

S.I. No. 161/2010 — European Communities (Greenhouse Gas Emissions Trading) (Amendment) Regulations 2010.

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Notice of the making of this Statutory Instrument was published in

“Iris Oifigiúil” of 23rd April, 2010.

I, JOHN GORMLEY, 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, 52 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 2003¹, as amended by Directive 2004/101/EC of the European Parliament and of the Council of 27 October 2004², Directive 2008/101/EC of the European Parliament and of the Council of 19 November 2008³, and Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009⁴ hereby make the following regulations:

1. These Regulations may be cited as the European Communities (Greenhouse Gas Emissions Trading) (Amendment) Regulations 2010.

2. 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))—

(i) by substituting for the definition of “Directive” the following:

“‘Directive’ means Directive 2003/87/EC of 13 October 2003¹ establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC⁵, as amended by Directive 2004/101/EC of 27 October 2004² in respect of the Kyoto Protocol’s project mechanisms, by Directive 2008/101/EC of 19 November 2008³ so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community, and by Directive 2009/29/EC of 23 April 2009⁴ so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community;”,

(ii) by inserting, at the appropriate point in alphabetical order, the following:

“‘direction’ means a direction issued by the Agency pursuant to Regulation 15A;”,

(b) by inserting after Regulation 15 the following:

“Issue of Direction

15A. (1) The Agency may issue a direction to an operator to comply with Regulation 7(1), 12(3) or 14.

(2) An operator who fails to comply with a direction issued to him or her is guilty of an offence.

Direction

15B. A direction issued by the Agency shall be—

- (a) in writing,
- (b) served in accordance with Regulation 15C,
- (c) contain reasons for the direction, and
- (d) advise the recipient of his or her right of appeal pursuant to Regulation 15D.

Service of Direction

15C. (1) Where a direction is required to be issued by the Agency, the direction shall be in writing and shall be addressed to the operator and shall be given to the operator in one of the following ways—

- (a) by delivering it to the operator,
- (b) by leaving it at the address at which the operator carries on business,
- (c) by sending it by post in a pre-paid registered letter addressed to the operator at the address at which the operator carries on his or her business,
- (d) if an address for the service of a direction has been furnished by the operator, by leaving it at, or sending it by pre-paid registered post addressed to the operator, to that address,
- (e) by sending it by means of electronic mail or a facsimile machine, to a device or facility for the reception of electronic mail or facsimiles located at the address at which the operator carries on business or, if an address for the service of a direction has been furnished by the operator, that address:

provided that—

- (i) the sender’s—

(I) facility for the reception of electronic mail generates a message confirming a receipt of the electronic mail, or

(II) facsimile machine generates a message confirming successful transmission of the total number of pages of the direction, and

(ii) the direction is also given in one of the other ways mentioned in any of the preceding paragraphs.

(2) For the purposes of paragraph (1)—

(a) a company registered under the Companies Acts is deemed to be ordinarily resident at its registered office, and

(b) every other body corporate and every unincorporated body is deemed to be ordinarily resident at its principal office or place of business.

(3) A copy of a direction, which has endorsed on it a certificate purporting to be signed by an officer of the Agency authorised in that behalf by the Agency stating that the copy is a true copy of the direction or reply may, without proof of signature of that person, be produced in every court and in all legal proceedings and is evidence, unless the contrary is shown, of the direction or reply.

Appeal from a Direction issued by the Agency

15D. (1) A direction issued by the Agency shall take effect—

(a) where it is received by the person on whom it is served, or

(b) where an appeal is brought against the direction, on the day immediately following—

(i) the day on which the direction is confirmed on appeal or the appeal is withdrawn, or

(ii) the day specified in the direction.

(2) The bringing of an appeal against a direction referred to in paragraph (1) shall not have the effect of suspending the operation of the direction, but the appellant may apply to the court to have the operation of the direction suspended until the appeal is disposed of and, on such application, the court may, if it thinks proper to do so, direct that the operation of the notice be suspended until the appeal is disposed of.

(3) A person on whom a direction referred to in paragraph (1) is served may, within 7 days beginning on the day on which the direction is served on him or her, appeal against the direction to a judge of the District Court in the district court district in which the direction was served and in determining the appeal the judge may, if he or she is satisfied that it is reasonable to do so, confirm, vary or cancel the notice.

