

**Circular 15/2009**

**28 September 2009**

***To all Regional Inspectors, AES inspectors, AS, DS & SAO.***

### **The Rural Environment Protection Scheme**

#### **REPS 3 Penalties for Breaches of Organic Nitrogen Scheme Limit of 170kg/ha.**

Article 73 of Regulation 817 of 2004 requires, inter alia, that where Member States lay down penalties for infringements such penalties must be proportionate.

The penalty schedule for REPS 3 at Annex 1 of the terms and conditions provides that ,where the organic nitrogen applied exceeds the scheme limit of 170kg per hectare, a penalty of 50% is to be applied. To ensure that the principle of proportionality is respected penalties should be applied pro-rata to the extent of the breach found.

Accordingly, Annex 1 of the REPS 3 terms and conditions is amended replacing the 50% penalty for exceeding the organic nitrogen scheme limits with the following graduated penalties:

<u>Kg/ha</u>	<u>% Penalty</u>
171 – 180	5%
181 – 190	10%
191 – 210	20%
211 – 230	30%
>230	50%

In all cases where the planned application of organic nitrogen is exceeded by 10% or more the specified penalty of 10% shall be applied. Where the scheme limit is exceeded an additional penalty is applied and the breach must be cross-reported to SPS.

All REPS 3 participants must farm at or below 170kg/ha and this limit cannot be exceeded in REPS 3 even if the farmer has applied for a derogation from the provisions of the Nitrates Directive.

*Example 1*

*Planned organic N is 145Kg. Applied organic N is 175Kg*

*The planned organic N is exceeded by 30kg equivalent to 20.69%*

*Penalty of 10% to be applied for exceeding planned limits by more than 10% and in addition 5% penalty for breaching scheme limits(171-180) to be applied and breach cross reported.*

*Example 2*

*Planned organic N is 165Kg. Applied organic N is 173Kg*

*The planned organic N is exceeded by 8kg equivalent to 4.85%*

*Penalty to be applied is for breach of scheme limits only, which in this case is 5% and breach(171-180) cross-reported.*

This circular comes into immediate effect and shall apply where penalties are yet to be applied irrespective of the date of inspection.

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