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RESOLUTION NO. 791 OF JUNE 12, 2019

Provides for the individualization of the annual mandatory targets of reduction in emissions of greenhouse gases for commercialization of fuels, in the scope of the Brazilian Biofuel Policy (RenovaBio).

THE COLLEGIATE BOARD OF THE NATIONAL AGENCY OF PETROLEUM, NATURAL GAS, AND BIOFUELS – ANP, in the exercise of the duties assigned by art. 6 of the Internal Regulations and by art. 7 of Schedule I of Decree No. 2,455 of January 14, 1998, based on the provisions of Law No. 9,478 of August 6, 1997, considering Proceeding No. 48610.003318/2018 and the resolutions taken in the 980th Meeting of the Collegiate Board held on June 11, 2019, resolves to:

Chapter I

ANNUAL TARGETS OF REDUCTION IN EMISSIONS OF GREENHOUSE GASES

Article 1. The criteria for the individualization of the annual mandatory targets of reduction in emissions of greenhouse gases for commercialization of fuels applicable to all fuel distributors, referred to in art. 7 of Law No. 13,576 of December 26, 2017, and art. 5 of Decree No. 9,308 of March 15, 2018, are established hereby.

Article 2. The individual annual target of reduction in greenhouse gases of the fuel distributor shall be an integer higher than zero, calculated based on the multiplication of the market share of the distributor in the total emissions arising from fossil fuel (in a percentage fraction) by the annual target established by the National Council for Energy Policy, through CNPE Resolution No. 5 of June 5, 2018.

Sole paragraph. The individual annual target:

I – shall be established in units of Decarbonization Credit (CBIO), based on the annual mandatory targets defined by CNPE Resolution No. 5 of June 5, 2018, or any other that may replace it;

II – may be revised pursuant to art. 4 of CNPE Resolution No. 5 of 2018, and art. 8 of Decree No. 9,308 of March 15, 2018;

III – shall be effective until December 31 of each year; and

IV – shall be published on ANP's website (www.anp.gov.br).

Section I

Criteria for Calculating the Individual Annual Target

Article 3. The individual annual target shall be calculated considering the following:

I – data on handling of fossil fuels informed in the Product Handling Movement Information System (SIMP), pursuant to ANP Resolution No. 729 of May 11, 2018, sent by ANP to the Brazilian Audit Court – TCU in compliance with art. 1-A, ¶ 2, item II, and ¶ 4, item I, of Law No. 10,336 of December 19, 2001.

II – the market share of the fuel distributors in the commercialization of the fossil fuels with biofuels as alternatives on a commercial scale, as detailed in item I of the Schedule.

Article 4. ANP shall annually publish preliminary targets and data used for calculating them, in December of the year preceding the year of effectiveness of the final annual target.

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Sole paragraph. The preliminary targets shall use handling data of fossil fuels informed in the SIMP considering the period from January to October of the year preceding the year of effectiveness of the target.

Article 5. The final individual annual target for each distributor shall be published by March 31 of its year of effectiveness.

Sole paragraph. The final targets shall use handling data of fossil fuels referred to in item I of art. 3, considering the period from January to December of the year preceding the year of effectiveness of the target.

Article 6. The market share of each fuel distributor shall be calculated by reference to the following variables and formulas:

I – sum of the volume traded by the distributor during the period related to each fuel listed in item I of the Schedule;

II – amount of fossil fuel corresponding to the volume of each product traded, minus the amount of biofuel of the product;

III – calculation of the greenhouse gas emissions by fossil fuel traded according to the formula included in item II of the Schedule;

IV – sum of the emissions corresponding to each fossil fuel traded by the distributor, according to the formula included in item III of the Schedule; and

V – market share of the distributor, according to the formula included in item IV of the Schedule.

Paragraph 1. The commercialization of the fossil fuel without a national offer of alternative biofuels on a commercial scale shall not be accounted for in the calculation of the target of the fuel distributor.

Paragraph 2. Every year, ANP shall publish on its website an updated list with the codes of the corresponding table of the SIMP regarding the products and transactions considered for the calculation of the market share in the commercialization of fossil fuels.

Paragraph 3. The volumes marketed for another distributor and the volumes intended for export shall be disregarded from the sum of the volume of each fuel traded by the distributor.

Article 7. In the cases of consolidation, spin-off, mergers and acquisitions of fuel distributors, the obligations regarding the individual target of reduction in greenhouse gases shall be automatically transferred to the successor company.

Paragraph 1. In the cases provided for in the main section, ANP shall be informed by the parties interested in the definition of the individual targets of reduction in greenhouse gases of the successor company, without prejudice to the obligations included in other resolutions.

Paragraph 2. In case of spin-off of fuel distributors, the obligation regarding the individual target of reduction in greenhouse gases shall be assumed jointly by the successor companies.

Chapter II

DEMONSTRATION OF ACHIEVEMENT OF THE INDIVIDUAL ANNUAL TARGET

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Article 8. The achievement of the individual annual target of reduction in emissions of greenhouse gases shall be demonstrated based on information sent by the institutions involved in the activities of distribution, intermediation, trading, and custody of the Decarbonization Credits (CBIO).

Paragraph 1. Up to fifteen percent of the individual target for one year (t) may be demonstrated by the fuel distributor in the subsequent year (t+1), provided that it has fully achieved the target for the previous year (t-1).

Paragraph 2. In the case provided for in ¶ 1, the fuel distributor shall fully achieve the target established for the subsequent year (t+1), plus fifteen percent of the individual target that was not demonstrated in the previous year (t).

Paragraph 3. If there is no individual target established for the previous year (t-1), it will not be possible demonstrate in the subsequent year (t+1) any part of the individual target of a given year (t).

