

COMMISSION IMPLEMENTING REGULATION (EU) 2020/2084**of 14 December 2020****amending and correcting Implementing Regulation (EU) 2018/2067 on the verification of data and on the accreditation of verifiers pursuant to Directive 2003/87/EC of the European Parliament and of the Council****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC ⁽¹⁾, and in particular Article 10a(2) and the third subparagraph of Article 15 thereof,

Whereas:

- (1) To ensure consistency between verification of annual emissions reports pursuant to Article 15 of Directive 2003/87/EC and verification of activity level data collected pursuant to Commission Implementing Regulation (EU) 2019/1842 ⁽²⁾, as well as to make use of the synergies, it is appropriate to include rules for the verification of annual activity level reports required under Article 3 of Implementing Regulation (EU) 2019/1842 in the legal framework set by Commission Implementing Regulation (EU) 2018/2067 ⁽³⁾.
- (2) Harmonised standards such as the harmonised standard concerning requirements for greenhouse gas validation and verification bodies for use in accreditation or other forms of recognition are regularly revised. A number of amendments should be made to Implementing Regulation (EU) 2018/2067 to align it with revisions in the applicable standards and to strengthen the requirements for procedures of verifiers and for the operation of the verifier's management system.
- (3) It is important to clarify that the presumption of conformity laid down in Article 4 of Implementing Regulation (EU) 2018/2067 does not exempt the verifier from applying the programme specific requirements in that Implementing Regulation and that that presumption of conformity does not apply to certain provisions in Implementing Regulation (EU) 2018/2067 where it is important to preserve the objectives and principles set out in Annex V to Directive 2003/87/EC.
- (4) Under Commission Delegated Regulation (EU) 2019/331 ⁽⁴⁾ and Implementing Regulation (EU) 2019/1842, the operator of an installation applying for free allocation in accordance with Article 10a of Directive 2003/87/EC is required to include the relevant monitoring provisions in a monitoring methodology plan. Therefore, it is no longer appropriate to provide for the verification of elements relevant for such free allocation in the scope of verification of the monitoring plan under Implementing Regulation (EU) 2018/2067.
- (5) In order to ensure that the evaluation of verification may be carried out in efficient and timely manner, the rules regarding access of the competent authority to internal verification documentation should be amended.

⁽¹⁾ OJ L 275, 25.10.2003, p. 32.

⁽²⁾ Commission Implementing Regulation (EU) 2019/1842 of 31 October 2019 laying down rules for the application of Directive 2003/87/EC of the European Parliament and of the Council as regards further arrangements for the adjustments to free allocation of emission allowances due to activity level changes (OJ L 282, 4.11.2019, p. 20).

⁽³⁾ Commission Implementing Regulation (EU) 2018/2067 of 19 December 2018 on the verification of data and on the accreditation of verifiers pursuant to Directive 2003/87/EC of the European Parliament and of the Council (OJ L 334, 31.12.2018, p. 94).

⁽⁴⁾ Commission Delegated Regulation (EU) 2019/331 of 19 December 2018 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council (OJ L 59, 27.2.2019, p. 8).

- (6) To further promote harmonisation within the Union and to improve the effectiveness of the accreditation system, it is important to clarify the eligibility of verifiers requesting accreditation in accordance with Implementing Regulation (EU) 2018/2067.
- (7) Following the publication of Implementing Regulation (EU) 2018/2067, errors of different types have been detected and need to be corrected. In particular, throughout the text, the number of Delegated Regulation 2019/331 was omitted and needs to be inserted.
- (8) Force majeure circumstances beyond the control of the operator or aircraft operator may prevent the verifier from carrying out physical site visits according to Article 21 of Implementing Regulation (EU) 2018/2067. In these cases it is appropriate to allow verifiers to carry out virtual site visits provided specific conditions are met.
- (9) Implementing Regulation (EU) 2018/2067 should therefore be amended and corrected accordingly.
- (10) It is appropriate for the amendments to Implementing Regulation (EU) 2018/2067 to apply to the verification of greenhouse gas emissions, tonne-kilometre data and allocation data related to the fourth trading period. The applicability of the relevant provisions of this Regulation should therefore be deferred to 1 January 2021.
- (11) The measures provided for in this Regulation are in accordance with the opinion of the Climate Change Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Implementing Regulation (EU) 2018/2067

Implementing Regulation (EU) 2018/2067 is amended as follows:

- (1) Article 2 is replaced by the following:

‘Article 2

Scope

This Regulation shall apply to the verification of greenhouse gas emissions and tonne-kilometre data occurring from 1 January 2019, reported pursuant to Article 14 of Directive 2003/87/EC, and to the verification of data relevant for the update of *ex ante* benchmarks and for the determination of free allocation to installations pursuant to Article 10a of that Directive.’;

- (2) Article 3 is amended as follows:

- (a) point (3) is replaced by the following:

