STATUTORY INSTRUMENTS

2012 No. 3030

CLIMATE CHANGE

The Motor Fuel (Road Vehicle and Mobile Machinery) Greenhouse Gas Emissions Reporting Regulations 2012

Made - - - -	*5th December 2012*
Laid before Parliament	*6th December 2012*
Coming into force - -	*1st January 2013*

CONTENTS

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972 ("the 1972 Act")(**a**).

The Secretary of State is a Minister designated for the purposes of section 2(2) of the 1972 Act in relation to the environment(**b**) and in relation to energy and energy sources(**c**).

These Regulations make provision for a purpose mentioned in section 2(2) of the 1972 Act and it appears to the Secretary of State that it is expedient for any reference in these Regulations to Annex IV to Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels and amending Council Directive 93/12/EEC(**d**) to be construed as a reference to that Annex as amended from time to time.

(**a**) 1972 c.68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7). Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c.51). Paragraph 1A(1)(b) of Schedule 2 was then amended by section 3(3) of the European Union (Amendment) Act 2008 (c.7).

(**b**) S.I. 2008/301.

(**c**) S.I. 2010/761.

(**d**) OJ No L 350, 28.12.1998, p. 58. The Directive has been amended by Commission Directive 2000/71/EC, Directive 2003/17/EC, Regulation (EC) No 1882/2003, Directive 2009/30/EC and Commission Directive 2011/63/EU.

PART 1

Introductory Provisions

Citation and commencement

1. These Regulations may be cited as the Motor Fuel (Road Vehicle and Mobile Machinery) Greenhouse Gas Emissions Reporting Regulations 2012 and come into force on 1st January 2013.

Interpretation

2. In these Regulations—

"the directive" means Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels and amending Council Directive 93/12/EEC(**a**) and a reference in these Regulations to Annex IV to the directive is a reference to that Annex as amended from time to time;

"the RTFO Order" means the Renewable Transport Fuel Obligations Order 2007(**b**), and for the purposes of these Regulations references in the Schedule to the RTFO Order to Annex V of the Renewable Energy Directive are to be read as references to Annex IV of the directive;

"the Renewable Energy Directive" means Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC(**c**);

"account holder" has the meaning given in regulation 8;

"additional sustainability information" means the information specified in Article 1 of Commission Decision 2011/13/EU of 12 January 2011 on certain types of information about biofuels and bioliquids to be submitted by economic operators to Member States(**d**);

"the fuel baseline standard" means the standardised figure for the life cycle greenhouse gas emissions per unit of energy from fossil fuels in 2010 and is 88.3 gCO2eq/MJ;

"the fossil fuel comparator" has the meaning given in paragraph 19 of Part C of Annex IV to the directive;

"GHG" means greenhouse gas;

"the GHG reporting requirement" means the requirement imposed by regulation 4;

"greenhouse gas emissions per unit of energy" has the meaning given in Article 2(7) of the directive;

"non-regulated supplier" means a supplier other than one upon whom the GHG reporting requirement is imposed under regulation 4;

"regulated supplier" means a supplier upon whom the GHG reporting requirement is imposed under regulation 4;

"relevant feedstock" means the biodegradable portion of—

(a) products, wastes or residues of biological origin from—

(i) agriculture (including both vegetal and animal substances);

(ii) forestry;

(iii) related industries including fisheries and aquaculture;

(b) industrial or municipal waste of biological origin;

(**a**) OJ No L 350, 28.12.1998, p. 58. The Directive has been amended by Commission Directive 2000/71/EC, Directive 2003/17/EC, Regulation (EC) No 1882/2003, Directive 2009/30/EC and Commission Directive 2011/63/EU.

(**b**) S.I. 2007/3072. The Order was amended by the Finance Act 2008 (c.9), section 13, and by S.I. 2009/843, 2011/493 and 2011/2937.

(**c**) OJ No L 140, 5.6.2009, p16.

(**d**) OJ No L 15, 20.1.2011, p12.

"the reporting deadline" means 29th November (or the next working day after 29th November, if 29th November is not a working day) immediately following the end of a reporting period;

"reporting period" means a period beginning with 1st January in a year and ending with 31st December in that same year;

"road vehicle" means a vehicle constructed or adapted for use on roads, but does not include any vehicle which is an excepted vehicle within the meaning given by the Hydrocarbon Oil Duties Act 1979(**a**);

"supplier" means a supplier of energy products;

"supply" means, in relation to an energy product, the supply of that energy product to any person whether with a view to its being used by that person or by persons to whom it is subsequently supplied and related expressions are to be construed accordingly;

"sustainability criteria" means the criteria set out in the Schedule to the RTFO Order (read in accordance with the definition above);

"sustainable feedstock" means a relevant feedstock which meets the criteria set out in the Schedule to the RTFO Order (read in accordance with the definition above);

"working day" means any day other than—

(a) Saturday or Sunday;

(b) Christmas Day or Good Friday; or

(c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971(**b**) in any part of the United Kingdom.

Definitions of energy products and relevant use

3.—(1) The following paragraphs of this regulation define the various descriptions of energy product referred to in these Regulations and the relevant use of such products for the purposes of these Regulations.

(2) "Energy product" means—

(a) liquid fuel; or

(b) gaseous fuel;

but does not include detergents, cetane improvers, lubricity improvers, viscosity improvers, oxidation inhibitors, gum inhibitors, anti-corrosive preparations and like substances intended for use as fuel additives.

(3) For the purposes of these Regulations one kilogram of gaseous fuel is to be treated as equivalent to one litre of liquid fuel.

