

## **S.I. No. 127/2011 — European Communities (Greenhouse Gas Emissions Trading) (Amendment) Regulations 2011.**

*Notice of the making of this Statutory Instrument was published in  
“Iris Oifigiúil” of 29th March, 2011.*

I, PHIL HOGAN, Minister for the Environment, Heritage and Local Government, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and by sections 6 and 53 of the Environmental Protection Agency Act 1992 (No. 7 of 1992) and for the purpose of giving further effect to Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003<sup>1</sup>, as amended by Directive 2004/101/EC of the European Parliament and of the Council of 27 October 2004<sup>2</sup>, Directive 2008/101/EC of the European Parliament and of the Council of 19 November 2008<sup>3</sup>, and Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009<sup>4</sup>, and for the purpose of giving full effect to Commission Regulation (EU) No 1031/2010 of 12 November 2010<sup>5</sup>, hereby make the following regulations:

1. These Regulations may be cited as the European Communities (Greenhouse Gas Emissions Trading) (Amendment) Regulations 2011.

2. (1) In these Regulations “Commission Regulation” means Commission Regulation (EU) No 1031/2010 of 12 November 2010<sup>5</sup> on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003<sup>1</sup> establishing a scheme for greenhouse gas emission allowances trading within the Community.

(2) A word or expression that is used in these Regulations and is also used in the Commission Regulation has the same meaning in these Regulations that it has in the Commission Regulation.

3. The European Communities (Greenhouse Gas Emissions Trading) Regulations 2004 ( S.I. No. 437 of 2004 ) are amended—

(a) in Regulation 2(1) (as amended by Regulation 5(a) of the European Communities (Greenhouse Gas Emissions Trading) (Amendment) Regulations 2005 ( S.I. No. 706 of 2005 ) and as amended by Regulation 2(a) of the European Communities (Greenhouse Gas Emissions Trading) (Amendment) Regulations 2010 ( S.I. No. 161 of 2010 )) by inserting, at the appropriate point in alphabetical order, the following:

“‘Commissions Free Allocation Rules’ means the detailed rules for the harmonised free allocation of emission allowances adopted by the Commission pursuant to Article 10a of the Directive and any associated guidance published by the Commission;”,

(b) in Regulations 9(1a) (inserted by Regulation 5(b) of the European Communities (Greenhouse Gas Emissions Trading) (Amendment) Regulations 2005 ( S.I. No. 706 of 2005 )) and 11(7) (inserted by Regulation 5(c) of the European Communities (Greenhouse Gas Emissions Trading) (Amendment) Regulations 2005 ( S.I. No. 706 of 2005 )) by substituting “the period” for “each period”,

(c) in Regulations 9(2)(b) and 11(2)(c) by deleting “and each subsequent five-year period”,

(d) in Regulation 9(3)(b) by deleting “and each subsequent five-year period;”, and

(e) by substituting for Regulation 18 the following:

“18. The Agency is designated as the competent authority in the State for the purposes of these Regulations and the Directive and for the implementation of the Commissions Free Allocation Rules.”.

4. The European Communities (Greenhouse Gas Emissions Trading) (Amendment) Regulations 2010 ( S.I. No. 161 of 2010 ) are amended by substituting for Regulation 4 the following:

“4.(1)(a) An operator shall, not later than 30 June 2011, submit to the Agency information, of such nature and in such form as shall be specified by the Agency in accordance with the Commissions Free Allocation Rules, and any other requirements of the Agency which are necessary for the purposes of the administration and implementation of the Directive.

(b) The operator referred to in subparagraph (a) shall include an operator of an installation carrying out one or more activities listed in the Schedule to these Regulations, which is only included in the Community scheme from 2013 onwards.

(2) The operator shall ensure that the information referred to in paragraph (1) is submitted in accordance with-

(a) the Commissions Free Allocation Rules,

(b) the provisions adopted pursuant to Article 14(1) of the Directive, and

(c) any detailed provisions on verification adopted by the Commission pursuant to Article 15 of the Directive,

to the satisfaction of the Agency.

(3) The Agency may issue a direction to an operator to comply with paragraph (1) or (2).

(4) An operator who fails to comply with paragraph (1) or (2), or a direction issued to him or her under this Regulation, is guilty of an offence.

(5) The Agency shall, not later than 30 September 2011 and in accordance with the Commissions Free Allocation Rules, publish and submit to the Commission the list of installations covered by the Directive in its territory and any free allocation to each installation in its territory.

(6) The Agency shall, not later than 28 February of each year and commencing after 1 January 2013, issue the quantity of allowances that are to be allocated for that year, calculated in accordance with Articles 10 and 10a of the Directive, and in accordance with the Commissions Free Allocation Rules.

(7) The Agency may not issue allowances free of charge under paragraph (6) to an installation whose inscription in the list referred to in paragraph (5) has been rejected by the Commission.

