Act Adjusting the Legal Basis for the Further Development of Emissions Trading

(Gesetz zur Anpassung der Rechtsgrundlagen für die Fortentwicklung des Emissionshandels)

of 21 July 2011

The Bundestag has adopted the following Act:

Article 1

Act on Trading in Greenhouse Gas Emission Allowances

(Greenhouse Gas Emissions Trading Act)

(Treibhausgas-Emissionshandelsgesetz – TEHG)

Contents

Part 1

General provisions

Section 1 Purpose of the Act
Section 2 Scope
Section 3 Definitions

Part 2

Approval and monitoring of emissions

Section 4 Emissions permit
Section 5 Emissions monitoring and reporting
Section 6 Monitoring plan

Part 3

Allowances and allocation

Section 7 Allowances
Section 8 Auctioning of allowances
Section 9 Allocation of free allowances to installation operators
Section 10 Statutory ordinance on allocation rules
Section 11 Standard allocation of free allowances to aircraft operators
Section 12 Allocation of free allowances from the special reserve
Section 13 Application for allocation from the special reserve
Section 14 Issuance of allowances

Section 15  Enforcement of obligations to return
Section 16  Recognition of allowances and emission credits
Section 17  Emissions trading register
Section 18  Exchange of emission credits for allowances

Part 4
Joint Provisions

Section 19  Competences
Section 20  Monitoring
Section 21  Verifiers
Section 22  Fees for official acts of federal authorities
Section 23  Electronic communication
Section 24  Single installation
Section 25  Change in the identity or legal form of the operator
Section 26  Exclusion of suspensive effect
Section 27  Exclusion for small emissions producers
Section 28  Entitlements to issue regulations

Part 5
Sanctions

Section 29  Enforcement of the duty to report
Section 30  Enforcement of the obligation to surrender
Section 31  Prohibition of operation against aircraft operators
Section 32  Administrative fine provisions

Part 6
Transitional provisions

Section 33  General transitional provision
Section 34  Transitional provision for installation operators
Section 35  Transitional provision for aircraft operators

Annex 1  Included activities and greenhouse gases
Annex 2  Requirements regarding the submission and approval of monitoring plans in accordance with sections 6 and 13, as well as regarding the monitoring of emissions and reporting in accordance with section 5
Annex 3  Requirements as to verification
Annex 4  Requirements of verifiers
Annex 5  Calculation of the specific emission reduction, as well as of the compensation amount in case of non-compliance with the voluntary undertaking in accordance with section 27 subsection (4)
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 system for the activities designated in Annex 1 Part 2 emitting particular quantities of greenhouse gases to contribute to worldwide climate protection through a cost-effective reduction of greenhouse gases.

Section 2
Scope

(1) The present Act shall apply to emissions of the greenhouse gases designated in Annex 1 Part 2 by the activities designated therein. The present Act shall also apply to the installations designated in Annex 1 Part 2 if they are parts of installations or ancillary installations of an installation not listed in Annex 1 Part 2.

(2) The scope of the present Act shall include, in the case of the installations designated in Annex 1 Part 2 Nos. 2 to 31, all

1. parts of installations and procedural steps which are necessary for the 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 Part 2.

The first sentence shall apply mutatis mutandis to combustion units in accordance with Annex 1 Part 2 No. 1.

(3) The preconditions 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 output limitations or installation sizes relevant in accordance with Annex 1. 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) If installations in accordance with Annex 1 Part 2 Nos. 2 to 30 are subject to licensing in accordance with section 4 subsection (1) third sentence of the Federal Immission Control Act (Bundes-Immissionsschutzgesetz), the stipulations in the licence in accordance with the law on immissions for the installation shall apply with regard to the delimitation of the installations in accordance with subsections (2) and (3). The first sentence shall apply
mutatis mutandis to combustion units in accordance with Annex 1 Part 2 No. 1. In cases falling under subsection (1) second sentence, the first sentence shall apply mutatis mutandis with regard to the stipulations in the licence in accordance with the law on immissions on the parts of installations or ancillary installations.

(5) The present Act shall not apply to:

1. installations or parts 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,

2. installations which are subject to licensing in accordance with section 4 subsection (1) third sentence of the Federal Immission Control Act and in which, in accordance with their licence in accordance with the law on immissions, other than for purposes of ignition and auxiliary firing, only sewage treatment plant gas, landfill gas, biogas or biomass within the meaning of Article 2 (2) second sentence (a) and (e) of Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJ L 140 of 5 June 2009, p. 16) in the respectively applicable version, may be used as fuel, and

3. installations or combustion units in accordance in accordance with Annex 1 Part 2 Nos. 1 to 6 for the incineration of hazardous or municipal waste which are subject to licensing in accordance with No. 8.1 or No. 8.2 of the Annex to the Ordinance on Installations which are Subject to Licensing (Verordnung über genehmigungsbedürftige Anlagen).

(6) With regard to aviation activities, the scope of the present Act shall include all emissions of an aircraft generated by means of the consumption of fuels. Fuel consumption shall include the fuel consumption of auxiliary engines. The present Act shall only apply to an aviation activity implemented by aircraft operators

1. which possess a valid German operating licence within the meaning of Article 3 of Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (OJ L 293 of 31 October 2008, p. 3) in the respectively applicable version, or

2. which are allocated to the Federal Republic of Germany as the competent administering Member State in accordance with Commission Regulation (EC) No 748/2009 of 5 August 2009 on the list of aircraft operators which performed an

All aviation activities implemented by aircraft operators from the beginning of the calendar year in which the preconditions in accordance with the third sentence are met for the first time shall fall within the scope of the present Act.

Section 3
Definitions

The following definitions shall apply to the present Act:

1. installation  
an establishment or other stationary facility,

2. installation operator  
a natural or legal entity or corporation having direct decision-making authority over an installation in which an activity in accordance with Annex 1 Part 2 Nos. 1 to 32 is implemented, and hereby bearing the economic risks; anyone who operates an installation subject to licensing within the meaning of the Federal Immission Control Act in which an activity in accordance with Annex 1 Part 2 Nos. 1 to 30 is implemented shall be deemed to be an installation operator in accordance with the first half of the sentence;

3. allowance  
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 an equivalent global-warming potential of one tonne of carbon dioxide equivalent;

4. operator  
an installation operator or aircraft operator;

5. emissions  
the release of greenhouse gases through an activity in accordance with Annex 1 Part 2; the forwarding of greenhouse gases in accordance with the Monitoring and Reporting Regulation shall be deemed equivalent to release;

6. emission reduction unit  
a unit within the meaning of section 2 No. 20 of the Project Mechanisms Act;

7. aircraft operator  
a natural or legal entity or corporation having direct decision-making authority over an
aircraft at the time it performs an aviation activity and which in so doing bears the economic risks of the aviation activity, or, where that person is not known or is not identified by the owner of the aircraft, the owner of the aircraft;

8. an aviation allowance
an allowance affording exclusively to aircraft operators the entitlement to emit one tonne of carbon dioxide equivalent during a specified period;

9. an aviation activity
an activity in accordance with Annex 1 Part 2 No. 33;

10. Monitoring and Reporting Regulation

11. production output
the maximum actual and legally permissible production volume per year;

12. activity
an activity designated in Annex 1 Part 2;

13. transport service
the product of distance and payload;

14. greenhouse gases
carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), partly fluorinated hydrocarbons (HFCs), perfluorocarbons (PFCs) and sulphur hexafluoride (SF₆).

15. monitoring plan
a description of the method used by an operator to calculate and report on its emissions;

16. certified emission reduction
a unit within the meaning of section 2 No. 21 of the Project Mechanisms Act.

Part 2
Approval and monitoring of emissions

Section 4
Emissions permit

(1) The installation operator shall require a permit to release greenhouse gases through an activity in accordance with Annex 1 Part 2 Nos. 1 to 32. The permit shall be issued by the competent authority on request of the installation operator if the competent
authority is able to ascertain the information in accordance with subsection (3) on the basis of the application documents submitted.

(2) The applicant shall enclose the following information with the permit application in particular:
1. the name and address of the installation operator,
2. a description of the activity and of the location of the activities carried out and of the technologies used there,
3. in cases falling under section 2 subsection (1) second sentence, a description of the geographical delimitation of the parts of installations, procedural steps and ancillary installations in accordance with section 2 subsection (2),
4. the sources of emissions, and
5. the time when the installation was or is to be commissioned.

(3) The permit shall contain the following information:
1. the name and address of the installation operator,
2. a description of the activity and of the location at which the activity is carried out,
3. in cases falling under section 2 subsection (1) second sentence, a description of the geographical delimitation of the parts of installations included, procedural steps and ancillary installations in accordance with section 2 subsection (2), and
4. a list of the sources of emissions involved.

(4) With installations which were approved prior to 1 January 2013 in accordance with the provisions of the Federal Immission Control Act, a licence in accordance with the law on immissions shall be deemed to constitute approval in accordance with subsection (1). The installation operator can however also apply for a separate permit in cases falling under the first sentence in accordance with subsection (1). In this case, the first sentence shall only be applicable until the separate permit is issued.

(5) The installation operator shall be obliged to notify to the competent authority any planned alteration to the activity in relation to the information in accordance with subsection (3) completely and correctly at least one month prior to its realisation where this alteration may exert an impact on the emissions. The competent authority shall alter the permit accordingly. Notwithstanding the second sentence, the competent authority shall verify the information in accordance with subsection (3) at least every five years, and shall amend the permit accordingly where necessary. Subsection (4) third sentence shall apply mutatis mutandis to the designated amendments to the permit.

(6) In the procedures to issue or amend the emissions permit in accordance with subsections (1) and (5), the authority competent in accordance with section 19 subsection (1) No. 3 shall be afforded the opportunity to submit observations within a reasonable period.
Section 5

**Emissions monitoring and reporting**

(1) The operator shall monitor the emissions caused through its activity in a calendar year in accordance with Annex 2 Part 2 and report to the competent authority on the emissions by 31 March of the following year.

(2) The information in the emission report in accordance with subsection (1) must have been verified by a verifier who has been accredited in accordance with section 21 by the competent authority, in accordance with Annex 3.

Section 6

**Monitoring plan**

(1) The operator shall be obliged to submit to the competent authority for each trading period a monitoring plan for emissions monitoring and reporting in accordance with section 5 subsection (1). In doing so, it shall comply with the deadlines designated in Annex 2 Part 1 No. 1.

(2) The monitoring plan shall require a permit. The permit shall be issued if the monitoring plan complies with the requirements of the Monitoring and Reporting Regulation, the statutory ordinance in accordance with section 28 subsection (2) No. 1 and, where these do not stipulate any provisions, with Annex 2 Part 2 third sentence. If a monitoring plan that has been submitted does not comply with these requirements, the operator shall be obliged to eliminate the faults that have been found within a deadline to be set by the competent authority and to submit the amended monitoring plan. In the procedure for the permit of the monitoring plan, in cases falling under section 19 subsection (1) No. 1, the authority thus competent shall be afforded the opportunity to make a statement. The competent authority can make the permit contingent on compliance with instructions for the monitoring of and reporting on emissions.

(3) The operator shall be obliged to promptly adjust the monitoring plan within a trading period where the following alterations emerge as to the requirements of emissions monitoring or their reporting:

1. alteration to the requirements in accordance with subsection (2) second sentence,
2. alteration to its emissions permit, or
3. other alteration to its activity.