(4) "Relevant use" means use within the United Kingdom in—

(a) road vehicles;

(b) non-road mobile machinery, including inland waterway vessels which do not normally operate at sea;

(c) agricultural tractors and forestry tractors; and

(d) recreational craft which do not normally operate at sea.

(5) For the purposes of paragraph (4)—

(a) the terms "non-road mobile machinery" and "inland waterway vessel" have the meanings given by Article 2 of Council Directive 97/68/EC(**c**);

(**a**) 1979 c.5. The phrase "excepted vehicle" is defined at section 27 of, and Schedule 1 to, the 1979 Act.
(**b**) 1971 c.80.
(**c**) OJ No L 59, 27.2.1998, p.1; a relevant amendment to the Directive was made by Directive 2004/26/EC (OJ No L 225, 25.6.2004, p.3).

(b) the terms "agricultural tractor" and "forestry tractor" have the meanings given by Article 1 of Council Directive 2000/25/EC(**a**);

(c) the term "recreational craft" has the meaning given by Article 1(3) of Council Directive 94/25/EC(**b**); and

(d) an inland waterway vessel or a recreational craft does not normally operate at sea if it does not normally operate beyond the limits of waters in—

(i) category A;

(ii) category B; and

(iii) category C, excluding tidal rivers and estuaries;

where categories A, B and C have the meanings given to them in Merchant Shipping Notice 1827(M) issued by the Maritime and Coastguard Agency.

(6) "Fossil fuel" means coal, substances produced directly or indirectly from coal, lignite, natural gas, crude liquid petroleum, or petroleum products where—

(a) "natural gas" means any gas derived from natural strata; and

(b) "petroleum products" means the following substances produced directly or indirectly from crude, that is to say, fuels, lubricants, bitumen, wax, industrial spirits and any wide-range substance (meaning a substance whose final boiling point at normal atmospheric pressure is more than 50°C higher than its initial boiling point).

(7) "Renewable transport fuel" is liquid fuel or gaseous fuel produced wholly or partially from a relevant feedstock whether blended with fossil fuel or not.

(8) "Wholly renewable transport fuel" means renewable transport fuel which is produced wholly from a relevant feedstock.

(9) "Partially renewable transport fuel" means renewable transport fuel other than wholly renewable transport fuel.

PART 2

The Motor Fuel Greenhouse Gas Reporting Requirement

The Motor Fuel Greenhouse Gas Reporting Requirement

4.—(1) Subject to paragraph (3), the motor fuel greenhouse gas reporting requirement ("the GHG reporting requirement") mentioned in paragraph (2) is imposed on every supplier of energy products for relevant use who in a reporting period owns such products at the time when the requirement to pay the duty of excise with which they are chargeable takes effect.

(2) The GHG reporting requirement is a requirement, for each reporting period, for the supplier to produce to the Administrator on or before the reporting deadline, or such later date as the Administrator may notify to the supplier for the purposes of this paragraph, information and evidence in accordance with regulations 13 and 15 in respect of all the energy products it supplied for relevant use during the reporting period.

(3) But the GHG reporting requirement does not apply to a supplier who, in a reporting period, supplies less than 450,000 litres of energy products for relevant use.

Determinations of amounts and greenhouse gas intensity of energy products for relevant use

5.—(1) Where it is shown that a person owns an amount of petrol, diesel fuel, low sulphur gas oil or renewable transport fuel at the time when the requirement to pay the duty of excise upon it

(**a**) OJ No L 173, 12.7.2000, p1.
(**b**) OJ No L 164, 30.6.1994, p15; a relevant amendment to the Directive was made by Directive 2003/44/EC (OJ No L 214, 26.8.2003, p.18).

takes effect, it is to be presumed, unless the contrary is shown, that that amount of fuel is supplied for relevant use.

(2) Subject to paragraph (3), the greenhouse gas emissions per unit of energy referable to an amount of renewable transport fuel are to be calculated as follows—

(a) where the fuel meets the sustainability criteria, by reducing the fossil fuel comparator by the applicable percentage, that percentage to be calculated in accordance with paragraph 3(3) of the Schedule to the RTFO Order;

(b) where a supplier does not submit a verifier's assurance report under regulation 6, the emissions referable to the fuel are deemed to be equal to the fuel baseline standard; and

(c) where a supplier submits a verifier's assurance report under regulation 6 but the fuel fails to meet the sustainability criteria, the greater of—

(i) the actual emissions per unit of energy calculated by reducing the fossil fuel comparator by the applicable percentage, that percentage to be calculated in accordance with paragraph 3(3) of the Schedule to the RTFO Order; and

(ii) a figure equal to the fuel baseline standard.

(3) In the case of partially renewable transport fuel—

(a) the calculations at paragraph (2) only apply to the percentage of the energy content of the fuel which is attributable to relevant feedstocks; and

(b) the remainder of the fuel is to be treated as if it were fossil fuel for these purposes.

(4) Save in respect of the percentage of the energy content of renewable transport fuel which is attributable to relevant feedstocks, the greenhouse gas emissions per unit of energy associated with all energy products are deemed to be equal to the fuel baseline standard.

(5) For the purposes of paragraph (1)—

(a) "petrol" has the same meaning as in Article 2(1) of the directive;

(b) "diesel fuel" has the same meaning as "diesel fuels" as defined in Article 2(2) of the directive; and

(c) "low sulphur gas oil" means any petroleum-derived liquid—

(i) which falls within CN codes 2710 19 41 and 2710 19 45; and

(ii) the sulphur content of which does not exceed the level specified in regulation 5B(1)(b) of the Motor Fuel (Composition and Content) Regulations 1999(**a**).

