

# S.I. No. 437/2004 — European Communities (Greenhouse Gas Emissions Trading) Regulations 2004

STATUTORY INSTRUMENTS.

S.I. No. 437 of 2004 .

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EUROPEAN COMMUNITIES (GREENHOUSE GAS EMISSIONS TRADING)  
REGULATIONS 2004.

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The Minister for the Environment, Heritage and Local Government, in exercise of the powers conferred on him by section 3 of the European Communities Act 1972 ( No. 27 of 1972 ) and for the purpose of giving effect to Directive 2003/87/EC<sup>1</sup> , of the European Parliament and of the Council of 13th October 2003, establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC<sup>2</sup> , hereby makes the following Regulations:—

*Citation*

1. These Regulations may be cited as the European Communities (Greenhouse Gas Emissions Trading) Regulations 2004.

*Definitions*

2. (1) In these Regulations—

“the 1992 Act” means the Environmental Protection Agency Act 1992 (No. 7 of 1992);

“the 1996 Act” means the Waste Management Act 1996 (No. 10 of 1996);

“the 2003 Act” means the Protection of the Environment Act 2003 (No. 27 of 2003);

“the Agency” means the Environmental Protection Agency established under Section 19 of the Environmental Protection Agency Act 1992 ( No. 7 of 1992 );

“allocate” means the intention to issue allowances as indicated in the final decision as notified to the Commission under article 9;

“allowance” means an allowance to emit 1 tonne of carbon dioxide equivalent during a specified period, which shall be valid only for the purposes of meeting the requirements of these Regulations and shall be transferable in accordance with the provisions of these Regulations;

“the Commission” means the Commission of the European Communities;

“Commission's Monitoring and Reporting Guidelines” means Commission Decision 2004/156/EC establishing guidelines for the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council;<sup>3</sup>

“Community scheme” means the scheme for greenhouse gas emission allowance trading within the European Community provided for in the Directive;

“competent authority” means, in respect of Ireland, the Agency, and in respect of other Member States of the European Communities, any competent authority specified in the national law of that State as notified by the Commission;

“directive” means Directive 2003/87/EC of the European Parliament and of the Council of 13th October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC;

“emissions” means the release of greenhouse gases into the atmosphere from sources in an installation;

“greenhouse gases” means the gases listed in Schedule 2;

“greenhouse gas emissions permit” means a permit granted under article 6;

“installation” means a stationary technical unit where one or more activities listed in Schedule 1 may be carried out on or after 1st January 2005 and any other directly associated activities which have a technical connection with the said activities on that site and which could have an effect on emissions and pollution, and references to an installation include references to part of an installation;

“the Minister” means the Minister for the Environment, Heritage and Local Government;

“new entrant” means any installation carrying out one or more of the activities indicated in Schedule 1 which has obtained a greenhouse gas emissions permit or an update of its greenhouse gas emissions permit because of a change in the nature or functioning or an extension of the installation subsequent to the notification to the Commission of the national allocation plan in accordance with article 9;

“operator” means any person who operates or controls an installation or to whom decisive economic power over the technical functioning of the installation has been delegated;

“person” means any natural or legal person;

“pilot period” means the three-year period beginning on 1st January 2005;

“Kyoto period” means the five-year period beginning on 1st January 2008;

“the public” means one or more persons and associations, organisations or groups of persons; and

“tonne of carbon dioxide equivalent” means one metric tonne of carbon dioxide (CO<sub>2</sub>) or an amount of any other greenhouse gas listed in Schedule 2 with an equivalent global-warming potential.

(2) In these Regulations—

- (a) where an installation has not been put into operation, the person who will have control over the operation of the installation when it is put into operation shall be treated as the operator of the installation; and
- (b) where an installation has ceased to be in operation, the person who holds the greenhouse gas emissions permit which applies to the Schedule 1 activities carried out in the installation shall be treated as the operator of the installation.