(4) Where, on the hearing of an appeal under this Regulation, a direction is confirmed, notwithstanding paragraph (1), the judge by whom the appeal is heard may, on the application of the appellant, suspend the operation of the direction for such period

as in the circumstances of the case the judge considers appropriate.

(5) A person who—

(a) brings an appeal under paragraph (3), or

(b) applies for the suspension of the operation of a direction under paragraph (4) shall at the same time notify the Agency of the appeal or application, and the grounds for the appeal or application.

Injunctive Relief

15E. (1) Where, on application by the Agency to the High Court, the Court is satisfied that an operator has failed to comply with a direction or a requirement of these Regulations, the Court may by order—

(a) direct the person to comply with the direction or requirement, and

(b) make such other provision, including provision in relation to the payment of costs, as the Court considers appropriate.

(2) An application for an order under this Regulation shall be by motion, and the High Court, when considering the matter, may make such interim or interlocutory order as it considers appropriate.

(3) An application for an order under this Regulation may be made whether or not there has been a prosecution for an offence under these Regulations in relation to the activity concerned, and shall not prejudice the initiation of a prosecution for an offence under these Regulations in relation to the activity concerned.

Authorised Officer

15F. (1) The Agency may appoint in writing one or more of its officers, as it considers appropriate, to be an authorised officer or authorised officers for the purposes of ensuring compliance with these Regulations.

(2) Every authorised officer appointed under this Regulation shall be furnished with a warrant of his or her appointment and shall if requested by any person thereby affected, produce such warrant of appointment to that person for inspection.

(3) An appointment under this Regulation shall cease—

(a) if the Agency revokes the appointment,

(b) in the case of an appointment that is for a fixed period, on the expiry of the period, or

(c) if the person appointed ceases to be an officer of the Agency.

(4) An authorised officer may, for the purposes of these Regulations—

(a) subject to paragraph (7) enter on any premises at all reasonable times for any purpose connected with these Regulations,

(b) at such premises inspect and take copies of, any books, records, other documents (including documents stored in non-legible form) or extracts therefrom, which he or she finds in the course of his or her inspection,

(c) remove such photographs, books, records or documents from such premises and detain them for such period as he or she reasonably considers to be necessary for the purposes of his or her functions under these Regulations,

(d) require the operator or his or her agent or employee or any person at the premises or person in charge of the premises and any person employed there to give to him or her such assistance and information and to produce to him or her such books, documents or other records (and in the case of documents or records stored in non-legible form, produce to him or her a legible reproduction thereof) that are in that person's power or procurement, as he or she may reasonably require for the purposes of his or her functions under these Regulations,

(e) direct that any matter or thing not be moved from the premises without his or her consent, or

(f) secure for later inspection any premises or part of any premises for such period as he or she considers reasonably necessary for the purposes of his or her functions under these Regulations.

(5) When performing a function under these Regulations, an authorised officer may, subject to any warrant under paragraph (6), be accompanied by such number of authorised officers or members of the Garda Síochána as he or she considers appropriate.

(6) An authorised officer shall not enter a dwelling other than—

(a) with the consent of the occupier, or

(b) in accordance with a warrant issued under paragraph (7).

(7) Upon the sworn information of an authorised officer, a judge of the District Court may, if satisfied that there are reasonable grounds for believing that books, records or other documents (including documents in non-legible form referred to in paragraph (4)(d)) are being kept or stored in any dwelling, issue a warrant authorising a named authorised officer accompanied by such other authorised officers or members of the Garda Síochána as may be necessary, at any time or times, not later than one month from the date of issue of the warrant, to enter the dwelling and perform the functions of an authorised officer under subparagraphs (a) to (f) of paragraph (4).

(8) Any person who obstructs or interferes with an authorised officer or a member of

the Garda Síochána in the course of exercising a power conferred on him or her by these Regulations or a warrant under paragraph (7), or impedes the exercise by the officer or member, as the case may be, of such power, or fails or refuses to comply with a request or requirement of, or to answer a question asked by, the officer or member pursuant to this Regulation, or in purported compliance with such request or requirement or in answer to such question gives information to the officer or member that he or she knows to be false or misleading in any material respect, is guilty of an offence.

