Commission Regulation (EU) No 63/2011 of 26 January 2011 laying down detailed provisions for the application for a derogation from the specific CO2 emission targets pursuant to Article 11 of Regulation (EC) No 443/2009 of the European Parliament and of the Council (Text with EEA relevance)

COMMISSION REGULATION (EU) No 63/2011

of 26 January 2011

laying down detailed provisions for the application for a derogation from the specific CO_2 emission targets pursuant to Article 11 of Regulation (EC) No 443/2009 of the European Parliament and of the Council

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 443/2009 of the European Parliament and of the Council of 23 April 2009 setting emission performance standards for new passenger cars as part of the Community's integrated approach to reduce CO_2 emissions from light-duty vehicles[(1)], and in particular Article 11(8) thereof,

Whereas:

(1) According to Article 11 of Regulation (EC) No 443/2009 small-volume and niche manufacturers may apply for alternative emissions reduction targets relating to the reduction potential of a given manufacturer's vehicles to reduce their specific emissions of CO_2, and consistent with the characteristics of the market for the types of cars concerned.

(2) In determining the small-volume manufacturer's reduction potential, the applicant's economic and technological potential should be assessed. For that purpose the applicant should provide detailed information on its economic activities as well as information on CO_2 reducing technologies used in the cars. The information requested include data that is readily available to the applicant and should not entail an additional administrative burden.

(3) To provide consistency between the reduction target requested from small-volume and niche manufacturers, and in order to avoid putting at a disadvantage the small-volume manufacturers that decreased their average specific CO_2 emissions prior to 2012, the specific CO_2 emission targets for those manufacturers should be compared to their baseline average specific CO_2 emissions in 2007. Where this data does not exist the target should be compared to the average specific CO_2 emissions in the following calendar year closest to 2007.

(4) In order to take into account the limited product offer of some small-volume manufacturers and resulting limited scope for distribution of the reduction effort over

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the fleet, the applicants should be allowed to choose between a single yearly specific emission target for the period of derogation or different yearly targets, resulting in reduction from the 2007 baseline at the end of the derogation period.

(5) Article 11(4) of Regulation (EC) No 443/2009 allows certain niche manufacturers to benefit from an alternative specific emissions target which is 25 % lower than their average specific emissions of CO_2 in 2007. An equivalent specific emissions target based on the best available CO_2-reducing technologies in 2007 should be determined where information on a manufacturer's average specific emissions of CO_2 does not exist for the year 2007. The ratio of maximum power to vehicle mass should be used to distinguish different market characteristics for cars of a given mass for the purpose of identifying the best available CO_2 emissions reduction technologies.

(6) In order to provide small-volume and niche manufacturers with a clear baseline to be used for setting the specific emissions targets, a list of manufacturers and their average specific CO_2 emissions in the Union in 2007 has been drawn up following a formal consultation with the Member States and the main stakeholders, including the associations of European (ACEA), Japanese (JAMA) and Korean (KAMA) car manufacturers, and European Association of Small Volume Manufacturers (ESCA).

(7) Certain information contained in the application for derogation should be exempted from public access where disclosure of this information would undermine the protection of commercial interest, in particular information on the manufacturer's product planning, expected costs and impacts on the profitability of the company. The decisions granting derogations will be published by the Commission on the Internet.

(8) The measures provided for in this Regulation are in accordance with the opinion of the Climate Change Committee established by Article 9 of Decision No 280/2004/EC of the European Parliament and of the Council[(2)],

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation specifies the information to be provided by manufacturers for the purpose of demonstrating that the conditions for a derogation pursuant to Article 11(1) or (4) of Regulation (EC) No 443/2009 are satisfied.

Article 2

Definitions

In addition to the definitions set out in Articles 2 and 3 of Regulation (EC) No 443/2009, the following definitions shall apply:

(a) 'applicant' means a manufacturer within the meaning of Article 11(1) or (4) of Regulation (EC) No 443/2009;

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(b) 'vehicle characteristics' means the features of the vehicle, including mass, its specific CO_2 emissions, the number of seats, engine performance, power to mass ratio and top speed;

(c) 'characteristics of the market' means information on vehicle characteristics, and names and price ranges of cars directly competing with the vehicles for which a derogation is sought;

(d) 'own production facility' means a manufacturing or assembly plant used solely by the applicant for the purpose of manufacturing or assembling new passenger cars exclusively for that manufacturer, including, where relevant, passenger cars which are intended for export;

(e) 'own design centre' means a facility in which the whole vehicle is designed and developed, and which is under the control and exclusive use of the applicant.

Article 3

Application for a derogation pursuant to Article 11(1) and (4) of Regulation (EC) No 443/2009

1 An application for a derogation pursuant to Article 11(1) of Regulation (EC) No 443/2009 shall be submitted by the applicant in accordance with the format specified in Annex I to this Regulation, and shall include the information set out in Article 4(1) and Article 5 of this Regulation.

2 An application for a derogation pursuant to Article 11(4) of Regulation (EC) No 443/2009 shall be submitted by the applicant in accordance with the format specified in Annex II to this Regulation, and shall include the information set out in Article 4(2) and Article 6 of this Regulation.

