

Act
**Transposing Directive 2003/87/EC establishing a scheme for greenhouse gas
emission allowance trading within the Community**
**(*Gesetz zur Umsetzung der Richtlinie 2003/87/EG über ein System für den Handel mit
Treibhausgasemissionszertifikaten in der Gemeinschaft*)^{*)}**

of 8 July 2004

The *Bundestag* has adopted the following Act with the consent of the *Bundesrat*:

Article 1
Act on Trading in Greenhouse Gas Emission Allowances
(*Gesetz über den Handel mit Berechtigungen zur Emission von Treibhausgasen*)

Greenhouse Gas Emissions Trading Act
(*Treibhausgas-Emissionshandelsgesetz – TEHG*)

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^{*)} The present Act serves to transpose Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ EU L 275, p. 32).

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Part 1

General provisions

Section 1

Purpose of the Act

The purpose of the present Act is to create the foundation for greenhouse gas emissions trading in a Community-wide emissions trading scheme for activities emitting particular quantities of greenhouse gases which is to contribute to worldwide climate protection through a cost-effective reduction of greenhouse gases.

Section 2

Scope

(1) The present Act applies to emissions of the greenhouse gases listed in Annex 1 to the present Act through the activities designated therein. The present Act also applies to

those installations listed in Annex 1 which are a part of an installation or of an ancillary installation of an installation not listed in Annex 1, which are separately subject to licensing under the law on immission control.

(2) In the case of the installations listed in Annex 1, the scope of the present Act shall include all

1. parts of installations and procedural steps which are necessary for operation, and
2. ancillary installations which are connected physically and in terms of technical operation with the parts of installations and procedural steps in accordance with No. 1 and which may be significant to the generation of the greenhouse gases listed in Annex 1.

(3) The prerequisites set out in Annex 1 shall also be deemed to have been satisfied if several installations of the same type are in a close physical and operational connection and together will reach or exceed the relevant output limitations or installation sizes. A close physical connection and in terms of technical operation shall be deemed to apply if the installations

1. are located on the same industrial premises,
2. are connected with common operating equipment, and
3. serve a comparable technical purpose.

(4) The present Act shall not apply to the emissions of installations used for the research, development or testing of new substances, fuels, products or procedures on a laboratory scale or at pilot plant level; this shall also include those installations on a laboratory scale or at pilot plant level in which new products are manufactured in the quantity necessary for the testing of their characteristics by third parties prior to market introduction insofar as the new products are still being further researched or developed.

(5) Installations in accordance with Annex 1 Nos. I to V exclusively for the incineration of hazardous or municipal waste – regardless of whether for disposal or recycling –, as well as installations in accordance with section 2 of the Act on Granting Priority to Renewable Energy Sources (*Gesetz für den Vorrang Erneuerbarer Energien*) of 29 March 2000 (Federal Law Gazette [BGBl.] Part I p. 305) in the version amended by Article 7 of the Act of 23 July 2002 (Federal Law Gazette Part I p. 2778) shall not fall within the scope of the present Act.

Section 3

Definitions

(1) Emissions within the meaning of the present Act shall mean the release of greenhouse gases through an activity within the meaning of the present Act.

(2) Greenhouse gases within the meaning of the present Act shall be carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFC), perfluorocarbons and sulphur hexafluoride (SF₆).

(3) The activities listed in Annex 1 shall be deemed to constitute an activity within the meaning of the present Act.

(4) Allowance within the meaning of the present Act is the entitlement to emit one tonne of carbon dioxide equivalent during a specified period. One tonne of carbon dioxide equivalent shall be one tonne of carbon dioxide or the quantity of another greenhouse gas with a global-warming potential equivalent to one tonne of carbon dioxide. The Federal Government may by means of a statutory ordinance, which shall not require the consent of the *Bundesrat*, determine within international standards the carbon dioxide equivalents for the individual greenhouse gases.

(5) Responsible party within the meaning of the present Act shall be any natural or legal entity having direct decision-making authority for an activity within the meaning of the present Act and hereby bearing the economic risks of the activity. With regard to installations subject to licensing within the meaning of section 4 subsection (1) third sentence of the Federal Immission Control Act (*Bundes-Immissionsschutzgesetz*), the responsible party shall be the operator of the installation.

Part 2

Emissions permit and monitoring of emissions

Section 4

Emissions permit

(1) The release of greenhouse gases through an activity within the meaning of the present Act shall require a permit.

(2) The permit shall be conditional on the responsible party being able to monitor the emissions caused by its activity and to report thereon.