(9) Where an authorised officer believes, upon reasonable grounds, that a person has committed an offence under these Regulations he or she may require that person to provide him or her with his or her name and the address at which he or she ordinarily resides.

(10) A person who falsely represents himself or herself to be an authorised officer is guilty of an offence.

(11) A statement or admission made by a person pursuant to a request or requirement or in answer to a question under this Regulation shall not be admissible as evidence in proceedings brought against that person for an offence (other than an offence under paragraph 8).

(12) In this Regulation—

“premises” means as respects entry pursuant to paragraph (4), any place and shall include any building, ship or other vessel, aircraft, railway wagon and includes a lorry or container used to transport vehicles, or a lorry found on the lands,

“record” includes, in addition to a record in writing—

(a) a disc, tape, sound-track or other device in which information, sounds or signals are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced in legible or audible form,

(b) a film, tape or other device in which visual images are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced in visual form,

(c) a photograph, and

any reference to a copy of a record includes—

(i) in the case of a record to which paragraph (a) applies, a transcript of the sounds or signals embodied therein,

(ii) in the case of a record to which paragraph (b) applies, a still reproduction of the images embodied therein, and

(iii) in the case of a record to which paragraphs (a) and (b) apply, such a transcript

together with such a still reproduction.”,

and

(c) by substituting for Regulation 16 the following:

“16. (1) A person who fails to comply with these Regulations is guilty of an offence.

(2) A person guilty of an offence under these Regulations shall be liable—

(a) on summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding 6 months or both, or

(b) on conviction on indictment, to a fine not exceeding €500,000 or to imprisonment for a term not exceeding 3 years or both.

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

(4) An operator who fails to surrender allowances as required by Regulation 12(3) by 30 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.

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

(6) An excess emissions penalty under this Regulation may be recovered by the Agency, as a simple contract debt in a court of competent jurisdiction.

(7) Where a person is convicted of an offence under these Regulations, the court shall, unless it is satisfied that there are special and substantial reasons for not so doing, order the person to pay to the Agency the costs and expenses measured by the court, that were incurred by the Agency in relation to the investigation, detection and prosecution of the offence, including costs and expenses incurred in the taking of samples, the carrying out of tests, examinations and analyses and in respect of the remuneration and other expenses of employees or persons engaged by the Agency.

(8) Where a court imposes a fine or affirms or varies a fine imposed by another court for an offence under these Regulations, prosecuted by the Agency, it shall, on the

application of the Agency (made before the time of such imposition, affirmation or variation), provide by order for the payment of the amount of the fine to the Agency and such payment may be enforced by the Agency, as if it were due to it on foot of a decree or order made by the court in civil proceedings.

(9) Where an offence under these Regulations is committed by a body corporate and is proved to have been so committed with the consent, connivance of or to be attributable to any neglect on the part of a person, being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, that person, as well as the body corporate, is guilty of an offence and is liable to be proceeded against and punished as if he or she were guilty of the first mentioned offence.

(10) Summary proceedings for an offence under these Regulations may be brought and prosecuted by the Agency.

(11) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851 summary proceedings for an offence under these Regulations may be instituted not later than 2 years from the date of the offence.”.

3. (1) In respect 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, the operator of an installation shall, not later than 30 April 2010, submit to the Agency duly substantiated and independently verified emissions data, of such nature and in such form as shall be specified by the Agency for the purposes of the administration and implementation of the Directive with respect to the adjustment of the Community-wide quantity of allowances to be issued.

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

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

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

to the satisfaction of the Agency.

(3) (a) The Agency shall, not later than 30 June 2010, notify the Commission of the data received under this Regulation, if the Agency is satisfied that the operator has complied with paragraphs (1) and (2).

(b) In the case of an installation emitting greenhouse gases other than CO₂, the Agency may notify the Commission a lower amount of emissions according to the emission reduction potential of the installation.

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

(5) 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.

(6) 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;

“direction” means a direction issued by the Agency pursuant to this Regulation;

“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.

