



STATUTORY INSTRUMENTS.

S.I. No. 128 of 2016

AIR POLLUTION ACT (MARKETING, SALE, DISTRIBUTION AND
BURNING OF SPECIFIED FUELS) (AMENDMENT) REGULATIONS
2016

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BURNING OF SPECIFIED FUELS) (AMENDMENT) REGULATIONS
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I, ALAN KELLY, Minister for the Environment, Community and Local Government, in exercise of the powers conferred on me by sections 10, 14 (as amended by Section 23 of the Environment (Miscellaneous Provisions) Act 2015 (No. 29 of 2015)), 22F (inserted by Section 24 of that Act) and 53 (as amended by Section 26 of that Act) of the Air Pollution Act 1987 (No. 6 of 1987)(as adapted by the Environment, Heritage and Local Government (Alteration of Name of Department and Title of Minister) Order 2011 (S.I. No. 193 of 2011)), hereby make the following regulations:

Citation

1. These Regulations may be cited as the Air Pollution Act (Marketing, Sale, Distribution and Burning of Specified Fuels)(Amendment) Regulations 2016

Commencement

2. These Regulations come into operation on 8 March 2016.

Definitions

3. In these Regulations, “Regulations of 2012” means the Air Pollution Act (Marketing, Sale, Distribution and Burning of Specified Fuels) Regulations 2012 (S.I. No. 326 of 2012)

Amendments to the Regulations of 2012

4. The Regulations of 2012 are amended—

(a) in Regulation 4, by the insertion of the following definitions:

‘approved fuel’ means a low smoke solid fuel for which a current certificate of conformity issued by a certification body exists;

‘bagging operator’ means a person or body engaged in the business of bagging or bailing solid fuel;

‘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;

‘certification body’ means a third-party conformity assessment body accredited to I.S. EN ISO/IEC 17021;

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 11th March, 2016.*

‘low smoke biomass product’ means any solid fuel with a biomass content of at least 30% but less than 100% biomass, for which carbon tax relief for biomass content of solid fuel is sought under Section 82A of the Finance Act 2010 and where such fuel has a smoke emission rate of:

- (a) in the period ending 31 August 2018, not more than 7.5 grams per hour;
- (b) in the period commencing 1 September 2018, not more than 5 grams per hour;

‘Low smoke solid fuel’ means a solid fuel which contains coal and which is permissible for sale in a Low Smoke Zone,

‘Low Smoke Zone’ has the same meaning as ‘specified area’,

- (b) in Regulation 5 by:

the insertion of the following after Regulation 5(5):

“(6) in Regulation 5(2)(c), ‘record’ means a certificate of conformity verifying that the fuel complies with the standards and specifications set out in these Regulations, issued by a certification body following an independent audit by them under Regulation 9A and including the registration number issued by the Agency to the bagging operator

(7) The records to be kept and maintained by suppliers relating to the solid fuel products received, produced, held, delivered and supplied by them shall be sufficient to enable the certification body to determine the sulphur content and the smoke emission rate of the solid fuel products, and include at a minimum, those specified in Schedule 7.”,

- (c) the insertion of the following after Regulation 6A:

“6B The occupier of any premises other than a private dwelling located within a specified area shall not burn at such premises any specified fuels for the purpose of space heating.”,

- (d) in Regulation 7(1), by the insertion of the following after (d):

“(e) there is printed on such a bag a notice in the form set out in Schedule 5 to these Regulations.”,

- (e) in Regulation 7, by the insertion of the following after (1):

“(2) in Regulation 7(1), ‘record’ means a certificate of conformity verifying that the fuel complies with the standards and specifications set out in these Regulations, issued by a certification body following

an independent audit by them under Regulation 9A, and including the registration number issued by the Agency to the bagging operator.

(3) The records to be kept and maintained by suppliers relating to the bituminous coal received, produced, held, delivered and supplied by them shall be sufficient to enable the certification body to determine the sulphur content of bituminous coal, and include at a minimum, those specified in Schedule 7.”,

(f) by the insertion of the following Regulation after Regulation 7:

“Identification, marking and records of Low Smoke Biomass Products

7A (1) A person placing on the market, selling or distributing any low smoke biomass product shall hold a current certificate of conformity verifying that the fuel complies with the standards and specifications set out in these Regulations, issued by a certification body following an independent audit by them under Regulation 9A, and including the registration number issued by the Agency to the bagging operator.

(2) The packaging of low smoke biomass products shall have printed on it a notice in the form set out in Schedule 6 to these Regulations.

(3) The records to be kept and maintained by suppliers relating to the biomass products received, produced, held, delivered and supplied by them shall be sufficient to enable the certification body to determine the biomass content of low smoke biomass product, and include at a minimum, those specified in Schedule 7.”,

(g) the insertion of the following Regulation after Regulation 9

“Certification

9A For the purposes of establishing compliance with the standards, specifications and procedures set out in these Regulations, a person or body placing on the market, selling or distributing:

- (i) bituminous coal;
- (ii) within a specified area, any solid fuel in a bag; or
- (iii) low smoke biomass product;

shall be audited on an annual basis by a certification body.”