The competent authority can issue subsequent instructions in order to guarantee compliance with the obligation in accordance with the first sentence. Subsection (1) first sentence and subsection (2) shall apply mutatis mutandis to the altered monitoring plan in accordance with the first sentence.
Part 3
Allowances and allocation

Section 7
Allowances

(1) The operator shall submit to the competent authority, annually by 30 April, a number of allowances corresponding to the emissions caused by its activity in the previous calendar year. Installation operators may not comply with their obligation in accordance with the first sentence by submitting aviation allowances.

(2) The allowances shall be deemed to apply for one of the trading periods designated below, respectively:


2. The first trading period for aviation activities, which shall commence on 1 January 2012, shall end on 31 December 2012 (trading period 2012);

3. The trading period for all activities, which shall commence on 1 January 2013, shall end on 31 December 2020 (trading period 2013 to 2020);

4. Trading periods following the trading period 2013 to 2020 shall encompass a period of eight years each.

Allowances from an expired trading period shall be cancelled four months after the end of this trading period and replaced by the competent authority with allowances from the ongoing trading period. The person holding an allowance can waive it at any time and demand its deletion.

(3) Allowances shall be transferrable. The transfer of allowances shall be effected by agreement and entry in the account of the purchaser designated in the emissions trading register in accordance with section 17. 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.

(4) Insofar as an allowance has been entered for a party in the emissions trading register, the content of the register shall be deemed to be correct. This shall not apply to the recipient of allowances which have been issued if they are aware that they are incorrect when they are issued.

(5) Allowances shall not be deemed to be financial instruments within the meaning of section 1 subsection (11) of the Banking Act (Kreditwesengesetz) or of section 2 subsection (2b) of the Act on Securities Trading (Wertpapierhandelsgesetz).
Section 8

Auctioning of allowances


(2) The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety, in agreement with the Federal Ministry of Finance and the Federal Ministry of Economics and Technology, shall commission a suitable agency to carry out the auctioning.

(3) The Federation shall be entitled to the proceeds from the auctioning of the allowances in accordance with subsection (1). The costs incurred by the Federation through carrying out the tasks incumbent on it in the context of emissions trading and not covered by fees in accordance with section 22 shall be covered from the proceeds in accordance with the first sentence.

Section 9

Allocation of free allowances to installation operators


(2) The allocation shall be contingent on an application being lodged with the competent authority. The application for an allocation of free allowances shall be made within a deadline to be notified in the electronic Federal Gazette by the competent authority at least three months prior to their expiry. The announcement of the deadline shall be effected at the earliest after the entry into force of the statutory ordinance on allocation rules in accordance with section 10. Should the application be late, there shall be no claim to free allocation. The documents necessary to examine the right shall be enclosed with the application. Unless the ordinance in accordance with section 10 stipulates otherwise, the actual information in the allocation application must have been verified by a verifier which has been accredited in accordance with section 21 by the competent authority.
(3) The competent authority shall calculate the preliminary allocation volumes, shall publish a list of all installations falling within the scope of the present Act and the temporary allocation volumes in the electronic Federal Gazette, and shall report the list to the European Commission. When calculating the temporary allocation volumes, only the information from the operator, the correctness of which is adequately ensured, shall be considered. Appeals with regard to the report of the allocation volumes can only be lodged at the same time as the appeals that are admissible against the allocation decision.

(4) The competent authority shall decide prior to the commencement of the trading period on the allocation of free allowances for an installation to installation operators which have lodged an application within the deadline announced in accordance with subsection (2) second sentence. The provisions of the Administrative Procedure Act (Verwaltungsverfahrensgesetz) shall apply to the allocation procedure in other respects.

(5) Where an allocation in accordance with allocation rules in accordance with section 10 to signify an unreasonable hardship for the installation operator and for an enterprise affiliated with the latter which must bear the economic risks of the operation of the installation with its capital for a commercial or company law reason, the competent authority shall on request of the operator allocate additional allowances in the quantity suitable for equalisation unless the European Commission rejects this allocation in accordance with Article 11 (3) of Directive 2003/87/EC.

(6) The allocation decision shall be rescinded where it must be subsequently amended on the basis of a legal act of the European Union. Sections 48 and 49 of the Administrative Procedure Act shall remain unaffected in other respects.

Section 10

Statutory ordinance on allocation rules

The Federal Government is herewith empowered, in accordance with Directive 2003/87/EC in the respectively applicable version and with Commission Decision 2011/278/EU of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC (OJ L 130 of 17 May 2011, p. 1), after hearing the groups involved, to determine the details of the allocation of free allowances to installation operators by means of a statutory ordinance which shall not require the consent of the Bundesrat. The Federal Government may regulate the following in this statutory ordinance in particular:

1. the products for which the allowances are allocated free of charge,
2. the calculation of the number of allowances to be allocated,
3. the collection of data on the emissions and the production of installations and other data relevant for the allocation procedure,
4. the determination of the production volume or of other values which are needed to calculate the allocation volume,
5. emissions values per product unit produced,
6. the cases in which exceptionally no allocation on the basis of emissions values is carried out per product unit produced or in which special allocation rules exist, as well as the methods which are applied in these cases,
7. the baseline period the data of which are material for the allocation of free allowances, as well as cases in which it is possible to deviate from this baseline period,
8. the allocation for new entrants and capacity extensions, including the determination of the capacity and the capacity use of new entrants,
9. the determination of the volumes of free allowances to be issued annually in the allocation decision,
10. stipulations on the shares of heat production among the emissions values in accordance with No. 5,
11. the
   a) necessary information, and
   b) documentation necessary as well as the nature of the documentation to be submitted
   in the application in accordance with section 9 subsection (2) first sentence.
12. requirements as to the verification of allocation applications in accordance with section 9 subsection (2) fifth sentence, as well as exceptions from the obligation of verification, and
13. the preconditions and the procedure of the accreditation of the verifier by the competent authority.

The statutory ordinance in accordance with the first and second sentences shall require the consent of the Bundestag. The Bundestag can make this consent contingent on whether amendment requests are accepted. If the Federal Government takes on the amendments, no renewed resolution by the Bundestag shall be necessary. If the Bundestag has not read it after six weeks of it being in session since receipt of the statutory ordinance, it shall be deemed to have consented to the unamended statutory ordinance.

Section 11

Standard allocation of free allowances to aircraft operators

(1) Aircraft operators shall receive for a trading period a number of free aviation allowances which are issued corresponding to the product of their transport service in the base year in tonne-kilometres and to the benchmark which is determined in the decision of
the European Commission in accordance with Article 3e (3) first sentence (e) and second sentence of Directive 2003/87/EC.

(2) The base year for the transport service shall be the calendar year ending 24 months prior to the beginning of the trading period to which the allocation refers. 2010 shall be the base year for the trading period 2012 and the trading period 2013 to 2020.

(3) The allocation for a trading period shall be contingent on an application being filed with the competent authority, which must be lodged at the latest 21 months prior to the beginning of the respective trading period. Should an application be late, there shall be no right to the allocation of free aviation allowances. The first and second sentences shall not apply to the trading period 2012 and to the trading period 2013 to 2020.

(4) In the application, the applicant must state the transport service, calculated in accordance with the requirements of the Monitoring and Reporting Regulation, which it has provided in the base year through its aviation activity. If the aircraft operator has submitted a report on distance and payload in accordance with section 5 subsection (1) first sentence of the Data Collection Ordinance 2020, this report shall be deemed to constitute an application for allocation for the trading period 2012 and the trading period 2013 to 2020 where the aircraft operator does not object to this within one month after the entry into force of the present Act. In the event of an objection, there shall be no right to a free allocation in accordance with subsection (1). The information on the transport service shall be verified in accordance with section 5 subsection (2). This shall not apply where a report on distance and payload has already been verified in accordance with section 11 of the Data Collection Ordinance 2020.

(5) The competent authority shall transmit the applications to the European Commission at the latest 18 months prior to the beginning of the trading period. The competent authority shall verify the information provided by the applicant on the transport service and transmit to the European Commission only that information the correctness of which is adequately certain by the expiry of the reporting period. Where the competent authority requires additional information or proof in order to verify the application and the information contained therein, the aircraft operator shall be obliged to transmit this at the request of the competent authority within a deadline to be set by the latter.

(6) The competent authority shall allocate the free allowances within three months after the European Commission has announced the benchmark in accordance with Article 3e (3) of Directive 2003/87/EC. The competent authority shall publish a list with the names of the aircraft operators and the amount of the allocations in the electronic Federal Gazette.
Section 12

Allocation of free allowances from the special reserve

(1) Aircraft operators shall receive an allocation of free aviation allowances from the special reserve for a trading period if

1. they have newly taken up an aviation activity for the first time after expiry of the base year in accordance with section 11 subsection (2), or

2. the transport service in tonne-kilometres provided within their aviation activity increased on average by more than 18 percent per year in the period between the base year and the end of the second calendar year of the current trading period.

Furthermore, an allocation in accordance with the first sentence shall be contingent on the aircraft operator not fully or partly continuing an activity previously implemented by another enterprise through the newly taken up activity or through the increased transport service. The first sentence shall not apply to the trading period 2012.

(2) In the case of the launching of a new activity, the number of aviation allowances to be allocated shall correspond to the product of the transport service provided in the second calendar year of the trading period and the benchmark which is determined in the decision of the European Commission in accordance with Article 3f (5) of Directive 2003/87/EC.

(3) In the case of increased transport service in accordance with subsection (1) first sentence No. 2, the number of aviation allowances to be allocated shall be the product of the increase in the transport service in tonne-kilometres where the increase is greater than the percentage increase designated in subsection (1) first sentence No. 2 in tonne-kilometres, and the benchmark which is determined in the decision of the European Commission in accordance with Article 3f subsection (5) of Directive 2003/87/EC. The allocation in accordance with the first sentence shall be 1 million aviation allowances per aircraft operator at most.

(4) The competent authority shall allocate the free allowances within three months after the European Commission has announced the benchmark in accordance with Article 3f (5) of Directive 2003/87/EC. It shall show the allocation for a whole trading period and for the individual remaining full years of this trading period. The competent authority shall publish a list of the names of the aircraft operators and of the amount of the allocations in the electronic Federal Gazette.

Section 13

Application for allocation from the special reserve

(1) The allocation from the special reserve shall be contingent on an application being lodged with the competent authority, which must be lodged at the latest by 30 June of the third year of the respective ongoing trading period. If an application is late, there shall be no right to the allocation of free aviation allowances.
(2) In the application in accordance with subsection (1), the applicant shall prove compliance with the allocation prerequisites listed in section 12 subsection (1). An application in accordance with section 12 subsection (1) first sentence No. 2 must in particular contain the following information, respectively related to the period between the base year and the second calendar year of the ongoing trading period:

1. the percentage increase in the transport service of the applicant since the base year,
2. the absolute increase in the transport service of the applicant since the base year in tonne-kilometres, and
3. the share of the absolute increase in accordance with No. 2 which exceeds the percentage increase in tonne-kilometres designated in section 12 subsection (1) first sentence No. 2.

The competent authority shall transmit the applications to the European Commission at the latest six months after expiry of the deadline in accordance with subsection (1) first sentence. Section 5 subsection (2) and section 11 subsection (5) second and third sentences shall apply mutatis mutandis.

(3) The application in accordance with subsection (1) first sentence shall state the transport service calculated in accordance with the requirements of the Monitoring and Reporting Regulation which the applicant has implemented by its aviation activity in the second calendar year of the ongoing trading period.

(4) In order to monitor and state the transport service in accordance with subsection (3), the aircraft operator shall draw up a tonne-kilometre monitoring plan and submit it to the competent authority within the period designated in Annex 2 Part 1 Nos. 2 for a permit.