(6) For the purposes of paragraph (3), where the partially renewable transport fuel is—

(a) fatty-acid-methyl-ester, the percentage of the energy content of the fuel which is attributable to relevant feedstocks is deemed to be 100%;

(b) bio-ethyl-tertiary-butyl-ether, the percentage of the energy content of the fuel which is attributable to relevant feedstocks is deemed to be 37%;

(c) bio-methyl-tertiary-butyl-ether, the percentage of the energy content of the fuel which is attributable to relevant feedstocks is deemed to be 22%;

(d) bio-tertiary-amyl-ethyl-ether, the percentage of the energy content of the fuel which is attributable to relevant feedstocks is deemed to be 29%.

Verifier's assurance report

6.—(1) Every supplier subject to the requirement imposed by regulation 4 in respect of a reporting period must submit to the Administrator a verifier's assurance report in respect of the information or evidence provided to the Administrator in accordance with regulations 13 and 15 relating to that reporting period giving details of—

(**a**) S.I. 1999/3107. The Regulations were amended by S.I. 2001/3896, 2003/3078, 2007/1608, 2010/3035 and 2012/2567.

(a) the compliance of the renewable transport fuel supplied with the sustainability criteria; and

(b) the additional sustainability information in respect of that renewable transport fuel.

(2) The report referred to in paragraph (1) must be submitted to the Administrator on or before the reporting deadline or such later date as the Administrator may notify to the supplier for the purposes of this paragraph.

(3) But a verifier's assurance report need not be submitted in respect of—

(a) any proportion of the renewable transport fuel supplied which the supplier accepts cannot be shown to comply with the sustainability criteria; and

(b) matters already confirmed by a verifier's assurance report submitted to the Administrator under the RTFO Order.

(4) A verifier's assurance report must—

(a) confirm that the assurance procedures used in the preparation of the report—

(i) met the requirements in respect of limited assurance engagements prescribed in ISAE 3000(**a**), or an equivalent standard; and

(ii) were undertaken by a person with appropriate expertise who is not the supplier or a connected person;

(b) be prepared by a person with appropriate expertise who is not the supplier or a connected person and in accordance with the requirements in respect of limited assurance engagements prescribed in ISAE 3000, or an equivalent standard;

(c) consider whether the relevant systems used to collate and report—

(i) information relating to the compliance of renewable transport fuel with the sustainability criteria; and

(ii) the additional sustainability information;

are likely to produce relevant data which is reasonably accurate and reliable and whether there are controls in place to help protect against material misstatements due to fraud or error;

(d) where the verifier intends to use as evidence work performed by the supplier or another party, consider the frequency and methodology of sampling used by that party and the robustness of the relevant data; and

(e) state whether anything has come to the verifier's attention to indicate that—

(i) the relevant data has not been prepared in accordance with any guidance produced by the Administrator under regulation 16; and

(ii) the information or evidence provided by the supplier under regulation 4 is not accurate.

(5) In paragraph (4)—

(a) "connected person" means, in relation to a supplier, a person connected with the supplier within the meaning of section 1122 of the Corporation Tax Act 2010(**b**);

(b) "ISAE 3000" means the International Standard on Assurance Engagements 3000 promulgated by the International Federation of Accountants;

(c) "relevant data" means—

(i) the information referred to in paragraph (4)(c); and

(ii) any other information or data on which that information is based;

(**a**) The International Standard on Assurance Engagements 3000 is set out from page 292 of Part II of the publication entitled "Handbook of International Quality Control, Auditing, Review, Other Assurance, and Related Services Pronouncements" (2010 edition) (ISBN 978-1-60815-052-6) published by the International Federation of Accountants. Copies can be obtained from www.ifac.org.

(**b**) 2010 c.4.

(d) "relevant systems" means the systems by which the relevant data were produced;

(e) "sampling" means sampling for the purposes of obtaining or checking the relevant data.

PART 3

Administration

Administration

7.—(1) The Administrator must administer the GHG reporting requirement in accordance with these Regulations.

(2) The Secretary of State is appointed as the Administrator.

Establishment of accounts

8.—(1) The Administrator must establish and maintain an account, in which the greenhouse gas emissions per unit of energy supplied are to be recorded, for each person who—

(a) is, or is likely to become, subject to the GHG reporting requirement;

(b) applies for an account; and

(c) satisfies the Administrator that the person is, or is likely to become, a supplier of energy products for relevant use.

(2) The Administrator may record such other matters as the Administrator thinks fit in any account established under paragraph (1).

(3) A person must apply for an account under paragraph (1) not later than the end of the period of 28 days beginning on the date on which the person becomes a regulated supplier.

(4) The Administrator must, so far as reasonably practicable, identify all regulated suppliers.

(5) A supplier or other person who applies for an account under this regulation must provide such information or produce such evidence (or both) to the Administrator as the latter may reasonably request in order to satisfy the Administrator that the person is, or is likely to become, a supplier of energy products for relevant use.

(6) A supplier or other person who applies for an account under this regulation must ensure that the information provided or evidence produced is accurate to the best of the supplier's or other person's knowledge and belief.

(7) The Administrator may reject any application under this regulation if the Administrator reasonably believes that the information or evidence provided to the Administrator under this regulation is inaccurate or incomplete.

(8) An "account holder" is a supplier or other person for whom the Administrator establishes an account pursuant to this regulation.

Power of the Administrator to require further information or evidence

9.—(1) Where the Administrator has reason to believe that an account holder for whom an account has been established pursuant to regulation 8 is not subject, and is not likely to become subject, to the GHG reporting requirement, the Administrator may require the account holder to provide such information or produce such evidence (or both) to the Administrator as may be necessary for the Administrator to become satisfied as to whether the account holder is subject, or is likely to become subject, to that requirement.