(3) In these Regulations—

- (a) a reference to an article or sub-article which is not otherwise identified is a reference to an article or sub-article of these Regulations;
- (b) a reference to a Schedule which is not otherwise identified is a reference to a Schedule to these Regulations; and
- (c) a letter, word, phrase or symbol which has been assigned a meaning by the Directive, or is used in the Directive, has that meaning where the context requires except where otherwise indicated.

(4) In these Regulations, a reference to an enactment shall be construed as a reference to that enactment as amended by a subsequent enactment, including these Regulations.

(5) Installations or parts of installations used exclusively for research, development and testing of new products and processes are not covered by these Regulations.

*Objective and Scope*

3. (1) These Regulations provide for the implementation in Ireland of a scheme for greenhouse gas emission allowance trading within the European Community in order to promote reductions of greenhouse gas emissions in a cost effective and economically efficient manner.

(2) These Regulations apply to emissions from the activities listed in Schedule 1 and greenhouse gases listed in Schedule 2.

*Greenhouse Gas Emissions Permits*

4. No person shall carry out an activity listed in Schedule 1 resulting in emissions specified therein on or after 1st January 2005, except under and to the extent authorised by a greenhouse gas emissions permit issued by the Agency pursuant to these Regulations.

*Applications for Greenhouse Gas Emissions Permits*

5. An application to the Agency for a greenhouse gas emissions permit shall include a description of:

- (a) the installation and its activities, including the technology used;
- (b) the raw and auxiliary materials, the use of which is likely to lead to emissions of gases listed in Schedule 1;
- (c) the sources of emissions of gases listed in Schedule 1 from the installation;
- (d) the measures planned to monitor and report emissions in accordance with article 14;
- (e) any other appropriate information requested by the Agency; and
- (f) a non-technical summary of the details referred to in the preceding paragraphs of this article.

*Conditions for and Contents of Greenhouse Gas Emissions Permits*

6. (1) As soon as practicable after receipt of an application in accordance with article 5, the Agency shall issue a greenhouse gas emissions permit to the operator granting authorisation to emit greenhouse gases from an installation if the Agency is satisfied the operator complies with the conditions of these Regulations and is capable of monitoring and reporting emissions.

(2) A greenhouse gas emissions permit may cover one or more installations on the

same site operated by the same operator.

(3) Greenhouse gas emissions permits shall contain the following:—

- (a) the name and address of the operator;
- (b) a description of the activities at and emissions from the installation;
- (c) monitoring requirements, specifying monitoring methodology and frequency;
- (d) reporting requirements;
- (e) requirements to notify the Agency;
- (f) an obligation to surrender allowances equal to the total emissions of the installation in each calendar year, commencing on 1st January 2005, as verified in accordance with article 15, within four months following the end of that year, and
- (g) requirements to pay penalties for non-compliance under paragraph (f) above.

*Changes  
relating to  
installations*

7. (1) The operator shall inform the Agency of any changes planned in the nature or functioning, or an extension, of the installation which may require updating of the greenhouse gas emissions permit and where appropriate, the Agency shall update the greenhouse gas emissions permit accordingly.

(2) Where there is a change in the identity of the installation's operator, the Agency shall update the greenhouse gas emissions permit to include the name and address of the new operator.

*Coordination  
with Integrated  
Pollution  
Prevention and  
Control  
Licensing*

8. (1) The Agency shall ensure that where installations carry out activities that are included in Schedule 1 to the 2003 Act, the conditions of, and procedure for the issue of, a greenhouse gas emissions permit are coordinated with those for integrated pollution prevention and control licences provided for in the 1992 Act and the 1996 Act.

(2) The Agency may integrate the requirements of articles 5, 6 and 7 into the procedures for integrated pollution prevention and control licensing provided for in the 1992 Act and the 1996 Act.

*National  
Allocation Plan*

9. (1) In respect of each period specified in sub-article 2, the Agency shall develop a National Allocation Plan setting out the total quantity of allowances to be allocated for that period and how such allowances are to be allocated, in accordance with any direction provided by the Minister, including in relation to the total quantity of allowances available for allocation, and on the basis of objective and transparent criteria, including those listed in Schedule 3.

