

Commission Delegated Regulation (EU) 2019/331 of 19 December 2018 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council (Text with EEA relevance)

CHAPTER II

Application, data reporting and monitoring rules

Article 4

Application for free allocation by operators of incumbent installations

1 The operator of an installation eligible for free allocation pursuant to Article 10a of Directive 2003/87/EC may submit to the competent authority an application for free allocation for an allocation period. That application shall be submitted before 30 May 2019 as regards the first allocation period and every five years thereafter.

Member States may set an alternative time-limit for the submission of such applications, which, however, may not be later or earlier than one month compared to the time-limit provided for in the first subparagraph.

2 An application for free allocation submitted pursuant to paragraph 1 shall be accompanied by the following particulars:

- a a baseline data report verified as satisfactory in accordance with measures adopted pursuant to Article 15 of Directive 2003/87/EC containing data for the installation, and its sub-installations as specified in Article 10 and Annexes I and II to this Regulation, taking into account, for the calculation of historical activity levels for specific product benchmarks, Annex III to this Regulation, containing each parameter listed in Annex IV to this Regulation and covering the baseline period relating to the allocation period to which the application relates;
- b the monitoring methodology plan which formed the basis for the baseline data report and the verification report, in accordance with Annex VI;
- c a verification report issued in accordance with measures adopted pursuant to Article 15 of Directive 2003/87/EC on the baseline data report and, unless it has already been approved by the competent authority, on the monitoring methodology plan.

Article 5

Application for free allocation by new entrants

1 Upon application by a new entrant, the Member State concerned shall determine on the basis of this Regulation the amount of allowances to be allocated free of charge to that operator's installation once it has started normal operation.

2 The operator shall divide the installation concerned in sub-installations in accordance with Article 10. The operator shall submit to the competent authority, in support of the application referred to in paragraph 1, all relevant information and a new entrant data report containing each parameter listed in sections 1 and 2 of Annex IV for each sub-installation separately, for the first calendar year after the start of normal operation, together with the

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monitoring methodology plan as referred to in Article 8 and the verification report issued in accordance with measures adopted pursuant to Article 15 of Directive 2003/87/EC, and shall specify to the competent authority the date of start of normal operation.

3 Where an application by a new entrant fulfils all the conditions laid down in paragraph 2, and follows the allocation rules laid down in Articles 17 to 22, the competent authority shall approve it, as well as the specified date of start of normal operation.

4 Competent authorities shall only accept data submitted pursuant to this Article that has been verified as satisfactory by a verifier, in accordance with the requirements set out in measures adopted pursuant to Article 15 of Directive 2003/87/EC.

Article 6

General obligation to monitor

The operator of an installation, applying for or receiving free allocation pursuant to Article 10a of Directive 2003/87/EC shall monitor the data to be submitted as listed in Annex IV to this Regulation, based on a monitoring methodology plan approved by the competent authority by 31 December 2020.

Article 7

Monitoring principles

1 Operators shall determine complete and consistent data and ensure that there are no overlaps between sub-installations and no double counting. Operators shall apply the determination methods laid down in Annex VII, exercise due diligence and use data sources representing highest achievable accuracy pursuant to section 4 of Annex VII.

2 By way of derogation from paragraph 1, the operator may use other data sources in accordance with sections 4.4 to 4.6 of Annex VII, if any of the following conditions is met:

- a the use of most accurate data sources pursuant to section 4 of Annex VII is technically not feasible;
- b the use of most accurate data sources pursuant to section 4 of Annex VII would incur unreasonable costs;
- c based on a simplified uncertainty assessment identifying major sources of uncertainty and estimating their associated levels of uncertainty, the operator demonstrates to the satisfaction of the competent authority that the associated level of accuracy of the data source proposed by the operator is equivalent to or better than the level of accuracy of most accurate data sources pursuant to section 4 of Annex VII.

3 Operators shall keep complete and transparent records of all data listed in Annex IV, and supporting documents, for at least 10 years from the date of the submission of the application for free allocation. The operator shall, upon request, make those data and documents available to the competent authority and to the verifier.