(2) An account holder must—

(a) provide the information or produce the evidence required under this regulation; and

(b) ensure that the information provided or evidence produced is accurate to the best of the account holder's knowledge and belief.

Closure of accounts

10. Where the Administrator is satisfied that an account holder for whom an account has been established pursuant to regulation 8 is not subject, and is not likely to become subject, to the GHG reporting requirement, the Administrator may close that account.

Managing accounts

11. Subject to the provisions of these Regulations, the Administrator may manage accounts, including amending details of accounts, and consolidating the accounts of account holders, as the Administrator thinks fit.

Processing of information and evidence

12.—(1) The Administrator must—

(a) record and retain information submitted for the purpose of—

(i) establishing that a supplier is, or reasonably expects to be, subject to the GHG reporting requirement; or

(ii) calculating the greenhouse gas emissions referable to the energy products supplied by each account holder; and

(b) correct any error which is discovered in information stored by the Administrator in relation to an account.

(2) The period for which the Administrator must retain any information pursuant to paragraph (1) is such period as the Administrator considers is reasonable, but it must not be a period of less than ten years beginning with the date of receipt of the information.

(3) The Administrator may record and retain, for purposes connected with the carrying out of the Administrator's functions, such other information as the Administrator thinks fit.

Duty to require information from regulated suppliers

13.—(1) The Administrator must impose a requirement on a regulated supplier to provide the Administrator with—

(a) information as to—

(i) whether the supplier has supplied any energy products for relevant use during each reporting period;

(ii) the total amount of each type of energy product supplied during each reporting period expressed as—

(aa) the volume of liquid fuel supplied if applicable; or

(bb) the weight of gaseous fuel supplied if applicable; and in all cases

(cc) the amount of energy supplied calculated, where applicable, in accordance with Annex III of the Renewable Energy Directive;

(iii) how much of the fuel supplied during each reporting period is—

(aa) fossil fuel (including fossil fuel blended with other fuel);

(bb) wholly renewable transport fuel (excluding fossil fuel blended with wholly renewable transport fuel);

(cc) partially renewable transport fuel (excluding fossil fuel blended with partially renewable transport fuel);

(iv) how much of the energy content of the wholly renewable transport fuel referred to in paragraph (iii)(bb) is attributable to sustainable feedstocks;

(v) how much of the energy content of the partially renewable transport fuel referred to in paragraph (iii)(cc) is attributable to sustainable feedstocks;

(vi) the greenhouse gas emissions per unit of energy of each type of energy product supplied during each reporting period; and

(b) the additional sustainability information in respect of any relevant renewable transport fuel supplied during each reporting period.

(2) The Administrator must impose requirements as to—

(a) the form in which the information must be provided;

(b) the methodology to be used in calculating and providing the information; and

(c) the period within which it must be provided.

(3) The Administrator may require a supplier to produce such evidence as the Administrator may determine is necessary in order to substantiate information which the supplier has provided to the Administrator under this regulation.

(4) In exercising the power under paragraph (3) the Administrator may impose requirements as to—

(a) the form in which the evidence must be produced;

(b) the methodology to be used in compiling and producing the evidence; and

(c) the period within which the evidence must be produced.

(5) Where the Administrator imposes a requirement under this regulation on a supplier to produce information or evidence, the supplier must—

(a) produce that information or evidence; and

(b) ensure that it is—

(i) accurate; and

(ii) produced in such form, and using such methodology, and within such period, as the Administrator requires.

(6) Without prejudice to the generality of paragraphs (1) to (5), the Administrator is under no obligation to impose a requirement on a regulated supplier to produce information or evidence to confirm matters previously reported by the same supplier to the Administrator appointed by the RTFO Order.

Power to require information from non-regulated suppliers

14.—(1) The Administrator may impose a requirement on a non-regulated supplier to provide the Administrator with such information as the Administrator may require for purposes connected with the carrying out of the Administrator's functions.

(2) Without prejudice to the generality of paragraph (1), the Administrator may require a non-regulated supplier to provide the Administrator with the information, in relation to that supplier, which is referred to in paragraph (1) of regulation 13, and references in that paragraph to the "reporting period" are to be treated as references to such period during a reporting period as the Administrator notifies to the supplier for the purposes of this paragraph.

(3) The Administrator may require a non-regulated supplier to produce such evidence as the Administrator may determine is necessary in order to substantiate information which the supplier has provided to the Administrator under this regulation.

(4) The Administrator may impose requirements as to—

(a) the form in which the information or evidence must be provided;

(b) the methodology to be used in calculating and providing the information or evidence; and

(c) the period within which it must be provided.

(5) Where the Administrator imposes a requirement under this regulation on a non-regulated supplier to provide information or evidence, the supplier must provide that information or evidence and ensure that it is—

(a) accurate to the best of the supplier's knowledge and belief; and

(b) provided in such form, using such methodology, within such period and in relation to such period as the Administrator requires.

Mass balance system

15.—(1) When providing information or evidence to the Administrator relating to the compliance of renewable transport fuel with the sustainability criteria and relating to the additional sustainability information, a supplier must use a mass balance system in accordance with this regulation.

(2) In using a mass balance system, and notwithstanding regulations 13(5)(b)(i) and 14(5)(a), a supplier may report that the relevant feedstock or fuel has sustainability characteristics other than its actual sustainability characteristics if the condition in paragraph (3) is met.

(3) That condition is that none of the relevant feedstock or fuel which is subject to that mass balance system is reported to have sustainability characteristics other than those attributed to it by that system.

(4) In this regulation, "report" means to produce information or evidence in accordance with regulations 13(5) and 14(5), and "reported" is to be construed accordingly.

