

Commission Implementing Regulation (EU) 2019/1842 of 31 October 2019 laying down rules for the application of Directive 2003/87/EC of the European Parliament and of the Council as regards further arrangements for the adjustments to free allocation of emission allowances due to activity level changes

COMMISSION IMPLEMENTING REGULATION (EU) 2019/1842

of 31 October 2019

laying down rules for the application of Directive 2003/87/EC of the European Parliament and of the Council as regards further arrangements for the adjustments to free allocation of emission allowances due to activity level changes

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC<sup>(1)</sup>, and in particular Article 10a(21) thereof,

Whereas:

- (1) Directive 2003/87/EC establishes a system for greenhouse gas emission allowance trading within the Union in order to promote reductions of greenhouse gas emissions in a cost-effective and economically efficient manner. In its Article 10a, it provides for the transitional free allocation of allowances.
- (2) Commission Delegated Regulation (EU) 2019/331<sup>(2)</sup> lays down the transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC for the fourth trading period from 2021 until 2030.
- (3) In accordance with Article 10a(20) of Directive 2003/87/EC, the allocation of emission allowances free of charge to installations whose operations have increased or decreased, as assessed on the basis of a rolling average of two years, by more than 15 % compared to the historical activity levels is to be adjusted in a symmetrical manner. To implement the adjustments of allocation of emission allowances due to changes in activity, since the installations are divided in sub-installations in accordance with Article 10 of Delegated Regulation (EU) 2019/331, it is appropriate to compare these changes against the historical activity levels at sub-installation level.
- (4) The collection of high quality and independently verified data is necessary for adjustments to free allocation. Consistency in the accuracy and quality of the data monitored and reported to determine free allocation should be ensured. For that purpose, specific rules for reporting of activity levels at sub-installation level should be provided, taking into account the relevant provisions of Delegated Regulation (EU) 2019/331. Data collected from operators in accordance with these rules should reflect the actual operations of sub-installations.

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*Changes to legislation: This version of this Regulation was derived from EUR-Lex on IP completion day (31 December 2020 11:00 p.m.). It has not been amended by the UK since then. Find out more about legislation originating from the EU as published on legislation.gov.uk. (See end of Document for details)*

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- (5) Operators should report the requested data annually. Data should be monitored in accordance with the requirements on monitoring pursuant to Article 8 of Delegated Regulation (EU) 2019/331.
- (6) To ensure consistency between verification of annual emissions reports pursuant to Article 15 of Directive 2003/87/EC and activity level data, as well as to make use of synergies, it is appropriate to use the legal framework set by measures in accordance with Commission Implementing Regulation (EU) 2018/2067<sup>(3)</sup>.
- (7) In order to prevent manipulation or abuse of the system for adjustments of allocations, avoid undue administrative burden and ensure that changes to the allocations are carried out in an effective, non-discriminatory and uniform manner, further arrangements for the adjustments of free allocation of sub-installations should apply when activity level have increased or decreased by more than 15 % compared to the historical activity level. The average activity level should be defined as the arithmetic mean of the two annual activity levels of two full calendar years of operation. The first year of calculation of the average activity level should be the first year of each allocation period. If the comparison of the historical activity level and the average activity level presents a difference of more than 15 %, then the free allocation should be adjusted by the exact percentage of the activity level change. If a subsequent change of activity level occurs within the same 5 % interval, beyond 15 %, then the allocation should remain the same. If a subsequent change exceeds the 5 % interval within which the previous adjustment fell (e.g. 20-25 %, 25-30 % and so on), the adjustment in that case should also be as the exact percentage change in the average activity level.
- (8) To avoid undue administrative burden, adjustments should be considered whenever changes in the level of activity of a sub-installation would lead to an annual adjustment in the level of free allocation of the sub-installation of 100 allowances or more.
- (9) In order to prevent manipulation or abuse of the system and to ensure that the changes to the allocations are carried out in an effective, non-discriminatory and uniform manner, the new entrants and the new sub-installations should be treated in the same manner.
- (10) Article 10a(1) of Directive 2003/87/EC requires transitional harmonised measures for free allocation of emission allowances to take place in a manner that provides incentives for reductions in greenhouse gas emissions and energy efficient techniques. In order to maintain incentives to reduce emissions when defining further arrangements for the adjustment of free allocations to sub-installations whose operations have increased or decreased by more than 15 % compared to the historical activity levels, changes in the operation of sub-installations other than changes in activity levels should also be considered. This should cover improvements of energy efficiency, changes in heat supply, the exchangeability of fuel and electricity, production of high value chemicals, changes in the production of vinyl chloride monomer as well as the energy recovery of waste gases. In order to maximise such incentives to reduce emissions, it is appropriate to consider such changes at sub-installation level.

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- (11) For better alignment of production changes to free allocation, emission allowances should not be issued for sub-installations reporting a cessation of operations as of the year following the cessation.
- (12) The measures provided for in this Regulation are in accordance with the opinion of the Climate Change Committee,

HAS ADOPTED THIS REGULATION:

**Modifications etc. (not altering text)**

- C1** Regulation modified (7.2.2022) by [S.I. 2020/1265](#), **Sch. 8A para. 5** (as inserted by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) Order 2021 \(S.I. 2021/1455\)](#), arts. 2, **27**)

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- (1) [OJ L 275, 25.10.2003, p. 32.](#)
- (2) Commission Delegated Regulation (EU) 2019/331 of 19 December 2018 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council ([OJ L 59, 27.2.2019, p. 8.](#))
- (3) Commission Implementing Regulation (EU) 2018/2067 of 19 December 2018 on the verification of data and on the accreditation of verifiers pursuant to Directive 2003/87/EC of the European Parliament and of the Council ([OJ L 334, 31.12.2018, p. 94.](#))

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