

Act relating to greenhouse gas emission allowance trading and the duty to surrender emission allowances (greenhouse gas emission trading act)

Act of 17 December 2004 No.99

Chapter 1. Introductory provisions

§ 1. (purpose of the Act)

The purpose of this Act is to limit emissions of greenhouse gases in a cost-effective manner by means of a system involving the duty to surrender carbon dioxide (CO₂) emission allowances and freely transferable emission allowances.

§ 2. (geographical scope of the Act)

This Act applies to emissions within the realm and to emissions from activities on the Norwegian part of the continental shelf, subject to any restrictions deriving from international law.

The King may issue regulations containing further provisions on the geographical scope of the Act, including its application in Svalbard.

§ 3. (emissions to which this Act applies)

This Act applies to CO₂ emissions in connection with:

- a. energy production,
- b. refining of mineral oil,
- c. coke production,
- d. production and processing of iron and steel, including roasting and sintering of iron ore,
- e. production of cement, lime, glass, glass fibre and ceramic products.

Nevertheless, the Act does not apply to emissions:

- a. from the combustion of biomass,
- b. from the combustion of hazardous or municipal waste,
- c. that under the terms of the Storting's annual decision on the CO₂ tax are liable to the tax.

The King may by regulations prescribe that emissions to which the first paragraph applies and that are generated by production units with a production capacity below a specified threshold value shall be excepted from this Act, including provisions specifying that where there are several production units with closely linked operations or in close physical proximity to each other, they shall be considered as one unit for the purpose of calculating their capacity.

The King may by regulations prescribe that all CO₂ emissions from a production unit shall come within the scope of this Act even if the emissions are only partly generated by activities such as are mentioned in the first paragraph.

§ 4. (duty to surrender emission allowances)

Any person engaged in any of the activities mentioned in section 3 (hereinafter referred to as the operator) is required under this Act to surrender allowances corresponding to any CO₂ emissions to which the duty to surrender allowances applies, in accordance with the provisions of section 13. In addition, a discharge permit pursuant to section 11 of the Pollution Control Act is required.

§ 5. (applications for discharge permits and emission allowances)

Applications for discharge permits pursuant to section 11 of the Pollution Control Act must be submitted by 15 January 2005 for installations to be taken into consideration when allowances are allocated pursuant to section 8 for the period 1 January 2005 to 31 December 2007. Applications submitted within this time limit are also considered to be applications for allowances to be allocated pursuant to section 8. Applications must include any information necessary for an evaluation of the number of allowances to be allocated pursuant to section 8. The pollution control authorities may in the individual case determine which information or studies the applicant must supply or provide for.

Chapter 2. Determination of the total number of allowances and allocation of allowances

§ 6. (determination of the total number of allowances)

The King will determine the total number of allowances to be allocated for the period 1 January 2005 to 31 December 2007.

In determining the total number of allowances to be allocated, the King shall among other things take into account Norway's international commitments to reduce greenhouse gas emissions, actual and projected emissions in Norway, the proportion of actual and projected emissions that come within the scope of section 3, the fact that discrimination between sectors and enterprises should be avoided, and the technological and economic potential for reducing emissions that come within the scope of section 3.

§ 7. (method of allocation)

For the period 1 January 2005 to 31 December 2007, the allowances shall be allocated to operators free of charge.

§ 8. (allocation of allowances)

The pollution control authorities will decide the number of allowances to be allocated to each operator for the period 1 January 2005 to 31 December 2007.

The following guidelines shall be followed for the allocation of allowances for the period 1 January 2005 to 31 December 2007:

- a. For installations that started operations no later than 1 January 2001, allowances shall be allocated on the basis of the installation's average emissions in the base years 1998 to 2001 inclusive.
- b. If an installation such as is mentioned in litra a was not in operation throughout the base years, or if the level of emissions was for some other reason atypical in one or more of the base years, allowances may be allocated on the basis of emissions in the other years.
- c. If, as a result of substantial changes in the nature or scale of its operations, emissions from an installation such as are mentioned in litra a have risen or fallen substantially after 1 January 2001 but before 31 December 2007, or it is reasonably certain that this will happen, this shall be taken into account when allowances are allocated. In the case of changes that result in higher emissions, the potential, including the technological and economic potential, for reducing emissions of CO₂, particularly through the use of the best available techniques, may be taken into account.
- d. For installations that start operations after 1 January 2001 or are reasonably certain to do so before 31 December 2007, the potential, including the technological and economic potential, for reducing emissions of CO₂, particularly through the use of the best available techniques, may be taken into account when allocating allowances.