(5) A mass balance system is a system which—

(a) allows amounts of relevant feedstock or fuel with different sustainability characteristics to be mixed ("the mixture");

(b) provides for the sustainability characteristics of amounts added to the mixture to be attributed to other amounts withdrawn from the mixture; and

(c) requires the sustainability characteristics attributed to the sum of the amounts withdrawn from the mixture to be the same, and in the same quantities, as the sustainability characteristics attributed to the sum of the amounts added to the mixture.

(6) For the purposes of paragraphs (2) to (5), the sustainability characteristics of relevant feedstock or fuel include—

(a) its type;

(b) its place of origin; and

(c) any other matter relevant to its compliance with the sustainability criteria.

Other powers and duties conferred and imposed on the Administrator

16.—(1) In addition to the duties imposed upon the Administrator elsewhere in these Regulations, the Administrator has the following duties—

(a) to publicise the GHG reporting requirement so as to ensure, so far as reasonably practicable, that it is brought to the attention of suppliers who are or may be subject to that requirement;

(b) to verify, so far as reasonably practicable, the information provided pursuant to regulation 13(1)(a)(i) to (iii) by each account holder;

(c) to ensure, so far as reasonably practicable, that there is no regulated supplier who, though subject to the GHG reporting requirement, is failing to report the information and evidence required by regulation 4(2).

(2) In so far as it is not reasonably practicable for the Administrator under paragraph (1)(b) to verify the information provided by a regulated supplier as to the amount of each type of energy product supplied, the Administrator may require that supplier to submit a verifier's report, meeting the requirements of regulation 6(4) modified in accordance with paragraph (3), in respect of that information.

(3) For the purposes of paragraph (2), regulation 6(4) is to have effect as if, in paragraph (4)(c), for "compliance of renewable transport fuel with the sustainability criteria; and (ii) the additional sustainability information" there were substituted "amount of each type of energy product supplied".

(4) Where the Administrator imposes a requirement on a regulated supplier to submit a verifier's report under paragraph (2), that report must be submitted to the Administrator by such date as the Administrator notifies to the supplier for the purposes of this paragraph.

(5) In addition to the powers conferred upon the Administrator elsewhere in these Regulations, the Administrator may—

(a) take reasonable steps to promote good working relationships with suppliers of energy products for relevant use and others having an interest in the implementation of these Regulations; and

(b) publish such guidance as the Administrator thinks fit for purposes connected with the implementation of provision made by or under these Regulations.

PART 4

Discharge of reporting requirement

Reliance upon RTF certificates to prove sustainability of renewable transport fuel

17.—(1) A RTF certificate may be relied upon as evidence by the supplier who was initially awarded that certificate that the renewable transport fuel to which the certificate relates satisfies the sustainability criteria.

(2) A supplier must notify the Administrator of each such certificate which it wishes to be taken into account in discharging that supplier's GHG reporting requirement for each reporting period.

(3) The notification in paragraph (2) must be given to the Administrator on or before the reporting deadline immediately following the end of the reporting period or such later date as the Administrator may notify to the supplier for the purposes of this paragraph.

(4) Where a supplier fails to notify the Administrator that it wishes any RTF certificate to be taken into account by the date mentioned in paragraph (3), the Administrator may deem that the supplier wishes to rely upon that certificate.

(5) For the purposes of this regulation "RTF certificate" has the meaning given in section 127 of the Energy Act 2004(**a**).

PART 5

Civil penalties

Civil penalties

18.—(1) A supplier is liable to a civil penalty if that supplier contravenes regulations 4(2), 6(1), 8(3) or 16(4).

(2) A supplier or other person is liable to a civil penalty if at the time that supplier or other person provides the information or evidence referred to in regulation 8(6), 9(2), 13(5) or 14(5)—

(a) that supplier or other person has not taken reasonable steps to ensure that the information or evidence is accurate; or

(b) that supplier or other person has taken reasonable steps to ensure that the information or evidence is accurate, but the condition set out in paragraph (3) is subsequently satisfied.

(3) In the case of paragraph (2)(b), the condition is that the supplier or other person has subsequently—

(**a**) 2004, c.20. Provisions concerning applications for, and the award of, "RTF certificates" are set out at Part 4 of the RTFO Order.

(a) become aware that the information or evidence is or may be inaccurate but has not informed the Administrator of that fact within 20 working days of so becoming aware;

(b) been informed by the Administrator that the information or evidence is or may be inaccurate but has not investigated and remedied the inaccuracy within such period as may reasonably be allowed by the Administrator; or

(c) become aware (other than by being informed by the Administrator) that the information or evidence is or may be inaccurate but has not investigated and remedied the inaccuracy within such period as may reasonably be allowed by the Administrator.

(4) The amount of a civil penalty under this regulation must not exceed £50,000 or the amount equal to 10 per cent of the turnover of the specified business of the supplier, whichever is the lesser.

(5) For the purposes of paragraph (4), the turnover of the specified business of the supplier is the applicable turnover for the business year preceding the date of the civil penalty notice.

(6) Where the business year preceding the date of the civil penalty notice does not equal 12 months, the turnover is the amount which bears the same proportion to the applicable turnover during that business year as 12 months does to the period of that business year.

(7) Where there is no preceding business year, the turnover is the applicable turnover of the supplier for the period of 12 months ending on the last day of the month preceding the month in which the date of the civil penalty notice falls.

(8) Where in the application of paragraph (7) the supplier has applicable turnover for a period of less than 12 months, the turnover is the amount which bears the same proportion to the applicable turnover during the period for which the supplier has applicable turnover as 12 months does to that period.