4. (1) Where an operator is entitled to a free allocation of allowances in accordance with the Directive, an operator shall, not later than 28 February 2011, submit to the Agency information, of such nature and in such form as shall be specified by the Agency for the purposes of the administration and implementation of the Directive with respect to the free allocation of allowances.

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

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

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

to the satisfaction of the Agency.

(3) Where an operator does not comply with paragraph (1) or (2), the Agency may determine the appropriate information for the free allocation of allowances to the operator.

(4) (a) Where the Agency makes a determination in accordance with paragraph (3), the Agency shall notify the operator of the determination.

(b) The Agency may recover from the operator referred to in subparagraph (a), as a simple contract debt in a court of competent jurisdiction, the costs that it has incurred in making the determination under this Regulation.

(5) The Agency shall, not later than 30 September 2011, 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 calculated in accordance with the rules referred to in Articles 10a(1) and Article 10c of the Directive.

(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, 10a and 10c of the Directive.

(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.

5. (1) (a) Subject to compliance with paragraph (3), the Agency may, with the approval of the Minister and following consultation with the operator, exclude from the Community scheme an installation which has reported to the Agency emissions of less than 25,000 tonnes of carbon dioxide equivalent and, where the installation carries out combustion activities, has a rated thermal input below 35 MW, excluding emissions from biomass, in each of the 3 years preceding the notification under paragraph (3)(a), and which is subject to measures that will achieve an equivalent contribution to emission reductions.

(b) The Agency may exclude a hospital under subparagraph (a) where the hospital undertakes equivalent measures.

(2) Where an installation has not been included in the Community scheme during the period from 2008 to 2012, the Agency may apply simplified requirements for monitoring, reporting

and verification for determining emissions in the 3 years preceding the notification under paragraph (3)(a).

(3) (a) The Agency shall notify the Commission of the installation to be excluded pursuant to paragraph (1), specifying the equivalent measures applying to the installation that will achieve an equivalent contribution to emission reductions that are in place, before the list of installations pursuant to Regulation 4(5) has to be submitted and at the latest when this list is submitted to the Commission.

(b) (i) The Agency shall confirm that monitoring arrangements are in place to assess whether an installation emits 25,000 tonnes or more of carbon dioxide equivalent, excluding emissions from biomass, in any one calendar year.

(ii) The Agency may allow simplified monitoring, reporting and verification measures for an installation with average annual verified emissions between 2008 and 2010 which are below 5,000 tonnes a year, in accordance with Article 14 of the Directive.

(c) The Agency shall confirm that where an installation emits 25,000 tonnes or more of carbon dioxide equivalent, excluding emissions from biomass, in any one calendar year or the measures applying to the installation that will achieve an equivalent contribution to emission reductions are no longer in place, the installation will be reintroduced into the Community scheme.

(d) The Agency shall publish the information referred to in subparagraphs (a), (b) and (c) for public comment.

(4) (a) Where, following a period of 3 months from the date of notification for public comment pursuant to paragraph (3)(d), the Commission does not object within a further period of 6 months, the exclusion of the installation shall be deemed approved.

(b) Following the surrender of allowances in respect of the period during which the installation is in the Community scheme, the installation shall be excluded and the Agency shall no longer issue free allowances to the installation pursuant to Article 10a of the Directive.

(5) (a) When an installation is reintroduced into the Community scheme pursuant to paragraph (3)(c), any allowances issued pursuant to Article 10a of the Directive shall be granted starting with the year of the reintroduction.

(b) Allowances issued to the installation referred to in subparagraph (a) shall be deducted from the quantity to be auctioned pursuant to Article 10(2) of the Directive.

(c) The installation referred to in subparagraph (a) shall stay in the Community scheme for the rest of the trading period.

(6) An installation shall not be excluded from the Community scheme, pursuant to this Regulation, before 1 January 2013.

SCHEDULE CATEGORIES OF ACTIVITIES

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 thresholds 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 Community scheme, 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 or catalytic post-combustion units. Units with a rated thermal input under 3 MW 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 Community scheme.

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.

6. From 1 January 2012 all flights which arrive at or depart from an aerodrome situated in the territory of a Member State to which the Treaty applies shall be included.

