

SUBSIDIARY LEGISLATION 423.50

EUROPEAN UNION GREENHOUSE GAS EMISSIONS
TRADING SYSTEM FOR STATIONARY
INSTALLATIONS REGULATIONS

*Substituted by:
L.N. 268 of 2019.*

1st January, 2013*

LEGAL NOTICE 434 of 2013, as amended by Legal Notice 268 of 2019.

1. (1) The title of these regulations is the European Union Greenhouse Gas Emissions Trading System for Stationary Installations Regulations.

*Citation and scope.
Substituted by:
L.N. 268 of 2019.*

(2) These regulations provide for the implementation in Malta of the European Union system for greenhouse gas emissions allowance trading, established by Directive 2003/87/EC, for activities listed in Schedule 1 to these regulations, for the period commencing 1st January, 2013, and any subsequent periods.

(3) These regulations transpose:

- Directive 2003/87/EC;
- Directive 2004/101/EC amending Directive 2003/87/EC;
- Directive 2008/101/EC amending Directive 2003/87/EC;
- Directive 2009/29/EC amending Directive 2003/87/EC;
- Decision (EU) 2015/1814 amending Directive 2003/87/EC;
- Regulation (EU) 2017/2392 amending Directive 2003/87/EC; and
- Directive (EU) 2018/410 amending Directive 2003/87/EC.

2. For the purposes of these regulations and unless the context otherwise requires, the following definitions shall apply:

*Interpretation.
Amended by:
L.N. 268 of 2019.*

"account holder" means a natural or legal person that holds an account in the Union registry;

"the Act" means the Malta Resources Authority Act;

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"allowance" means an allowance to emit one tonne of carbon dioxide equivalent during a specific period, which shall be valid for the purposes of meeting the requirements of these regulations and shall be transferable in accordance with the provisions of these regulations;

"auctioneer" means the Debt Management Office within the Treasury Department appointed by the Government to auction allowances on its behalf;

*see regulation 1(3) of these Regulations, as originally promulgated.

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"authorised representatives" means the representatives, nominated by an account holder in respect of an account in the Union registry, to have access to that account and undertake processes relating to that account on behalf of the account holder;

"the Authority" means the Malta Resources Authority established by article 3 of the Act;

"cancellation" means the definitive disposal of an allowance by its holder or by the national registry administrator as may be applicable;

"certified emissions reduction" or "CER" means a unit issued pursuant to Article 12 of the Kyoto Protocol and the decisions adopted pursuant to the UNFCCC or the Kyoto Protocol;

"Chapter II allowance" means an allowance allocated and issued in respect of aviation activities listed in Annex I to Directive 2003/87/EC, in accordance with Chapter II of Directive 2003/87/EC;

"Chapter III allowance" means an allowance allocated and issued in respect of activities listed in Annex I to Directive 2003/87/EC other than aviation activities, in accordance with Chapter III of Directive 2003/87/EC;

"combustion" means any oxidation of fuels, regardless of the way the heat, electrical or mechanical energy produced by this process is used, and any other directly associated activities, including waste gas scrubbing;

"the Commission" means the European Commission;

"confidential information" means any non-public information deemed to be sensitive by the operator and, or, any privileged information falling within the scope of these regulations, disclosed only for promoting and elaborating certain purposes. It shall include, *inter alia*:

- (a) trade secrets;
- (b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed; or
- (c) information other than trade secrets or information under paragraph (b) concerning a person, organisation or undertaking in respect of their business, professional, commercial or financial affairs;

"Decision (EU) 2015/1814" means Decision (EU) 2015/1814 of the European Parliament and of the Council of 6 October 2015 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading scheme and amending Directive 2003/87/EC;

"deviation" means, in respect of monitoring of annual emissions, the use of a monitoring approach that is different, in full or in part, from the approved monitoring and reporting plan, which use is of a temporary nature;

"Directive 2003/87/EC" means Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC;

"Directive 2004/101/EC" means Directive 2004/101/EC of the European Parliament and of the Council of 27 October 2004 amending Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community, in respect of the Kyoto Protocol's project mechanisms;"

"Directive 2008/101/EC" means Directive 2008/101/EC of the European Parliament and of the Council of 19 November 2008 amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community;

"Directive 2009/29/EC" means Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community;

"Directive 2009/31/EC" means Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide and amending Council Directive 85/337/EEC of the European Parliament and Council Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC, 2008/1/EC and Regulation (EC) No 1013/2006;

"Directive (EU) 2018/410" means Directive (EU) 2018/410 of the European Parliament and of the Council of 14 March 2018 amending Directive 2003/87/EC to enhance cost-effective emission reductions and low-carbon investments, and Decision (EU) 2015/1814;

"economically justifiable demand" means the demand that does not exceed the needs for heat or cooling and which would otherwise be satisfied at market conditions by energy generation processes other than cogeneration;

"electricity generator" means an installation that, on or after the 1st January, 2005, has produced electricity for sale to third parties, and in which no activity listed in Schedule 1 is carried out other than the combustion of fuels;

"emissions" means the release into the atmosphere of greenhouse gases specified in respect of an activity listed in Schedule 1, from sources in an installation performing that activity;

"emission reduction unit" or "ERU" means a unit issued pursuant to Article 6 of the Kyoto Protocol and the decisions adopted pursuant to the United Nations Framework Convention on Climate Change or the Kyoto Protocol;

"EU ETS" means the European Union Emissions Trading System established by Directive 2003/87/EC;

"greenhouse gases" means the gases listed in Schedule 2 and other gaseous constituents of the atmosphere, both natural and anthropogenic, that absorb and re-emit infrared radiation;

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"greenhouse gas emissions permit" means the permit issued pursuant to regulation 6;

S.L. 545.16. "high efficiency cogeneration" means cogeneration meeting the criteria for high efficiency cogeneration set out in the Cogeneration Regulations;

"installation" means a stationary technical unit where one or more activities listed in Schedule 1 are carried out and any other directly associated activities which have a technical connection with the activities carried out on that site and which could have an effect on emissions and pollution;

"Joint Implementation project activity" or "JI project activity" means a project activity undertaken in accordance with Article 12 of the Kyoto Protocol and decisions adopted pursuant to the United Nations Framework Convention on Climate Change or the Kyoto Protocol;

"Kyoto Protocol" means the Kyoto Protocol to the United Nations Framework Convention on Climate Change;

"least developed countries" means those countries included in the list of Least Developed Countries as defined by the Committee for Development Policy and endorsed by the Economic and Social Council of the United Nations;

"Member State" means a state which is a member of the European Union and which, for the purpose of these regulations, includes Iceland, Liechtenstein and Norway;

"the Minister" means the Minister responsible for climate change policy;

"modification" means, in respect of monitoring of annual emissions, a permanent change in an approved monitoring plan, in full or in part, and, where it is deemed to be of a significant nature, shall require the approval of the Authority to become valid;

S.L. 419.07. "National Accreditation Board - Malta" means the National Accreditation Board established by the National Accreditation Board (Malta) (Establishment) Regulations;

"national registry administrator" means the entity responsible for the administering of operator holding accounts on behalf of the Government, which operator holding accounts are under the jurisdiction of the Government in the Union registry, and designated in accordance with relevant decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC;

"new entrant" means any installation carrying out one or more of the activities listed in Schedule 1, which has obtained a greenhouse gas emissions permit for the first time within the period starting three months before the date for submission of the list pursuant to regulation 11, and ending three months before the date for submission of the subsequent list pursuant to regulation 11;

"operator" means any person who operates or controls an installation;

"person" means any natural or legal person;

"proposed transferee" means a person who receives from another person the greenhouse gas emissions permit, in whole or in part, issued for the installation;

"proposed transferor" means an operator of an installation who transfers to another person the greenhouse gas emissions permit, in whole or in part, issued for the installation;

"the public" means one or more persons, associations, organisations or groups of persons;

"Regulation (EC) No 765/2008" means Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93;

"Regulation (EU) 2017/2392" means Regulation (EU) 2017/2392 of the European Parliament and of the Council of 13 December 2017 amending Directive 2003/87/EC to continue current limitations of scope for aviation activities and to prepare to implement a global market-based measure from 2021;

"surrender" means the accounting of an allowance by an operator of an installation against the verified emissions of the installation;

"tonne of carbon dioxide equivalent" means one metric tonne of carbon dioxide (CO₂) or an amount of any other greenhouse gas listed in Schedule 2 with an equivalent global-warming potential;

"the Union" or the "European Union" means the European Union as established by the Treaty on the European Union as amended by the Lisbon Treaty of 2009, as may be subject to subsequent amendments;

"Union registry" means the registry established and maintained in accordance with Article 19 of Directive 2003/87/EC as amended by Directive 2009/29/EC for the execution of processes pertaining to the maintenance of holding accounts and the allocation, surrender and cancellation of allowances;

"Union registry" means the registry established and maintained in accordance with Article 19 of Directive 2003/87/EC for the execution of processes pertaining to the maintenance of holding accounts and the allocation, surrender and cancellation of allowances;

"UNFCCC" means the United Nations Framework Convention on Climate Change which entered into force on the 21st March, 1994;

"verifier" means a legal person or another legal entity carrying out verification activities pursuant to these regulations and accredited by a national accreditation body pursuant to Regulation (EC) No 765/2008 and relevant decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC, or a natural person otherwise authorised, without prejudice to Article 5(2) of Regulation (EC) 765/2008, at the time a verification report is issued.