(5) The permit in accordance with subsection (4) shall be issued if the monitoring plan corresponds to the prerequisites of the Monitoring and Reporting Regulation. Section 6 subsection (2) third and fifth sentences shall apply mutatis mutandis.

Section 14

Issuance of allowances

(1) The competent authority shall issue the allowances allocated in accordance with section 9 subsection (4) in accordance with the allocation decision by 28 February of a year for which allowances are to be surrendered.

(2) In derogation from subsection (1), for installations which were commissioned after the beginning of the trading period, allowances allocated for the first year of operation shall be issued promptly after the allocation decision. If the allocation decision is taken prior to 28 February of a calendar year, allowances in accordance with the first sentence shall be issued for the first time in each case as per 28 February of the same year.
(3) In the standard allocation for aircraft operators in accordance with section 11, the competent authority shall issue the total volume of aviation allowances allocated for a trading period in the years of the trading period in each case by 28 February in annually equal portions. With the allocation from the special reserve in accordance with section 12, the competent authority shall issue the total volume of aviation allowances allocated for a trading period in the calendar years following the allocation decision in annually equal portions.

Section 15  
**Enforcement of obligations to return**

Where the operator has been obliged to return excess allowances which have been issued in the case of the rescission of the allocation decision, the competent authority may enforce this obligation in accordance with the provisions of the Administrative Execution Act (*Verwaltungs-Vollstreckungsgesetz*). The amount of the coercive fine shall be up to Euro 500,000.

Section 16  
**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 trading period shall have the same status as allowances issued in the Federal Republic of Germany.

(2) The provisions on allowances in accordance with section 7 subsections (3) to (5) and section 17 shall apply mutatis mutandis to emission reduction units, certified emission reductions and emission credits which have been recognised in a statutory ordinance in accordance with section 28 subsection (1) No. 3.

(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.

Section 17  
**Emissions trading register**

Allowances shall be held and transferred in an emissions trading register in accordance with the regulation in accordance with Article 19 (3) of Directive 2003/87/EC.
Section 18

Exchange of emission credits for allowances

(1) On application of the operator, the competent authority shall convert emission reduction units, certified emission reductions or other credits for emission reductions in accordance with subsections (2) and (3) to allowances for the trading period 2013 to 2020.

(2) Conversion in the trading period 2013 to 2020 shall, on proviso of an increase by means of a statutory ordinance in accordance with section 28 subsection (1) No. 3, be restricted to the following maximum amounts:

1. for an installation for which the installation operator has received in the trading period 2008 to 2012 an allocation in accordance with sections 6 to 9 or section 12 of the Allocation Act 2012, to 22 percent of this allocation volume where this share was not used to comply with the obligation to surrender the emissions in the trading period 2008 to 2012;

2. for an installation which is not covered by No. 1, to a volume corresponding to 4.5 percent of the total volume of allowances to be surrendered in accordance with section 7 subsection (1) for the emissions in the trading period 2013 to 2020;

3. for aircraft operators to a volume corresponding to 1.5 percent of the total volume of allowances to be surrendered by the respective aircraft operator in accordance with section 7 subsection (1) for the emissions in the trading period 2013 to 2020; this volume shall be increased by an amount corresponding to 15 percent of the volume of allowances which the respective aircraft operator had to surrender for the trading period 2012 where the aircraft operator did not use this share to comply with this obligation to surrender.

(3) The following emission reduction units or certified emission reductions shall be convertible on proviso of a restriction by a statutory ordinance in accordance with section 28 subsection (1) No. 3:

1. emission reduction units or certified emission reductions for emission reductions achieved prior to 2013;

2. certified emission reductions from projects which were registered prior to 2013 by the Executive Council within the meaning of section 2 No. 22 of the Project Mechanisms Act.

The first sentence shall only apply to emission reduction units and certified emission reductions originating from project types whose credits it was also possible to use in the trading period 2008 to 2012.
Part 4
Joint Provisions

Section 19
Competences

(1) The competent authority shall be

1. for the enforcement of section 4 with installations subject to licensing in accordance with section 4 subsection (1) third sentence of the Federal Immission Control Act, the authority competent in accordance with Land law for the enforcement of section 4,
2. the Federal Aviation Office for the enforcement of section 31 subsection (2) in the case of a commercial aircraft operator,
3. in other respects the Federal Environment Agency.

(2) If recourse is had to the administrative courts for disputes in accordance with the present Act, in case of rescissory actions against administrative acts of the Federal Environment Agency, the court of the district in which the administrative act was handed down shall have local jurisdiction. The first sentence shall apply mutatis mutandis to actions for performance, as well as to actions for the declaration of the nullity of administrative acts.

Section 20
Monitoring

(1) The authority respectively competent in accordance with section 19 shall monitor the implementation of the present Act and of the statutory ordinances based on the present Act.

(2) Operators as well as owners and proprietors of aircraft or of land on which aircraft are located or on which installations are operated shall be obliged to

1. permit access to the installations, aircraft or land during business hours,
2. permit the implementation of tests, including the monitoring of emissions during business hours, as well as
3. to provide on request the information and submit the documents necessary to carry out their tasks

Within the obligations in accordance with the first sentence, the operators shall provide staff and auxiliary materials.

(3) Section 55 of the Code of Criminal Procedure (Strafprozessordnung) shall apply mutatis mutandis to the person obliged to provide information.

Section 21
Verifiers

(1) On application, accreditation as a verifier applicable for the entire federal territory shall be effected by the competent authority where the applicant satisfies the requirements in
accordance with Annex 4, as well as the requirements of the regulation of the European Commission in accordance with Article 15 (3) and (4) of Directive 2003/87/EC.

(2) On proviso of further requirements as to the accreditation and accreditation of verifiers in the regulation of the European Commission in accordance with Article 15 (3) and (4) of Directive 2003/87/EC, the following persons or organisations shall be announced, on application, without further verification:

1. independent environmental auditors or environmental audit organisations which may act in accordance with the Environmental Audit Act (Umweltauditgesetz) and which are empowered for the activities covered by their respective license to verify declarations of the operator, 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).

(3) Furthermore, persons who have been appointed in accordance with the comparable requirements of another Member State to verify emission reports in the Community-wide emissions trading system and who have the requisite linguistic and legal knowledge may be accredited as verifiers. The authority may require that copies of documentation be certified. It can further require that a certified German translation of proof that is in a foreign language be submitted.

(4) A decision shall be handed down on the application within a period of three months. Section 42a subsection (2) second to fourth sentences of the Administrative Procedure Act shall apply.

Section 22

Fees for official acts of federal authorities

(1) For the administration of a personal or dealer account in the emissions trading register, the competent authority shall levy a fee of Euro 400 per trading period from the account holder.

(2) If an objection to decisions in accordance with the present Act is completely or partly rejected, with the exception of the objection against decisions in accordance with section 4, the fee shall be Euro 50 to 2,000, according to the administrative effort incurred. This shall not apply if the objection is only unsuccessful because the violation of a procedural or formal regulation in accordance with section 45 of the Administrative Procedure Act is immaterial. If the objection is however withdrawn after the factual processing has commenced, but prior to its completion, the fee shall be reduced by at least 25 percent.

(3) The entitlement of the Länder to levy fees and expenditure for official acts in accordance with section 4 shall remain unaffected.
Section 23

Electronic communication

The competent authority may make use of written form or electronic form for the documents designated in the third sentence, for the announcement of decisions and for other communications. If the electronic form is prescribed, the competent authority may prescribe a specific form of encryption, as well as the opening of access for the transmission of electronic documents. The competent authority may also prescribe that operators to draw up monitoring plans or reports or, when lodging applications, only use the electronic form templates provided on its website, and that they must transmit the completed electronic form templates in electronic form and using a qualified signature in accordance with the Digital Signature Act (Signaturgesetz) of 16 May 2001 (Federal Law Gazette Part I p. 876), most recently amended by Article 4 of the Act of 17 July 2009 (Federal Law Gazette Part I p. 2091). If the use of electronic form templates is prescribed, the transmission of additional documents as a supplement to the form templates shall be possible, provided the formal provisions of the third sentence are adhered to. Where the Federal Environment Agency is the competent authority, orders in accordance with the first to third sentences shall be announced in the electronic Federal Gazette; otherwise, they shall be announced in the official publication gazette of the competent authority.

Section 24

Single installation

The competent authority shall establish on request that the operation of several installations within the meaning of Annex 1 Part 2 No. 7, as well as Nos. 8 to 11, which are operated by the same operator on the same site in an integrated technical system, is deemed as the operation of a single installation in application of sections 5 to 7 and 9 if the necessary precision is guaranteed in the monitoring of the emissions.

Section 25

Change in the identity or legal form of the operator

(1) If the identity or the legal form of an operator changes, the new operator shall notify this with no undue delay after the change to the authority competent for the enforcement of section 6 subsection (3) first sentence, and with installations licensed in accordance with the law on immissions to the authority which is competent for the enforcement of section 4 subsection (5) first sentence. The new operator shall assume the obligations of the original operator in accordance with sections 5 and 7 which have not yet been complied with.

(2) A change of the operator during the trading period shall not affect the allocation decision. Allowances which have not yet been issued shall be issued to the new operator, from when proof is provided of the change of operator, where it has taken over the activity.
Section 26

Exclusion of suspensive effect

An objection and rescissory action against allocation decisions or decisions in accordance with section 29 first sentence or section 31 subsection (2) first sentence shall not have any suspensive effect.

Section 27

Exclusion for small emissions producers

(1) The competent authority shall exclude the operator of an installation for the trading period 2013 to 2020 from the obligation in accordance with section 7 subsection (1) where
1. the installation in each case has emitted fewer than 25,000 tonnes of carbon dioxide equivalent during the period 2008 to 2010, and
2. the European Commission does not lodge any objections to exclusion in accordance with Article 27 (2) of Directive 2003/87/EC.

With installations engaged in the activities designated in Annex 1 Part 2 Nos. 2 to 6, an exclusion in accordance with the first sentence shall be ruled out where the rated thermal input of the installation is 35 Megawatt or more; this shall apply mutatis mutandis to the total rated thermal input of combustion units in accordance with Annex 1 Part 2 No. 1 in an installation. For the duration of the exclusion, there shall be no right to an allocation of free allowances in accordance with section 9 subsection (1).

(2) Exclusion in accordance with subsection (1) shall be contingent on an application being filed by the operator with the competent authority, which can only be lodged together with the application in accordance with section 9 subsection (2). It shall be linked for the trading period 2013 to 2020 with the selection of one of the two measures in accordance with the third sentence. As compensation for the exclusion from the obligation in accordance with subsection (1), the operator shall be liable for one of the following equivalent measures for the trading period 2013 to 2020:
1. payment of an equalisation amount for saved costs of the acquisition of emission allowances for the years under report of the trading period 2013 to 2020 in accordance with subsection (3);
2. voluntary undertaking to achieve specific emission reductions of the installation in the trading period 2013 to 2020 in accordance with subsection (4).