(9) In this regulation—

"applicable turnover" means the amounts, ascertained in conformity with normal accounting practice in the United Kingdom, which are—

(a) derived by the supplier from the supply of energy products for relevant use; and

(b) computed on an accruals basis so that those amounts relating to the period for which the turnover is being determined are taken into account, without regard to the date of invoice or receipt of payment;

after deduction of trade discounts, value added tax and any other taxes based on such amounts;

"business year" means a period of more than 6 months in respect of which a supplier publishes accounts or, if no such accounts have been published for the period, prepares accounts; and

"date of the civil penalty notice" means the date on which the Administrator gives notice under regulation 19.

Civil penalty notices

19.—(1) Where the Administrator is satisfied that a person (the "defaulter") is liable to a civil penalty, the Administrator may give a notice to the defaulter imposing on the defaulter a penalty of such amount, subject to regulation 18(4), as the Administrator considers appropriate.

(2) A notice under paragraph (1) (a "civil penalty notice") must be given by written notice to the defaulter.

(3) A civil penalty notice must—

(a) set out the Administrator's reasons for deciding that the defaulter is liable to a penalty;

(b) state the amount of the penalty that is being imposed;

(c) set out a date before which the penalty must be paid to the Administrator;

(d) describe how payment may be made;

(e) explain the steps that the defaulter may take if the defaulter objects to the penalty; and

(f) set out and explain the powers of the Administrator to enforce the penalty.

(4) The date before which the penalty must be paid (the "date for payment") must not be less than 28 days after the giving of the civil penalty notice.

(5) For the purpose of this regulation, the "date for payment" of a civil penalty by a defaulter is the latest of the following—

(a) the date set out in the civil penalty notice by which the penalty was imposed;

(b) if a civil penalty is reduced following an objection to a civil penalty notice under regulation 20, the date 28 days after the date on which the Administrator gives its decision;

(c) if a civil penalty is reduced following an appeal against a civil penalty notice under regulation 21, the date 28 days after the date on which the court gives its decision.

(6) Where a defaulter does not pay all or any part of the penalty to the Administrator by the date for payment—

(a) the sum outstanding is to increase at the rate specified in paragraph (7) and the increase is to be calculated in accordance with paragraph (8); and

(b) the increased sum is a debt due from the defaulter to the Administrator until it has been paid in full.

(7) The rate for the purposes of paragraph (6)(a) is 5 percentage points above the base rate of the Bank of England as at the date for payment.

(8) The increase is to be calculated on a daily basis beginning on the date for payment, and ending on the date on which payment is received by the Administrator.

Objections to civil penalties

20.—(1) A person to whom a civil penalty notice is given may give notice to the Administrator that that person (the "objector") objects to the penalty on one or both of the following grounds—

(a) that the objector is not liable to pay it;

(b) that the amount of the penalty is too high.

(2) The notice of objection—

(a) must set out the grounds of the objection and the objector's reasons for objecting on those grounds; and

(b) must be given to the Administrator in the manner specified in paragraph (8) and within the period of 28 days beginning on the day immediately after the day on which the civil penalty notice is given.

(3) The Administrator must consider a notice of objection given in accordance with this regulation and may then—

(a) cancel the penalty;

(b) reduce it;

(c) increase it; or

(d) confirm it.

(4) The Administrator must not enforce a penalty in respect of which the Administrator has received a notice of objection before the Administrator has notified the objector of the outcome of the consideration of the objection.

(5) That notification of the outcome of the consideration must be given in the manner specified in paragraph (9)—

(a) before the end of the period of 28 days beginning on the day immediately after the day on which the notice of objection is given to the Administrator; or

(b) within such longer period as the Administrator may agree with the objector.

(6) Where, on consideration of an objection, the Administrator increases the penalty, the Administrator must revoke the original civil penalty notice and give the objector a new civil

penalty notice setting out the amount of the new penalty which may include any interest accrued to the date of the new civil penalty notice.

(7) Where, on consideration of an objection, the Administrator reduces the penalty, the notification mentioned in paragraph (5) must set out the reduced amount and in determining that amount the Administrator may take account of any interest accrued on the reduced penalty.

(8) For the purposes of paragraph (2)(b) the manner in which the notice of objection must be given to the Administrator is—

(a) by delivering it to the Administrator;

(b) by leaving it at the address of the Administrator; or

(c) by sending it by post to the Administrator at that address.

(9) For the purposes of paragraph (5) the manner in which the notification of the outcome of the Administrator's consideration must be given is—

(a) by delivering it to the objector;

(b) by leaving it at the objector's proper address; or

(c) by sending it by post to the objector at that address.

(10) The notification or document may be given or sent to a body corporate by being given or sent to the secretary or clerk of that body.

(11) The notification or document may be given or sent to a firm by being given or sent to—

(a) a partner in the firm; or

(b) a person having the control or management of the partnership business.

(12) The notification or document may be given or sent to an unincorporated body or association by being given or sent to a member of the governing body of the body or association.

(13) For the purposes of this regulation and section 7 of the Interpretation Act 1978(**a**) (service of documents by post) in its application to this regulation, the proper address of a person is—

(a) in the case of a body corporate, the address of the registered or principal office of the body;

(b) in the case of a firm, or an unincorporated body or association, the address of the principal office of the firm, body or association;

(c) in the case of a person to whom the notification or other document is given or sent in reliance on any of paragraphs (10) to (12), the proper address of the body corporate, firm or (as the case may be) other body or association in question; and

(d) in any other case, the last known address of the person in question.

(14) In the case of—

(a) a company registered outside the United Kingdom;

(b) a firm carrying on business outside the United Kingdom; or

(c) an unincorporated body or association with offices outside the United Kingdom;

the references in paragraph (13) to its principal office include references to its principal office within the United Kingdom (if any).