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Applicability.
Substituted by:
L.N. 268 of 2019.

3. These regulations shall apply to operators of stationary installations situated in the territory of Malta and carrying out one or more activities listed in Schedule 1 resulting in emissions of the greenhouse gases specified in respect of those activities in Schedule 1, and to any other relevant legal bodies on which these regulations put any obligations.

Greenhouse gas
emissions permits.

4. (1) No operator of an installation shall carry out any activity listed in Schedule 1 resulting in emissions specified in relation to that activity unless such operator holds a permit issued by the Authority in accordance with regulation 6.

(2) Where an operator of an installation carries out any activity listed in Schedule 1 without holding a permit in accordance with sub-regulation (1), the operator of that installation shall be liable to the imposition of an administrative fine:

- (a) where emissions of an installation during that year are equal to or less than fifty thousand (50,000) tonnes carbon dioxide equivalents, of ten thousand euro (€10,000), and one hundred euro (€100) for each day of non-compliance from the date of a notice given by the Authority to the operator;
- (b) where emissions of an installation during that year are more than fifty thousand (50,000) tonnes of carbon dioxide equivalents and equal to or less than five hundred thousand (500,000) tonnes of carbon dioxide equivalent, of fifty thousand euro (€50,000), and three hundred euro (€300) for each day of non-compliance from the date of a notice given by the Authority to the operator;
- (c) where emissions of an installation during that year are more than five hundred thousand (500,000) tonnes of carbon dioxide equivalents, of one hundred thousand euro (€100,000), and six hundred euro (€600) for each day of non-compliance from the date of a notice given by the Authority to the operator.

(3) For the purposes of determining the administrative fine under sub-regulation (2), where the emissions of the installation are not known or are not reported or where the Authority is satisfied that there is no reasonable possibility that the quantity of emissions will be reported by the operator of the installation, the Authority may itself determine the emissions from the activities performed in that installation. The Authority shall use best available data and ensure that a conservative estimate is made that does not underestimate emissions. The operator of the installation shall be liable to the imposition of an administrative fine equal to the amounts established in sub-regulation (2) in respect of the quantity of emissions estimated in terms of this sub-regulation.

(4) A permit issued by the Authority in accordance with sub-regulation (1) shall be valid for the duration of the performance of the activity or activities listed in Schedule 1 in respect of which the permit is issued, unless the permit is surrendered in accordance

with regulation 9 or revoked in accordance with regulation 10.

(5) The Authority shall ensure that permits issued by it in accordance with sub-regulation (1) shall be made publicly available.

5. (1) An operator of an installation carrying out an activity listed in Schedule 1 shall apply to the Authority for a greenhouse gas emissions permit.

Applications for
greenhouse gas
emissions permits.
Amended by:
L.N. 268 of 2019.

(2) An operator of an installation shall submit an application for a greenhouse gas emissions permit. The application shall be submitted at least one hundred and twenty days before the commencement of activities listed in Schedule 1 in respect of which the application for a permit is to be submitted, unless otherwise agreed in writing between the applicant and the Authority.

(3) An application made to the Authority for a greenhouse gas emissions permit shall include, *inter alia*, the following:

- (a) information as may be requested by the Authority about the operator of the installation;
- (b) information as may be requested by the Authority about the applicant, if different from the operator of the installation;
- (c) a description of the installation and activities listed in Schedule 1 to be carried out in the installation, including the technology used;
- (d) the raw and auxiliary materials, the use of which, in activities listed in Schedule 1 to be carried out in the installation, is likely to lead to emissions of the greenhouse gases specified in respect of those activities in Schedule 1;
- (e) the sources of emissions of gases listed in Schedule 1 from the installation;
- (f) a description of the measures planned to monitor and report emissions in accordance with regulations 15 and 16;
- (g) any other appropriate information requested by the Authority;
- (h) any other information that the applicant wishes the Authority to take into account when considering the application;
- (i) a non-technical summary of the details referred to in paragraphs (c) to (f).

(4) Any operator who prior to the entry into force of these regulations is in possession of a valid greenhouse gas emissions permit issued under the European Community Greenhouse Gas Emissions Trading Scheme Regulations, 2005, shall continue to hold such permit under existing conditions until such conditions are revised by the Authority:

L.N. 140 of 2005.

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Provided that any such operator shall comply with such revised conditions which may be issued by the Authority and with effect from such date as the Authority shall establish.

Conditions for the issuance of a greenhouse gas emissions permit. Amended by: L.N. 268 of 2019.

6. (1) The Authority shall issue a greenhouse gas emissions permit granting authorization to emit greenhouse gases from all or part of an installation for which the application for a permit is made, if it is satisfied that the operator of the installation is capable of complying with the requirements of these regulations and the conditions of the permit. A permit shall be issued within a period of ninety days from the date on which the Authority received the application containing a complete set of information in accordance with sub-regulation (3) of regulation 5, unless otherwise agreed in writing between the operator and the Authority.

(2) A greenhouse gas emissions permit issued by the Authority may cover one or more installations on the same site operated by the same operator. A greenhouse gas emissions permit may not cover two or more installations situated on different sites. A greenhouse gas emissions permit may not cover two or more installations on the same site operated by different operators.

(3) The Authority shall, when issuing a greenhouse gas emissions permit, ensure that the permit includes, *inter alia*, the following:

- (a) the name and address of the operator;
- (b) the name and address of the installation;
- (c) a description of the activities and emissions covered by the permit;
- (d) a reference to monitoring, reporting and verification requirements including the requirement to have a monitoring plan approved by the Authority;
- (e) an obligation to report verified emissions of greenhouse gases specified for the activity or activities listed in Schedule 1 for each calendar year, within three months following the end of that year;
- (f) an obligation to surrender allowances equal to the total emissions of the installation in each calendar year within four months following the end of that year;
- (g) requirements for any notifications to be made to the Authority;
- (h) a requirement to pay penalties for non-compliance with paragraph (f);
- (i) any other conditions that the Authority considers appropriate to ensure compliance with the requirements of these regulations.

(4) The Authority may, at any time, review a greenhouse gas emissions permit issued to an operator of an installation and make amendments to the permit as appropriate and issue an updated permit:

Provided that it shall inform the operator covered by the permit of such amendments as early as possible prior to the issuance of an updated permit.

(5) The Authority may, at any time, vary the conditions of a permit in such a manner as it may deem fit, and issue an updated permit:

Provided that it shall inform the operator covered by the permit of such variations by not later than thirty days prior to the issuance of an updated permit.

7. (1) The operator of an installation for which a greenhouse gas emissions permit has been issued shall notify the Authority of:

- (a) any changes planned in the nature or functioning of the installation; or
- (b) any extension or reduction of the capacity of the installation; or
- (c) in the case of a permit covering more than one installation on the same site operated by the same operator, any instance where one or more installations cease carrying out all of the activities listed in Schedule 1 covered by the permit but the operator continues to carry out at least one activity in one installation under that permit:

Changes relating to installations.
Amended by:
L.N. 268 of 2019.

Provided that any such notification must be made in writing at least one hundred and twenty days prior to such change in the nature or functioning of the installation, or extension or reduction of capacity of the installation, or the one or more installations ceasing carrying out of activities listed in Schedule 1, effectively taking place.

(2) The Authority shall, where appropriate, update the greenhouse gas emissions permit accordingly, within a period of ninety days from the date on which the Authority receives a notification pursuant to sub-regulation (1), unless otherwise agreed in writing between the operator and the Authority.