(3) The application for the permit shall be lodged with the competent authority by the responsible party at the latest with the allocation application in accordance with section 10. The following shall be enclosed with the application for a permit

1. the statement of the name and the address of the responsible party,

2. a description of the activity, its location and the nature and scope of the activities carried out and technologies used there,
3. a list of the raw and auxiliary materials the use of which is likely to lead to emissions,
4. information on the sources of emissions,
5. information on measures planned to monitor and report emissions in accordance with section 5,
6. a statement as to when the installation was or is to be commissioned, and
7. all documents required to examine the prerequisites for a permit.

The application shall also include a non-technical summary of the details referred to in the second sentence.

(4) The competent authority can prescribe that the applicant must only use the electronic form templates provided on its website and that the form templates completed by the applicant are to be transmitted in electronic form. It shall announce requirements in accordance with the first sentence in good time prior to the expiry of the application periods in accordance with section 10 subsection (3) in the Federal Gazette and on the website of the competent authority.

(5) The permit shall contain the following information and provisions:

1. the name and address of the responsible party,
2. a description of the activity and of its emissions, as well as of the site in which the activity is carried out,
3. monitoring requirements, specifying monitoring methodology and frequency,
4. reporting requirements in accordance with section 5, and
5. an obligation to surrender allowances in accordance with section 6.

(6) With regard to installations subject to licensing in accordance with section 4 of the Federal Immission Control Act, the licence in accordance with the law on immission control shall be constituted by approval in accordance with subsection (1). Subsections (2) to (5) shall apply in the licensing procedure in accordance with the law on immission control insofar as they contain additional requirements.

(7) When it comes to installations within the meaning of Annex 1 which were approved prior to 15 July 2004 in accordance with the provisions of the Federal Immission Control Act, the requirements of sections 5 and 6 subsection (1) shall be deemed to be a component of this approval. Where in individual cases the additional provisions necessary for the implementation of the present Act are not contained in the licensing procedure in

accordance with the law on immissions, and approval particularly requires additional details with regard to monitoring and reporting, the competent authority may adjust the licence which has been granted by means of a subsequent order in accordance with section 17 of the Federal Immission Control Act. The operators shall report installations in accordance with the first sentence to the competent authority within three months after the entry into force of the present Act.

(8) If the responsible party fails to comply with the obligations designated in section 5, measures in accordance with sections 17 and 18 of the present Act shall take priority over measures in accordance with section 17 of the Federal Immission Control Act. Sections 20 and 21 of the Federal Immission Control Act shall not apply in the event of violations of duties in accordance with section 5. If the responsible party fails to comply with the obligations designated in section 6 subsection (1), the provisions of the present Act shall apply exclusively.

(9) The responsible party shall be obliged to inform the competent authority of a planned change to the activity, in particular to the location, to the mode of operation or to the scale of operation, as well as of the closure of an installation designated in Annex 1, at least one month prior to its implementation where this may have an impact on the emissions.

(10) If the identity or the legal form of the responsible party changes, the new responsible party shall notify this to the competent authority with no undue delay after the change.

(11) The authority competent in accordance with section 20 subsection (1) first sentence shall notify the authority competent in accordance with section 20 subsection (1) second sentence with no undue delay that approval has been granted for an installation covered by Annex 1. Where impacts on the emissions are anticipated, the competent authorities shall also announce the complete or partial closure of installations, as well as the change, withdrawal or recall of approvals.

Section 5

Emissions monitoring and reporting

(1) The responsible party shall from 1 January 2005 onwards monitor the emissions caused by its activity in a calendar year in accordance with Annex 2 Part I and report to the competent authority on the emissions in accordance with Annex 2 Part II to this Act by 1 March of the following year. The Federal Government may regulate on details to determine the emissions to be monitored in accordance with Annex 2 Part I to this Act by means of a statutory ordinance, which shall require the consent of the *Bundesrat*.

(2) Section 4 subsection (4) shall apply *mutatis mutandis*.

(3) Prior to being submitted, the emission report in accordance with subsection (1) must be verified by a verifier accredited by the competent authority in accordance with Annex 3 to the present Act. Designation as a verifier shall be effected on application where the applicant satisfies the requirements in accordance with Annex 4 to the present Act, notwithstanding further requirements in accordance with the fourth sentence. Without further verification, the following shall be accredited on application

1. independent environmental auditors or environmental audit organisations holding a licence in accordance with the Environmental Audit Act (*Umweltauditgesetz*) which are empowered for the activities covered by their respective license to verify declarations in accordance with subsection (1), and
2. persons, who subject to the present Act or on the basis of the present Act, have been publicly appointed as verifiers to verify emission reports in accordance with section 36 subsection (1) of the Industrial Code (*Gewerbeordnung*).