(15) For the purposes of this regulation "delivering" includes transmitting by means of an electronic communications network, or by other means but in a form that nevertheless requires the use of apparatus by the recipient to render it intelligible.

Appeals against civil penalties

21.—(1) A person to whom a civil penalty notice is given may appeal to the court on one or both of the following grounds—

(**a**) 1978 c.30.

(a) that that person is not liable to pay the penalty;

(b) that the amount of the penalty is too high.

(2) An appeal under this regulation must be brought within such period after the giving of the civil penalty notice as may be set out in rules of court.

(3) On an appeal under this regulation, the court may—

(a) allow the appeal and cancel the penalty;

(b) allow the appeal and reduce the penalty; or

(c) dismiss the appeal.

(4) An appeal under this regulation is to be by way of a rehearing of the Administrator's decision to impose the penalty.

(5) The matters to which the court may have regard when determining an appeal under this regulation include all matters that the court considers relevant, including—

(a) matters of which the Administrator was unaware when making the decision; and

(b) matters which (apart from this paragraph) the court would be prevented from having regard to by virtue of rules of court.

(6) An appeal under this regulation may be brought in relation to a penalty irrespective of whether a notice of objection under regulation 20 has been given in respect of that penalty or whether the Administrator has increased, confirmed or reduced the penalty under that regulation.

(7) In this regulation "the court" means—

(a) in England and Wales or Northern Ireland, the High Court; and

(b) in Scotland, the Court of Session.

PART 6

Disclosure of information held by Revenue and Customs

Disclosure of information held by Revenue and Customs

22.—(1) This regulation applies to information held by or on behalf of the Commissioners for Her Majesty's Revenue and Customs in connection with their functions under or by virtue of the Hydrocarbon Oil Duties Act 1979(**a**).

(2) Such information may be disclosed to—

(a) the Administrator; or

(b) an authorised person;

for the purposes of or in connection with the Administrator's functions.

(3) In this Part "authorised person" means a person who—

(a) provides services to, or exercises functions on behalf of, the Administrator; and

(b) is authorised by the Administrator to receive information to which this regulation applies.

(4) The Administrator may authorise such a person to receive information to which this regulation applies either generally or for a specific purpose.

Further disclosure of information

23.—(1) This regulation applies to information disclosed under regulation 22, other than information which is also provided to the Administrator or an authorised person otherwise than under that regulation.

(**a**) 1979 c.5.

(2) Information to which this regulation applies may not be disclosed—

(a) by the Administrator;

(b) by an authorised person; or

(c) by any other person who obtains it in the course of providing services to, or exercising functions on behalf of, the Administrator;

except as permitted by the following provisions of this regulation.

(3) Paragraph (2) does not apply to a disclosure made—

(a) by the Administrator to an authorised person;

(b) by an authorised person to the Administrator; or

(c) by an authorised person to another authorised person;

for the purposes of, or in connection with, the discharge of the Administrator's functions.

(4) Paragraph (2) does not apply to a disclosure if it is—

(a) authorised by an enactment;

(b) made in pursuance of an order of a court;

(c) made for the purposes of a criminal investigation or criminal proceedings (whether or not within the United Kingdom) relating to a matter in respect of which the Administrator has functions;

(d) made for the purposes of civil proceedings (whether or not within the United Kingdom) relating to a matter in respect of which the Administrator has functions;

(e) made with the consent of the Commissioners for Her Majesty's Revenue and Customs; or

(f) made with the consent of each person to whom the information relates.

Wrongful disclosure

24.—(1) A person commits an offence if—

(a) that person discloses information about a person in contravention of regulation 23(2); and

(b) the person's identity is specified in the disclosure or can be deduced from it.

(2) In paragraph (1) "information about a person" means revenue and customs information relating to a person within the meaning of section 19(2) of the Commissioners for Revenue and Customs Act 2005(**a**) (wrongful disclosure).

(3) It is a defence for a person charged with an offence under this regulation to prove that the person reasonably believed—

(a) that the disclosure was lawful; or

(b) that the information had already and lawfully been made available to the public.

(4) A person guilty of an offence under this regulation is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both; or

(b) on summary conviction, to imprisonment for a term not exceeding three months, or to a fine of no more than level 5 on the standard scale, or both.

(5) A prosecution for an offence under this regulation—

(a) may be brought in England and Wales only with the consent of the Director of Public Prosecutions;

(b) may be brought in Northern Ireland only with the consent of the Director of Public Prosecutions for Northern Ireland.

(**a**) 2005 c.11.

PART 7

Review of implementation and Regulations

Review of implementation

25.—(1) The Secretary of State must keep under review and determine from time to time whether further steps need to be taken in order to meet the requirements of the directive.

(2) Without prejudice to the generality of paragraph (1), the Secretary of State must keep under review—

(a) whether it is necessary to impose lifecycle GHG emission reduction obligations in respect of such periods as the Secretary of State may specify; and

(b) the extent to which relevant feedstocks from agriculture cultivated in the United Kingdom and used for the production of renewable transport fuel have been obtained in accordance with the cross compliance requirements.

(3) Where the Secretary of State determines that steps need to be taken in order to meet the requirements of the directive, the Secretary of State must take those steps.

(4) For the purposes of this regulation "the cross compliance requirements" means—

(a) the statutory management requirements—

(i) under the heading 'Environment' in point A of Annex II to Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003(**a**) ("the CAP Regulation"); and

(ii) in row 9 of the table in that Annex; and

(b) the minimum requirements for good agricultural and environmental condition defined pursuant to Article 6(1) of the CAP Regulation.