Article 9. The fuel distributor shall keep, for five years, all documents and information required in this Resolution, filing them in any proper mean, physical or digital.

Chapter III

SANCTIONS FOR FAILURE TO ACHIEVE THE INDIVIDUAL ANNUAL TARGET

Article 10. Partial or full failure to achieve the individual annual target shall subject the fuel distributor to the fine set forth in art. 9 of Law No. 13,576 of 2017, and in art. 7 of Decree No. 9,308 of 2018, without prejudice to the other administrative and monetary sanctions set forth in Law No. 9,847 of October 26, 1999, and other applicable criminal and civil sanctions.

Paragraph 1. Paying the fine does not exempt the distributor from achieving its annual target, and the CBIO amount target that is not achieved shall be added to the target applicable to the distributor in the subsequent year.

Paragraph 2. If the limit set forth in ¶ 1 of art. 8 is exceeded, namely, fifteen percent of the individual target of a given year, a fine for the percentage of the individual target of such year that was not achieved shall be imposed.

Article 11. When the fine set forth in article 9 of Law No. 13,576 of 2017 does not correspond to the advantage obtained as a result of the failure to achieve the target, a temporary full or partial suspension penalty shall be imposed for the operation of facilities of the distributor, pursuant to item I of art. 8 of Law No. 9,847 of 1999.

Paragraph 1. The advantage obtained as a result of the failure to achieve the target shall be measured based on the number of CBIOs that were not acquired by the fuel distributor and on the average price of the CBIO in effect during the year when the target was not achieved.

Paragraph 2. When the penalty set forth in the main section is imposed, its extent shall consider the amount, the location, and the volume handled of each product of the facilities of the fuel distributor, as well as the impacts on the national fuel supply and the advantage obtained.

Article 12. The administrative sanction shall be applied by means of an administrative proceeding initiated to investigate the infraction of this Resolution, being the right to legal defense and adversary proceeding ensured under Law No. 9,784 of January 29, 1999, and Decree No. 2,953 of January 28, 1999.

Chapter IV

FINAL AND TRANSITIONAL PROVISIONS

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Article 13. The final individual annual targets for 2019 shall be published on ANP's website by July 1, 2019, pursuant to art. 12 of Decree No. 9,308 of March 15, 2018, and art. 2 of CNPE Resolution No. 5 of June 5, 2018.

Sole paragraph. No preliminary individual annual targets for 2019 shall be published.

Article 14. ANP shall publish every year on its website the percentage achievement of the individual target by each fuel distributor and the respective administrative and monetary sanctions imposed.

Article 15. ANP may publish on its website additional information, clarification, and operational details complementing the provisions in this Resolution.

Article 16. Failure to comply with the provisions in this Resolution shall subject the offender to the penalties provided for hereby, as well as those contemplated by Law No. 9,847 of October 26, 1999.

Article 17. This Resolution becomes effective as of the date of its publication.

SCHEDULE

(referred to in item II of art. 3 and items I, III, IV, and V of art. 6 of ANP Resolution No. 791 of June 12, 2019)

SUPPORTING INFORMATION FOR CALCULATING THE MARKET SHARE OF THE FUEL DISTRIBUTORS

I – List of fossil fuels that have an alternative biofuel on a commercial scale

a) Common gasoline type C: fuel obtained from mixing common gasoline type A and fuel anhydrous ethanol, in the proportions defined by the prevailing laws and regulations. All products are included, regardless of presence or absence of additives.

a) Premium gasoline type C: fuel obtained from mixing premium gasoline type A and fuel anhydrous ethanol, in the proportions defined by the prevailing laws and regulations. All products are included, regardless of presence or absence of additives.

c) Diesel B: diesel for road and non-road use, defined as the mixture of diesel A and biodiesel in the proportions defined by the prevailing laws and regulations. All products are included, regardless of sulfur content and of presence or absence of additives.

d) Diesel BX: mixture composed of diesel A and biodiesel in proportions different from the compulsory ones defined by the prevailing laws and regulations.

II – Formula for calculating the greenhouse gas emissions by fossil fuel traded

$$\text{Emissions}_i = V_{i\text{Total}} * \rho_i * \text{ICI} * \text{PCI}_i$$

Where:

Emissions_i: is the amount of greenhouse gas emissions released during the life cycle of fossil fuel i (in tons of equivalent CO₂);

V_{iTotal}: is the total volume of fossil fuel i traded by the fuel distributor during the period (in liters);

ρ_i: is the specific mass of fossil fuel i (in kilograms/liter);

ICI - : is the carbon intensity of fossil fuel i (in tons of equivalent CO₂/megajoule);

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PCI_i: is the lower heating value of fossil fuel i (in megajoule/kilogram).

The amounts related to specific mass, carbon intensity, and lower heating value are those defined by ANP Resolution No. 758 of November 23, 2018, or any other that may replace it.

III – Formula for calculating of the total emissions by fuel distributor

$$Emissions_{distributor} = \sum_i^n Emissions_i$$

Where:

Emissions_{distributor}: is the total emissions of fossil fuels by fuel distributor (in tons of equivalent CO₂).

I - : is each fossil fuel with national offer of alternative biofuels on a commercial scale;

n: is the number of fossil fuels traded by the fuel distributor.

IV – Formula for calculating the market share in the commercialization of fossil fuels by fuel distributor

$$Share_{distributor} = (Emissions_{distributor} / \sum_k Emissions_{distributor}) * 100$$

Where:

Share_{distributor} is the market share percentage in the commercialization of fossil fuels of fuel distributor j (in %);

k: is the total number of fuel distributors that have traded fossil fuels.