(3) The equalisation amount ultimately payable in accordance with subsection (2) third sentence No. 1 shall be calculated from the calculated payment obligation, reduced by an amount calculated from the application of a reduction factor auf the equalisation payment. The reduction factor shall correspond to the ratio of the reduction of the specific emissions value achieved in percentage points to 1.74 percentage points. The payment obligation shall be the product of the volume of emission allowances to be estimated corresponding to the
additional amount needing to be purchased for the respective year under report of the trading period 2013 to 2020, and the average, volume-weighted price obtained in the auctions in accordance with section 8 in the year under report or the calendar year prior to the year under report, depending on which of the two purchase prices is the lower; for the year under report 2013, only the purchase price of this year under report shall be material. The amount of an installation needing to be purchased shall correspond to the difference between the emission volume of the previous year and the volume of allowances calculated from the calculation provisions of the statutory ordinance in accordance with section 10. The Federation shall be entitled to the proceeds from the equalisation amount, and these shall be paid into the Special Energy and Climate Fund.

(4) The subject of the voluntary undertaking to achieve specific emission reductions of the installation in accordance with subsection (2) No. 2 is the reduction of the installation-specific emissions value per product unit vis-à-vis the emissions value of the baseline period by 1.74 percent per year. The provisions of Annex 5 Part 1 shall be material for the calculation of the necessary, specific emission reduction. The operator shall be obliged to report to the competent authority by 31 March of each year the production volume of the previous year. If an operator does not satisfy the obligation in accordance with the first sentence in three consecutive years under report of the trading period 2013 to 2020, it shall be for each of these years under report subject to the equalisation payment in accordance with subsection (2) No. 1 by the beginning of the year under report in which the obligation is met once again. The operator shall also be subject to the equalisation payment if it fails to meet its obligation in accordance with the first sentence in the year under report 2020 or in both years under report 2019 and 2020. The requirements of Annex 5 Part 2 shall be material for the calculation of the equalisation payment in cases falling under the fourth and fifth sentences.

(5) For installations which have emitted in each case fewer than 20,000 tonnes of carbon dioxide equivalent in 2008 to 2010, or in the three calendar years prior to the year under report, the obligation to monitor and report emissions in accordance with section 5 shall apply on proviso that a simplified emission report covers a period of two years under report. Where overall emissions of more than 20,000 tonnes of carbon dioxide equivalent in a year under report are revealed from the emission report with these installations, the competent authority may order annual emission reports to be submitted.

(6) The exclusion shall cease to apply if the installation emits 25,000 tonnes of carbon dioxide equivalent or more in one year of the trading period 2013 to 2020. In this case, the operator shall be subject to the obligation in accordance with section 7 subsection (1) from the year of exceeding the emission limit onwards until 2020, and shall receive an allocation in accordance with section 9.
Section 28

Entitlements to issue regulations

(1) The Federal Government is herewith empowered, by means of a statutory ordinance which shall not require the consent of the Bundesrat,

1. to determine the carbon dioxide equivalents within the meaning of section 3 subsection (1) No. 3 for the individual greenhouse gases in accordance with international standards;

2. to provide for details for auctioning in accordance with section 8; here, the Federal Government may in particular issue provisions regarding the licensing of agencies which implement auctioning, on the supervision of these agencies, as well as on the licensing of further providers;

3. to regulate on details on the exchange of emission reduction units, certified emission reductions or other emission credits in allowances in accordance with section 18 and further forms of the use of these credits; here, the Federal Government may in particular
   a) provide that, in accordance with the requirements of measures of the European Commission in accordance with Article 11a (8) subparagraphs 4 to 6 of Directive 2003/87/EC, additional volumes of credits may be exchanged for allowances deviating from the values designated in section 18 subsection (2),
   b) define requirements as to the exchange procedure, as well as application deadlines,
   c) permit the exchange and use of further types of credit for emission reductions to transpose Article 11a (4) to (6) of Directive 2003/87/EC, and
   d) determine project types the credits of which are subject to a restriction on utilisation in the trading period 2013 to 2020 by means of measures in accordance with Article 11a (9) of Directive 2003/87/EC, as well as the point in time from when the restriction on utilisation begins;

4. to regulate details on the application of section 24 to installations which are operated by the same operator on the same site in an integrated technical system; this shall in particular include providing that
   a) the application in accordance with section 24 is also permissible for single installations from installations in accordance with Annex 1 Part 2 Nos. 1 to 6 and other installations in accordance with Annex 1 Part 2,
   b) the production volumes of the products manufactured in the installations included are to be stated with installations in accordance with Annex 1 Part 2 Nos. 8 to 11,
c) installations in accordance with Annex 1 Part 2 No. 7 are regarded as a single installation with other installations listed in Annex 1 Part 2;

5. to issue details to shape the exclusion from obligations in accordance with section 27, in particular to issue provisions on
   a) information in the exclusion application in accordance with section 27 subsection (2),
   b) requirements as to the simplified emission report in accordance with section 27 subsection (5) first sentence, as well as additional relaxations in reporting in accordance with section 5 for installations which have emitted in 2008 to 2010, or in the three calendar years prior to the year under report, in each case fewer than 5,000 tonnes of carbon dioxide equivalent,
   c) requirements as to the proof of the installation-specific emissions value,
   d) consideration of the combined production of electricity and heat, as well as the consideration of several individual elements of the allocation in the calculation of the specific emission reduction,
   e) requirements as to joint proof in accordance with Annex 5 Part 1 No. 1 (b), and
   f) special deadlines for compliance with the obligations in accordance with sections 5 and 7 in cases falling under section 27 subsection (6).

(2) The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety is herewith empowered, by means of a statutory ordinance, which shall not require the consent of the Bundesrat,

1. to regulate details for the monitoring of and reporting on emissions in accordance with section 5 subsection (1), as well as on verification in accordance with section 5 subsection (2) where these circumstances do not relate to the enforcement of section 4 and are not conclusively regulated either in the Monitoring and Reporting Regulation or in the regulation of the European Commission in accordance with Article 15 (3) and (4) of Directive 2003/87/EC;

2. to regulate, in agreement with the Federal Ministry of Economics and Technology, on details on the transfer of allowances which are issued by third countries, in accordance with section 16 subsection (3);

3. to regulate on details to establish and maintain an emissions trading register in accordance with section 17, in particular the facts listed in the regulation in accordance with Article 19 (3) of Directive 2003/87/EC for supplementary regulation by the Member States.

(3) The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety is herewith empowered, by means of a statutory ordinance which shall not require the
consent of the Bundesrat, to commission a legal person under private law with the implementation of all or some of the tasks of the Federal Environment Agency in accordance with this Act and the sovereign empowerments necessary herefor if this offers a guarantee that the transferred tasks are properly and centrally carried out for the federal territory. This shall not apply to entitlements in accordance with section 20 subsection (2) Nos. 1 and 2 and Part 5 of the present Act, as well as to measures in accordance with the Administrative Execution Act. A legal person shall provide a guarantee within the meaning of the 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 and sufficient starting capital to carry out its tasks, and
3. a close economic or organisational relationship with the entities falling within 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.

Part 5
Sanctions

Section 29

Enforcement of the duty to report

In the event of an operator not complying with its obligation to report in accordance with section 5 subsection (1), the competent authority shall order the blocking of its account. The block shall be rescinded without delay as soon as the operator has submitted to the competent authority a report complying with section 5 or the emissions are estimated in accordance with section 30 subsection (2) first sentence.

Section 30

Enforcement of the obligation to surrender

(1) If an operator fails to comply with its obligation in accordance with section 7 subsection (1), the competent authority shall impose a payment obligation of 100 Euro for each tonne of carbon dioxide equivalent emitted for which the operator has not surrendered any allowances. The duty to pay shall be increased in accordance with the increase of the European consumer price index for the year under report vis-à-vis the reference year 2012; these annual indices are published by the Statistical Office of the European Union (Eurostat). The imposition of a duty to pay in accordance with the first sentence shall only be permissible within one year from the time of the breach of the duty. It shall be possible to waive the imposition of a duty to pay if the operator was unable to comply with its obligation in accordance with section 7 subsection (1) because of force majeure.
(2) As far as an operator has not properly reported on the emissions caused by its activity, the competent authority shall estimate the emissions caused by the activity as stipulated in Annex 2 Part 2. The estimate shall form the basis for the obligation in accordance with section 7 subsection (1). The estimate shall not be carried out if the operator within the hearing on the imposition notice in accordance with subsection (1) properly complies with its duty to report.

(3) The operator shall remain obliged to surrender the missing allowances by 31 January of the following year; if the emissions have been estimated in accordance with subsection (2), the allowances shall be surrendered in accordance with the implemented estimate. If the operator fails to surrender the missing allowances by 31 January of the following year, allowances to the allocation or issuance of which the operator has a right shall be offset against its obligation in accordance with the first sentence.

(4) The names of the operators who violate their obligation in accordance with section 7 subsection (1) shall be published in the Federal Gazette. The publication shall be contingent on a definitive payment order.

Section 31

**Prohibition of operation against aircraft operators**

(1) If an aircraft operator fails to comply with its obligations from the present Act, and if it was impossible to guarantee compliance with the provisions by other enforcement measures, the competent authority may request the European Commission to decide on a prohibition of operation for the aircraft operator in question. The competent authority shall in so doing submit a recommendation for the scope of the prohibition of operation and for conditions which are to be satisfied. With the request in the case of a commercial aircraft operator, the competent authority shall reach an agreement with the Federal Aviation Office.

(2) If the European Commission has decided in accordance with Article 16 (10) of Directive 2003/87/EC on the imposition of a prohibition of operation against an aircraft operator, in the case of a commercial aircraft operator the Federal Aviation Office, and in the case of a non-commercial aircraft operator the Federal Environment Agency, shall take the measures necessary to enforce this resolution. To this end, they may in particular

1. ground the aircraft,
2. impose a flight ban, and
3. revoke the permit in accordance with section 2 subsection (7) of the Civil Aviation Act (Luftverkehrsgesetz) or the operating licence in accordance with section 20 subsection (4) or section 21a of the Civil Aviation Act, where applicable.
Section 32

Administrative fine provisions

(1) Anyone who

1. in contravention of section 5 subsection (1) in conjunction with Annex 2 Part 2 first sentence does not report correctly to the authority,

2. acts in breach of a statutory ordinance in accordance with section 10 third sentence No. 11 (a) or of an enforceable order on the basis of such a statutory ordinance where the statutory ordinance refers to this administrative fine provision for a specific offence,

3. in contravention of section 11 subsection (4) first sentence fails to provide correct information, or

4. in contravention of section 11 subsection (5) third sentence, also in conjunction with section 13 subsection (2) fourth sentence, fails to transmit information or documentation correctly

shall be deemed to have committed a regulatory offence.

(2) Anyone who negligently commits an act designated in subsection (1) shall be deemed to have committed a regulatory offence.

(3) Anyone who, intentionally or negligently,

1. releases greenhouse gases without a permit in accordance with section 4 subsection (1) first sentence,

2. in contravention of section 4 subsection (2) fails to enclose information, or fails to do so correctly or completely,

3. in contravention of section 4 subsection (5) first sentence or section 25 subsection (1) first sentence fails to make a report, or fails to do so correctly, completely or in good time,

4. in contravention of section 6 subsection (1) fails to submit a monitoring plan or fails to do so in good time,

5. acts in breach of an enforceable order in accordance with section 6 subsection (3) second sentence,

6. acts in breach of a statutory ordinance in accordance with section 10 third sentence No. 3 or No. 11 (b) or of an enforceable order on the basis of such a statutory ordinance where the statutory ordinance refers to this administrative fine provision for a specific offence, or

7. in contravention of section 20 subsection (2) fails to permit an act designated therein, fails to provide information, or fails to do so correctly, completely or in good time, fails to submit a document, or fails to do so correctly or in good time, or fails to provide a staff member or auxiliary materials, or fails to do so in good time
shall be deemed to have committed a regulatory offence.