The Federal Government is herewith empowered by means of a statutory ordinance with the consent of the *Bundesrat* to detail the prerequisites and the procedure of the verification, as well as the prerequisites and the procedure of the accreditation of verifiers by the competent authority.

(4) The emission report in accordance with subsection (1) and the report on verification in accordance with subsection (3) shall be examined by the competent authority on a random basis and forwarded to the authority competent in accordance with section 20 subsection (1) second sentence at the latest by 31 March of the next year within the meaning of section (1).

Part 3

Allowances and allocation

Section 6

Allowances

(1) The responsible party shall by 30 April of a year, for the first time in 2006, surrender a number of allowances to the competent authority corresponding to the emissions caused by its activity in the previous calendar year.

(2) Allowances shall be allotted and issued to the responsible parties by the competent authority in accordance with section 9.

(3) The allowances shall be transferrable between responsible parties, as well as between entities within the European Union or between entities within the European Union and entities in third countries within the meaning of section 13 subsection (3).

(4) The allowances shall be valid in each case for an allocation period. The first allocation period shall commence on 1 January 2005 and end on 31 December 2007. The subsequent allocation periods shall cover a period of five years each. Allowances of an expired allocation period shall be transferred four months after the end of an allocation period into allowances of the ongoing allocation period. The Act on the National Allocation Plan (*Gesetz über den nationalen Zuteilungsplan*) can provide for derogations from the fourth sentence for a transfer of allowances from the first to the second allocation period. The holder of an allowance can waive it at any time and demand its cancellation.

Section 7

National allocation plan

The Federal Government shall adopt a national allocation plan for each allocation period. This shall form the basis for an Act on the National Allocation Plan; allocation shall be effected on the basis of the Act. The allocation plan shall contain a determination of the overall quantity of the allowances to be allocated in the allocation period, as well as rules in accordance with which the overall quantity of the allowances is allocated and issued to the responsible parties for the individual activities. The overall quantity of the allowances that are to be allocated is to be in a reasonable proportion to emissions from sectors of the economy which do not fall within the scope of the present Act. The provisions for additional new entrants and extensions of installations after commencement of the first allocation period shall be in the respective Acts on the national allocation plans for the allocation periods 2005 to 2007 and 2008 to 2012 such that as soon as the reserve provided for in the Acts has been exhausted, or further allocation applications would exhaust them, additional sufficient allowances are available for free allocation.

Section 8

Procedures of the development of the plan, notification

(1) The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety shall publish the draft of the national allocation plan for the second and for every other allocation period that has been coordinated within the Federal Government after a hearing of the *Länder* at the latest three months prior to the time designated in subsection (3) in the Federal Gazette and on its website over a period of six weeks. Anyone may make comment on the draft until the third working day after expiry of the Internet publication. The statements submitted within the period in accordance with the second sentence shall be taken into consideration.

(2) The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety shall enclose with the resolution in accordance with section 7 first sentence, in agreement with the Federal Ministry of Economics and Labour, a list which, subject to the

decision on allocation in accordance with section 9, shows the allocation volume planned for each activity.

(3) The allocation plan, including the list in accordance with subsection (2), shall be forwarded for the second and each further allocation period 18 months prior to its respective commencement to the Commission of the European Communities and the other Member States and, at the latest at these times, published in the Federal Gazette and via the Internet.

(4) The Federal Government may by means of a statutory ordinance which does not require the consent of the *Bundesrat* issue provisions regarding the data to be collected for drawing up the national allocation plan for the next allocation period, as well as on the procedure for their collection by the competent authority.

Section 9

Allocation of allowances

(1) Responsible parties shall have for each activity within the meaning of the present Act a right to the allocation of allowances in accordance with the Act on the National Allocation Plan.

(2) The allocation shall be effected in each case related to an activity for an allocation period. The allocation decision shall determine in accordance with the Act on the National Allocation Plan which portions are to be issued annually. The competent authority shall issue these portions, apart from when including or expanding an activity after this time, until 28 February of a year for which allowances are to be surrendered.