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Article 8

Content and submission of the monitoring methodology plan

1 The operator of an installation applying for free allocation pursuant to Articles 4(2)b and 5(2) shall draw up a monitoring methodology plan containing, in particular, a description of the installation and its sub-installations, the production processes and a detailed description of monitoring methodologies and data sources. The monitoring methodology plan shall comprise a detailed, complete and transparent documentation of all relevant data collection steps, and shall contain at least the elements laid down in Annex VI.

2 For each parameter listed in Annex IV, the operator shall select a monitoring method based on the principles laid down in Article 7 and on the methodological requirements laid down in Annex VII. Based on the risk assessment in accordance with Article 11(1) and control procedures referred to in Article 11(2), when selecting monitoring methods, the operator shall give preference to monitoring methods that give most reliable results, minimise the risk of data gaps, and are least prone to inherent risks, including control risks. The selected method shall be documented in the monitoring methodology plan.

3 Where Annex VI makes a reference to a procedure, and for the purposes of Article 12(3) of Regulation (EU) No 601/2012, the operator shall establish, document, implement and maintain such a procedure separately from the monitoring methodology plan. The operator shall make any written documentation of the procedures available to the competent authority upon request.

4 The operator shall submit the monitoring methodology plan to the competent authority for approval by the date set in Article 4(1). Member States may set an earlier time-limit for the submission of the monitoring methodology plan and may require the monitoring methodology plan to be approved by the competent authority before submission of an application for free allocation.

5 Where an operator applies for free allocation but has renounced it for a previous allocation period, the operator shall submit the monitoring methodology plan for approval not later than six months before the time-limit for submission of the application pursuant to Article 4(1).

Article 9

Changes to the monitoring methodology plan

1 The operator shall regularly check whether the monitoring methodology plan reflects the nature and functioning of the installation and whether it can be improved. To this end, the operator shall take account of any recommendations for improvements included in the relevant verification report.

2 The operator shall modify the monitoring methodology plan in any of the following situations:

- a new emissions or activity levels occur due to new activities carried out or due to the use of new fuels or materials not yet contained in the monitoring methodology plan;
- b the use of new measuring instrument types, new sampling or analysis methods or new data sources, or other factors, lead to higher accuracy in the determination of reported data;

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- c data resulting from the previously applied monitoring methodology has been found incorrect;
 - d the monitoring methodology plan is not, or no longer, in conformity with the requirements of this Regulation;
 - e it is necessary to implement recommendations for improvement of the monitoring methodology plan contained in a verification report.
- 3 The operator shall notify any intended modification of the monitoring methodology plan to the competent authority without undue delay. However, a Member State may allow the operator to notify, by 31 December of the same year or by another date set by the Member State, intended modifications of the monitoring methodology plan that are not significant within the meaning of paragraph 5.
- 4 Any significant modification of the monitoring methodology plan within the meaning of paragraph 5 shall be subject to approval by the competent authority. Where the competent authority considers that a modification that has been notified by the operator as significant is not significant, it shall inform the operator thereof.
- 5 The following modifications of the monitoring methodology plan of an installation shall be considered significant:
- a modifications resulting from changes to the installation, in particular new sub-installations, changes to the boundaries of existing sub-installations or closures of sub-installations;
 - b a switch from a monitoring methodology laid down in sections 4.4 to 4.6 of Annex VII to another methodology laid down in those sections;
 - c the change of a default value or estimation method laid down in the monitoring methodology plan;
 - d changes requested by the competent authority to ensure conformity of the monitoring methodology plan with the requirements of this Regulation.
- 6 The operator shall keep records of all modifications of the monitoring methodology plan. In each record, the following shall be specified:
- a a transparent description of the modification;
 - b a justification for the modification;
 - c the date of notification of the intended modification to the competent authority;
 - d the date of acknowledgement, by the competent authority, of the receipt of the notification referred to paragraph 3, where available, and the date of the approval or provision of information referred to in paragraph 4;
 - e the starting date of implementation of the modified monitoring methodology plan.