(2) The periods in respect of which national allocation plans shall be developed shall be:—

- (a) the three year pilot period beginning on 1st January 2005; and
- (b) the five-year Kyoto period beginning on 1st January 2008 and each subsequent five-year period.

(3) The Agency shall publish draft plans for public comment and having taken due account of any such comments, notify the plans to the Commission and to other Member States of the European Communities:—

- (a) in respect of the pilot period, by 31st March 2004; and
- (b) in respect of the Kyoto period, and each subsequent five year period, at least 18 months before the beginning of the relevant period.

(4) The Agency may, following public consultation and any necessary consultation with the Minister in respect of directions provided by him, amend a national allocation plan in the light of any decision by the Commission to reject the plan or any aspect of the plan, as soon as practicable after being advised of such acceptance or rejection, and shall notify such amended plan to the Commission forthwith.

*Method of  
Allocation*

10. For the pilot period, the Agency shall allocate at least 95% of the allowances free of charge and for the Kyoto period, the Agency shall allocate at least 90% of the allowances free of charge.

*Allocation and  
Issue of  
Allowances*

11. (1) For each period referred to in article 9(2), the Agency shall decide upon the allocation of allowances to the operator of each installation including the number of those allowances to be issued in each year of that period.

(2) Decisions under sub-article 1 shall—

- (a) be based upon the national allocation plan for the relevant period as accepted by the European Commission;
- (b) take due account of comments from the public;
- (c) be taken at least three months before the beginning of the pilot period and initiated at least 12 months before the beginning of the Kyoto period and each subsequent five year period; and
- (d) be published as soon as practicable.

(3) The Agency shall issue to greenhouse gas emissions permit holders a proportion of the total quantity of allowances for each year of each period referred to at sub-article

1 by 28th February of that year.

*Transfer,  
Surrender and  
Cancellation of  
Allowances*

12. (1) Subject to Articles 15, 20 and 24, allowances shall be transferable between persons within the Community.

(2) Only allowances issued by a competent authority shall be recognised for the purpose of meeting an operator's obligations under sub-article 3.

(3) The operator of each installation shall surrender, by 30th April each year at the latest, a number of allowances equal to the total emissions from that installation during the preceding calendar year, as verified in accordance with article 15.

(4) The Agency shall cancel or cause to be cancelled allowances surrendered in accordance with sub-article 3.

(5) The Agency shall cancel or cause to be cancelled allowances at any time at the request of the person holding them.

*Validity of  
Allowances*

13. (1) Allowances shall only be valid for emissions during the periods referred to in Article 9(2) for which they are issued.

(2) (a) Four months after the end of the pilot period, allowances which are no longer valid and have not been surrendered and cancelled in accordance with articles 12(3) and 12(4), or cancelled in accordance with article 12(5), shall be cancelled or be caused to be cancelled by the Agency; and

(b) the Agency shall not issue allowances to persons for the current period to replace any allowances held by them which are cancelled or caused to be cancelled in accordance with the preceding paragraph of this sub-article.

(3) (a) Four months after the beginning of each five year period subsequent to the Kyoto period, allowances which are no longer valid and have not been surrendered and cancelled in accordance with articles 12(3) and 12(4), or cancelled in accordance with article 12(5), shall be cancelled or be caused to be cancelled by the Agency; and

(b) the Agency shall as soon as practicable issue allowances to persons for the current period to replace any allowances held by them which are cancelled or caused to be cancelled in accordance with the preceding paragraph of this sub-article.

*Monitoring,  
Reporting and  
Verification of  
Emissions*

14. (1) The operator of an installation shall monitor emissions from that installation in accordance with the principles set out at Schedule 4 and the requirements of the Commission's Monitoring and Reporting Guidelines.

(2) The operator shall report the emissions as specified in the greenhouse gas emissions permit from each installation during each calendar year commencing on 1st January 2005, to the Agency, not later than 31st March of the following year in accordance with:

- (a) the conditions specified in the greenhouse gas emissions permit;
- (b) the principles set out in Schedule 4; and
- (c) the detailed requirements of the Commission's Monitoring and Reporting Guidelines.