(3) Where there is a change in the name of the operator of an installation, the Authority shall update the permit to include the name and address of the new operator:

Provided that the Authority shall be notified by the operator, in writing, of the change in the name of the operator of the installation at least sixty days before such a change is effectively to take place.

(4) An operator that allows the coming into effect of changes listed under sub-regulation (1) without notifying the Authority of such changes in accordance with this regulation shall be liable to the imposition of an administrative fine of five thousand euro (€5,000).

(5) Where a change in the name of the operator of an installation comes into effect without such a change having been notified to the Authority in accordance with sub-regulation (3), the

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operator of the installation shall be liable to the imposition of an administrative fine of one thousand euro (€1,000).

(6) The Authority shall notify the national registry administrator of any changes made to a permit pursuant to this regulation. The national registry administrator shall ensure that any changes required are made to the account or accounts relating to the installation or installations for which the changes to the permit relate, so as to reflect such changes.

Transfer of
greenhouse gas
emissions permits.

8. (1) An operator of an installation ("proposed transferor") may transfer to another person ("proposed transferee"), in whole or in part, the greenhouse gas emissions permit issued to the installation.

(2) An application for the transfer of a permit shall be submitted to the Authority, in writing, jointly by the proposed transferor and the proposed transferee.

(3) An application under sub-regulation (2) shall include the following information:

- (a) the name and address of the proposed transferor;
- (b) the name and address of the proposed transferee;
- (c) the name and address of the installation to which the greenhouse gas emissions permit relates;
- (d) in the case of a request to transfer a permit in part, information identifying the activity or activities or part of an activity or activities to which the transfer of permit applies.

The Authority may request any additional information it deems necessary to process an application for the transfer of a permit.

(4) The Authority shall carry out a transfer of a greenhouse gas emissions permit, if it satisfied that the proposed transferee is capable of complying with the requirements of these regulations and the conditions of the permit. The transfer shall be carried out:

- (a) in the case of a transfer of a permit in whole, by transferring the permit for the installation to the proposed transferee, updated to include the name and address of the proposed transferee as the operator of the installation;
- (b) in the case of a transfer of a permit in part, by:
 - (i) issuing a new greenhouse gas emissions permit to the proposed transferee, recording the transfer, identifying the activity or activities or part of an activity or activities to be transferred and identifying the proposed transferee as the operator in respect of the activity or activities covered by the new permit;
 - (ii) revising and reissuing the greenhouse gas emission permit to the proposed transferor,

recording the transfer, and the permit shall be updated so as to identify the activity or activities to be carried out in the installation operated by the proposed transferor.

(5) The transfer of a permit shall come into effect at a time agreed between the proposed transferor, proposed transferee and the Authority, as shall be recorded in the permit.

(6) The Authority shall notify the national registry administrator of any application for the transfer of a permit made to it and the coming into effect of such a transfer. The national registry administrator shall ensure that any changes required are made to the account or accounts relating to the installation or installations to which the transfer of a permit relates so as to reflect the transfer of the permit.

9. (1) An operator who ceases to carry out all of the activities listed in Schedule 1 in all of the installations covered by a greenhouse gas emissions permit shall surrender the permit.

Surrender of
greenhouse gas
emissions permits.

(2) An application for the surrender of a permit shall be submitted to the Authority, in writing, by not later than thirty days from the date on which the operator has ceased to carry out the activity or activities in the installation to which the greenhouse gas emissions permit relates.

(3) An application for the surrender of a permit shall include the following:

- (a) the name and address of the applicant;
- (b) the name and address of the installation to which the greenhouse gas emissions permit relates;
- (c) the date on which the activity or activities have ceased being carried out.

(4) The Authority shall process an application for the surrender of a permit submitted in accordance with this regulation within thirty days from the receipt of the application. The Authority shall issue a notice of surrender of a permit, which shall include the following conditions:

- (a) a requirement to monitor, and report by the date that may be specified in the notice of surrender of a permit, and in accordance with these regulations, verified emissions for the year during which the notice becomes effective up to the date on which the notice becomes effective;
- (b) a requirement to surrender, by the date that may be specified in the notice of surrender of a permit, and in accordance with these regulations, a quantity of allowances equal to the verified emissions reported under paragraph (a);
- (c) a requirement to surrender, by the date that may be specified in the notice of surrender of a permit, and in accordance with these regulations, a quantity of

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allowances equal to verified emissions not covered by surrendered allowances in respect of years previous to the year when the notice of surrender of a permit becomes effective.

Monitoring, reporting and verification of emissions referred to in paragraph (a) shall be carried out in accordance with monitoring, reporting and verification requirements in the greenhouse gas emissions permit to which the application to surrender a permit relates.

(5) The permit shall cease to have effect from the date on which the notice for surrender of a permit becomes effective in so far as it authorises the carrying out of an activity or activities in the installation or installations covered by the permit:

Provided that any conditions in the permit shall remain in effect until the Authority is satisfied that the requirements under sub-regulation (4) have been complied with or that there is no reasonable possibility of further allowances being surrendered by the operator of the installation or installations to which the notice for surrender of a permit relates.

(6) The Authority shall notify the national registry administrator of any application for the surrender of a permit made to it and the coming into effect of such surrender. The national registry administrator shall ensure that any changes required are made to the account or accounts relating to the installation or installations to which the surrender of a permit relates so as to reflect the surrender of the permit.

(7) When a permit for an installation is surrendered without sufficient allowances having been surrendered in accordance with regulation 19 to cover all emissions reported in respect of that installation, the operator of that installation shall be liable to the imposition of an administrative fine of one hundred euro (€100) for each tonne of carbon dioxide equivalent emitted for which the operator has not surrendered allowances.

(8) From the 1st January, 2013, where, for the year in which an operator surrendering a permit does not surrender sufficient allowances, the annual average Harmonised European Index of Consumer Prices published shows a percentage increase as compared to the latest Harmonised European Index of Consumer Prices published for the previous year, the administrative fine shall be increased by the same percentage. The administrative fine as revised pursuant to this sub-regulation shall apply to subsequent years unless further increased in accordance with the Harmonized European Index of Consumer Prices. For the purposes of this sub-regulation, each allowance not surrendered by the operator for a tonne of carbon dioxide equivalent emitted shall be considered as a separate contravention.

(9) For the purposes of determining the total administrative fine under sub-regulation (7), where the emissions of the installation or installations are not known, or are not reported, or where the Authority is satisfied that there is no reasonable

possibility that a verified quantity of emissions will be reported by the operator of the installation or installations covered by the permit to be surrendered, the Authority may itself determine the emissions from the activities performed in the installation or installations. The Authority shall use best available data and ensure that a conservative estimate is made that does not underestimate emissions. The operator shall be liable to the imposition of an administrative fine equal to the amount established in sub-regulation (7) in respect of the quantity of emissions estimated in terms of this sub-regulation.

10. (1) The Authority may, at any time, revoke a greenhouse gas emissions permit issued to an operator of an installation.

Revocation of
greenhouse gas
emissions permits.

(2) The Authority may revoke a permit in accordance with sub-regulation (1) by issuing a notice of revocation of a permit to the operator, which shall include the following:

- (a) information clearly identifying the operator and the installation or installations covered by the notice;
- (b) the reasons for the revocation of the greenhouse gas emissions permit;
- (c) the date on which the notice takes effect, which shall not be earlier than fifteen days from the date of the notice;
- (d) the requirement for the operator to monitor and report, by the date that may be specified in the notice of revocation of a permit, and in accordance with these regulations, verified emissions for any years in which the operator performed the activity or activities covered by the permit and for which he did not submit a verified emissions report;
- (e) the requirement for the operator to surrender, by the date that may be specified in the notice of revocation of a permit, and in accordance with these regulations, a quantity of allowances equal to the amount of emissions reported, for any years in which the operator performed the activity or activities covered by the permit and in respect of which he did not surrender allowances.

(3) The permit shall cease to have effect from the date on which the notice for revocation of a permit becomes effective in so far as it authorises the carrying out of an activity or activities in the installations or installations covered by the permit:

Provided that any conditions in the permit shall remain in effect until the Authority is satisfied that the requirements under sub-regulation (2) have been complied with or that there is no reasonable possibility of further allowances being surrendered by the operator of the installation to which the notice for revocation of a permit relates.