(4) In cases falling under subsection (1), the regulatory offence can be sanctioned with an administrative fine of up to five hundred thousand Euro and in cases falling under subsections (2) and (3) with an administrative fine of up to fifty thousand Euro.

(5) The competent authority should waive a sanction in cases falling under subsection (1) No. 1 if, as a result of the incorrect report, the operator breaches the obligation to surrender in accordance with section 7 subsection (1) first sentence and because of this act a duty to pay in accordance with section 30 subsection (1) first sentence is established.

Part

Transitional provisions

Section 33

General transitional provision

(1) Section 18 shall apply from 1 January 2013 onwards.

(2) Section 13 subsection (2), section 19 subsection (1) No. 4 and section 27 of the Greenhouse Gas Emissions Trading Act of 8 July 2004 (Federal Law Gazette Part I p. 1578), most recently amended by Article 9 of the Act of 11 August 2010 (Federal Law Gazette Part I p. 1163), shall apply continue to apply to rights and obligations relating to emissions from the trading period 2008 to 2012.

(3) Section 22 subsection (1) shall apply to the collection of fees for the administration of accounts from the trading period 2013 to 2020 onwards. Section 22 subsection (1) of the Greenhouse Gas Emissions Trading Act of 8 July 2004 (Federal Law Gazette Part I p. 1578), most recently amended by Article 9 of the Act of 11 August 2010 (Federal Law Gazette Part I p. 1163), shall apply to fees complied with by the end of 2012.

Section 34

Transitional provision for installation operators


(2) The obligations in accordance with sections 4, 5 and 7 shall not be applicable to installation operators until from 1 January 2013; where these provisions apply to emissions,
they shall be applicable to greenhouse gases which are released from this date onwards. Sections 9 and 14 shall not apply to the allocation and issuance of allowances applicable to the trading period 2013 to 2020 and to subsequent trading periods. Section 24 shall be applicable to the establishment of single installations from the trading period 2013 to 2020 onwards. The competent authority may revoke establishments in accordance with section 25 of the Greenhouse Gas Emissions Trading Act of 8 July 2004 (Federal Law Gazette Part I p. 1578), most recently amended by Article 9 of the Act of 11 August 2010 (Federal Law Gazette Part I p. 1163), with effect from the trading period 2013 to 2020 where these establishments may not be made in accordance with section 24 or the statutory ordinance in accordance with section 28 subsection (1) No. 4.

Section 35

Transitional provision for aircraft operators

(1) For aircraft operators the obligations in accordance with sections 5 and 7 shall be applicable to emissions which are released from 1 January 2012.


(3) Aircraft operators can meet the obligation to surrender in accordance with section 7 subsection (1) first sentence in the trading period 2012 by submitting emission reduction units or certified emission reductions up to a maximum share of 15 percent of the volume of the allowances to be surrendered. Section 6 subsection (1)c of the Greenhouse Gas Emissions Trading Act of 8 July 2004 (Federal Law Gazette Part I p. 1578), most recently amended by Article 9 of the Act of 11 August 2010 (Federal Law Gazette Part I p. 1163), shall apply mutatis mutandis.

(4) If an aircraft operator in accordance with section 2 subsection (6) second sentence No. 2 is allocated to the Federal Republic of Germany as the competent administering Member State in accordance with Commission Regulation (EC) No 748/2009
(OJ L 219 of 22 August 2009, p. 1), amended by regulation (EU) No. 82/2010 (OJ L 25 of 29 January 2010, p. 12), and if this aircraft operator is allocated by a new version of the regulation to another administering Member State, the present Act shall continue to apply to it with regard to the allocation procedure in accordance with section 11, with the exception of the allocation decision in accordance with section 11 subsection (6).
Annex 1
(re section 1, section 2 subsections (1) to (3) first sentence, subsection (4) first sentence, subsection (5) No. 3, section 3 subsection (1) Nos. 2, 5, 9 and 12, section 4 subsection (1) first sentence, section 7 subsection (2) first sentence No. 1, section 24, section 27 subsection (1) second sentence and section 28 subsection (1) No. 4)

Included activities and greenhouse gases

Part 1

Principles

1. To calculate the total rated thermal input of an installation designated in Part 2 Nos. 2 to 6, 11, 13, 19 and 22 or the total rated thermal input of the combustion units of an installation in accordance with Part 2 No. 1, the rated thermal inputs of all technical units shall be added which form a component of the installation and in which fuels are burnt. These units shall be in particular all kinds of boilers, turbines, burners, furnaces, incinerators, calciners, kilns, ovens, dryers, engines, fuel cells, flares and thermal or catalytic post-combustion units. Units with a rated thermal input of fewer than 3 Megawatt (MW), emergency flares for pressure relief in installations in case of breakdowns, emergency generators and units which exclusively use biomass, shall not be included in this calculation. If the threshold for the total rated thermal input has been exceeded, all units shall be included in which fuels are burnt.

2. The following shall apply to the attribution of an installation which can be attributed both to an activity with a threshold stated as production output and also an activity with a threshold stated as total rated thermal input:
   a) If the installation reaches or exceeds both the threshold of the production output and the threshold of the total rated thermal input, the installation shall be attributed to the activity for which the threshold is stated as production output.
   b) If the installation either only reaches or exceeds the threshold of the total rated thermal input or only the threshold of the production output, it shall be attributed to the activity the threshold of which it reaches.
### Activities

<table>
<thead>
<tr>
<th>No.</th>
<th>Activities</th>
<th>Greenhouse gas</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Combustion units for combustion of fuels with a total rated thermal input exceeding 20 MW in an installation if not included in any of the numbers below</td>
<td>CO₂</td>
</tr>
<tr>
<td>2</td>
<td>Installations for the generation of electricity, steam, hot water, process heat or hot waste gas by use of fuels in a combustion installation (such as a power station, heat and power station, heating plant, gas turbine installation, combustion engine installation, other combustion installations), including related steam boilers, with a rated thermal input of 50 MW or more</td>
<td>CO₂</td>
</tr>
<tr>
<td>3</td>
<td>Installations for the generation of electricity, steam, hot water, process heat or hot waste gas by use of coal, coke, including petroleum coke, coal briquettes, peat briquettes, fuel peat, untreated timber, 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, untreated 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 plant, gas turbine installation, combustion engine installation, other combustion installations), including related steam boilers</td>
<td>CO₂</td>
</tr>
<tr>
<td>4</td>
<td>Installations for the generation of electricity, steam, hot water, process heat or hot waste gas by use of other solid or liquid fuels than those designated in Nos. 3 in a combustion installation (such as a power station, heat and power station, heating plant, gas turbine installation, combustion engine installation, other combustion installations), including related steam boilers, with a rated thermal input exceeding 20 MW but less than 50 MW</td>
<td>CO₂</td>
</tr>
<tr>
<td>5</td>
<td>Combustion engine installations for driving engines for the use of extra-light heating oil, diesel fuel, methanol, ethanol, untreated 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 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 20 MW or more</td>
<td>CO₂</td>
</tr>
<tr>
<td>No.</td>
<td>Activities</td>
<td>Greenhouse gas</td>
</tr>
<tr>
<td>-----</td>
<td>------------------------------------------------------------------------------------------------</td>
<td>----------------</td>
</tr>
<tr>
<td>6</td>
<td>Gas turbine installations for driving engines for the use of extra-light heating oil, diesel</td>
<td>$\text{CO}_2$</td>
</tr>
<tr>
<td></td>
<td>fuel, methanol, ethanol, untreated vegetable oils, vegetable oil methyl esters or gaseous fuels</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(in particular coke oven gas, mine gas, basic oxygen furnace gas, refinery gas, synthesis gas,</td>
<td></td>
</tr>
<tr>
<td></td>
<td>petroleum gas from tertiary mineral oil production, sewage treatment plant gas, biogas,</td>
<td></td>
</tr>
<tr>
<td></td>
<td>untreated natural gas, liquefied petroleum gas, gases from public gas supply, hydrogen) with</td>
<td></td>
</tr>
<tr>
<td></td>
<td>a rated thermal input exceeding 20 MW</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Installations for distilling or refining or other further processing of petroleum gas or</td>
<td>$\text{CO}_2$</td>
</tr>
<tr>
<td></td>
<td>petroleum gas products in mineral oil or lubricant refineries</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Installations for dry distillation of hard coal or lignite (coke oven plants)</td>
<td>$\text{CO}_2$</td>
</tr>
<tr>
<td>9</td>
<td>Installations for the roasting, melting, sintering or pelletisation of metal ores</td>
<td>$\text{CO}_2$</td>
</tr>
<tr>
<td>10</td>
<td>Installations for the production or melting of pig iron or steel, including continuous</td>
<td>$\text{CO}_2$</td>
</tr>
<tr>
<td></td>
<td>casting, including where concentrates or secondary raw materials are used, with a</td>
<td></td>
</tr>
<tr>
<td></td>
<td>melting capacity exceeding of 2.5 tonnes or more per hour, also where operated in</td>
<td></td>
</tr>
<tr>
<td></td>
<td>integrated iron and steel plants</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Installations for the production or processing of ferrous metals (including ferro-alloys) in</td>
<td>$\text{CO}_2$</td>
</tr>
<tr>
<td></td>
<td>the operation of combustion units with a total rated thermal input of 20 MW or more where</td>
<td></td>
</tr>
<tr>
<td></td>
<td>not covered by No. 10; the processing shall include in particular rolling mills, re-</td>
<td></td>
</tr>
<tr>
<td></td>
<td>heaters, annealing furnaces, smelters, foundries, coating and pickling</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>Installations for the production of primary aluminium</td>
<td>$\text{CO}_2$, $\text{PFC}$</td>
</tr>
<tr>
<td>13</td>
<td>Installations for the melting, alloying or refining of non-ferrous metals in the operation</td>
<td>$\text{CO}_2$</td>
</tr>
<tr>
<td></td>
<td>of combustion units with a total rated thermal input (including fuels used as reducing</td>
<td></td>
</tr>
<tr>
<td></td>
<td>agents) of 20 MW or more</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>Installations for the production of cement clinkers with a production output exceeding</td>
<td>$\text{CO}_2$</td>
</tr>
<tr>
<td></td>
<td>500 tonnes per day in rotary kilns or more than 50 tonnes per day in other kilns</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>Installations for the firing of limestone, magnesite or dolomite with a production output</td>
<td>$\text{CO}_2$</td>
</tr>
<tr>
<td></td>
<td>exceeding 50 tonnes burned lime, burned magnesite or burned dolomite per day</td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>Installations for the manufacture of glass, also where it is produced from waste glass,</td>
<td>$\text{CO}_2$</td>
</tr>
<tr>
<td></td>
<td>including installations for the manufacture of glass fibre, with a melting capacity</td>
<td></td>
</tr>
<tr>
<td></td>
<td>exceeding 20 tonnes per day</td>
<td></td>
</tr>
<tr>
<td>17</td>
<td>Installations for the firing of ceramic products with a production output exceeding 75</td>
<td>$\text{CO}_2$</td>
</tr>
<tr>
<td></td>
<td>tonnes per day</td>
<td></td>
</tr>
<tr>
<td>18</td>
<td>Installations for the melting mineral matters, including installations for the production of</td>
<td>$\text{CO}_2$</td>
</tr>
<tr>
<td></td>
<td>mineral fibres, with a melting capacity exceeding 20 tonnes per day</td>
<td></td>
</tr>
<tr>
<td>19</td>
<td>Installations for the drying or firing of gypsum or production of plaster boards and other</td>
<td>$\text{CO}_2$</td>
</tr>
<tr>
<td></td>
<td>gypsum products in the operation of combustion units with a total rated thermal input of 20</td>
<td></td>
</tr>
<tr>
<td></td>
<td>MW or more</td>
<td></td>
</tr>
<tr>
<td>20</td>
<td>Installations for the production of pulp from timber, straw or similar fibrous materials</td>
<td>$\text{CO}_2$</td>
</tr>
<tr>
<td>21</td>
<td>Installations for the production of paper, paperboard or cardboard with a production output</td>
<td>$\text{CO}_2$</td>
</tr>
<tr>
<td></td>
<td>exceeding 20 tonnes per day</td>
<td></td>
</tr>
<tr>
<td>22</td>
<td>Installations for the production of carbon black in the operation of combustion units with</td>
<td>$\text{CO}_2$</td>
</tr>
<tr>
<td></td>
<td>a total rated thermal input of 20 MW or more</td>
<td></td>
</tr>
<tr>
<td>23</td>
<td>Installations for the production of nitric acid</td>
<td>$\text{CO}_2$, $\text{N}_2\text{O}$</td>
</tr>
<tr>
<td>24</td>
<td>Installations for the production of adipic acid</td>
<td>$\text{CO}_2$, $\text{N}_2\text{O}$</td>
</tr>
<tr>
<td>25</td>
<td>Installations for the production of glyoxal or glyoxylic acid</td>
<td>$\text{CO}_2$, $\text{N}_2\text{O}$</td>
</tr>
<tr>
<td>26</td>
<td>Installations for the production of ammonia</td>
<td>$\text{CO}_2$</td>
</tr>
<tr>
<td>27</td>
<td>Installations for the production of bulk organic chemicals (alkenes and chlorinated alkynes;</td>
<td>$\text{CO}_2$</td>
</tr>
<tr>
<td></td>
<td>alkenes; alkynes; aromatics and alkylated aromatics; phenols, alcohols; aldehyde, ketones;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>carboxylic acids, dicarboxylic acids, carboxylic acid anhydrides and dimethyldiethylphthalate;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>epoxides; vinyl acetate acrylonitrile; caprolactam and melamine) with a production output of</td>
<td></td>
</tr>
<tr>
<td></td>
<td>über 100 tonnes per day</td>
<td></td>
</tr>
<tr>
<td>No.</td>
<td>Activities</td>
<td>Greenhouse gas</td>
</tr>
<tr>
<td>-----</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>----------------</td>
</tr>
<tr>
<td>28</td>
<td>Installations for the production of hydrogen or synthesis gas by reforming, partial oxidation, water gas shift reaction or a similar procedure with a production output exceeding 25 tonnes per day</td>
<td>CO₂</td>
</tr>
<tr>
<td>29</td>
<td>Installations for the production of sodium carbonate and bicarbonate of soda</td>
<td>CO₂</td>
</tr>
<tr>
<td>31</td>
<td>Transmission and distribution systems for transport of greenhouse gases for the purposes of geological storage in a storage site permitted under Directive 2009/31/EC</td>
<td>CO₂</td>
</tr>
<tr>
<td>32</td>
<td>Storage sites for the geological storage of greenhouse gases which is permitted under Directive 2009/31/EC</td>
<td>CO₂</td>
</tr>
<tr>
<td>33</td>
<td>Flights which depart from or arrive in an aerodrome situated in the territory of a State of the Agreement on the European Economic Area, but in the case of Member States of the European Union only where the Treaty on European Union applies in that territory. This activity shall not include:</td>
<td>CO₂</td>
</tr>
<tr>
<td></td>
<td>a) flights performed exclusively for the</td>
<td></td>
</tr>
<tr>
<td></td>
<td>aa) transport of a reigning Monarch and his immediate family,</td>
<td></td>
</tr>
<tr>
<td></td>
<td>bb) Heads of State, Heads of Government and Government Ministers of a country other than a Member State of the Agreement on the European Economic Area on official mission where this is substantiated by an appropriate status indicator in the flight plan;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>b) military flights performed by military aircraft and customs and police flights;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>c) flights related to search and rescue, fire-fighting flights, humanitarian flights and emergency medical service flights authorised by the appropriate competent authority;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>d) any flights performed exclusively under visual flight rules as defined in sections 28 and 31 to 34 of the Aviation Code (Luftverkehrsordnung);</td>
<td></td>
</tr>
<tr>
<td></td>
<td>e) flights terminating at the aerodrome from which the aircraft has taken off and during which no intermediate landing has been made;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>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; such flights may not serve for the transport of passengers or cargo or for the positioning or ferrying of aircraft;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>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;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>h) flights performed by aircraft with a certified maximum take-off mass of less than 5,700 kg;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>i) flights performed in the framework of public service obligations imposed in accordance with Article 16 of Regulation (EEC) No 1008/2008 on routes within outermost regions, as specified in Article 349 of the Treaty on the functioning of the European Union, or on routes where the capacity offered does not exceed 30,000 seats per year, and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>j) flights which are not covered by (a) to (i) and are implemented by an aircraft operator which, for remuneration, provides scheduled or non-scheduled aviation services to the public for the carriage of passengers, freight or mail (commercial aircraft operator), where</td>
<td></td>
</tr>
<tr>
<td>No.</td>
<td>Activities</td>
<td>Greenhouse gas</td>
</tr>
<tr>
<td>-----</td>
<td>---------------------------------------------------------------------------</td>
<td>----------------</td>
</tr>
<tr>
<td></td>
<td>aa) this aircraft operator operates fewer than 243 such flights within a calendar year in each of the periods January to April, May to August and September to December, or bb) the total annual emissions of such flights operated by this aircraft operator are lower than 10 000 tonnes per year; this exception shall not apply to 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 State of the Agreement on the European Economic Area.</td>
<td></td>
</tr>
</tbody>
</table>
Annex 2
(re section 5 subsection (1), section 6 subsection (1) second sentence, subsection (2) second sentence, section 13 subsection (4), section 30 subsection (2) first sentence and section 32 subsection (1) No. 1)