Section 10

Allocation procedure

(1) The allocation shall be contingent on a written application being lodged with the competent authority. The application shall include the documents necessary to verify the claim in accordance with section 9 subsection (1). The information in the allocation application must have been verified by a verifier accredited by the competent authority. Without further verification of the content of the qualification, on request

1. independent environmental auditors or environmental audit organisations, which are entitled within the area covered by their respective license in accordance with the Environmental Audit Act to verify in accordance with the third sentence, and
2. persons who in accordance with section 36 subsection (1) of the Industrial Code have been publicly appointed as verifiers to verify allocation applications in accordance with the third sentence

shall be accredited free of charge.

(2) Section 4 subsection (4) shall apply *mutatis mutandis*.

(3) Allocation applications for the first allocation period shall be made by the 15th working day after the entry into force of the Act on the National Allocation Plan; allocation applications for each further allocation period shall be made in each case by 31 March of the year which precedes the start of the allocation period. There shall be no right thereafter. The first and second sentences shall not apply in the event of the inclusion or expansion of an activity after this time.

(4) The allocation decision shall be handed down at the latest three months prior to the start of the allocation period; this shall not apply in the event of the inclusion or expansion of an activity after this time. In derogation from the first half of the first sentence, the allocation decision for the first allocation period shall be handed down at the latest on the 30th working day after the expiry of the application deadline. The authority competent in accordance with *Land* law shall receive a copy of the allocation decision issued to responsible parties which exercise an activity in accordance with section 3 subsection (3) in their area of competence.

(5) The Federal Government may regulate the details of the allocation procedure, in particular

1. the information and documentation to be requested in the application in accordance with subsection (1), as well as the nature of the proof to be provided,
2. the criteria for the verification of allocation applications in accordance with subsection (1) third sentence, and
3. the prerequisites and the procedure for the accreditation of verifiers by the competent authority

by means of a statutory ordinance which shall not require the consent of the *Bundesrat*.

Section 11

Verification of the allocation decision

The competent authority may also subsequently verify the correctness of the information provided in the allocation procedure. Verification shall be carried out in particular if there are indications that the allocation decision is based on incorrect information.

Section 12

Appeals against the allocation decision

An objection and rescissory action against allocation decisions in accordance with section 9 shall not have any suspensive effect.

Section 13

Recognition of allowances and emission credits

(1) Allowances issued by other Member States of the European Union in application of Directive 2003/87/EC for the ongoing allocation period shall have the same status as allowances issued in the Federal Republic of Germany.

(2) Emission credits on the basis of projects in accordance with Article 6 and Article 12 of the Kyoto Protocol to the United Nations Framework Convention on Climate Change of 11 December 1997 (Federal Law Gazette 2002 Part II p. 966) shall be transferred into allowances by the competent authority in accordance with Directive 2003/87/EC. The details on the transfer of emission credits shall be regulated by a law.

(3) Allowances which are issued by third countries with which agreements have been concluded on the mutual recognition of allowances in accordance with Article 25 (1) of Directive 2003/87/EC shall be transferred into allowances by the competent authority in accordance with the provisions drawn up on the basis of Article 25 (2) of Directive 2003/87/EC. The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety, in agreement with the Federal Ministry of Economics and Labour, may regulate details on the transfer of such allowances by means of a statutory ordinance which shall not require the consent of the *Bundesrat*.

Section 14

Emissions trading register

(1) The competent authority shall in accordance with Regulation... [insert: designation and source of the regulation proposed by the Commission of the European Communities under the working title "Draft Commission Regulation (EC) No .../2004 of xx/xx/2004 for a standardised and secured system of registries pursuant to Article 19 (3) of Directive 2003/87/EC and Article 6 (1) of Decision 2003/xx/EC" (no German translation available)] keep an emissions trading register in the form of a standardised electronic database. The register shall contain accounts for allowances and identify restrictions on disposal. It shall contain a list of the verified and corrected emissions of the individual activities. When setting up the register, the respective best available technology shall be used to guarantee data protection and security. Personal data required to establish and maintain the accounts shall be deleted at the end of an allocation period if an account no longer contains any allowances and the account holder requests the closure of its account.

(2) Each responsible party shall receive an account in which the issuance, possession, transfer and surrender of allowances is recorded. Surrendered allowances shall be cancelled by the competent authority. Each person shall receive on request an account in

which possession and transfer of allowances are recorded. The owner of an account can dispose of its account in accordance with the present Act and Regulation... [insert: designation and source of the regulation proposed by the Commission of the European Communities under the working title “Draft Commission Regulation (EC) No .../2004 of xx/xx/2004 for a standardised and secured system of registries pursuant to Article 19 (3) of Directive 2003/87/EC and Article 6 (1) of Decision 2003/xx/EC” (no German translation available)].