(3) The operator shall ensure that the report referred to in sub-article 2 is verified in accordance with the criteria set out in Schedule 5, to the satisfaction of the Agency, and shall provide a copy of the said verification report to the Agency when submitting the report specified in sub-article 2.

*Reports of Emissions that have not been Verified*

15. An operator whose report has not been verified or has not submitted a verification report to the satisfaction of the Agency by 31st March each year, for emissions during the proceeding year, cannot make further transfers of allowances until a report from that operator has been verified as satisfactory.

*Penalties*

16. (1) An operator who fails to comply with his obligations under these Regulations shall be guilty of an offence within the meaning of section 8 of the 1992 Act and shall be liable to the penalties laid down in section 9 of the said Act.

(2) The Agency shall publish the names of operators who are in breach of the requirements to surrender allowances as required by article 12(3), and the details of such breach.

(3) An operator who fails to surrender allowances as required by article 12(3) by 30th April of each year to cover its emissions during the preceding year shall be liable for payment to the Agency of an excess emissions penalty in the amount of:

- (a) €40 for each tonne of carbon dioxide equivalent emitted by that installation during the pilot period for which the operator has not surrendered allowances; and
- (b) €100 for each tonne of carbon dioxide equivalent emitted by that installation during the Kyoto period and each subsequent five year period for which the operator has not surrendered allowances.

(4) Payment of the excess emissions penalty specified in this article shall not release the operator from the obligation to surrender an amount of allowances equal to those excess emissions in the following calendar year.



(5) This article shall in all respects be enforced in accordance with the provisions of the 1992 Act.

*Access to information*

17. The Agency shall make available to the public decisions on the allocation of allowances and the reports of emissions submitted to it by operators in accordance with the provisions of [the European Communities Act 1972](#) (Access to Information on the Environment) Regulations 1998 ( [S.I. No. 125 of 1998](#) ).

*Competent Authority*

18. The Environmental Protection Agency is the designated competent authority for the purposes of the Directive.

*Registry*

19. (1) The Agency shall establish and maintain, or cause to be established and maintained, a registry in order to ensure the accurate accounting of the issue, holding, transfer and cancellation of allowances, and may do so in a consolidated manner with the registry of one or more Member States of the European Communities.

(2) Any person may hold allowances.

(3) The Registry shall be accessible to the public and shall contain separate accounts to record the allowances held by each person to whom and from whom allowances are issued or transferred.

*Irregularities*

20. Where irregularities are identified by or to the Agency, it shall not register, or allow to be registered as appropriate, the transactions in question or any further transactions relating to the allowances concerned until the irregularities have been resolved.

*Reporting to the Commission*

21. (1) The Agency shall submit to the Commission an annual report on the application of these Regulations, providing information on the allocation of allowances, the operation of the registry, the application of the Commission's Monitoring and Reporting Guidelines, the verification of reports on emissions, compliance with these Regulations, and the fiscal treatment of allowances, if any.

(2) The first report shall be sent to the Commission by 30th June 2005, and shall be drawn up on the basis of a questionnaire or outline drafted by the Commission.

*Procedures for inclusion of additional activities and gases*

22. (1) From 2008, the Agency may, with the approval of the Minister, apply emissions allowance trading in accordance with these Regulations to activities, installations and greenhouse gases which are not listed in Schedule 1, provided that inclusion of such activities, installations and greenhouse gases is approved by the Commission.

(2) Allocations to installations carrying out activities referred to in sub-article 1 shall be specified in national allocation plans referred to in article 9.