Requirements regarding the submission and approval of monitoring plans in accordance with sections 6 and 13, as well as regarding the monitoring of emissions and reporting in accordance with section 5

Part 1

Deadlines for the submission of a monitoring plan

1. The following deadlines shall apply to the submission of a monitoring plan in accordance with section 6 subsection (1) first sentence:
   a) For operators of installations commissioned at the latest ten months prior to the beginning of a trading period, the deadline shall end five months prior to the beginning of the trading period;
   b) Operators of installations commissioned later than ten months prior to the beginning of a trading period must submit the monitoring plan prior to commissioning of the installation;
   c) Aircraft operators commencing their activity by 28 July 2011 must submit a monitoring plan on the reporting of emissions for the years 2010 to 2012 without delay subsequent to 28 July 2011;
   d) Aircraft operators taking up their activity after the time designated at (c) must submit a monitoring plan on the reporting of emissions for the years 2010 to 2012 without delay subsequent to this time, where these years have not yet elapsed;
   e) Aircraft operators taking up their activity by 31 August 2012 must submit a monitoring plan on the reporting of emissions for the trading period 2013 to 2020 by 30 September 2012;
   f) Aircraft operators taking up their activity after the times designated at (e) must submit a monitoring plan for the reporting of emissions for the trading period 2013 to 2020 without delay subsequent to this time, where these years have not yet elapsed.

2. Aircraft operators must submit the monitoring plan for monitoring and reporting of the transport service for the second calendar year of the ongoing trading period in accordance with section 13 subsection (4) at the latest three months prior to the beginning of the second calendar year of the ongoing trading period.
Part 2

Requirements regarding emissions monitoring and reporting

An operator shall calculate its emissions in accordance with its approved monitoring plan. Where this monitoring plan does not contain any regulations, it shall calculate and report the emissions in accordance with the Monitoring and Reporting Regulation and the statutory ordinance in accordance with section 28 subsection (2) No. 1. Where the latter contain no regulations, the following regulations shall be adhered to:

1. With oxidation processes, an oxidation factor of 1 shall be taken as a basis; incomplete combustion shall also not be included in the determination of the emission factor.

2. The CO$_2$ emissions of installations within the meaning of Annex 1 Part 2 Nos. 8 to 10 shall be included via the balancing and offsetting of the carbon contents of the CO$_2$-relevant input and output where these installations in accordance with section 24 are considered as a single installation; combined power stations located at installations for the production of iron and steel may not be balanced together with the other installations.

In derogation from the second sentence, aircraft operators shall monitor the emissions of the year 2012 in accordance with Commission Decision 2007/589/EC.
Annex 3
(re section 5 subsection (2))

Requirements as to verification

Part 1
Reporting on emissions

In accordance with the European Commission regulation, the information contained in emissions reports must be verified in accordance with Article 15 (3) and (4) of Directive 2003/87/EC and the statutory ordinance in accordance with section 28 subsection (2) No. 1. Where these do not provide any regulations, the following requirements shall apply:

A. General principles

1. The emissions from all activities listed in Annex 1 Part 2 shall be subject to verification.

2. The verification procedure shall explore the emissions report in accordance with section 5 subsection (1) and the emissions monitoring in the previous year. Furthermore, the reliability, credibility and precision of the monitoring systems shall be verified, as well as the data and information transmitted on the emissions, in particular
   a) the activity data transmitted and related measurements and calculations,
   b) selection and application of the emission factors,
   c) the calculations for determining the overall emissions, and
   d) with measurements the appropriateness of the selection and application of the measurement procedure.

3. The validation of the information on emissions shall be contingent on reliable, credible data and information permitting emissions to be determined with a high degree of reliability. A high degree of reliability shall require operators to demonstrate that
   a) the data transmitted are reliable,
   b) the data were collected in compliance with applicable scientific standards, and
   c) the relevant information on the installation or the aircraft with which the activity is implemented is complete and free of inconsistencies.

4. The verifier shall be afforded access to all locations and to all information connected with the subject-matter of the examination.

5. The verifier shall take account of whether the installation or the aircraft operator is a registered site in accordance with Article 13 or 14 of Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS) (OJ L 342 of 22 December 2009, p. 1) in the respectively applicable version.
6. The verifier must be independent of the operator whose declaration it verifies.

B. Methods

Strategic analysis
7. The verification shall be based on a strategic analysis of all activities carried out in the installation or of all aviation activities which are covered by the report. This requires the verifier to have an overview of all the activities and their significance for emissions.

Process analysis
8. The verification of the information submitted shall, where appropriate, be carried out on the site of the installation or on the sites which the aircraft operator uses to implement the aviation activity falling under the report. The verifier shall use spot-checks to determine the reliability of the reported data and information.

Risk analysis
9. The verifier shall subject all data on sources of emissions in the installation or on aircraft to an evaluation with regard to their reliability.
10. On the basis of this analysis, the verifier shall explicitly identify those sources or aircraft with a high risk of providing erroneous data, as well as 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 or aircraft. Particular attention shall be given to those sources or aircraft with a high risk of providing erroneous data, and to the abovementioned aspects of the monitoring procedure.
11. 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
12. The verifier shall prepare a report on the validation process stating whether the report of emissions 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. If the verifier identifies incorrect information, it shall indicate this in its report and identify the error and the resulting impact on the overall emissions of the installation.
D. Additional provisions for the verification of emission reports on aviation activity

13. The verifier shall in particular ascertain that
   a) all flights falling within an aviation activity listed in Annex I Part 2 No. 33 have been taken into account. In this task the verifier shall be assisted by timetable data and other data on the aircraft operator’s traffic including data from Eurocontrol requested by that operator;
   b) there is overall consistency between aggregated fuel consumption data and data on fuel purchased or otherwise supplied to the aircraft performing the aviation activity.