(3) Each account holder shall have freedom of access to the information stored in its accounts.

(4) The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety may by means of a statutory ordinance which shall not require the consent of the *Bundesrat* regulate details on the establishment and keeping of the register, in particular the questions listed in Annex V of Regulation ... [insert: designation and source of the regulation proposed by the Commission of the European Communities under the working title “Draft Commission Regulation (EC) No .../2004 of xx/xx/2004 for a standardised and secured system of registries pursuant to Article 19 (3) of Directive 2003/87/EC and Article 6 (1) of Decision 2003/xx/EC” (no German translation available)].

Part 4

Trading in allowances

Section 15

Applicability of provisions on banking

Allowances in accordance with the present Act shall not be deemed to be financial instruments within the meaning of section 1 subsection (11) of the Banking Act (*Kreditwesengesetz*). Derivatives within the meaning of section 1 subsection (11) fourth sentence of the Banking Act shall also be deemed to be forward transactions whose price depends directly or indirectly on the stock exchange or market price of allowances.

Section 16

Transfer of allowances

(1) The transfer of allowances shall be effected by agreement and entry in the account of the purchaser designated in section 14 subsection (2). The entry shall be effected on order of the seller to the account-servicing authority to transfer allowances from its account to the account of the purchaser.

(2) Insofar as an allowance has been entered for someone, the content of the register shall be deemed to be correct. This shall not apply if the recipient of issued allowances is aware of the incorrectness at the time they are issued.

P a r t 5

S a n c t i o n s

Section 17

Enforcement of the duty to report

(1) If no report meeting the requirements in accordance with section 5 is submitted to the competent authority by 31 March of a year, for the first time in 2006, it shall have the account of the responsible party blocked for transferring allowances to third parties. This shall not apply if the report was submitted to the authority competent in accordance with section 20 subsection (1) first sentence by 1 March of a year. The block shall be rescinded without delay as soon as the responsible party has submitted to the authority competent in accordance with the first sentence a report complying with the requirements in accordance with section 5 or the emissions are estimated in accordance with section 18 subsection (2).

(2) An objection and a rescissory action against the account blocking ordered in accordance with subsection (1) first sentence shall not have any suspensive effect.

Section 18

Enforcement of the obligation to surrender

(1) If the responsible party fails to comply with its obligation in accordance with section 6 subsection (1), the competent authority shall set a payment obligation of 100 Euro, in the first allocation period of 40 Euro, for each tonne of carbon dioxide equivalent emitted for which the responsible party has not surrendered any allowances. It shall be possible to waive setting a duty to pay if the responsible party was unable to comply with its obligation in accordance with section 6 subsection (1) because of force majeure.

(2) Where the responsible party has not properly reported on the emissions caused by its activity, the competent authority shall estimate the emissions caused by the activity in

the previous calendar year. The estimate shall form the irrefutable basis for the obligation in accordance with section 6 subsection (1). The estimate shall not be carried out if the responsible party complies with its duty to report properly at the hearing on the imposition notice in accordance with subsection (1).

(3) The responsible party shall remain obliged to surrender the missing allowances, in the event of subsection (2) in accordance with the estimate that has been carried out, by 30 April of the following year. If the responsible party fails to surrender the missing allowances by 30 April of the following year, allowances to the allocation or issuance of which the responsible party has a right shall be offset against its obligation in accordance with the first sentence.

(4) The names of the responsible parties who violate their obligation in accordance with section 6 subsection (1) shall be published in the Federal Gazette. The publication shall be contingent on a definitive payment order.

Section 19

Regulatory offences

(1) Anyone who, intentionally or negligently,

1. carries out an activity without the necessary permit in accordance with section 4,
2. in contravention of section 4 subsection (3) fails to provide correct information or provides it incompletely,
3. in contravention of section 4 subsections (9) and (10) does not make reports, or fails to do so correctly, completely or in good time,
4. acts in breach of a statutory ordinance in accordance with section 10 subsection (5) No. 1 where it refers for a specific offence to this administrative fine provision, or
5. in contravention of section 21 subsection (2) fails to provide information, or fails to do so correctly, completely or in good time, fails to tolerate a measure, to submit documents, or acts in breach of any other obligation stipulated there

shall be deemed to have committed a regulatory offence.

(2) The regulatory offence can be sanctioned with an administrative fine of up to fifty thousand Euro.