Article 10

Division into sub-installations

1 For the purposes of data reporting and of monitoring, the operator shall divide each installation eligible for the free allocation of emission allowances under Article 10a of Directive 2003/87/EC into sub-installations. For this purpose, the installation's inputs, outputs and emissions shall be assigned to one or more sub-installations by establishing, where relevant, a method for quantifying specific fractions of relevant inputs, outputs or emissions to be assigned to individual sub-installations.

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2 For attributing the installation's inputs, outputs and emissions to sub-installations, the operator shall carry out the following steps in the descending order:

- a if any of the products as specified for product benchmarks listed in Annex I are produced in the installation, the operator shall attribute the related inputs, outputs and emissions to the product benchmark sub-installations, as applicable, applying rules set out in Annex VII;
- b if inputs, outputs and emissions qualifying for heat benchmark or district heating sub-installations are relevant at the installation, and do not qualify for any of the sub-installations referred to in point (a), the operator shall attribute them to heat benchmark sub-installations or to district heating sub-installation, as applicable, applying the rules set out in Annex VII;
- c if inputs, outputs and emissions qualifying for fuel benchmark sub-installations are relevant at the installation, and do not qualify for any of the sub-installations referred to in points (a) or (b), the operator shall attribute them to fuel benchmark sub-installations, as applicable, applying the rules set out in Annex VII;
- d if inputs, outputs and emissions qualifying for process emissions sub-installations are relevant at the installation, and do not qualify for any of the sub-installations referred to in points (a), (b) or (c), the operator shall attribute them to process emissions sub-installations, as applicable, applying the rules set out in Annex VII.

3 For heat benchmark sub-installations, fuel benchmark sub-installations and process emissions sub-installations, the operator shall clearly distinguish on the basis of NACE and PRODCOM codes whether or not the relevant process serves a sector or subsector deemed to be exposed to a significant risk of carbon leakage as determined in accordance with Article 10b(5) of Directive 2003/87/EC. In addition, the operator shall distinguish the amount of measurable heat which is exported for the purposes of district heating from the measurable heat which does not serve a sector or subsector deemed to be exposed to a significant risk of carbon leakage as determined in accordance with Article 10b(5) of Directive 2003/87/EC.

Where at least 95 % of the activity level of the heat benchmark sub-installations, of the fuel benchmark sub-installations or of the process emissions sub-installations, serve sectors or subsectors deemed to be exposed to a significant risk of carbon leakage as determined in accordance with Article 10b(5) of Directive 2003/87/EC or where at least 95 % of the activity level of the heat benchmark sub-installations, of the fuel benchmark sub-installations or of the process emissions sub-installations serve sectors or subsectors not deemed to be exposed to a significant risk of carbon leakage, the operator is exempted from providing data allowing for the distinction in terms of carbon leakage exposure.

Where at least 95 % of the activity level of the district heating sub-installations or the heat benchmark sub-installations are attributable to one of these sub-installations, the operator may attribute the total activity level of these sub-installations to the one with the highest activity level.

4 Where an installation included in the EU ETS has produced and exported measurable heat to an installation or other entity not included in the EU ETS, the operator shall consider that the relevant process of the heat benchmark sub-installation for this heat does not serve a sector or subsector deemed to be exposed to a significant risk of carbon leakage as determined in accordance with Article 10b(5) of Directive 2003/87/EC, unless the operator provides evidence to the satisfaction of the competent authority that the consumer of the measurable heat belongs to a sector or subsector deemed to be exposed to a significant risk of carbon leakage as determined in accordance with Article 10b(5) of Directive 2003/87/EC.

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For distinguishing measurable heat attributable to the district heating sub-installation, the operator shall provide evidence to the satisfaction of the competent authority that the measurable heat is exported to district heating.