(4) The Authority shall notify the national registry administrator of any revocation of a permit and the coming into

effect of such revocation. The national registry administrator shall ensure that any changes required are made to the account or accounts relating to the installation or installations to which the revocation of a permit relates so as to reflect the revocation of the permit.

(5) When a permit for an installation is revoked without sufficient allowances having been surrendered to cover all emissions reported in respect of that installation in accordance with regulation 19, the operator of that installation shall be liable to the imposition of an administrative fine of one hundred euro (€100) for each tonne of carbon dioxide equivalent emitted for which the operator has not surrendered allowances.

(6) From the 1st January, 2013, where, for the year in which an operator surrendering a permit does not surrender sufficient allowances, the annual average Harmonised European Index of Consumer Prices published shows a percentage increase as compared to the latest Harmonised European Index of Consumer Prices published for the previous year, the administrative fine shall be increased by the same percentage. The administrative fine as revised pursuant to this sub-regulation shall apply to subsequent years unless further increased in accordance with the Harmonised European Index of Consumer Prices. For the purposes of this sub-regulation, each allowance not surrendered by the operator for a tonne of carbon dioxide equivalent emitted shall be considered as a separate contravention.

(7) For the purposes of determining the total administrative fine under sub-regulation (5), where the emissions of the installation or installations are not known, or are not reported, or where the Authority is satisfied that there is no reasonable possibility that a verified quantity of emissions will be reported by the operator of the installation or installations covered by the permit to be surrendered, the Authority may itself determine the emissions from the activities performed in the installation or installations. The Authority shall use best available data and ensure that a conservative estimate is made that does not underestimate emissions. The operator shall be liable to the imposition of an administrative fine equal to the amount established in sub-regulation (5) in respect of the quantity of emissions estimated in terms of this sub-regulation.

Free allocation of allowances.
*Amended by:
L.N. 268 of 2019.*

11. (1) The Authority shall determine the quantity of free Chapter III allowances to be allocated to an installation eligible to a free allocation of Chapter III allowances pursuant to Directive 2003/87/EC. Such an allocation shall be determined in accordance with Directive 2003/87/EC and relevant decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC.

(2) No free allocation shall be made in respect of any electricity production, except for electricity produced from waste gases.

(3) No free allocation shall be given to:

(a) electricity generators;

- (b) installations for the capture of carbon dioxide;
- (c) pipelines for transport of carbon dioxide; or
- (d) carbon dioxide storage sites.

(4) No free allocation shall be made in respect of any electricity production by new entrants.

(5) District heating and high efficiency cogeneration for economically justifiable demand shall be eligible for free allocation, in respect of the production of heating or cooling, in accordance with Directive 2003/87/EC and relevant decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC.

(6) No free allocation shall be given to an installation that has ceased its operations, unless the operator demonstrates to the Authority that this installation will resume production within a specified and reasonable time. An installation for which the greenhouse gas emissions permit has been surrendered or has been revoked shall be considered to have ceased its operations. An installation for which the operation or resumption of operation is technically impossible shall be considered to have ceased operations.

(7) The Authority shall, by 30th September, 2019, submit to the Commission a list of installations covered by these regulations for the period of five years beginning on 1st January, 2021, including free allocations as determined in accordance with this regulation. The Authority shall submit to the Commission lists of installations for each subsequent period of five years every five years thereafter.

(8) The Authority may, where applicable, request from an operator of an installation information it deems appropriate in accordance with relevant decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC.

(9) Upon approval by the Commission of the lists submitted to the Commission pursuant to sub-regulation (7), the Authority shall ensure that the lists of installations, including any free allocation for each installation, are published.

12. (1) The quantity of Chapter III allowances that will not be allocated free of charge, as determined for Malta in accordance with Directive 2003/87/EC, shall be auctioned by the auctioneer in accordance with the relevant decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC.

Auctioning of allowances.

(2) The auctioneer shall act in accordance with the relevant decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC.

13. (1) Allowances issued to operators of installations in terms of these regulations shall be held in the Union registry. An operator of an installation shall have an operator holding account in respect of that installation in the Union registry.

Union registry.

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(2) The national registry administrator shall perform its functions in accordance with the relevant decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC:

Provided that, in respect of operator holding accounts of operators of installations to which these regulations apply, the Authority shall act as the national registry administrator:

Provided also that, where the Authority acts as the national registry administrator there shall be no conflict of interest between the Authority and holders of operator holding accounts.

(3) A request to open an operator holding account shall be made by the Authority or the operator of the installation to the national registry administrator.

(4) A request for the opening of an operator holding account shall include all information required by the national registry administrator in accordance with the relevant decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC and any requirements and terms and conditions made by the national registry administrator.

(5) The national registry administrator shall open and administer an operator holding account for an operator of an installation in accordance with the relevant decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC and any terms and conditions it may make. The national registry administrator shall not open an account unless it is satisfied that the request is in accordance with the requirements of this regulation.

(6) An operator holding account holder and its nominated authorised representatives shall act in accordance with the relevant decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC and any terms and conditions made by the national registry administrator.

(7) Where an operator of an installation fails to comply with any requirements of decisions and regulations adopted by the Commission in respect of registries or terms and conditions made by the national registry administrator in respect of registries, the national registry administrator may prevent the transfer of allowances or other accounting units into or out of any operator holding account held by that operator until any non-compliance is rectified:

Provided that the national registry administrator shall not prevent the surrender or cancellation of allowances in accordance with regulation 22.

14. (1) The Authority shall, by 28th February of each year, issue the quantity of free Chapter III allowances that are to be allocated for that year to each installation included in the list referred to in sub-regulation (8) of regulation 11, as determined in accordance with regulation 11:

Provided that the allowances allocated to each installation are issued to the operator holding account opened in respect of that

Issuance of allowances allocated to operators of installations and validity of allowances.
*Amended by:
L.N. 268 of 2019.*

installation in accordance with regulation 13:

Provided further that no allowances may be issued to an installation whose inscription in the list referred to in sub-regulation (8) of regulation 11 has not been approved by the Commission.

(2) Issuance of allowances shall be carried out in accordance with the relevant decisions and regulations adopted by the European Commission pursuant to Directive 2003/87/EC.

(3) Where –

- (a) an installation has ceased its operations, unless the operator demonstrates to the Authority that this installation will resume production within a specified and reasonable time; or
- (b) a permit has been changed, in accordance with regulation 7, in such a way that it no longer applies to an installation; or
- (c) a permit has been surrendered in accordance with regulation 9; or
- (d) a permit has been revoked in accordance with regulation 10, the Authority shall inform the national registry administrator. The national registry administrator shall ensure that no further allowances are issued to the operator in respect of an installation subject to any of the conditions under this sub-regulation, for the first year after the year when the installation ceases its operations, or the change in the permit, the surrender of the permit or the revocation of the permit has come into effect, and for subsequent years.

(4) Chapter III allowances issued in accordance with sub-regulation (1) in respect of the period beginning 1st January, 2013 and subsequent periods shall be valid indefinitely. Allowances issued as from 1st January, 2021 in a ten-year period shall be valid for emissions from the first year of that period onwards.

15. (1) The operator of an installation shall submit to the Authority a monitoring plan setting out measures to monitor and report emissions of greenhouse gases specified in respect of the activities carried out in that installation as listed in Schedule 1. These measures shall be in accordance with:

- (a) the principles set out in Schedule 3;
- (b) relevant decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC; and
- (c) any other requirements made by the Authority in respect of monitoring and reporting of emissions of greenhouse gases from activities listed in Schedule 1.

(2) The operator of an installation shall submit a monitoring and reporting plan for the first time to the Authority at the same time as an application is made for a greenhouse gas emissions permit in accordance with regulation 4.

Monitoring of
annual emissions.

(3) The monitoring plan submitted by an operator of an installation pursuant to sub-regulation (1) shall be approved by the Authority if it is satisfied that the plan is in accordance with the requirements set out under this regulation. The Authority may request from the operator of the installation any additional information it deems appropriate for the approval of the plan.

(4) An operator of an installation shall notify the Authority of any deviations from the monitoring plan that may occur at any time after the approval of the plan by the Authority:

Provided that the Authority shall be notified of any deviation from the plan:

- (a) as early as possible before the deviation occurs, if the deviation is known to the operator or is made known to the operator prior to its occurrence; or
- (b) immediately after the deviation occurs if the occurrence of the deviation is not known to the operator or is not made known to the operator before or at the time of its occurrence.