Part 6

Joint Provisions

Section 20

Competences

(1) The competent authority for the enforcement of sections 4 and 5 regarding installations subject to licensing within the meaning of section 4 subsection (1) third sentence of the Federal Immission Control Act shall be the authorities competent therefor in accordance with *Land* law. The Federal Environment Agency shall be competent in other respects.

(2) The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety may transfer the full or partial exercise of the tasks of the Federal Environment Agency in accordance with the present Act with the sovereign powers necessary herefor by means of a statutory ordinance, which shall not require the consent of the *Bundesrat*, to a legal entity if the latter guarantees that the transferred tasks are carried out properly and centrally for the federal territory. This shall not apply to powers in accordance with Part 5 of the present Act. A legal entity shall be deemed to provide a guarantee within the meaning of first sentence if

1. those who exercise the management or representation of the legal entity are reliable and qualified,
2. the legal entity has the necessary equipment and structure as well as sufficient starting capital to carry out its tasks, and
3. a close economic or organisational relationship with the entities falling under the scope of the present Act is ruled out.

The party granted contractor status shall be subject to the supervision of the Federal Environment Agency.

Section 21

Monitoring

(1) The authority competent in each case in accordance with section 20 subsection (1) shall monitor the implementation of the present Act and of the statutory ordinances based on the present Act.

(2) Responsible parties, as well as owners and proprietors of plots of land on which activities are implemented shall be obliged vis-à-vis the staff of the competent authority and their representatives

1. to permit access to the land, and
2. to permit the implementation of tests, including the monitoring of emissions during business hours, as well as
3. to provide the information and documents which are needed to carry out their tasks.

Within the duties in accordance with the first sentence, the responsible parties shall provide staff as well as auxiliary materials.

(3) Section 52 subsections (5) and (7) of the Federal Immission Control Act shall apply *mutatis mutandis*.

Section 22

Cost of official acts in accordance with the present Act

The authority competent in accordance with section 20 subsection (1) second sentence shall levy cost-covering charges for official acts in accordance with the present Act. Expenditure associated therewith shall be refunded. The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety shall set by means of a statutory ordinance which shall not require the consent of the *Bundesrat* the amount of the fees and the expenditure to be refunded for official acts in accordance with the present Act and in accordance with statutory ordinances handed down on the basis of the present Act.

Section 23

Electronic communication

The competent authority can prescribe the use of the electronic form, as well as a specific encryption, for communications. It shall announce requirements in accordance with the first sentence in good time prior to the application deadlines in accordance with section 10 subsection (3) in its official publication gazette and on its website.

Section 24

Pooling

(1) The competent authority shall issue to responsible parties whose activity falls within the same field of activity in accordance with Annex I of Directive 2003/87/EC on request permission to form a pool of installations if a trustee is designated who guarantees the proper fulfilment of the obligations ensuing from subsection (2), and the Commission of the European Communities does not oppose it. Pools can be formed in the first and second allocation periods.

(2) If permission is given, the total amount of the allowances to which the responsible parties covered by the pool of installations are entitled shall be issued to the trustee in derogation from section 9. In accordance with section 6 subsection (1), the latter shall surrender a number of allowances which corresponds to the overall emissions generated in the previous calendar year by the activities covered by the pool. The trustee may not surrender allowances to third parties if one of the responsible parties covered by the pool has not submitted a report complying with the requirements in accordance with section 5. The sanctions in accordance with section 18 shall be imposed on the trustee; if the trustee fails to comply with its duty to pay, the provision contained in section 18 shall continue to apply.

(3) Applications to form a pool of installations shall be lodged with the competent authority at the latest five months prior to the commencement of the respective allocation period.

Section 25

Single installation

The competent authority shall establish on request that the operation of several installations within the meaning of Annex 1 No. VI, as well as VII to IX, which are operated by the same operator on the same site in an interconnected technical system is deemed as the operation of a single installation if the necessary precision is guaranteed in the monitoring of the emissions.