*Amendment of  
Procedures for  
Integrated  
Pollution  
Prevention and  
Control  
Licensing*

23. The 1992 Act shall apply to installations under these Regulations with the following modifications and with any other necessary modifications to that Act arising from the implementation of these Regulations, and references in that Act or to the provisions of that Act shall, unless the context otherwise requires, be construed as including references to these Regulations or the provisions of these Regulations:

- (1) the Agency in issuing a licence pursuant to Part IV of the 1992 Act:
  - (a) shall not have regard to Sections 83(4)(a), 83(5)(a)(vi), 86(1)(a)(i), 86(1)(b)(i) and 90(4)(a)(i) in respect of greenhouse gas emissions, unless it is necessary to ensure that no significant local pollution is caused; and
  - (b) may choose not to impose the requirements of Sections 83(5)(a)(viii), 86(1)(b)(vii) and 86(1)(b)(ix) in respect of greenhouse gas emissions;

and shall amend any licence issued as appropriate.

*Force Majeure*

24. The Agency may, following consultation with the Minister, apply to the Commission for certain installations to be issued with additional allowances in respect of the pilot period in cases of *force majeure*, and where approved by the Commission, shall issue additional and non-transferable allowances to the operators of those installations.

SCHEDULE 1

CATEGORIES OF ACTIVITIES REFERRED TO IN ARTICLES 2(1), 3, 4 AND 14(1)

The threshold values given in this Schedule generally refer to production capacities or outputs. Where one operator carries out several activities falling under the same subheading in the same installation or on the same site, the capacities of such activities are added together.

	Activities	Greenhouse gases
	<i>Energy activities</i>	
E1.1	Combustion installations with a rated thermal input exceeding 20 MW (except hazardous or municipal waste installations)	Carbon dioxide
E1.2	Mineral oil refineries	Carbon dioxide
E1.3	Coke ovens	Carbon dioxide

*Production and processing of ferrous metals*

E2.1	Metal ore (including sulphide ore) roasting or sintering installations	Carbon dioxide
E2.2	Installations for the production of pig iron or steel (primary or secondary fusion) including continuous casting, with a capacity exceeding 2.5 tonnes per hour	Carbon dioxide
<i>Mineral industry</i>		
E3.1	Installations for the production of cement clinker in rotary kilns with a production capacity exceeding 500 tonnes per day or lime in rotary kilns with a production capacity exceeding 50 tonnes per day or in other furnaces with a production capacity exceeding 50 tonnes per day	Carbon dioxide
E3.2	Installations for the manufacture of glass including glass fibre with a melting capacity exceeding 20 tonnes per day	Carbon dioxide
E3.3	Installations for the 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, and/or with a kiln capacity exceeding 4 m <sup>3</sup> and with a setting density per kiln exceeding 300 kg/m <sup>3</sup>	Carbon dioxide
<i>Other activities</i>		
E4.1	Industrial plants for the production of	
	(a) pulp from timber or other fibrous materials	Carbon dioxide
	(b) paper and board with a production capacity exceeding 20 tonnes per day	Carbon dioxide

## SCHEDULE 2

### GREENHOUSE GASES REFERRED TO IN ARTICLE 3

Carbon dioxide (CO<sub>2</sub>)

Methane (CH<sub>4</sub>)

Nitrous Oxide (N<sub>2</sub>O)

Hydrofluorocarbons (HFC<sub>s</sub>)

Perfluorocarbons (PFC<sub>s</sub>)

Sulphur Hexafluoride (SF<sub>6</sub>)

### SCHEDULE 3

#### CRITERIA FOR NATIONAL ALLOCATION PLANS REFERRED TO IN ARTICLES 9 AND 22

1. The total quantity of allowances to be allocated for the relevant period shall be consistent with the national obligation to limit emissions pursuant to Decision 2002/358/EC concerning the approval, on behalf of the European Community, of the Kyoto Protocol to the United Nations Framework Convention on Climate Change and the joint fulfilment of commitments thereunder<sup>4</sup> and the Kyoto Protocol, taking into account, on the one hand, the proportion of overall emissions that these allowances represent in comparison with emissions from sources not covered by these Regulations and, on the other hand, national energy policies, and should be consistent with the National Climate Change Strategy. The total quantity of allowances to be allocated shall not be more than is likely to be needed for the strict application of the criteria of this Schedule. Prior to 2008, the quantity shall be consistent with a path towards achieving or over-achieving the national target under Decision 2002/358/EC concerning the approval, on behalf of the European Community, of the Kyoto Protocol to the United Nations Framework Convention on Climate Change and the joint fulfilment of commitments thereunder and the Kyoto Protocol.