(5) An operator of an installation shall maintain a documented record, which shall include information in accordance with requirements that may be established by the Authority, of any deviations that occur during a monitoring year and shall submit such record to the Authority together with the annual emissions report submitted pursuant to regulation 16.

(6) The operator of an installation shall regularly check if the approved monitoring plan reflects the nature and function of the installation. An operator may at any time after the approval of the monitoring plan of an installation, submit to the Authority proposed modifications that have to be made to the plan, in accordance with the relevant decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC. The operator shall maintain a documented record of all modifications to the monitoring plan. No proposed significant modifications to an approved plan shall be valid without the approval of the Authority.

(7) Where it deems appropriate, the Authority may request the submission of a revised plan.

(8) An operator of an installation shall monitor emissions from that installation during each monitoring year.

(9) Without prejudice to sub-regulation (4), an operator of an installation shall monitor annual emissions in accordance with the monitoring plan approved by the Authority in accordance with this regulation. The Authority may take any action it deems necessary under these regulations to ensure that an operator is monitoring and reporting annual emissions in accordance with the approved monitoring plan.

16. (1) An operator of an installation shall report annual emissions, monitored in accordance with regulation 15, for each monitoring year in accordance with:

Reporting of
verified annual
emissions.
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- (a) the principles set out in Schedule 3; and
- (b) relevant decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC; and
- (c) any other requirements made by the Authority in respect of reporting of emissions of greenhouse gases from activities listed in Schedule 1.

(2) An operator of an installation shall submit to the Authority an annual report on the emissions from that installation for a monitoring year by not later than 31st March of the subsequent year.

(3) The report submitted by an operator of an installation pursuant to sub-regulation (2) shall be verified by a verifier in accordance with:

- (a) the principles set out in Schedule 4; and,
- (b) relevant decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC; and
- (c) any other requirements made by the Authority in respect of verification of annual emission reports for emissions from installations.

The verifier shall issue a verification report.

(4) A verification report shall be submitted by the operator of an installation to the Authority with an annual emissions report submitted. The operator shall also enter the amount of emissions reported in the verified annual emissions report for a monitoring year into the Union Registry, by 31st March of the subsequent year.

(5) Where an operator of an installation fails to submit an annual emissions report for a monitoring year that has been verified as satisfactory by the 31st March of the subsequent year, the national registry administrator shall not allow the transfer of allowances or any other accounting units out of the operator holding account until a report from the operator in respect of that installation has been verified as satisfactory:

Provided that the national registry administrator shall not prevent the surrender or cancellation of allowances in accordance with regulation 19, or the issuance of allowances in exchange for CERs or ERUs in accordance with regulation 20.

(6) The operator of an installation for which an annual emissions report is to be verified shall notify the Authority and the National Accreditation Board – Malta of the planned date and place of the verification and the identity of the verifier who will perform the verification, by not later than thirty days prior to the date when the verification is to be performed.

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Competent authority acceptance of verified annual emissions reports and determination of emissions in case of non-reporting or non-verification.
*Amended by:
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17. (1) The Authority may perform any checks it deems necessary to ensure that a report submitted by an operator is in accordance with regulation 16.

(2) The Authority shall, on the basis of the information included in the annual emissions report and the verification report submitted in accordance with regulation 16 and its own checks, without undue delay, determine whether it can accept the submitted annual emissions report. The Authority shall not accept a report of annual emissions which has not been verified as satisfactory or for which a verification report has not been submitted. The Authority shall inform the operator, in writing or through other documented means, of its decision. Where it deems necessary, the Authority may require the submission of a revised annual emissions report. The revised annual emissions report shall be verified in accordance with regulation 16. Where necessary the operator shall also update the amount of emissions entered into the Union Registry.

(3) Where, in respect of any monitoring year, an operator of an installation does not submit a verified annual emissions report in accordance with regulation 16, or where it is deemed that the operator has not submitted an annual emissions report which is in accordance with the requirements set out in regulation 16, the Authority may, unless there is written agreement between the Authority and the operator providing otherwise, itself determine the emissions for activities performed in that installation for that monitoring year. The Authority shall use best available data and ensure that a conservative estimate is made that does not underestimate emissions. When annual emissions are determined under this sub-regulation, the Authority shall consider the requirements set out in Schedules 3 and 4:

Provided that the Authority shall notify the operator of the installation of the emissions as determined and the methodology used to determine such emissions:

Provided further that the Authority shall enter the amount of emissions as determined in accordance with this sub-regulation into the Union Registry.

(4) Where the verification report submitted with an annual emissions report states outstanding non-conformities or recommendations for improvements, the operator of the installation shall submit to the Authority, by not later than 30th June of the year when the verification report is issued by the verifier, an improvement report describing how and when the operator has rectified or plans to rectify the non-conformities identified by the verifier and to implement recommended improvements.

(5) The Authority shall, within a reasonable time, approve the improvement report and inform the operator of the installation of its approval. Where it deems necessary, the Authority may require the submission of a revised improvement report.

Fines relating to monitoring and reporting of annual emissions.

18. (1) An operator of an installation who fails to submit a monitoring plan in accordance with regulation 15 in respect of the period beginning the 1st January, 2013 or a subsequent period, shall

be liable to the imposition:

- (a) for an operator of an installation for which emissions for the first calendar year of the period for which the plan relates or for the first year of performing an activity covered by these regulations during the period for which the plan relates are equal to or less than fifty thousand (50,000) tonnes carbon dioxide equivalents, of an administrative fine of five thousand euro (€5,000) and, or, one hundred euro (€100) for each day of non-compliance, from the date of a notice given by the Authority to the operator;
- (b) for an operator of an installation for which emissions for the first calendar year of the period for which the plan relates or for the first year of performing an activity covered by these regulations during the period for which the plan relates are more than fifty thousand (50,000) tonnes of carbon dioxide equivalents and equal to or less than five hundred thousand (500,000) tonnes of carbon dioxide equivalent, of an administrative fine of ten thousand euro (€10,000) and, or, three hundred euro (€300) for each day of non-compliance, from the date of a notice given by the Authority to the operator;
- (c) for an operator of an installation for which emissions for the first calendar year of the period for which the plan relates or for the first year of performing an activity covered by these regulations during the period for which the plan relates are more than five hundred thousand (500,000) tonnes of carbon dioxide equivalents, of an administrative fine of fifty thousand euro (€50,000) and, or, six hundred euro (€600) for each day of non-compliance, from the date of a notice given by the Authority to the operator.

(2) An operator of an installation who fails to monitor annual emissions during a year in accordance with regulation 15 or fails to submit a verified annual emissions report in respect of a year in accordance with regulation 16, shall be liable to the imposition:

- (a) for an operator of an installation for which emissions for that year are equal to or less than fifty thousand (50,000) tonnes carbon dioxide equivalents, of an administrative fine of five thousand euro (€5,000) and, or, one hundred euro (€100) for each day of non-compliance, from the date of a notice given by the Authority to the operator;
- (b) for an operator of an installation for which emissions for that year are more than fifty thousand (50,000) tonnes of carbon dioxide equivalents and equal to or less than five hundred thousand (500,000) tonnes carbon dioxide equivalents, of an administrative fine of ten thousand euro (€10,000) and, or, three hundred euro (€300) for each day of non-compliance, from the

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date of a notice given by the Authority to the operator;

- (c) for an operator of an installation for which emissions for that year are more than five hundred thousand (500,000) tonnes carbon dioxide equivalents, of an administrative fine of fifty thousand euro (€50,000) and, or, six hundred euro (€600) for each day of non-compliance, from the date of a notice given by the Authority to the operator.

(3) For the purposes of determining the administrative fine under this regulation, where the emissions of the installation are not known or where the Authority is satisfied that there is no reasonable possibility that a verified quantity of emissions will be reported by the operator of the installation, the Authority may itself determine the emissions from the activities performed in that installation. The Authority shall use best available data and ensure that a conservative estimate is made that does not underestimate emissions. The operator of the installation shall be liable to the imposition of an administrative fine equal to the amounts established in sub-regulations (1) and (2) in respect of the quantity of emissions estimated by the Authority in terms of this sub-regulation.

Surrender and
cancellation of
allowances.
Amended by:
L.N. 268 of 2019.