Annex 1

Activities	Greenhouse gas
Energy conversion/reforming	
I. Installations for the generation of electricity, steam, hot water, process heat or heated waste gas using fuels in a combustion installation (such as a power station, heat and power station, heating station, gas turbine installation, combustion engine installation, other combustion installation), including related pressure vessels, with a rated thermal input exceeding 50MW	CO ₂
II Installations for the generation of electricity, steam, hot water, process heat or heated waste gas using coal, coke, including petroleum coke, coal bricks, peat briquettes, fuel peat, natural wood, emulsified natural bitumen, heating oils, gaseous fuels (in particular coke oven gas, mine gas, basic oxygen furnace gas, refinery gas, synthesis gas, petroleum gas from tertiary mineral oil production, sewage treatment plant gas, biogas), methanol, ethanol, natural vegetable oils, vegetable oil methyl esters, untreated natural gas, liquefied petroleum gas, gases from public gas supply or hydrogen with a rated thermal input exceeding 20 MW but less than 50 MW in a combustion installation (such as a power station, heat and power station, heating station, gas turbine installation, combustion engine installation, other combustion installation), including related pressure vessels, not including combustion engine systems for drilling installations and emergency power-generating sets	CO ₂
III Installations for the generation of electricity, steam, hot water, process heat or heated waste gas using other solid or liquid fuels than those named in No. II in a combustion installation (such as a power station, heat and power station, heating station, gas turbine installation, combustion engine installation, other combustion installation), including related pressure vessels, with a rated thermal input exceeding 20 MW but less than 50 MW	CO ₂
IV Combustion engine installations to drive engines for the use of extra-light heating oil, diesel fuel, methanol, ethanol, natural vegetable oils, vegetable oil methyl esters or gaseous fuels (in particular coke oven gas, mine gas, basic oxygen furnace gas, refinery gas, synthesis gas, petroleum gas from the tertiary mineral oil production, sewage treatment plant gas, biogas, untreated natural gas, liquefied petroleum gas, gases from public gas supply, hydrogen) with a rated thermal input of 20MW or more, not including combustion engine installations for drilling installations with a rated thermal input exceeding 20 MW to less than 50MW	CO ₂
V Gas turbine installations to drive engines for the use of extra-light heating oil, diesel fuel, methanol, ethanol, natural vegetable oils, vegetable oil methyl esters or gaseous fuels (in particular coke oven gas, mine gas, basic oxygen furnace gas, refinery gas, synthesis gas, petroleum gas from the tertiary mineral oil production, sewage treatment plant gas, biogas, untreated natural gas, liquefied petroleum gas, gases from public gas supply, hydrogen) with a rated thermal input exceeding 20 MW, not including installations with a totally closed circuit with a rated thermal input exceeding 20MW but less than 50MW	CO ₂
VI Installations for the distilling or refining or other processing of crude oil or crude oil products in mineral oil or lubricant refineries	CO ₂
VII Installations for the dry distillation of coal or lignite (coking plants)	CO ₂
Ferrous metal production and processing	
VIII Installations for the roasting, melting or sintering of iron ores	CO ₂
IX Installations for the production or melting of pig iron or steel, including continuous casting, also where concentrates or secondary raw materials are used, with a melting rate of 2.5 tonnes or more per hour, also when operated in integrated iron and steelworks	CO ₂

Activities	Greenhouse gas
Mineral industry	
X Installations for the production of cement clinkers with a production output exceeding 500 tonnes per day in rotary kilns or exceeding 50 tonnes per day in other kilns	CO ₂
XI Installations for the firing of limestone or dolomite with a production output exceeding 50 tonnes of burned lime or burned dolomite per day	CO ₂
XII Installations for the production of glass, also in cases of using waste glass as raw material, including installations for the production of glass fibres, with a melting rate exceeding 20 tonnes per day	CO ₂
XIII Installations for the firing of ceramic products, insofar as the capacity of the combustion installation exceeds 4 m ³ and the setting density exceeds 300 kg/m ³	CO ₂
Other sectors of industry	
IV Installations for the production of pulp from timber, straw or similar fibrous materials	CO ₂
V Installations for the production of paper, paperboard or cardboard with a production output exceeding 20 tonnes per day	CO ₂

Requirements as to the monitoring of
greenhouse gas emissions and the submission of emission reports in accordance with section 5

Part I

Requirements as to the monitoring of greenhouse gas emissions

M o n i t o r i n g g r e e n h o u s e g a s e m i s s i o n s

Emissions shall be monitored either by calculation or on the basis of measurement.

C a l c u l a t i o n

Calculations of emissions shall be performed using the formula:

Activity data × Emission factor × Oxidation factor.

Activity data (fuel used, production rate, etc.) shall be monitored on the basis of supply data or measurement. Accepted emission factors shall be used. Activity-specific emission factors are acceptable for all fuels. Default factors are acceptable for all fuels except non-commercial ones (fuels from waste 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, 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 in accordance with Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control (OJ EC L 257 p. 26) shall be used unless the operator can demonstrate that activity-specific factors are more accurate. A separate calculation shall be made for each activity and installation, and for each fuel.