Review of Regulations

26.—(1) Save to the extent that the Secretary of State has already satisfied the requirements of this regulation by complying with regulation 25, the Secretary of State must from time to time—

(a) carry out a review of regulations 1 to 24;

(b) set out the conclusions of the review in a report; and

(c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how the directive is implemented in other Member States.

(3) The report must in particular—

(a) set out the objectives intended to be achieved by the regulatory system established by those regulations;

(b) assess the extent to which those objectives are achieved; and

(c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this regulation must be published before the end of the period of five years beginning with the day on which these Regulations come into force.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

(**a**) OJ No L 30, 31.1.2009, p16.

Signed by the authority of the Secretary of State

Norman Baker
Parliamentary Under Secretary of State
Department for Transport

5th December 2012

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations transpose Articles 7a to 7e, and Annex IV, of Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels (OJ L 350, 28.12.1998, pp. 58–68) as inserted by Directive 2009/30/EC of the European Parliament and of the Council of 23 April 2009 (OJ L 140, 5.6.2009, pp. 88–113).

These Regulations require suppliers of fuel for use in road vehicles and various forms of mobile machinery to report on the greenhouse gas ("GHG") intensity of their fuels and upon the sustainability of any biofuels supplied.

Part 2 of the Regulations imposes on fuel suppliers who supply liquid or gaseous fuel in the United Kingdom for use in road vehicles, non-road mobile machinery (including inland waterway vessels which do not normally operate at sea), tractors and recreational craft which do not normally operate at sea ("relevant use"), an obligation to report on the GHG intensity of their fuels and upon the sustainability of any biofuels supplied ("the GHG reporting requirement", *regulation 4*). Biofuels must be shown, by means of a verifier's assurance report, to meet specified sustainability criteria. Otherwise, any biofuels supplied will be deemed to have a GHG intensity at least equal to that of fossil fuel. Small suppliers, specifically those who supply less than 450,000 litres of fuel for relevant use in a given year, are exempted from the requirement.

Part 3 provides that the Secretary of State is the Administrator of this obligation (*regulation 7*). This Part makes provision for the Administrator to establish and maintain accounts for regulated fuel suppliers (*regulations 8 to 11*). It also confers powers and imposes duties on the Administrator as regards requiring information from both regulated and non-regulated fuel suppliers and other matters (*regulations 12 to 16*).

Part 4 provides that Renewable Transport Fuel Certificates awarded to suppliers by the Administrator of the Renewable Transport Fuel Obligation scheme can be produced as evidence, though only by suppliers to whom they were originally awarded under that scheme, that any biofuels supplied meet the biofuel sustainability criteria (*regulation 17*).

Part 5 empowers the Administrator to impose civil penalties when various provisions of the Regulations are contravened (*regulation 18*) and makes provision for the giving of civil penalty notices by the Administrator (*regulation 19*). It also provides for the process of objecting to a civil penalty (*regulation 20*) and for appeals to be made to the High Court (in England and Wales or Northern Ireland) or the Court of Session (in Scotland) where a person disputes a liability to a penalty or claims that the penalty is too high (*regulation 21*).

Part 6 makes provision enabling information to be disclosed by Her Majesty's Revenue and Customs ("HMRC") to the Administrator, as well as prohibiting further disclosure of that information. The information in question is restricted to information held in connection with HMRC's functions under or by virtue of the Hydrocarbon Oil Duties Act 1979. This is to limit the information to that which is relevant to the Administrator's functions.

Regulation 22 permits such information to be disclosed to the Administrator or an authorised person.

Regulation 23 prohibits the disclosure of such information by the Administrator, an authorised person or any other person who obtains it in the course of providing services to or acting on behalf of the Administrator, except in certain specified cases (for example a disclosure required by a court order). The restrictions on further disclosure only apply to information received under regulation 22 that has not also been received by the Administrator or an authorised person by another means.

Wrongful disclosure contrary to regulation 23 is an offence under *regulation 24* if the information is about a person who is identified in or identifiable from the disclosure. The offence is triable either summarily or on indictment. Regulation 24 provides that a person convicted on indictment may be imprisoned for up to 2 years or fined or both, and that on summary conviction a person is liable to imprisonment for up to 3 months or to a fine not exceeding level 5 on the standard scale or both. A person charged with an offence under regulation 24 has a defence if that person can prove that they reasonably believed that the disclosure was lawful or that the information was already lawfully in the public domain.

Part 7 places an ongoing duty on the Secretary of State to keep under review and to determine from time to time what further steps may be necessary to meet the requirements of Directive 98/70/EC (*regulation 25*). The Secretary of State must then take such steps as the Secretary of State determines are necessary. This Part also requires the Secretary of State to review the operation and effect of these Regulations and to publish a report within five years after they come into force and within every five years after that though only to the extent that these obligations have not already been satisfied by work performed in pursuance of regulation 25 (*regulation 26*). Following a review it will fall to the Secretary of State to consider whether the Regulations should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke the Regulations or to amend them.

A Transposition Note in respect of the relevant parts of Directive 98/70/EC as amended has been laid before each House of Parliament.

An impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Low Carbon Fuels Division, Department for Transport, Great Minster House, 33 Horseferry Road, London SW1P 4DR (telephone 020 7944 4378). That impact assessment and an Explanatory Memorandum are available alongside the instrument on the UK legislation website, www.legislation.gov.uk. A copy of the impact assessment has been placed in the library of each House of Parliament.

A copy of the Directives referred to in this Explanatory Note may be obtained from the Office of Public Sector Information or viewed in the Official Journal of the European Union via the EUR-Lex website at http://eur-lex.europa.eu/.

Merchant Shipping Notices are published by the Maritime and Coastguard Agency and can be viewed on the Agency's website at http://www.dft.gov.uk/mca/ which also has details of any amendments or replacements.

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