Activities	Greenhouse gases
Combustion of fuels in installations with a total rated thermal input exceeding 20 MW (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	Carbon dioxide

(including ferro-alloys) where combustion units with a total rated thermal input exceeding 20 MW are operated. Processing includes, inter alia, rolling mills, re-heaters, annealing furnaces, smitheries, foundries, coating and pickling

Production of primary aluminium Carbon dioxide and perfluorocarbons

Production of secondary aluminium where combustion units with a total rated thermal input exceeding 20 MW 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 20 MW 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 calcination 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 calcination of gypsum or production of plaster boards and other gypsum products, where combustion units with a total rated thermal input exceeding 20 MW 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 20 MW 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 these Regulations 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
Aviation Flights which depart from or arrive in an aerodrome situated in the territory of a Member State to which the Treaty applies. This activity shall not	Carbon dioxide

include:(a)flights performed exclusively for the transport, on official mission, of a reigning Monarch and his immediate family, Heads of State, Heads of Government and Government Ministers, of a country other than a Member State, where this is substantiated by an appropriate status indicator in the flight plan;(b)military flights performed by military aircraft and customs and police flights;(c)flights related to search and rescue, fire-fighting flights, humanitarian flights and emergency medical service flights authorised by the appropriate competent authority;(d)any flights performed exclusively under visual flight rules as defined in Annex 2 to the Chicago Convention;(e)flights terminating at the aerodrome from which the aircraft has taken off and during which no intermediate landing has been made;(f)training flights performed exclusively for the purpose of obtaining a licence, or a rating in the case of cockpit flight crew where this is substantiated by an appropriate remark in the flight plan provided that the flight does not serve for the transport of passengers and/or cargo or for the positioning or ferrying of the aircraft;(g)flights performed exclusively for the purpose of scientific research or for the purpose of checking, testing or certifying aircraft or equipment whether airborne or ground-based;(h)flights performed by aircraft with a certified maximum take-off mass of less than 5,700 kg;(i)flights performed in the framework of public service obligations imposed in accordance with Regulation (EEC) No. 2408/92 ⁶ on routes within outermost regions, as specified in Article 299(2) of the Treaty, or on routes where the capacity offered does not exceed 30,000 seats per year; and(j)flights which, but for this point, would fall within this activity, performed by a commercial air transport operator operating either:—fewer than 243 flights per period for three consecutive four-month periods, or—flights

with total annual emissions lower than 10,000 tonnes per year. Flights performed exclusively for the transport, on official mission, of a reigning Monarch and his immediate family, Heads of State, Heads of Government and Government Ministers, of a Member State may not be excluded under this point.

6 O.J. No. L240 24.8.1992 p. 8



GIVEN under my Official Seal,

22 April 2010.

JOHN GORMLEY,

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 provide for the partial transposition of EU Directive 2009/29/EC which improves and extends the EU Emissions Trading Scheme (ETS) so as to provide for a more efficient, more harmonised and fairer system. The revised ETS Directive (2009/29/EC) provides substantial amendments to the ETS Directive (2003/87/EC).

The purpose of these Regulations is to prepare for the revised operation of the EU ETS from 2013 onwards i.e. the third trading period. Specifically, this is to provide for the collection by the EPA of duly substantiated and verified emissions data from installations that will only be covered by the EU ETS from 2013, the publication and submission by the EPA to the European Commission of a national list of installations covered by the Directive, and the consideration in this list of the possible exclusion of certain small installations which are subject to measures that will achieve an equivalent contribution to emission reductions.

The Regulations also provide for some amendments to the European Communities (Greenhouse Gas Emissions Trading) Regulations 2004 (S.I. No. 437 of 2004) with respect to enforcement and compliance.

For the third trading period, there will be a single EU-wide cap and allowances will be allocated on the basis of harmonised rules. National allocation plans will therefore not be needed any more and as such the relevant provisions of the European Communities (Greenhouse Gas Emissions Trading) Regulations 2004 (S.I. No. 437 of 2004) and the European Communities (Greenhouse Gas Emissions Trading) (Amendment) Regulations 2005 (S.I. No. 706 of 2005) will be revoked in advance of the third trading period. Such

revocation will be undertaken as part of the transposition of the remaining provisions of the revised ETS Directive.

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. L257 10.10.1996 p. 26

6 O.J. No. L240 24.8.1992 p. 8

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