5 By carrying out the division in accordance with paragraphs 1 and 2, the operator shall ensure all of the following:

- a each of the installation's physical products is attributed to one sub-installation without any omission or double counting;
- b 100 % of the quantity of all the installation's source streams and emissions as listed in the installation's monitoring plan approved in accordance with Regulation (EU) No 601/2012 are attributed to sub-installations without any omission or double counting, unless they relate to any process non-eligible for free allocation such as the production of electricity in the installation, flaring other than safety flaring which is not covered by a product benchmark sub-installation, or the production of measurable heat exported to other EU ETS installations;
- c 100 % of the quantity of net measurable heat eligible for free allocation produced within the installation, or imported or exported by the installation, as well as quantities transferred between sub-installations, are attributed to sub-installations without any omission or double counting;
- d for all measurable heat produced, imported or exported by sub-installations, it is documented whether the measurable heat was produced in a combustion process within an EU ETS installation, imported from other heat producing processes or imported from non-EU ETS entities;
- e where electricity is produced within the installation, the quantities produced within product benchmark sub-installations are attributed to these sub-installations without any omission or double counting;
- f for each product benchmark sub-installation where exchangeability of fuel and electricity is relevant in accordance with section 2 of Annex I, the relevant amount of electricity consumed is separately identified and attributed;
- g where a sub-installation has outputs of carbon containing materials in the form of exported fuels, products, by-products, feedstocks for other sub-installations or installations, or waste gases, those outputs are attributed to sub-installations without any omission or double counting, if not covered by point (b);
- h CO₂ emissions occurring outside the system boundaries of a product benchmark sub-installation resulting from processes listed in points (a) to (f) of Article 2(10) are assigned to a process emissions sub-installation to the extent that it can be demonstrated to the satisfaction of the competent authority that these emissions are direct and immediate results of any of the processes listed in Article 2(10) and that they do not result from the subsequent oxidation of incompletely oxidised carbon in a gaseous state under standard conditions;
- i where CO₂ emissions from the combustion of waste gas not serving the purpose of the production of measurable heat, non-measurable heat or electricity occur outside the system boundaries of a product benchmark sub-installation as a result of the processes listed in points (a) to (f) of Article 2(10), 75 % of the quantity of the carbon content of the waste gas shall be considered as converted to CO₂, and assigned to a process emissions sub-installation;
- j for avoiding any double counting, products of a production process returned into the same production process are deducted from annual activity levels, as appropriate in line with product definitions laid down in Annex I;
- k where measurable heat is recovered from processes covered by a fuel benchmark sub-installation, for avoiding double counting, the relevant amount of net measurable heat

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divided by a reference efficiency of 90 % is subtracted from the fuel input. The recovery of heat from processes covered by a process emissions sub-installation is treated the same way.

Article 11

Control system

1 The operator shall identify sources of risks of errors in the data flow from primary data to final data in the baseline data report and shall establish, document, implement and maintain an effective control system to ensure that the reports resulting from data flow activities do not contain misstatements and are in conformity with the monitoring methodology plan and in compliance with this Regulation.

The operator shall make the risk assessment pursuant to the first subparagraph available to the competent authority upon request. The operator shall also make it available for the purposes of verification.

2 For the purpose of the first subparagraph of paragraph 1, the operator shall establish, document, implement and maintain written procedures for data flow activities as well as for control activities, and include references to those procedures in the monitoring methodology plan in accordance with Article 8(3).

3 Control activities referred to in paragraph 2 shall include, where applicable:

- a quality assurance of the relevant measurement equipment;
- b quality assurance of information technology systems ensuring that the relevant systems are designed, documented, tested, implemented, controlled and maintained in a way that ensures processing reliable, accurate and timely data in accordance with the risks identified in accordance with paragraph 1;
- c segregation of duties in the data flow activities and control activities, as well as management of necessary competencies;
- d internal reviews and validation of data;
- e corrections and corrective action;
- f control of out-sourced processes;
- g keeping records and documentation including the management of document versions.