Article 4

Information on eligibility criteria

1 The applicant shall provide the following information on the eligibility criteria:

a information on the ownership structure of the manufacturer or group of connected manufacturers, together with the relevant declaration set out in Annex III;

b for the manufacturer applying for a derogation pursuant to Article 11(1) of Regulation (EC) No 443/2009, or the group of connected manufacturers in accordance with point (b) of Article 11(1) of that Regulation, or for the member of a group of connected manufacturers in accordance with point (c) of Article 11(1) of that Regulation, the number of passenger cars officially registered in the Union in the three calendar years preceding the date of application, or where such data is not available, one of the following:

— an estimate based on verifiable data of the number of cars registered in the period referred to in point (b) for which the applicant is responsible,

— if no cars were registered in the period referred to in point (b), the number of cars registered in the last calendar year for which such data is available.

2 An applicant applying for a derogation pursuant to Article 11(4) of Regulation (EC) No 443/2009 shall provide the data referred to in point (b) of paragraph 1 of this Article only for the calendar year preceding the date of application.

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Article 5

Specific emissions target and reduction potential pursuant to Article 11(2) of Regulation (EC) No 443/2009

1 The applicant shall provide the average specific CO_2 emissions of its passenger cars registered in 2007, unless the average specific CO_2 emissions for that year are listed in Annex IV to this Regulation. Where this information is not available, the applicant shall provide the average specific CO_2 emissions of its passenger cars registered in the following calendar year closest to 2007.

2 The applicant shall provide the following information on its activity:

a for the calendar year preceding the date of application, the number of employees and the size of the production facility in square metres;

b the operational model of the production facility specifying which design and production activities are performed by the applicant or outsourced;

c in the case of a connected undertaking, if the technology is shared by the manufacturers, and which activities are outsourced;

d for five calendar years preceding the date of application, the sales volumes, yearly turnover, net profit, and R & D spending, and in the case of a connected undertaking, the net transfers to the parent company;

e the characteristics of their market;

f the price list for all versions of cars to be covered by the derogation in the calendar year preceding the date of application, and the expected price list for the cars planned to be launched and to be covered by the derogation.

When an application is submitted by a manufacturer responsible for more than 100 cars per year, the information referred to in point (d) shall be accompanied by the official certified accounts, or shall be certified by an independent auditor.

3 The applicant shall provide the following information on its technological potential:

a the list of CO_2 reducing technologies used in its passenger cars deployed on the market in 2007 or, where those data are not available, for the following year closest to 2007, or in case of manufacturers planning to enter the market, for the year in which the derogation starts to apply;

b the list of CO_2 reducing technologies used in its passenger cars under the reduction programme and the additional costs of these technologies for each vehicle version covered by the application.

4 The applicant shall in accordance with its reduction potential propose a specific emissions target for the period of the derogation. The applicant may also propose yearly specific emissions targets.

The specific emissions target or yearly specific emissions targets shall be determined so that the average specific emissions at the expiry of the derogation period are reduced in comparison to the average specific emissions of CO_2 referred to in paragraph 1.

5 The specific emissions target or yearly specific emissions targets proposed by the applicant in accordance with point (d) of Article 11(2) of Regulation (EC) No 443/2009 shall be accompanied by a programme of reduction for the new fleet's specific CO_2 emissions.

The reduction programme shall specify the following:

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a the timetable for introduction of CO_2 reducing technologies in the applicant's fleet;

b the estimated Union registrations per year for the period of the derogation and the expected average specific emissions of CO_2 and average mass;

c in the case of yearly specific emissions targets, yearly improvement of specific CO_2 emissions of the vehicle versions for which CO_2 reducing technologies are introduced.

6 The applicant's compliance with a specific emissions target or yearly specific emissions targets shall be assessed in accordance with Article 9 of Regulation (EC) No 443/2009 each year during the derogation period.

Article 6

Reduction target for a derogation pursuant to Article 11(4) of Regulation (EC) No 443/2009

1 The applicant shall provide the average specific CO_2 emissions of its passenger cars registered in 2007, unless the average specific CO_2 emissions for that year are listed in Annex IV to this Regulation.

2 The reduction target determined in accordance with Article 11(4) of Regulation (EC) No 443/2009 shall apply in relation to the baseline average specific CO_2 emissions as set out in paragraph 1.

3 Where information on a manufacturer's average specific CO_2 emissions in 2007 does not exist, the applicant shall provide information on the vehicle characteristics for all types of cars manufactured by him as well as the number of cars manufactured by the applicant that the applicant expects to be registered in the Union in the first year of the derogation. The applicant shall indicate for all variants of cars to which of the vehicle classes specified in the table in Annex V the variant belongs.

4 The specific emissions target shall be calculated annually based on the 25 % reduction from the baseline for each vehicle class set out in Annex V.

Article 7

Assessment by the Commission

1 Where the Commission has raised no objections within nine months of official receipt of a complete application pursuant to Article 11(1) or Article 11(4) of Regulation (EC) No 443/2009 the relevant conditions for applying the derogation shall be deemed to be satisfied. If the Commission finds that the application is incomplete, additional information may be requested. Where the additional information is not submitted within the time period specified in the request, the Commission may reject the application.

In the case of a rejection due to the incompleteness of the application or due to the Commission finding the proposed specific emissions target inconsistent with the applicant's reduction potential, the applicant may submit a completed or revised application for a derogation.

2 Applications shall be sent in printed and electronic versions and be addressed to the Secretariat General of the European Commission, 1049 Brussels, Belgium, marked 'Derogation under Regulation (EC) No 443/2009'. The electronic version shall be also sent to the functional mailbox specified in Annex I.