or multilateral agreement concluded by the European Community with a third country, as referred to in the first subparagraph of Article 18(4) of the Directive;

- (c) through a voluntary national or international scheme recognised by the European Commission as referred to in the second subparagraph of Article 18(4) of the Directive;
  - (d) through compliance with a national scheme of another Member State, as referred to in Articles 17(8) and 18(7) of the Directive.
- (2) Biofuel obligation account holders shall report compliance on the basis of a mass balance system that—
- (a) allows consignments of raw material or biofuel with differing sustainability characteristics to be mixed,
  - (b) requires information about the sustainability characteristics and sizes of the consignments referred to in subparagraph (a) to remain assigned to the mixture, and
  - (c) provides for the sum of all consignments withdrawn from the mixture to be described as having the same sustainability characteristics, in the same quantities, as the sum of all consignments added to the mixture.

*Information to be submitted to Agency*

6. (1) A biofuel obligation account holder shall for each consignment of biofuel making up the whole or part of a disposal of biofuel provide the following information to the Agency:

- (a) whether the greenhouse gas emissions savings required under Article 17(2) of the Directive is being carried out through—
  - (i) the use of default values,
  - (ii) a combination of disaggregated default values and actual calculations, or
  - (iii) solely through the use of actual calculations;
- (b) the type of raw material from which the product is made;
- (c) the place of origin of the raw material;
- (d) details of measures taken for—
  - (i) soil, water and air protection,
  - (ii) the restoration of degraded land,
  - (iii) the avoidance of excessive water consumption in areas where water is scarce, and
  - (iv) dealing with the issues referred to in the second subparagraph of Article 17(7) of the Directive;

- (e) whether the bonus referred to in Annex V, part C, points 7 and 8 of the Directive and Annex IV, part C, points 7 and 8 of the Directive of 1998 has been used in the greenhouse gas calculation referred to in Annex V, part C, point 1 of the Directive and Annex IV, part C, point 1 of Directive 98/70/EC for the consignment;
- (f) whether the factor for emissions savings from soil carbon accumulation via improved agricultural management referred to in Annex V, part C, point 1 of Directive 2009/28/EC and Annex IV, part C, point 1 of the Directive of 1998 has been used in the greenhouse gas calculation referred to in the same paragraph for the consignment,

and at least one of the following:

- (i) a statement, and evidence in support thereof, that the consignment has been certified or accepted as fulfilling the requirements of the procedure referred to in Regulation 4;
- (ii) a statement, and evidence in support thereof, that the consignment has been certified or accepted as fulfilling the requirements of a bilateral or multilateral agreement that has been concluded by the European Community, in accordance with the first subparagraph of Article 18(4) of the Directive and the first subparagraph of Article 7c(4) of the Directive of 1998, as containing accurate data for the purposes of information on measures taken for soil, water and air protection, the restoration of degraded land, the avoidance of excessive water consumption in areas where water is scarce and/or to take into account the issues referred to in the second subparagraph of Article 17(7) of the Directive and the second subparagraph of Article 7b(7) of the Directive of 1998;
- (iii) a statement, and evidence in support thereof, that the consignment has been duly certified as fulfilling the requirements of a voluntary scheme (including the name of the voluntary scheme) that has been recognised by the European Commission, in accordance with the second subparagraph of Article 18(4) of the Directive and the second subparagraph of Article 7c(4) of the Directive of 1998, as containing accurate data for the purposes of information on measures taken for soil, water and air protection, the restoration of degraded land, the avoidance of excessive water consumption in areas where water is scarce and/or to take into account the issues referred to in the second subparagraph of Article 17(7) of the Directive and the second subparagraph of Article 7b(7) of the Directive of 1998;
- (iv) a statement, and evidence in support thereof, that the consignment has been certified or accepted as fulfilling the requirements of the national scheme of another Member State, as referred to in Articles 17(8) and 18(7) of the Directive.

(2) Paragraphs (1)(d)(i) and 1(f) shall not apply where biofuel has been produced from waste and residues.

(3) The information submitted to the Agency under this Regulation shall be accompanied by a report verifying the information. The verification shall be completed by an independent person in accordance with the requirements for assurance engagements prescribed in ISAE 3000, or an equivalent standard as may be agreed with the Agency.

(4) Where calculation of emissions savings is involved, a biofuel obligation account holder shall hold the details of these calculations on file for 3 years and these details shall be available for audit as required by Regulation 7.

(5) The Minister shall submit to the European Commission, in aggregated form, the information required to be submitted to the Agency under this Regulation.

*Independent audit of records*

7. (1) In order for biofuel to be deemed to meet the sustainability criteria, a biofuel obligation account holder shall maintain records of sustainability criteria related data for each disposal of biofuel.

(2) A biofuel obligation account holder who has made a disposal of biofuel shall arrange for an independent audit of the data referred to in paragraph (1) and the information submitted to the Agency under these Regulations on an annual basis.

(3) The audit shall—

- (i) evaluate the frequency and methodology of sampling and the robustness of the data,
- (ii) verify that the systems used by the biofuel obligation account holder concerned are accurate, reliable and protected against fraud,
- (iii) meet the requirements specified for assurance engagements as set out in ISAE 3000, or an equivalent standard as may be agreed with the Agency, and
- (iv) be in such form as the Agency may require.

(4) A biofuel obligation account holder shall deliver the auditors' report to the Agency no later than 3 months after the end of each calendar year.

*Transitional provision*

8. These Regulations shall not apply to any consignment of biofuel for which a contract for purchase is entered into by a biofuel obligation account holder prior to 28 February 2012, provided that the biofuel obligation levy is paid in respect of such biofuel not later than 15 July 2012.



GIVEN under my Official Seal,  
2 February 2012.

PAT RABBITTE,  
Minister for Communications, Energy and Natural Resources.

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