(h) in Schedule 3 by, the substitution of the following for Schedule 3(ii):

“(ii) (a) in the period up to and including 31 August 2016, either the text "SMOKELESS FUEL — Contents comply with the Air Pollution Act Regulations" or the text “APPROVED FUEL — Contents comply with the Air Pollution Act Regulations.”

(b) in the period after 31 August 2016, the text “APPROVED FUEL — Contents comply with the Air Pollution Act Regulations.”,

(i) by the insertion of the following after Schedule 4—

“Schedule 5

Form of notice referred to in Regulation 7(1)(e)

In a form which is clearly legible on the front of the packaging—

- (i) In letters at least 2 centimetres high, the name and address of the person who packed the bag and the text “Contents comply with the Air Pollution Act Regulations”, and
- (ii) the text “0.7% SULPHUR COAL”

For the purposes of this Schedule, a reference to the “Air Pollution Act Regulations” shall be construed as a reference to these Regulations.

Schedule 6

Form of notice referred to in Regulation 7A(2) — Mark or Logo requirements for Low Smoke Biomass Product

The notice referred to in Regulation 7A(2) shall:

(I) be:

- (i) printed as part of the packaging;
- (ii) non-detachable;
- (iii) of a minimum height of 80 mm;
- (iv) undistorted;
- (v) either colour, or black and white, on a contrasting background;
- (vi) tamperproof; and

(II) include the following:

- (i) The text “50% Biomass” where the biomass content is greater than or equal to 50%, or “30% Biomass” where the biomass content is between 30% and 50%, by weight on a dry matter basis;

- (ii) the name of the bagging operator;
- (iii) The current EPA Registration Number of the bagging operator in the form “EPA REG No F00XX-0X” supplied by the Environmental Protection Agency;
- (iv) Such logo, in such format as may be prescribed pursuant to obtaining a certificate of conformity.

Schedule 7

Records referred to in Regulations 5(7), 7(3) and 7A(3)

(1) Records for traceability and compliance of low smoke biomass product, within the scope of Regulations 5(7), 7(3) and 7A(3) shall be:

- (i) kept in appropriate media (e.g. paper and/or electronic form);
- (ii) retained for 6 years; and
- (iii) stored and/or archived to ensure satisfactory accessibility, legibility, and freedom from corruption or intentional alteration.

(2) The types of records kept shall include, as a minimum, the following:

- (a) delivery records for raw materials delivered to the bagger and/or producer, showing:
 - (i) the as delivered weight;
 - (ii) the certificate of analysis;
 - (iii) traceability to certificate of analysis;
 - (iv) the delivery vehicle licence plate number or ship reference; and
 - (v) the date of delivery;
- (b) calibration and maintenance records for the weighbridges;
- (c) calibration and maintenance records for the weighing equipment and check weighing, where used;

- (d) records of investigations and timely corrective action following any weighing equipment malfunction or loss of accuracy;
- (e) production reports showing the number of bags filled including any bags which were discarded and any coal contained in filled bags which was returned to the stockpile(s);
- (f) annual stocktakes of raw materials and bagged coal on year end or nearest working day;
- (g) accreditation certificates to I.S. EN ISO/IEC 17025, or equivalent, as carrying out testing to the applicable standard, for all calibration contractors and analytical laboratories which carry out work relevant to the process;
- (h) coal treatment records (if any);
- (i) sales records for all fuel sold;
- (j) market surveillance feedback records (if any);
- (k) feedback and complaints records (if any);
- (l) production records confirming control parameters (quality) (manufactured biomass product);
- (m) records of production runs (duration, product, quantity) (manufactured biomass product).”



GIVEN under my Official Seal,
8 March 2016.

ALAN KELLY,
Minister for Environment, Community and Local
Government.

EXPLANATORY NOTE

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

These Regulations amend the Air Pollution Act 1987 (Marketing, Sale, Distribution and Burning of Specified Fuels) Regulations 2012 (S.I. No. 326 of 2012). They provide for the identification of ‘low smoke’ biomass blend fuels and; the marking to be applied to packaging of these fuels and; the records to be kept by suppliers of biomass products. They also provide for the verification of low smoke biomass products and other low smoke solid fuel products, permitted for sale in Low Smoke Zones, through a requirement to hold a Certificate of Conformity pursuant to an annual audit to NSAI SWiFT 7:2015 *Verification of environmental parameters of certain solid fuel supplied to the residential market in Ireland*, in addition to the pre-existing requirement for bituminous (‘smoky’) coal.

These regulations fulfil the precondition in Section 82A of the Finance Act 2010 (as inserted by Section 51 of the Finance (No. 2) Act 2013 (which is subject to a Commencement Order by the Minister of Finance)) that the Minister for the Environment, Community and Local Government make such regulations prior to the Revenue Commissioners prescribing a partial relief from carbon tax so as to incentive a shift to cleaner, lower carbon heating fuels.

Coal bagging operators and solid fuel suppliers must already register with the Environmental Protection Agency (S.I. 454 of 2012) for the purposes of ensuring compliance with existing regulations on sulphur content and sealing and labelling of bags (S.I. 326 of 2012).

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