A decision to allocate allowances shall be conditional on the following: the operator must at the time of the annual issue of allowances pursuant to section 9 hold a discharge permit for CO₂ emissions pursuant to section 11, second paragraph, of the Pollution Control Act, and the nature and scale of activities at the installation must not be substantially different from those foreseen in the decision on the allocation of

allowances. In connection with the annual issue of allowances pursuant to section 9, the pollution control authorities will control whether the conditions on which the decision to allocate allowances is based have been met. If the pollution control authorities find that this is not the case, the decision may be reversed. A decision to reverse the original decision will be used as the basis for the allocation of allowances pursuant to section 9.

The King may by regulations lay down further provisions on the allocation of allowances pursuant to this provision.

§ 9. (issue of allowances)

Each year, the pollution control authorities will issue each operator with the number of allowances to which he is entitled according to a decision made pursuant to section 8. The procedure for issuing allowances is for the pollution control authorities to inform the Norwegian Emissions Trading Registry by 1 March each year that a specified number of allowances is to be transferred to the operator's account in the registry. The allocation of allowances for 2005 shall take place by 15 March 2005.

If an operator has received a larger number of allowances than he is entitled to in accordance with a decision to allocate allowances pursuant to section 8, the pollution control authorities shall inform the Norwegian Emissions Trading Registry that the excess allowances in the operator's account are to be cancelled. Before the pollution control authorities inform the Norwegian Emissions Trading Registry that allowances are to be cancelled, the operator shall be notified and given the opportunity to express an opinion within a specified time limit, unless the operator in question has already been given a reasonable opportunity to express an opinion in some other way, notification is considered obviously unnecessary, or there is reason to believe that this will complicate the cancellation of allowances.

§ 10. (duty to provide notification)

The operator shall provide the pollution control authorities with prior notification of any changes in the nature or scale of an activity that may have a bearing on whether the conditions set out in a decision pursuant to section 8 are satisfied.

Chapter 3. Norwegian Emissions Trading Registry. Surrender of allowances

§ 11. (Norwegian Emissions Trading Registry)

The Norwegian Emissions Trading Registry shall contain information on the allocation, issue, holding, transfer, surrender and cancellation of allowances.

The King will appoint a competent authority to establish and maintain the registry. The King may by regulations lay down further provisions on the organisation and operation of the registry, including provisions on the types of accounts and the information the registry shall contain, the types of information to which the public shall have access, and cooperation with other registries.

Public authorities are entitled to access to information from the Norwegian Emissions Trading Registry in so far as this is necessary to facilitate their tasks as set out in or pursuant to legislation.

§ 12. (opening accounts, transferring and cancelling allowances)

Any physical or legal person is entitled to open an account in the Norwegian Emissions Trading Registry.

An account holder is entitled to transfer his own allowances to other account-holders. The King may by regulations lay down provisions limiting the right to transfer allowances pursuant to this provision if this is necessary according to the provisions of the 1997 Kyoto Protocol to the 1992 UN Framework Convention on Climate Change.

An account holder may require the cancellation of allowances registered in his own account.

The King may by regulations lay down provisions on the payment of fees for opening accounts, receiving allowances issued by the state and transferring allowances within, to or from the registry.

§ 13. (duty to surrender allowances)

An operator shall by 1 May each year transfer a number of allowances corresponding to the volume of emissions for which reporting is mandatory generated by the installation in the previous calendar year to a specified retirement account in the registry.

If, by the time limit set out in the first paragraph, the operator has not surrendered a sufficient number of allowances to the retirement account, he shall, by 1 May the year after the allowances should have been surrendered pursuant to the first paragraph, transfer allowances to the appropriate retirement account corresponding to the deficit from the preceding year. In addition, an excess emissions fine shall be imposed pursuant to section 21.

Allowances that are surrendered pursuant to the first and second paragraphs for emissions to which the duty to surrender allowances applies during the period 1 January 2005 to 31 December 2007 shall be cancelled.

§ 14. (recognition of allowances not issued in the Norwegian Emissions Trading Registry)

The King may by regulations issue further provisions on which types of allowances other than those issued pursuant to section 8 may be recognised when allowances are surrendered in accordance with the rules of this scheme, and the procedures to be followed.

§ 15. (issue of allowances on the basis of projects to reduce emissions in sectors in Norway that are not subject to the duty to surrender allowances)

The King may by regulations lay down further provisions on the issue of allowances on the basis of projects to reduce emissions in sectors in Norway that are not subject to the duty to surrender allowances.