19. (1) For the period ending 31st December, 2020, an operator of an installation shall, by 30th April each year, surrender a number of allowances, other than Chapter II allowances, that is equal to the total emissions from that installation during the preceding calendar year as verified in accordance with regulation 16, or as determined by the Authority in accordance with regulation 17. An operator of an installation shall not surrender Chapter II allowances for the period ending 31st December, 2020.

(1a) For the period starting 1st January, 2021, and subsequent periods, an operator of an installation shall, by 30th April each year, surrender a number of allowances that is equal to the total emissions from that installation during the preceding calendar year as verified in accordance with regulation 16, or as determined by the Authority in accordance with regulation 17. For the period starting 1st January, 2021, and subsequent periods, an operator of an installation shall not be prohibited from surrendering Chapter II allowances.

(1b) Allowances issued by a competent authority of another Member State shall be recognized by the Authority for the purpose of meeting the obligations of an operator of an installation under sub-regulations (1) and (1a).

(1c) Where necessary, and for as long as is necessary, in accordance with relevant decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC, an operator of an installation shall not surrender allowances that are issued by a Member State in respect of which there are obligations arising from Directive 2003/87/EC which are lapsing.

(2) The national registry administrator shall cancel allowances surrendered in accordance with sub-regulation (1).

(3) The national registry administrator shall cancel allowances at any time at the request of an operator of an installation holding those allowances.

(4) An obligation to surrender allowances shall not arise in respect of emissions verified as captured and transported for permanent storage to a facility for which a permit is in force in accordance with Directive 2009/31/EC.

(5) Surrender and cancellation of allowances shall be carried out in accordance with the relevant decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC.

(6) The Authority shall publish the name of any operator who is in breach of the requirement to surrender sufficient allowances under sub-regulations (1) or (1a).

(7) An operator who does not surrender sufficient allowances as required under sub-regulations (1) or (1a) to cover its emissions during the preceding year, or who has not yet surrendered allowances to cover its emissions during any previous year, shall be liable to the imposition of an administrative fine of one hundred euro (€100) for each tonne of carbon dioxide equivalent emitted for which the operator has not surrendered allowances.

(8) From the 1st January, 2013, where, for the year in which an operator of an installation does not surrender sufficient allowances to cover emissions during that year in accordance with sub-regulation (1), the annual average Harmonized European Index of Consumer Prices published shows a percentage increase as compared to the latest Harmonized European Index of Consumer Prices published for the previous year, the administrative fine shall be increased by the same percentage. The administrative fine as revised pursuant to this sub-regulation shall apply to subsequent years unless further increased in accordance with the Harmonized European Index of Consumer Prices. For the purposes of this sub-regulation, each allowance not surrendered by the operator for a tonne of carbon dioxide equivalent emitted shall be considered as a separate contravention.

(9) The imposition of an administrative fine as prescribed in sub-regulation (7) shall not release the operator from the obligation to surrender an amount of allowances equal to those excess emissions in respect of which the administrative fine is paid when surrendering allowances in relation to the following calendar year.

(10) Where an operator of an installation fails to surrender allowances in accordance with sub-regulations (1) or (1a), the national registry administrator shall not allow the transfer of allowances or any other accounting units out of the operator holding account opened in respect of that installation until the operator complies with the requirement to surrender allowances:

Provided that the national registry administrator shall not prevent the surrender of allowances in accordance with sub-

Use of CERs and ERUs from project activities in the Union emissions trading scheme for the period 1st January 2013 to 31st December 2020.

regulations (1) and (1a) or the cancellation of allowances in accordance with sub-regulation (4), or the issuance of allowances in exchange for CERs or ERUs in accordance with regulation 20.

20. (1) To the extent that the levels of CER and ERU use, allowed to an operator of an installation for the period from 2008 to 2012, have not been used up, or where an entitlement to use credits is granted under sub-regulation (5), the operator may request to be issued allowances valid from 2013 onwards in exchange for CERs and ERUs issued in respect of emission reductions up until 2012 from project types which were eligible for use in the Union scheme during the period from 2008 to 2012. Until the 31st March, 2015, the Authority shall make such an exchange on request.

(2) To the extent that the levels of CER and ERU use, allowed to an operator of an installation for the period 2008 to 2012, have not been used up, or where an entitlement to use credits is granted under sub-regulation (5), the operator may exchange CERs and ERUs issued in respect of emission reductions from 2013 onwards from project types that were registered before 2013 and which were eligible for use in the Union scheme during the period from 2008 to 2012, for allowances valid from 2013 onwards.

(3) To the extent that the levels of CER and ERU use, allowed to an operator of an installation for the period from 2008 to 2012, have not been used up, or where an entitlement to use credits is granted under sub-regulation (5), the operator may exchange CERs issued in respect of emission reductions from 2013 onwards from project types started from 2013 onwards in least developed countries and which were eligible for use in the Union scheme during the period from 2008 to 2012, for allowances valid from 2013 onwards. This sub-regulation shall apply until such countries have ratified a relevant agreement with the Union or until 2020, whichever is the earlier.

(4) To the extent that the levels of CER and ERU use, allowed to an operator of an installation for the period from 2008 to 2012, have not been used up, or where an entitlement to use credits is granted under sub-regulation (5), the operator may use credits from projects or other emission reducing activities in accordance with any agreements that may be concluded by the Union with third countries, up to levels of use as specified in such agreements, to comply with obligations under these regulations.

(5) For the period from 2013 to 2020 an operator of an installation shall be entitled to use an additional quantity of CERs and ERUs up to an amount corresponding to a percentage of its verified emissions during the period from the 1st January, 2013 to the 31st December, 2020, as may be established by the Commission pursuant to Directive 2003/87/EC.

(6) For the purposes of this regulation, operators shall not use CERs or ERUs for which restrictions on use apply in accordance with relevant decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC.

21. No CERs or ERUs shall be issued for reductions or limitations of greenhouse gas emissions with respect to activities that fall within the scope of these regulations.

Issue of CERs or ERUs from project activities.

22. Decisions related to the allocation of allowances to operators of installations and reports of emissions submitted in accordance with regulation 17 shall be made available to the public in accordance with the Freedom of Access to Information on the Environment Regulations:

Access to information, disclosure of information and professional secrecy.
S.L. 504.65.

Provided that any access to personal data shall be made in accordance with the Data Protection Act and that information covered by professional secrecy may not be disclosed to any other person or authority except by virtue of the applicable laws, regulations, administrative provisions and, or, the provisions of the Professional Secrecy Act:

Cap. 586.

Cap. 377.

Provided also that without prejudice to this regulation and to the obligation which may be imposed on the Authority to disclose any information, the Authority shall not disclose any confidential information or any parts thereof or any other information which should be treated as commercially confidential:

Provided further that any information which shall be treated as commercially confidential shall be made known at all times to the Authority.

23. The Authority may require that submissions of applications, monitoring and reporting plans and reports under these regulations are made in the form and manner and by means of the medium as specified by it.

Submission of applications, monitoring plans and reports.

24. The revenue from the auctioning of allowances, after deducting the audited costs to administer the EU ETS agreed between the Minister responsible for finance and the Authority, shall accrue to the Consolidated Fund.

Revenue from auctioning of allowances.
Substituted by:
L.N. 268 of 2019.

25. The Administrative Review Tribunal shall have jurisdiction to hear and determine appeals from decisions of the Authority made under these regulations.

Administrative Review Tribunal.

26. (1) Where an operator of an installation has reported, for that installation, verified emissions of less than twenty five thousand (25,000) tonnes of carbon dioxide equivalent, and where that installation carried out combustion activities, has a rated thermal input below thirty five (35) MW, excluding emissions from biomass, in each of the three years preceding a notification under sub-regulation (8) of regulation 11, the Authority may, after consultation with the operator of the installation and the Minister, propose to exclude that installation from the EU ETS:

Exclusion of small installations subject to equivalent measures.
Added by:
L.N. 268 of 2019.

Provided that the installation shall be subject to equivalent measures that will achieve a contribution to emissions reductions that is equivalent to these regulations:

Provided further that arrangements for monitoring of

emissions are in place to assess whether the installation to which the equivalent measures apply emits twenty-five thousand (25,000) tonnes or more of carbon dioxide equivalent, excluding emissions from biomass, in any one calendar year:

Provided further that the Authority may establish simplified monitoring, reporting and verification measures for an installation to which equivalent measures apply if the average annual verified emissions of that installation between 2008 and 2010 are below five thousand (5,000) tonnes a year.