(8) In this Regulation—

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

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

“greenhouse gases” means the gases listed in Schedule 2 to the European Communities (Greenhouse Gas Emissions Trading) Regulations 2004 ( S.I. No. 437 of 2004 ) and other gaseous constituents of the atmosphere, both natural and anthropogenic, that absorb and re-emit infrared radiation;

“new entrant” means-

(a) any installation carrying out one or more of the activities indicated in the Schedule to these Regulations, which has obtained a greenhouse gas emissions permit for the first time after 30 June 2011,

(b) any installation carrying out an activity which is included in the Community scheme pursuant to Article 24(1) or (2) of the Directive for the first time, or

(c) any installation carrying out one or more of the activities indicated in the Schedule to these Regulations or an activity which is included in the Community scheme pursuant to Article 24(1) or (2) of the Directive, which has had a significant extension after 30 June 2011, only in so far as this extension is concerned, and in accordance with the Commissions Free Allocation Rules.”.

5. The Agency is appointed as the auctioneer in the State for the purposes of these Regulations and

the Commission Regulation.

6. (1) The Agency, in consultation with the Minister and the Minister for Finance, shall deduct the reasonable costs incurred in administering the greenhouse gas emission allowance trading scheme in the State from the auction proceeds due to the State in accordance with the Commission Regulation.

(2) The Agency shall ensure that the auction proceeds due to the State, following the deduction of the costs referred to in paragraph (1), are paid into an account, established by the Minister for Finance and disposed of for the benefit of the Exchequer.



Given under my Official Seal,

26 March 2011.

PHIL HOGAN,

Minister for the Environment, Heritage and Local Government.

#### EXPLANATORY NOTE

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

The purpose of these Regulations is to provide amendments to the Greenhouse Gas Emission Trading Regulations of 2004 and 2010 so as to remove the obligation on the EPA to prepare a National Allocation Plan in the period post 2012, and to allow operators more time to submit data to the EPA for the purposes of the free allocation of allowances for the third trading period. In addition, the Regulations provide for the appointment of an auctioneer which is required under the Commissions Auctioning Regulation on the auctioning of greenhouse gas emission allowances.

The first amendment is necessary because National Allocation Plans will no longer be required in the third trading period i.e. the period post 2012. The second amendment is required to facilitate the completion by the European Commission of the rules and guidance for Member States on the allocation of allowances, and the implementation of such rules and guidance by the EPA.

In December 2010, the Climate Change Committee agreed in favour of the detailed rules for the harmonised free allocation of emission allowances pursuant to Article 10a of the EU Emissions Trading Scheme Directive. These rules are now subject to a three month period of scrutiny in the Council and the European Parliament. Further guidance is currently being developed by the Commission to assist Member States in implementing these rules.

Extending the date from 28 February 2011 to 30 June 2011 will ensure that the EPA can implement the Commissions rules, as soon as these are agreed and adopted, and it will allow operators of installations sufficient time to submit the requisite verified data for consideration by the EPA. Following this, the EPA should be in a position to comply with the Directives requirement of publishing and submitting to the Commission the national list of installations covered by the Directive by 30 September 2011.

The verified data to be submitted to the EPA by operators includes baseline data collected and verified in accordance with Articles 7 and 8, and Annex IV of the abovementioned rules. These rules are published on the Commissions website, [http://ec.europa.eu/clima/documentation/ets/benchmarking\\_\\_\\_\\_\\_en.htm](http://ec.europa.eu/clima/documentation/ets/benchmarking_en.htm), the EPAs website, [www.epa.ie](http://www.epa.ie) and the Department of the Environment, Heritage and Local Governments website, [www.environ.ie](http://www.environ.ie)

The effect of these Regulations is to prepare for the third trading period. These Regulations do not contradict the provisions of, and agreements reached under, the National Allocation Plan, published by the EPA in March 2008 in respect of the second trading period, 2008 to 2012.

Further revocations of the Greenhouse Gas Emission Trading Regulations will be required in advance of the third trading period. Such revocations will be undertaken as part of the transposition of the remaining provisions of the revised EU Emissions Trading Scheme Directive. This transposition exercise will also consolidate all the Greenhouse Gas Emission Trading Regulations.

In addition, these Regulations give effect to Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances under the EU Emissions Trading Scheme. While this Regulation is directly applicable in Member States of the European Union, it is necessary to provide for certain administrative details, including the appointment of an auctioneer, provided for in Article 22 of the Commission Regulation.

The Environmental Protection Agency is appointed as the auctioneer in the State for the purpose of these Regulations and the Commission Regulation.

1 O.J. No. L275 25.10.2003 p. 32

2 O.J. No. L338 13.11.2004 p. 18

3 O.J. No. L8 13.1.2009 p. 3

4 O.J. No. L140 5.6.2009 p. 63

5 O.J. No. L302 18.11.2010 p. 1