Part 2

Information on transport service

1. The general principles and methodology for verifying emissions reports in accordance with section 5 subsection (2) as set out in this Annex shall also apply mutatis mutandis to the verification of aviation tonne-kilometre data for the purpose of allocation in accordance with section 11 or section 12.

2. The verifier shall in particular ascertain that only flights actually performed and falling within an aviation activity listed in Annex 1 Part 2 No. 33 for which the aircraft operator is responsible have been taken into account have been taken into account in that operator’s application under section 11 subsection (3) first sentence or section 13 subsection (1) first sentence. In this task the verifier shall be assisted by data on the aircraft operator’s traffic including data from Eurocontrol requested by that operator. In addition, the verifier shall ascertain that the payload reported by the aircraft operator corresponds to records on payloads kept by that operator for safety purposes.
Annex 4
(re section 21 subsection (1))

Requirements of verifiers

The verifier shall

1. meet the conditions of carrying out his activities in a sound and objective professional manner, and

2. understand
   a) the requirements of the present Act, as well as with the provisions and guidelines adopted by the European Commission 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.
Annex 5
(re section 27 subsection (4) and section 28 subsection (1) No. 5 (e))

Calculation of the specific emission reduction, as well as of the compensation amount in case of non-compliance with the voluntary undertaking in accordance with section 27 subsection (4)

Part 1

Calculation of the specific emission reduction in accordance with section 27 subsection (4)

1. Installation-specific emissions value for the calculation of the specific emission reduction
   a) The installation-specific emissions value for the starting value of the calculation of the specific emission reduction shall be the quotient of the emission volume and of the production volume of the installation in question in the baseline period relevant to the allocation in accordance with section 9; the data used in the allocation procedure are relevant for the calculation of the emissions value. The annual required reduction of the specific emissions value of the installation by 1.74 percent shall begin for the first time in 2010.
   b) The proof of the required reduction of the installation-specific emissions value can also be provided jointly for several installations which are subject to the obligation in accordance with section 27 subsection (2) No. 2 where the exclusion applications list all installations for which joint proof is provided. In such cases, the reduction amounts of the individual installations calculated in accordance with (a) shall be weighted in accordance with Formula 7 in accordance with the share of the emission volume of each individual installation among the overall emissions of all installations included in the joint proof in the baseline period relevant to allocation in accordance with section 9.

2. Calculation formulae
   a) Calculation formulae for proof relating to a single installation
      Formula 1 (compliance with the reduction obligation): E-Mind-Is(n) \geq E-Mind-Soll(n)
      Formula 2 (necessary reduction percentage): E-Mind-Soll(n) = 1.74 \times (n - 2009)
      Formula 3 (reduction percentage achieved): E-Mind-Is(n) = 100 - (E(n) \times 100) / EBas)
   b) Calculation formulae for joint proof
      Formula 4 (compliance with the reduction obligation): EPool-Is(n) \geq EPool-Soll(n)
      Formula 5 (necessary reduction percentage): EPool-Soll(n) = 1,74 \times (n - 2009)
      Formula 6 (reduction percentage achieved by the single installation): EPool-Is-Sg(a, n) = 100 - (E(a, n) \times 100) / (EBas(a))
      Formula 7 (weighting of the reduction amounts with joint proof):
EPool-Is(n) = \sum_a EPool-Is-Sg(a, n) \times W(a)

**Explanation of the abbreviations:**

Formulae 1 to 3:
- **n** Index of the year under report in the trading period 2013-2020
- **EMind-Is(n)** Achieved reduction of the installation-specific emissions value for the year under report n in percent
- **EMind-Soll(n)** Necessary reduction of the installation-specific emissions value for the year under report n in percent
- **E(n)**Installation-specific emissions value achieved in the year under report n in t CO₂Eq per product unit
- **EBas**Installation-specific emissions value achieved in the baseline period relevant to the allocation decision in accordance with section 9 in t CO₂Eq

Formulae 4 to 7:
- **a** Index of the installations with joint proof
- **n** Index of the year under report in the trading period 2013-2020
- **EPool-Is(n)** Reduction of the emissions value achieved of all installations included in the joint proof for the year under report n in percent
- **EPool-Soll(n)** Necessary reduction of the emissions value for the year under report n in percent
- **EPool-Is-Sg(a, n)** Reduction of the specific emissions value of the installation a achieved for the year under report n in percent
- **E(a, n)**Installation-specific emissions value achieved in the year under report n in t CO₂Eq per product unit
- **EBas(a)**Installation-specific emissions value achieved in the baseline period relevant for the allocation decision in accordance with section 9 in t CO₂Eq
- **W(a)**Weighting factor of the reduction contribution of an installation a in accordance with No. 1 (b) in percent

**Part 2**

**Calculation of the compensation amount on non-compliance with the voluntary undertaking in accordance with section 27 subsection (4) fourth and fifth sentences**

Where the obligation in accordance with section 27 subsection (4) first sentence was not met in cases falling under section 27 subsection (4) sentence 4 in a period of in each case three consecutive years under report, the compensation amount from the calculated payment obligation shall be reduced by an amount calculated by applying a reduction factor to the calculated payment obligation. The reduction factor shall correspond to the ratio between the reduction of the specific emissions value in the three-year period reached in percentage
points to 5.22 percentage points. The amount of the payment obligation shall be calculated in accordance with section 27 subsection (3). The second to fourth sentences shall apply mutatis mutandis to the cases regulated in section 27 subsection (4) fifth sentence, and the relevant values shall be adjusted in line with the shortened periods.
Article 2
Amendment of the
Federal Immission Control Act
(Bundes-Immissionsschutzgesetz)

Section 5 subsection (1) second and third sentences of 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 1 of the Act of 20 July 2011 (Federal Law Gazette Part I p. 1474), shall be replaced by the following sentence:

“Where installations subject to licensing fall within the scope of the Greenhouse Gas Emissions Trading Act, requirements to restrict emissions of greenhouse gases shall only be permissible in order to comply with the obligations in accordance with the first sentence No. 1 to ensure that no harmful effects on the environment are caused within the sphere of influence of the installation; this shall only apply to greenhouse gases which are covered by the activity in question in accordance with Annex 1 of the Greenhouse Gas Emissions Trading Act.”

Article 3
Amendment of the
Data Collection Ordinance
(Datenerhebungsverordnung) 2020

The Data Collection Ordinance 2020 of 22 July 2009 (Federal Law Gazette Part I p. 2118), amended by Article 6 of the ordinance of 9 November 2010 (Federal Law Gazette Part I p. 1504), shall be amended as follows:

1. Section 1 shall be amended as follows:
   a) In subsections (1) and (2) No. 1 in each case after the words “Greenhouse Gas Emissions Trading Act,” the words “of 8 July 2004 (Federal Law Gazette Part I p. 1578), most recently amended by Article 9 of the Act of 11 August 2010 (Federal Law Gazette Part I p. 1163),” shall be inserted.
   b) The following sentence shall be added to subsection (2):

      “If an aircraft operator in accordance with the first sentence No. 1 is allotted to the Federal Republic of Germany as the competent administering Member State in accordance with the list of the Commission in accordance with Article 18a (3) of Directive 2003/87/EC in the version of Regulation (EC) No. 748/2009 (OJ L 219 of 22 August 2009, p. 1), amended by Regulation (EU) No. 82/2010 (OJ L 25 of 29 January 2010, p. 12), and if this aircraft operator is allocated by a new version of Regulation (EC) No. 748/2009 to another administering Member State, the present regulation shall remain
applicable to it until it has complied with its obligations in accordance with section 4 with regard to the emissions of the year 2010 and its obligations in accordance with section 5.”

2. In section 2 subsection (1) No. 10, section 7 subsection (3) fourth sentence, section 11 subsection (3) and section 12 in each case after the words “Greenhouse Gas Emissions Trading Act”, the words “of 8 July 2004 (Federal Law Gazette Part I p. 1578), most recently amended by Article 9 of the Act of 11 August 2010 (Federal Law Gazette Part I p. 1163),” shall be inserted.

Article 4
Amendment of the Allocation Act
(Zuteilungsgesetz) 2012

The Allocation Act 2012 of 7 August 2007 (Federal Law Gazette Part I p. 1788) shall be amended as follows:

1. In section 2 first sentence, section 4 subsection (2) first sentence and subsection (3) first sentence, section 10 subsection (3) second sentence, section 15 first sentence, section 16 second sentence, section 17 subsection (1), sections 18, 22 subsection (1) No. 2, section 23 and Annex 4 No. I in each case after the words “Greenhouse Gas Emissions Trading Act,” the words “of 8 July 2004 (Federal Law Gazette Part I p. 1578), most recently amended by Article 9 of the Act of 11 August 2010 (Federal Law Gazette Part I p. 1163),” shall be inserted.

2. Section 5 shall be amended as follows:
   a) The following sentence shall be inserted after subsection (3) first sentence:
      “The first sentence shall also apply to costs not covered elsewhere incurred by the Federation prior to the allocation period 2008 to 2012 for carrying out the tasks designated in the first sentence.”
   c) Subsection (5) second sentence shall be worded as follows:
      “In compensation, the commissioned agency shall have the procurement costs, as well as the expenditure related to procurement, refunded.”

3. Section 6 shall be amended as follows:
   a) In subsection (1) first sentence and subsection (5) second sentence, in each case after the words “Greenhouse Gas Emissions Trading Act”, the words “of 8 July 2004 (Federal Law Gazette Part I p. 1578), most recently amended by
Article 9 of the Act of 11 August 2010 (Federal Law Gazette Part I p. 1163)" shall be inserted.

b) In subsection (5) first sentence No. 3 and third sentence, as well as in subsection (10) first sentence, in each case after the words "Greenhouse Gas Emissions Trading Act", the words "of 8 July 2004 (Federal Law Gazette Part I p. 1578), most recently amended by Article 9 of the Act of 11 August 2010 (Federal Law Gazette Part I p. 1163)," shall be inserted.

4. In Section 7 subsection (1) first sentence and section 20, in each case after the words "Greenhouse Gas Emissions Trading Act," the words "of 8 July 2004 (Federal Law Gazette Part I p. 1578), most recently amended by Article 9 of the Act of 11 August 2010 (Federal Law Gazette Part I p. 1163)," shall be inserted.

5. Section 11 shall be amended as follows:
   a) In subsection (1) first sentence, after the words "Greenhouse Gas Emissions Trading Act," the words "of 8 July 2004 (Federal Law Gazette Part I p. 1578), most recently amended by Article 9 of the Act of 11 August 2010 (Federal Law Gazette Part I p. 1163)," shall be inserted.
   b) In subsection (1) second sentence and subsection (2) first sentence, in each case after the words "Greenhouse Gas Emissions Trading Act", the words "of 8 July 2004 (Federal Law Gazette Part I p. 1578), most recently amended by Article 9 of the Act of 11 August 2010 (Federal Law Gazette Part I p. 1163)," shall be inserted.

6. Section 19 third sentence shall be rescinded.

7. Annex 1 shall be amended as follows:
   a) In Formulae 1 and 3, in each case after the words "Greenhouse Gas Emissions Trading Act", the words "of 8 July 2004 (Federal Law Gazette Part I p. 1578), most recently amended by Article 9 of the Act of 11 August 2010 (Federal Law Gazette Part I p. 1163)," shall be inserted.
   b) In Formulae 2 and 5, in each case after the words "Greenhouse Gas Emissions Trading Act," the words "of 8 July 2004 (Federal Law Gazette Part I p. 1578), most recently amended by Article 9 of the Act of 11 August 2010 (Federal Law Gazette Part I p. 1163)," shall be inserted.