(2) The Authority shall notify the Commission of an installation for which an exclusion in accordance with regulation (1) is proposed, before the list of installations pursuant to sub-regulation (8) of regulation 11 is to be submitted or, at the latest, when that list is submitted to the Commission, specifying the equivalent measures applying to that installation. The exclusion is deemed approved if the Authority does not receive an objection from the Commission in accordance with Directive 2003/87/EC.

(3) The installation shall be excluded following the surrender of allowances in respect of the period during which that installation is in the EU ETS. The Authority shall, where applicable, no longer issue free allowances to that installation pursuant to regulation 14.

(4) Where an installation excluded in accordance with sub-regulation (1) emits twenty-five thousand (25,000) tonnes or more of carbon dioxide equivalent, excluding emissions from biomass, in any one calendar year, or the equivalent measures applying to that installation are no longer in place, the installation shall be reintroduced into the EU ETS, starting from the first calendar year following the year when the installation emits twenty-five thousand (25,000) tonnes or more of carbon dioxide equivalent, excluding emissions from biomass. An installation which has been reintroduced into the EU ETS shall stay in the EU ETS for the rest of the period referred to in regulation 11 during which it is reintroduced.

(5) When an installation is reintroduced into the EU ETS pursuant to sub-regulation (4), any allowances to be allocated for free in accordance with regulation 11 shall be granted starting from the year when the installation is reintroduced into the EU ETS. The allowances to be allocated to that installation shall be deducted from the quantity of allowances to be auctioned pursuant to regulation 12.

(6) For installations which were not in the EU ETS during the period from 2008 to 2012, the Authority may apply monitoring, reporting and verification requirements for determining emissions in the three years preceding the year of a notification pursuant to sub-regulation (2).

(7) The Authority shall ensure that the notification to the Commission pursuant to sub-regulation (2), a confirmation that arrangements for monitoring of emissions of an installation excluded in accordance with sub-regulation (1) are in place, and a confirmation that if an installation excluded in accordance with sub-regulation (1) emits twenty-five thousand (25,000) tonnes or more of carbon dioxide equivalent, excluding emissions from biomass, in any one calendar year, that installation will be reintroduced into the EU ETS, are made available to the public.

(8) The Authority may exclude a hospital from the EU ETS:

Provided that the hospital is subject to equivalent measures that will achieve a contribution to emissions reductions that is equivalent to these regulations.

27. (1) Where an operator of an installation has reported, for that installation, verified emissions of less than two thousand five hundred (2,500) tonnes of carbon dioxide equivalent, disregarding emissions from biomass, in each of the three years preceding a notification under sub-regulation (8) of regulation 11, the Authority may, after consultation with the operator of the installation and the Minister, exclude that installation from the EU ETS:

Optional exclusion
of installations
emitting less than
2,500 tonnes.
Added by:
L.N. 268 of 2019.

Provided that the Authority shall notify the Commission of such an installation before the list of installations pursuant to sub-regulation (8) of regulation 11 is to be submitted or, at the latest, when that list is submitted to the Commission:

Provided further that arrangements for monitoring of emissions are in place to assess whether the installation emits two thousand five hundred (2,500) tonnes or more of carbon dioxide equivalent, disregarding emissions from biomass, in any one calendar year.

(2) Where an installation excluded in accordance with sub-regulation (1) emits two thousand five hundred (2,500) tonnes or more of carbon dioxide equivalent, disregarding emissions from biomass, in any one calendar year, the installation shall be reintroduced into the EU ETS, starting from the first calendar year following the year when the installation emits two thousand five hundred (2,500) tonnes or more of carbon dioxide equivalent, disregarding emissions from biomass.

(3) When an installation is reintroduced into the EU ETS pursuant to sub-regulation (2), any allowances to be allocated for free in accordance with regulation 11 shall be granted starting from the year when the installation is reintroduced into the EU ETS. The allowances to be allocated to that installation shall be deducted from the quantity of allowances to be auctioned pursuant to regulation 12.

(4) The Authority shall ensure that the notification to the Commission pursuant to sub-regulation (1), a confirmation that arrangements for monitoring of emissions of an installation excluded in accordance with sub-regulation (1) are in place, and a confirmation that if an installation excluded in accordance with sub-regulation (1) emits two thousand five hundred (2,500) tonnes or more of carbon dioxide equivalent, disregarding emissions from biomass, in any one calendar year, that installation will be reintroduced into the EU ETS, are made available to the public.

Optional exclusion
of reserve or
backup units which
do not operate
more than 300
hours.
Added by:
L.N. 268 of 2019.

28. (1) Where an operator of an installation notified the Authority of a reserve or backup unit which did not operate more than 300 hours per year in each of the three years preceding a notification under sub-regulation (8) of regulation 11, the Authority may, after consultation with the operator of the installation and, the Minister, exclude that unit from the EU ETS:

Provided that the Authority shall notify the Commission of such a unit before the list of installations pursuant to sub-regulation (8) of regulation 11 is to be submitted or, at the latest, when that list is submitted to the Commission:

Provided further that arrangements for monitoring of emissions are in place to assess whether the reserve or backup unit has operated more than 300 hours in any one calendar year.

(2) Where a reserve or backup unit excluded in accordance with sub-regulation 1 operates more than 300 hours in any one calendar year, the unit shall be reintroduced into the EU ETS, starting from the first calendar year following the year when the unit has operated more than 300 hours.

(3) When a unit is reintroduced into the EU ETS pursuant to sub-regulation (2), any allowances to be allocated for free in respect of that unit in accordance with regulation 11 shall be granted starting from the year when the unit is reintroduced into the EU ETS. The allowances to be allocated to that unit shall be deducted from the quantity of allowances to be auctioned pursuant to regulation 12.

(4) The Authority shall ensure that the notification to the Commission pursuant to sub-regulation (1), a confirmation that arrangements for monitoring of the hours of operation of a unit excluded in accordance with sub-regulation (1) are in place, and a confirmation that if a unit excluded in accordance with sub-regulation (1) operates more than 300 hours in any one calendar year, that unit will be reintroduced into the EU ETS, are made available to the public.

Amended by:
L.N. 268 of 2019.

Schedule 1

Regulations 1(2), 2, 3, 4(1), 4(2), 4(4), 5(1), 5(2), 5(3)(c), 5(3)(d),
5(3)(e), 6(3)(e), 7(1)(c), 9(1), 15(1), 15(1)(c), 16(1)(a), 16(1)(c)
and 16(3)(c)

Categories of Activities for which these Regulations apply

1. Installations or parts of installations used for research, development and testing of new products and processes and installations exclusively using biomass are not covered by these Regulations.

2. The threshold values given below generally refer to production capacities or outputs. Where several activities falling under the same category are carried out in the same installation, the capacities of such activities are added together.

3. When the total rated thermal input of an installation is calculated in order to decide upon its inclusion in the EU ETS, the rated thermal inputs of all technical units which are part of it, in which fuels are combusted within the installation, are added together. These units could include all types of boilers, burners, turbines, heaters, furnaces, incinerators, calciners, kilns, ovens, dryers, engines, fuel cells, chemical looping combustion units, flares, and thermal and catalytic post-combustion units. Units with a rated thermal input below 3MW and units which use exclusively biomass shall not be taken into account for the purposes of this calculation. 'Units using exclusively biomass' includes units which use fossil fuels only during start-up or shut-down of the unit.

4. If a unit serves an activity for which the threshold is not expressed as total rated thermal input, the threshold of this activity shall take precedence for the decision about the inclusion in the EU ETS.

5. When the capacity threshold of any activity in this Schedule is found to be exceeded in an installation, all units in which fuels are combusted, other than units for the incineration of hazardous or municipal waste, shall be included in the greenhouse gas emission permit.