2. The total quantity of allowances to be allocated shall be consistent with assessments of actual and projected progress towards fulfilling the national contributions to the European Community's commitments made pursuant to Decision 93/389/EEC for a monitoring mechanism of Community CO<sub>2</sub> and other greenhouse gas emissions, as amended by Decision 1999/296/EC<sup>5</sup>.

3. Quantities of allowances to be allocated shall be consistent with the potential, including the technological potential, of activities covered by this scheme to reduce emissions. The distribution of allowances may be based on average emissions of greenhouse gases by product in each activity and achievable progress in each activity.

4. The plan shall be consistent with other Community legislative and policy instruments. Account should be taken of unavoidable increases in emissions resulting from new legislative requirements.

5. The plan shall not discriminate between companies or sectors in such a way as to unduly favour certain undertakings or activities in accordance with the requirements of the Treaty of the European Communities, in particular Articles 87 and 88 thereof.

6. The plan shall contain information on the manner in which new entrants will be able to begin participating in the Community scheme.

7. The plan may accommodate early action and shall contain information on the manner in which early action is taken into account. Benchmarks derived from reference documents concerning the best available technologies may be employed in developing national allocation plans, and these benchmarks can incorporate an element of accommodating early action.

8. The plan shall contain information on the manner in which clean technology, including energy efficient technologies, are taken into account.

9. The plan shall include provisions for comments to be expressed by the public, and contain information on the arrangements by which due account will be taken of these comments before a decision on the allocation of allowances is taken.

10. The plan shall contain a list of the installations covered by these Regulations with the quantities of allowances intended to be allocated to each.

11. The plan may contain information on the manner in which the existence of competition from countries or entities outside the European Union will be taken into account.

#### SCHEDULE 4

##### PRINCIPLES FOR MONITORING AND REPORTING REFERRED TO IN ARTICLE 14

This Schedule shall be construed in conjunction with the Commission's Monitoring and Reporting Guidelines.

##### *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:

$$\text{Activity data} \times \text{Emission factor} \times \text{Oxidation factor}$$

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

supply data or measurement.

Emission factors accepted or approved by the Agency 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 take account of the fact that some of the carbon is not oxidised, 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 by the InterGovernmental Panel on Climate Change 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 standardised 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, developed by the Commission in collaboration with all relevant stakeholders and adopted in accordance with the procedure referred to in Article 23(2) of the Directive.

### *Reporting of emissions*

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

#### A. Data identifying the installation, including:

- name of the installation;
- its address, including postcode where applicable, and country;
- type of number of activities specified 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 specified in Schedule 1 carried out on the site for which emissions are calculated:
- activity data;
  - emission factors;
  - oxidation factors;
  - total emissions; and
  - uncertainty.
- C. For each activity specified in Schedule 1 carried out on the site for which emissions are measured:
- total emissions;
  - information on the reliability of measurement methods; and
  - uncertainty.
- D. For emissions for 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 5

### CRITERIA FOR VERIFICATION REFERRED TO IN ARTICLES 14 AND 15

#### *General Principles*

1. Emissions from each activity listed in Schedule 1 shall be subject to verification.
2. The verification process shall include consideration of the report submitted pursuant to article 14(2) 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 requires the operator to show that:

- (a) the reported data is free of inconsistencies;
- (b) the collection of the 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 provided for in Regulation (EC) No. 761/2001 of the European Parliament and of the Council of 19th March 2001 allowing voluntary participation by organisations in a Community eco-management and audit scheme (EMAS)<sup>6</sup>.

### *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 spotchecks 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 above mentioned 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 minimising the degree of uncertainty.