Article 5

Amendment of the Emissions Trading Auctioning Ordinance

(Emissionshandels-Versteigerungsordnung) 2012

The Emissions Trading Auctioning Ordinance 2012 of 17 July 2009 (Federal Law Gazette Part I p. 2048) shall be amended as follows:


2. Section 2 shall be amended as follows:

a) Subsection (2) shall be worded as follows:

“(2) For auctioning the total volume in accordance with subsection (1), from the beginning of the year onwards in each case an auction shall take place once per week until the total volume is auctioned. In 2010 and 2011, the weekly auctioning volumes were 870,000 allowances, and in 2012 there are 945,000. To divide the auctioning volumes in accordance with the second sentence, at the weekly auctions to be held in 2010 and 2011, in each case 570,000 allowances per auction and in 2012 in each case 645,000 allowances per auction shall be offered from January to October in the context of futures trading for delivery in December of the same year; in other respects, the allowances shall be offered in the context of spot trading. If the remaining auctioning volume falls below the volume designated in the second sentence, the remaining volume shall be offered in the following auctioning date.”

b) Subsection (4) shall be amended as follows:

aa) In the first sentence, after the words “Chapter 1605 "Federal Environment Agency”, the comma and the words “Title group 03 “German Emissions Trading Authority” shall be deleted.

bb) After the second sentence, the following sentence shall be inserted:

“The volume of allowances in accordance with subsection (1) No. 2 shall increase in 2012 in total by a number of allowances the net proceeds from the auctioning of which cover the total expenditure of the Federal Environment Agency in connection with the refunding of
the general emissions trading fee in accordance with the Emissions Trading Cost Ordinance (Emissionshandels-Kostenverordnung) 2007.”

cc) In the previous third sentence, “first sentence” shall be replaced by the words “first and third sentences”.

**Article 6**

**Amendment of the Renewable Energy Act**

(Erneuerbare-Energien-Gesetz)


1. In section 27 subsection (4) No. 3, after the word “shall be”, the comma and the words “by 3.0 Cent per kilowatt hour” shall be deleted.

2. In section 46 No. 2 the words “as well as” shall be replaced by a comma and after “section 27 subsection (4) Nos. 1 and 3”, the words “as well as the number of the free allowances allocated for the heat production of the installation in the previous year” shall be inserted.

3. Section 66 subsection (1) shall be amended as follows:
   a) The following sentence shall be added to No. 3:
      “Annex 3 No. VI shall apply mutatis mutandis to the increase in the remuneration in accordance with the first and third sentences.”
   b) No. 5 shall be amended as follows:
      aa) The third and fourth sentences shall be rescinded.
      bb) The following new third sentence shall be inserted after the second sentence:
          “Annex 3 No. VI shall apply mutatis mutandis to remuneration in accordance with the second sentence.”

4. The following Numbers V and VI shall be added to Annex 3:
   “V. Amount of bonus
      The CHP bonus shall be 3.0 Cent per kilowatt hour.
   VI. Crediting of the allocation of free allowances in accordance with section 9 of the Greenhouse Gas Emissions Trading Act
      The CHP bonus in accordance with No. V shall be reduced for electricity within the meaning of No. I.1 from installations which in accordance with section 9 of the Greenhouse Gas Emissions Trading Act receive an allocation of free allowances for heat production to the value equivalent of the free allowances allocated for the coupled heat production of this installation in the
previous year. The authority competent in accordance with section 19 subsection (1) No. 3 of the Greenhouse Gas Emissions Trading Act shall show the number of the allowances which are attributable to the coupled heat production of the installation in the allocation notice. The deduction of the value equivalent of the allocated free allowances shall be effected within the final account of the previous year by the network operator. As a value equivalent of a free allowance in accordance with the first sentence, the average, volume-weighted purchase price from the auctions in accordance with section 8 of the Greenhouse Gas Emissions Trading Act in the second quarter of the accounting year shall be estimated. The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety shall publish the value equivalent to be set for the respective calendar year by 30 September in the electronic Federal Gazette."

**Article 7**

**Amendment of the**

**Emissions Trading Cost Ordinance**

*(Emissionshandelskostenverordnung)* 2007

The Emissions Trading Cost Ordinance 2007 of 31 August 2004 (Federal Law Gazette Part I p. 2273) shall be amended as follows:

1. In section 1 subsection (1) and section 2, in each case after the words “Section 20 subsection (1) second sentence of the Greenhouse Gas Emissions Trading Act”, the words “of 8 July 2004 (Federal Law Gazette Part I p. 1578), most recently amended by Article 9 of the Act of 11 August 2010 (Federal Law Gazette Part I p. 1163),” shall be inserted.

2. The Annex shall be amended as follows:
Article 8
Amendment of the
Data Collection Ordinance
(Datenerhebungsverordnung) 2012

The Data Collection Ordinance 2012 of 11 July 2006 (Federal Law Gazette Part I p. 1572) shall be amended as follows:


Article 9
Amendment of the
Allocation Act
(Zuteilungsgesetz) 2007

The Allocation Act 2007 of 26 August 2004 (Federal Law Gazette Part I p. 2211), amended by Article 8 of the Act of 22 December 2004 (Federal Law Gazette Part I p. 3704), shall be amended as follows:

1. In sections 1, 4 subsection (3) second sentence, section 7 subsections (8) and (9) second sentence, section 8 subsection (2), section 9 subsection (3) second sentence, section 10 subsection (5) first sentence, section 11 subsection (4) first sentence, section 12 subsection (6) first sentence, section 13 subsection (3) first sentence, section 14 subsection (3) first sentence and 3, section 15 subsection (1) first sentence, section 17 third sentence, section 18 second sentence, section 19 subsection (1), section 20 first sentence and section 21 subsection (1) No. 3, in each case after the words “Greenhouse Gas Emissions Trading Act”, the words “of 8 July 2004 (Federal Law Gazette Part I p. 1578), most recently amended by Article 9 of the Act of 11 August 2010 (Federal Law Gazette Part I p. 1163),” shall be inserted.


3. In section 22 subsection (1), after the words “Greenhouse Gas Emissions Trading Act”, the words “of 8 July 2004 (Federal Law Gazette Part I p. 1578), most recently
amended by Article 9 of the Act of 11 August 2010 (Federal Law Gazette Part I p. 1163),” shall be inserted.


Article 10
Amendment of the Allocation Ordinance (Zuteilungsverordnung) 2007

The Allocation Ordinance 2007 of 31 August 2004 (Federal Law Gazette Part I p. 2255) shall be amended as follows:

1. Section 1 shall be amended as follows:

2. In section 3 subsection (1) first sentence, section 4 subsection (1) third sentence, subsection (3) second sentence, section 8 first sentence, section 9 subsection (1) third sentence, section 14 subsection (1) first sentence, subsection (3) first sentence and subsection (6) second sentence, in each case after the words “Greenhouse Gas Emissions Trading Act”, the words “of 8 July 2004 (Federal Law Gazette Part I p. 1578), most recently amended by Article 9 of the Act of 11 August 2010 (Federal Law Gazette Part I p. 1163),” shall be inserted.

3. Section 15 shall be rescinded.

Article 11
Amendment of the Allocation Ordinance (Zuteilungsverordnung) 2012

The Allocation Ordinance 2012 of 13 August 2007 (Federal Law Gazette Part I p. 1941) shall be amended as follows:

1. In section 1 first and second sentences, section 3 subsection (1) first sentence,
section 5 subsection (3) second sentence, section 6 subsection (1) second sentence, section 8 subsection (1) third sentence, section 10 subsection (4), section 11 subsection (5), section 17 subsection (1), section 19 subsections (1) and (4), section 20 subsection (1) first sentence and subsection (4) first sentence, as well as section 21, in each case after the words “Greenhouse Gas Emissions Trading Act”, the words “of 8 July 2004 (Federal Law Gazette Part I p. 1578), most recently amended by Article 9 of the Act of 11 August 2010 (Federal Law Gazette Part I p. 1163),” shall be inserted.

2. Section 14 shall be amended as follows:

   a) In subsection (1) No. 3, subsection (2) first sentence and subsection (3) first sentence, in each case after the words “Greenhouse Gas Emissions Trading Act”, the words “of 8 July 2004 (Federal Law Gazette Part I p. 1578), most recently amended by Article 9 of the Act of 11 August 2010 (Federal Law Gazette Part I p. 1163),” shall be inserted.


3. Section 15 shall be amended as follows:

   a) In subsection (1) No. 3 and subsection (2), in each case after the words “Greenhouse Gas Emissions Trading Act”, the words “of 8 July 2004 (Federal Law Gazette Part I p. 1578), most recently amended by Article 9 of the Act of 11 August 2010 (Federal Law Gazette Part I p. 1163),” shall be inserted.


4. Annex 4 shall be amended as follows:

   a) In Formulae 1, 2 and 3 and Definitions EF and \( P_{B_P(KGKW)} \), in each case after the words “Greenhouse Gas Emissions Trading Act”, the words “of 8 July 2004 (Federal Law Gazette Part I p. 1578), most recently amended by Article 9 of the Act of 11 August 2010 (Federal Law Gazette Part I p. 1163),” shall be inserted.

Article 12
Amendment of the
Act on Securities Trading
(Wertpapierhandelsgesetz)

In section 20a subsection (4) No. 2 and section 38 subsection (2) Nos. 1 and 3 of the Act on Securities Trading in the version promulgated on 9 September 1998 (Federal Law Gazette Part I p. 2708), most recently amended by Article 3 of the Act of 22 June 2011 (Federal Law Gazette Part I p. 1126), in each case “Section 3 subsection (4) first sentence” shall be replaced by the words “Section 3 No. 3”.

Article 13
Amendment of the
Turnover Tax Act
(Umsatzsteuergesetz)

Section 13b subsection (2) No. 6 of the Turnover Tax Act in the version promulgated on 21 February 2005 (Federal Law Gazette Part I p. 386), most recently amended by Article 6 of the Act of 16 June 2011 (Federal Law Gazette Part I p. 1090), shall be worded as follows:

“6. transfer of allowances in accordance with section 3 No. 3 of the Greenhouse Gas Emissions Trading Act, emission reduction units in accordance with section 2 No. 20 of the Project Mechanisms Act and certified emission reductions in accordance with section 2 No. 21 of the Project Mechanisms Act;”.

Article 14
Amendment of the
Renewable Energy Heat Act
(Erneuerbare-Energien-Wärmegesetz)


Article 15
Entry into force, cessation of application

(1) Article 6 Nos. 1 to 3 (a) and No. 3 (b) (bb) shall come into force on 1 January 2013.

(2) In other respects, the present Act shall come into force on the day after its promulgation. At the same time, the Greenhouse Gas Emissions Trading Act of 8 July 2004
(Federal Law Gazette Part I p. 1578), most recently amended by Article 9 of the Act of 11 August 2010 (Federal Law Gazette Part I p. 1163), shall cease to apply.

The constitutional rights of the Bundesrat have been complied with.

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

Berlin, 21 July 2011

Federal President
Christian Wulff

Federal Chancellor
Dr. Angela Merkel

Federal Minister for the Environment,
Nature Conservation and Nuclear Safety
Norbert Röttgen