Chapter 4. Reporting and control

§ 16. (reporting)

An operator shall by 1 March each year report to the pollution control authorities on CO₂ emissions during the previous calendar year to which the duty to surrender allowances applies.

The King may by regulations lay down further provisions on reporting, including the information to be provided and how emissions are to be calculated or measured.

§ 17. (control by the pollution control authorities)

The pollution control authorities will control and verify the reports on CO₂ emissions submitted by each operator pursuant to section 16.

In special cases, the pollution control authorities may issue an order for the emissions report from an operator to be verified by an independent third party before it is submitted. The King may by regulations lay down further provisions on requirements relating to and accreditation of verification bodies, including how verification reports are to be drawn up and their contents.

The King may by regulations prescribe that the costs incurred by the pollution control authorities in verifying emissions reports pursuant to this section are to be met by the operators.

§ 18. (requirement to provide information or make investigations)

The pollution control authority may require operators to provide information or carry out or pay for investigations or other measures it is reasonable to require to determine whether it is necessary to alter the provisions on reporting laid down pursuant to section 16.

Chapter 5. Penal measures

§ 19. (suspension of the right to transfer allowances)

If, by 1 April in any year, an operator has not reported his emissions pursuant to the provisions of section 16 or provisions laid down pursuant thereto, the pollution control authorities shall suspend the right of the said operator to transfer allowances within the registry of allowances until a satisfactory report on emissions has been provided.

§ 20. (coercive fines)

In the event of contravention of the duty to report on emissions pursuant to section 16, the pollution control authorities may impose a coercive fine to the state. The coercive fine becomes effective if the operator fails to meet the deadline for remedying the matter set by the pollution control authorities. The coercive fine shall continue to be effective for as long as the unlawful situation persists.

A coercive fine shall be imposed on the operator pursuant to section 4. An order to pay a coercive fine is enforceable by execution proceedings. The pollution control authorities may waive a coercive fine that has been imposed.

§ 21. (excess emissions fine)

If an operator has not complied with his duties pursuant to section 13, first paragraph, the pollution control authorities shall impose an excess emissions fine payable to the public treasury. The excess emissions fine shall correspond to EUR 40 on the due date for each tonne of CO₂ for which reporting is mandatory and for which no allowances have been surrendered to the appropriate account in accordance with section 13, first paragraph. The fine becomes due for payment 14 days after the demand for payment. Should a fine not be paid within the time stipulated, interest is to be paid according to the provisions of the Act of 17 December 1976 No. 100 relating to interest on overdue payments. An order to pay an excess emissions fine is enforceable by execution proceedings. The King may by regulations alter the amount of the excess emissions fine.

The names of operators on whom excess emissions fines are imposed and the volumes of emissions for which no allowances have been surrendered shall be open to the public.

§ 22. (penal measures)

Any person who wilfully or through negligence contravenes the provisions on the duty to report emissions laid down in or pursuant to section 16 of this Act is liable to fines or to a term of imprisonment not exceeding three months or both.

Chapter 6. Final provisions

§ 23. (amendments to other acts)

The Act of 13 March 1981 No. 6 relating to protection against pollution and to waste shall be amended as follows:

section 11, new second paragraph, shall read as follows:

An operator who is subject to the duty to surrender allowances pursuant to section 4 of the Greenhouse Gas Emission Trading Act shall on application be granted a permit for emissions of CO₂ to which the duty to surrender allowances applies, provided that he can substantiate that he is able to monitor and report on emissions satisfactorily. The King may lay down conditions pursuant to section 16 in the discharge permit. No emission limit value shall be set in the permit. The permit is valid provided that allowances are surrendered pursuant to section 13 of the Greenhouse Gas Emission Trading Act.

The current section 11, second paragraph becomes section 11, third paragraph, and so on.

Section 18, new second paragraph, shall read as follows:

A permit issued pursuant to section 11, second paragraph, shall be withdrawn or altered if the duty to surrender allowances pursuant to section 4 of the Greenhouse Gas Emission Trading Act lapses.

The current section 18, second paragraph, becomes section 18, third paragraph.

Section 18, new fourth paragraph, shall read as follows:

In making decisions pursuant to the first or third paragraphs, the costs that alteration or reversal will involve for the polluter, and any other advantages and disadvantages the alteration or reversal will involve, shall be taken into account.

§ 24. (entry into force)

This Act enters into force on 1 January 2005.