Activities	Greenhouse gases
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*EUROPEAN UNION GREENHOUSE GAS EMISSIONS
TRADING SYSTEM FOR STATIONARY
INSTALLATIONS*

30 [S.L.423.50

Combustion of fuels in installations with a total rated thermal input exceeding 20MW (except in installations for the incineration of hazardous or municipal waste)	Carbon dioxide
Refining of mineral oil	Carbon dioxide
Production of coke	Carbon dioxide
Metal ore (including sulphide ore) roasting or sintering, including pelletisation	Carbon dioxide
Production of pig iron or steel (primary or secondary fusion) including continuous casting, with a capacity exceeding 2.5 tonnes per hour	Carbon dioxide
Production or processing of ferrous metals (including ferro-alloys) where combustion units with a total rated thermal input exceeding 20MW are operated. Processing includes, inter alia, rolling mills, re-heaters, annealing furnaces, smitheries, foundries, coating and pickling	Carbon dioxide
Production of primary aluminium	Carbon dioxide and perfluorocarbons
Production of secondary aluminium where combustion units with a total rated thermal input exceeding 20MW are operated	Carbon dioxide
Production or processing of non-ferrous metals, including production of alloys, refining, foundry casting, etc., where combustion units with a total rated thermal input (including fuels used as reducing agents) exceeding 20MW are operated	Carbon dioxide
Production of cement clinker in rotary kilns with a production capacity exceeding 500 tonnes per day or in other furnaces with a production capacity exceeding 50 tonnes per day	Carbon dioxide
Production of lime or calcinations of dolomite or magnesite in rotary kilns or in other furnaces with a production capacity exceeding 50 tonnes per day	Carbon dioxide
Manufacture of glass including glass fibre with a melting capacity exceeding 20 tonnes per day	Carbon dioxide
Manufacture of ceramic products by firing, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain, with a production capacity exceeding 75 tonnes per day	Carbon dioxide
Manufacture of mineral wool insulation material using glass, rock or slag with a melting capacity exceeding 20 tonnes per day	Carbon dioxide
Drying or calcinations of gypsum or production of plaster boards and other gypsum products, where combustion units with a total rated thermal input exceeding 20MW are operated	Carbon dioxide

Production of pulp from timber or other fibrous materials	Carbon dioxide
Production of paper or cardboard with a production capacity exceeding 20 tonnes per day	Carbon dioxide
Production of carbon black involving the carbonisation of organic substances such as oils, tars, cracker and distillation residues, where combustion units with a total rated thermal input exceeding 20MW are operated	Carbon dioxide
Production of nitric acid	Carbon dioxide and nitrous oxide
Production of adipic acid	Carbon dioxide and nitrous oxide
Production of glyoxal and glyoxylic acid	Carbon dioxide and nitrous oxide
Production of ammonia	Carbon dioxide
Production of bulk organic chemicals by cracking, reforming, partial or full oxidation or by similar processes, with a production capacity exceeding 100 tonnes per day	Carbon dioxide
Production of hydrogen (H ₂) and synthesis gas by reforming or partial oxidation with a production capacity exceeding 25 tonnes per day	Carbon dioxide
Production of soda ash (Na ₂ CO ₃) and sodium bicarbonate (NaHCO ₃)	Carbon dioxide
Capture of greenhouse gases from installations covered by the Directive for the purpose of transport and geological storage in a storage site permitted under Directive 2009/31/EC	Carbon dioxide
Transport of greenhouse gases by pipelines for geological storage in a storage site permitted under Directive 2009/31/EC	Carbon dioxide
Geological storage of greenhouse gases in a storage site permitted under Directive 2009/31/EC	Carbon dioxide

Schedule 2
Regulation 2
Greenhouse gases

Carbon dioxide (CO₂)
Methane (CH₄)
Nitrous Oxide (N₂O)
Hydrofluorocarbons (HFCs)
Perfluorocarbons (PFCs)
Sulphur Hexafluoride (SF₆)

Schedule 3

Regulations 15(1)(a), 16(1)(a)

Principles for Monitoring and Reporting of annual emissions

Monitoring of carbon dioxide emissions

Emissions shall be monitored either by calculation or on the basis of measurement.

Calculation

Calculations of emissions shall be performed using the formula:

Activity data x Emission factor x Oxidation factor

Activity data (fuel used, production rate etc.) shall be monitored on the basis of supply data or measurement.

Accepted emission factors shall be used. Activity-specific emission factors are acceptable for all fuels. Default factors are acceptable for all fuels except non-commercial ones (waste fuels such as tyres and industrial process gases). Seam-specific defaults for coal, and EU-specific or producer country-specific defaults for natural gas shall be further elaborated. IPCC default values are acceptable for refinery products. The emission factor for biomass shall be zero.

If the emission factor does not account of the fact that some of the carbon is not oxidized, then an additional oxidation factor shall be used. If activity-specific emission factors have been calculated and already take oxidation into account, then an oxidation factor need not be applied.

Default oxidation factors developed pursuant to Directive 96/61/EC* shall be used, unless the operator can demonstrate that activity-specific factors are more accurate.

A separate calculation shall be made for each activity, installation and for each fuel.

Measurement

Measurement of emissions shall use standardized or accepted methods, and shall be corroborated by a supporting calculation of emissions.

Monitoring of emissions of other greenhouse gases

Standardised or accepted methods shall be used, as developed and adopted by the Commission in collaboration with all relevant stakeholders.

Reporting of emissions

Each operator shall include the following information in the report for an installation:

A. Data identifying the installation, including:

*Directive 96/61/EC: Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control.

- Name of the installation;
 - Its address, including postcode and country;
 - Type and number of activities listed in Schedule 1 carried out in the installation;
 - Address, telephone, fax and email details for a contact person; and
 - Name of the owner of the installation, and of any parent company.
- B. For each activity listed in Schedule 1 to these regulations carried out on the site for which emissions are calculated:
- Activity data;
 - Emission factors;
 - Oxidation factors;
 - Total emissions; and
 - Uncertainty.
- C. For each activity listed in Schedule 1 to these regulations carried out on the site for which emissions are measured:
- Total emissions;
 - Information on the reliability of measurement methods; and
 - Uncertainty.
- D. For emissions from combustion, the report shall also include the oxidation factor, unless oxidation has already been taken into account in the development of an activity-specific emission factor.

Schedule 4

Regulation 16(3)(a)

Criteria for Verification

General Principles

1. Emissions from each activity listed in Schedule 1 to these regulations shall be subject to verification
2. The verification process shall include consideration of the report submitted pursuant to regulation 16 and of monitoring during the preceding year. It shall address the reliability, credibility and accuracy of monitoring systems and the reported data and information relating to emissions, in particular:
 - (a) the reported activity data and related measurements and calculations;
 - (b) the choice and the employment of emission factors;
 - (c) the calculations leading to the determination of the overall emissions; and
 - (d) if measurement is used, the appropriateness of the choice and the employment of measuring methods.

3. Reported emissions may only be validated if reliable and credible data and information allow the emissions to be determined with a high degree of certainty. A high degree of certainty would require the operator to show that:

- (a) the reported data is free of inconsistencies;
- (b) the collection of data has been carried out in accordance with the applicable scientific standards; and
- (c) the relevant records of the installation are complete and consistent.

4. The verifier shall be given access to all sites and information in relation to the subject of the verification.

5. The verifier shall take into account whether the installation is registered under the Community eco-management and audit scheme (EMAS).

Methodology

Strategic analysis

6. The verification shall be based on a strategic analysis of all the activities carried out in the installation. This requires the verifier to have an overview of all the activities and their significance for emissions.

Process analysis

7. The verification of the information submitted shall, where appropriate, be carried out on the site of the installation. The verifier shall use spot-checks to determine the reliability of the reported data and information.

Risk analysis

8. The verifier shall submit all the sources of emissions in the installation to an evaluation with regard to the reliability of the data of each source contributing to the overall emissions of the installation.

9. On the basis of this analysis the verifier shall explicitly identify those sources with a high risk of error and other aspects of the monitoring and reporting procedure which are likely to contribute to errors in the determination of the overall emissions. This especially involves the choice of the emission factors and the calculations necessary to determine the level of the emissions from individual sources. Particular attention shall be given to those sources with a high risk of error and the abovementioned aspects of the monitoring procedure.

10. The verifier shall take into consideration any effective risk control methods applied by the operator with a view to minimizing the degree of uncertainty.

Report

11. The verifier shall prepare a report on the validation process stating whether the report submitted pursuant to regulation 16 of these regulations is satisfactory. This report shall specify all issues relevant to the work carried out. A statement that the report submitted pursuant to regulation 16 of these regulations is satisfactory may be made if, in the opinion of the verifier, the total emissions are not materially misstated.

Minimum competency requirements for the verifier

12. The verifier shall be independent of the operator, carry out his activities in a sound and objective professional manner, and understand:

- (a) the provisions of these regulations, as well as relevant standards and guidance adopted by the Authority pursuant to these regulations;

- (b) the legislative, regulatory, and administrative requirements relevant to the activities being verified; and
 - (c) the generation of all information related to each source of emissions in the installation, in particular, relating to the collection, measurement, calculation and reporting of data.
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