4 For the purposes of paragraph 3(a), the operator shall ensure that all relevant measuring equipment is calibrated, adjusted and checked at regular intervals including prior to use, and checked against measurement standards traceable to international measurement standards, where available, and proportionate to the risks identified.

Where components of the measuring systems cannot be calibrated, the operator shall identify those in the monitoring methodology plan and propose alternative control activities.

When the equipment is found not to comply with required performance, the operator shall promptly take necessary corrective action.

5 For the purposes of paragraph 3(d), the operator shall review and validate data resulting from the data flow activities referred to in paragraph 2.

Such review and validation of the data shall include:

- a a check as to whether the data are complete;

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- b a comparison of the data that the operator has determined over the preceding baseline period and, in particular, consistency checks based on time series of greenhouse gas efficiency of each sub-installation;
- c a comparison of data and values resulting from different operational data collection systems, in particular for production protocols, sales figures and stock figures of products to which product benchmarks relate;
- d comparisons and completeness checks of data at installation and sub-installation level for ensuring that the requirements laid down in Article 10(5) are fulfilled.

6 For the purposes of paragraph 3(e), the operator shall ensure that, where data flow activities or control activities are found not to function effectively, or not to respect the rules set in the documentation of procedures for those activities, corrective action is taken and affected data is corrected without undue delay.

7 For the purposes of paragraph 3(f), where the operator outsources one or more data flow activities or control activities referred to in paragraph 1, the operator shall proceed to all of the following:

- a check the quality of the outsourced data flow activities and control activities in accordance with this Regulation;
- b define appropriate requirements for the outputs of the outsourced processes as well as the methods used in those processes;
- c check the quality of the outputs and methods referred to in point (b) of this paragraph;
- d ensure that outsourced activities are carried out such that those are responsive to the inherent risks and control risks identified in the risk assessment referred to in paragraph 1.

8 The operator shall monitor the effectiveness of the control system, including by carrying out internal reviews and taking into account the findings of the verifier during the verification of reports for the purposes of Article 4(2).

When the operator finds the control system ineffective or not commensurate with the risks identified, it shall seek to improve the control system and update the monitoring methodology plan or the underlying written procedures for data flow activities, risk assessments and control activities, as appropriate.

Article 12

Data gaps

1 Where for technical reasons it is temporarily not feasible to apply the monitoring methodology plan as approved by the competent authority, the operator shall apply a method based on alternative data sources listed in the monitoring methodology plan for the purpose of performing corroborative checks in accordance with Article 10(5), or, if such an alternative is not contained in the monitoring methodology plan, an alternative method which provides the highest achievable accuracy according to the generic data sources and their hierarchy laid down in section 4 of Annex VII, or a conservative estimation approach, until the conditions for application of the approved monitoring methodology plan have been restored.

The operator shall take all necessary measures to achieve a prompt application of the approved monitoring methodology plan.

2 Where data relevant for the baseline data report are missing, for which the monitoring methodology plan does not list alternative monitoring methods or alternative data sources

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for corroborating data or for closing the data gap, the operator shall use an appropriate estimation method for determining conservative surrogate data for the respective time period and missing parameter, in particular, based on best industry practice, recent scientific and technical knowledge, and shall provide due justification for the data gap and the use of those methods in an annex to the baseline data report.

3 Where a temporary deviation from the approved monitoring methodology plan occurs in accordance with paragraph 1, or where data relevant for the report referred to in Article 4(2) (a) or Article 5(2) are found to be missing, the operator shall without undue delay develop a written procedure for avoiding this type of data gap in the future and modify the monitoring methodology plan in accordance with Article 9(3). Furthermore, the operator shall assess whether and how the control activities referred to in Article 11(3) need to be updated and shall modify those control activities and the relevant written procedures, as appropriate.

Article 13

Use of electronic templates

Member States may require operators and verifiers to use electronic templates or specific file formats for the submission of baseline data reports, monitoring methodology plans and verification reports as referred to in Article 4(2) and of new entrant data reports, monitoring methodology plans and verification reports as referred to in Article 5(2).

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