## Report

11. The verifier shall prepare a report on the validation process stating whether the report pursuant to article 14(2) is satisfactory. This report shall specify all issues relevant to the work carried out. A statement that the report pursuant to article 14(2) 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 this Directive, as well as relevant standards and guidance in the Commission's Monitoring and Reporting Guidelines;
- (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.

GIVEN under the Official Seal of the Minister for the Environment,  
Heritage and Local Government, this 14th day of July 2004.

MARTIN CULLEN,

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.)*

These Regulations establish the procedures in Ireland for participation by specified installations in the European Community greenhouse gas emissions trading scheme, in accordance with the provisions of Directive 2003/87/EC of the European Parliament and of the Council of 13th October 2003, establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC concerning integrated pollution prevention and control. The procedures include

- designation of the EPA as the national competent authority;
- application for and issue of greenhouse gas emissions permits to operators of installations, the appropriate conditions to attach thereto, and circumstances for their amendment;
- a requirement for operators of installations to be in possession of a greenhouse gas emissions permit;
- a requirement for operators to surrender allowances, each equivalent to 1 tonne of CO<sub>2</sub>, within 4 months of each calendar year, equal to the verified quantity of emissions during that year, and their cancellation;
- the development of national allocation plans, in accordance with specified criteria, detailing the amount of allowances to issue to participating installations in each emissions trading period, the issue of these annually, and the amounts that are to be made available free of charge in the initial trading period and the 1st 5 year period thereafter;
- specified reporting, monitoring and verification obligations, to be complied with within 3 months of the end of each calendar year.

The Regulations provide for a bar on the transfer of allowances by installations that do not comply with the reporting and verification requirements, and the payment of penalties by operators who fail to surrender for cancellation allowances equal to emissions during the preceding year. The penalty payment is set at €40 per tonne of CO<sub>2</sub> during the initial trading period, rising to €100 for each period thereafter, with a continuing requirement to surrender allowances in the succeeding calendar year in respect of emissions for which penalty payments have been made.

The recognition of allowances issued by competent authorities in other Member States, for the transfer of allowances between persons within the European Community and for these to be held by any person is provided for. The accounting for the issue, holding, transfer and cancellation of allowances is to be through the establishment by the Agency of a registry for the purpose.

The Regulations specify that the initial national allocation plan shall be for 3 years

from 1st January 2005, and thereafter for each 5-year period commencing on 1st January 2008.

Provision is made for public consultation during the preparation and finalisation of the national allocation plan, and for public access to the annual reports by operators on emissions. The public are also specified in the Regulations as having right of access to the information held in the registry.

The Regulations allow for the inclusion of additional activities and gases in the greenhouse gas emissions trading scheme from no earlier than 2008 and specify that this may only be done with the approval of the Minister and the European Commission. The Regulations amend the provisions in the Environmental Protection Agency Act 1992 (as amended) for integrated pollution prevention and control licensing, and for obligatory and optional provisions for the Agency to coordinate that code with the procedures for emissions trading.

The Regulations provide that unused allowances are to be cancelled within four months of the end of each trading period, that no allowances are to be issued by the Agency in respect of unused allowances issued in respect of the 1st three-year trading period during the next period, and that the Agency must issue replacement allowances after the end of each succeeding trading period to operators in respect of unused allowances during the 2nd and subsequent trading period.

Provision is made for the issue of additional and non-transferable allowances in the event of *force majeure*, with the approval of the European Commission.

The Agency is required by the Regulations to make annual reports to the European Commission on the operation of the greenhouse gas emissions trading.

<sup>1</sup> OJ L 275/32 of 25.10.2003.

<sup>2</sup> OJ L 257/26 of 10.10.1996.

<sup>3</sup> OJ L 59/1 of 26.2.2004.

<sup>4</sup> OJ L 130/1 of 15.5.2002.

<sup>5</sup> OJ L 167/31 of 9.7.1993, as amended by Decision 1999/296/EC (O) L 117/35 of 5.5.1999.

<sup>6</sup> OJ L 114/1 of 24.4.2001.