M e a s u r e m e n t

Measurement of emissions shall use standardised or accepted methods, and shall be corroborated by a supporting calculation of emissions.

B a l a n c i n g i n p u t s a n d o u t p u t s

The CO₂ emissions of installations within the meaning of Annex 1 Nos. VI as well as VII to IX shall be covered via the balancing and offsetting of the carbon contents of the CO₂-relevant inputs and outputs where these installations are regarded as a single installation in accordance with section 25. In the case of electric steelmaking, the metallurgy may only be covered in the total balancing and offsetting of the CO₂ emissions up to and including continuous casting. Combined power stations located at installations for the production of iron and steel may not be balanced together with the other installations. Carbon shall be converted in balancing with a factor 44/12 into carbon dioxide emissions.

The decision of the Commission in accordance with Article 14 (1) of Directive 2003/87/EC shall be taken into account when monitoring greenhouse gases.

Part II

Requirements as to the submission of emission reports

An emission report must contain the following information:

- A. Data on the installation, including
 - the name of the installation,
 - the address, including postcode and country,
 - the type and number of the activities carried out in the installation,
 - the address, telephone number, fax and e-mail details for a contact person, and
 - the name of the owner of the installation and of any parent company.
- B. For each activity carried out on the site for which emissions are calculated:
 - activity data,
 - emission factors,
 - oxidation factors,
 - overall emissions, and
 - insecurity factors.
- C. For each activity carried out on the site for which emissions are calculated:
 - overall emissions,
 - information on the reliability of the measurement methods, and
 - uncertainty factors.
- D. For emissions from 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.
- E. If several installations are regarded as a single installation within the meaning of section 25, a joint emission report shall be submitted for these installations.
- F. The decision of the Commission in accordance with Article 14 (1) of Directive 2003/87/EC shall be taken into account when submitting emission reports in accordance with section 5 subsection (1).

Criteria for verification in accordance with section 5 subsection (3) first sentence

A. General principles

1. Emissions from all installations listed in Annex 1 shall be subject to verification.
2. The verification process shall include consideration of the emissions declaration in accordance with section 5 subsection (1) and of emission monitoring during the preceding year.

It shall further 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 method.
3. Reported emissions may only be validated if reliable, credible data and information allow the emissions to be determined with a high degree of reliability. A high degree of reliability requires the operator to show that:
 - a) the reported data are reliable,
 - 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 (EMAS).

B. Methods

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 spot-checks 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 abovementioned 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.

C. Report

11. The verifier shall prepare a report on the validation process stating whether the report in accordance with section 5 subsection (1) is satisfactory. This report shall specify all issues relevant to the work carried out. A statement that the report is satisfactory may be made if, in the opinion of the verifier, the total emissions are not materially misstated.

Annex 4

Criteria for verifiers in accordance with section 5 subsection (3) second sentence

The verifier shall be independent of the operator whose declaration is being verified, carry out his activities in a sound and objective professional manner, and understand

- a) the requirements of the present Act, as well as the provisions and guidelines adopted by the Commission of the European Communities to lend concrete shape to the requirements of section 5,
- 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.

Article 2 Amendment of the Federal Immission Control Act

The Federal Immission Control Act in the version promulgated on 26 September 2002 (Federal Law Gazette Part I p. 3830), most recently amended by Article 7 of the Act of 6 January 2004 (Federal Law Gazette Part I p. 2), shall be amended as follows:

The following sentences shall be added to section 5 subsection (1):

“To comply with the precautionary duty in accordance with the first sentence No. 2, with installations which are subject to licensing which fall within the scope of the Greenhouse Gas Emissions Trading Act, the requirements of sections 5 and 6 subsection (1) of the Greenhouse Gas Emissions Trading Act shall be adhered to. With these installations, requirements to limit greenhouse gas emissions shall only be permissible in order to ensure that no harmful effects on the environment are caused within the sphere of influence of the installation in order to comply with the obligations in accordance with section 5 subsection (1) No. 1. In order to comply with the obligation to use energy efficiently in relation to emissions of carbon dioxide based on combustion or other processes of the installation, no requirements may be made with regard to these installations over and above the obligations based on the Greenhouse Gas Emissions Trading Act.”

Article 3 Entry into force

The present Act shall enter into force on the day after its promulgation.

The above Act is herewith issued. It
shall be promulgated in the Federal Law Gazette.

Berlin, 8 July 2004

Federal President
Horst Köhler

Federal Chancellor
Gerhard Schröder

Federal Minister
for the Environment, Nature Conservation and Nuclear Safety
Jürgen Trittin