‘(3) “verifier” means a legal person carrying out verification activities pursuant to this Regulation and accredited by a national accreditation body pursuant to Regulation (EC) No 765/2008 and this Regulation or a natural person otherwise authorised, without prejudice to Article 5(2) of that Regulation, at the time a verification report is issued.’;

- (b) the following point (6a) is inserted:

‘(6a) “annual activity level report” means a report submitted by an operator pursuant to Article 3(3) of Commission Implementing Regulation (EU) 2019/1842 (*);

(*) Commission Implementing Regulation (EU) 2019/1842 of 31 October 2019 laying down rules for the application of Directive 2003/87/EC of the European Parliament and of the Council as regards further arrangements for the adjustments to free allocation of emission allowances due to activity level changes (OJ, L 282, 4.11.2019, p. 20).’;

(c) point (7) is replaced by the following:

‘(7) “operator’s or aircraft operator’s report” means the annual emission report to be submitted by the operator or aircraft operator pursuant to Article 14(3) of Directive 2003/87/EC, the tonne-kilometre report to be submitted by the aircraft operator for the purposes of applying for the allocation of allowances pursuant to Articles 3e and 3f of that Directive, the baseline data report submitted by the operator pursuant to Article 4 (2) of Delegated Regulation (EU) 2019/331, the new entrant data report submitted by the operator pursuant to Article 5(2) of that Regulation or the annual activity level report;’;

(d) in point (13), point (c) is replaced by the following:

‘(c) for the purposes of verifying the baseline data report submitted by the operator pursuant to Article 4(2)(a) of Delegated Regulation (EU) 2019/331, the new entrant data report submitted by the operator pursuant to Article 5(2) of that Regulation or the annual activity level report, any act or omission of an act by the operator that is contrary to the requirements in the monitoring methodology plan;’;

(e) the following point (30) is added:

‘(30) “activity level reporting period” means the applicable period preceding the submission of the annual activity level report pursuant to Article 3(1) of Implementing Regulation (EU) 2019/1842.’;

(3) Article 4 is replaced by the following:

‘Article 4

Presumption of conformity

Where a verifier demonstrates its conformity with the criteria laid down in the relevant harmonised standards as defined in point (9) of Article 2 of Regulation (EC) No 765/2008, or parts thereof, the references of which have been published in the *Official Journal of the European Union*, it shall, with the exception of Articles 7(1), 7(4), 22, 27(1), 28, 31 and 32 of this Regulation, be presumed to comply with the requirements set out in Chapters II and III of this Regulation in so far as the applicable harmonised standards cover those requirements.’;

(4) in Article 6, the first paragraph is replaced by the following:

‘A verified emissions report, tonne-kilometre report, baseline data report, new entrant data report or annual activity level report shall be reliable for users. It shall represent faithfully that, which it either purports to represent or may reasonably be expected to represent.’;

(5) Article 7 is amended as follows:

(a) paragraph 4 is amended as follows:

(i) point (a) is replaced by the following:

‘(a) the operator’s or aircraft operator’s report is complete and meets the requirements laid down in Annex X to Implementing Regulation (EU) 2018/2066, in Annex IV to Delegated Regulation (EU) 2019/331 or Article 3(2) of Implementing Regulation (EU) 2019/1842, as appropriate;’;

(ii) point (c) is replaced by the following:

‘(c) where the verification of an operator’s baseline data report, new entrant data report or annual activity level report is concerned, the operator has acted in conformance with the requirements of the monitoring methodology plan pursuant to Article 8 of Delegated Regulation (EU) 2019/331 approved by the competent authority;’;

(b) paragraph 5 is replaced by the following:

‘5. If the verifier discovers that an operator or an aircraft operator is not complying with Implementing Regulation (EU) 2018/2066 or the operator is not complying with, Delegated Regulation (EU) 2019/331 or Implementing Regulation (EU) 2019/1842, that irregularity shall be included in the verification report even if the monitoring plan or monitoring methodology plan concerned, as appropriate, has been approved by the competent authority.’;

(6) Article 10(1) is amended as follows:

(a) point (h) is replaced by the following:

‘(h) the operator’s or aircraft operator’s annual emission, tonne-kilometre report, baseline data report, new entrant data report or annual activity level report, as appropriate;’

(b) the following point (ka) is inserted:

‘(ka) if the monitoring methodology plan was modified, a record of all modifications in accordance with Article 9 of Delegated Regulation (EU) 2019/331;’

(c) the following point (la) is inserted:

‘(la) where applicable, information on how the operator has corrected non-conformities or addressed recommendations of improvements that were reported in the verification report concerning an annual activity level report from the previous year or a relevant baseline data report;’

(d) point (n) is replaced by the following:

‘(n) all relevant correspondence with the competent authority, in particular information related to the notification of modifications of the monitoring plan or monitoring methodology plan as well as corrections of reported data, as appropriate;’

(7) Article 11(4) is amended as follows:

(a) point (b) is replaced by the following:

‘(b) whether there have been any modifications to the monitoring plan during the reporting period;’

(b) the following point (ba) is inserted:

‘(ba) whether there have been any modifications to the monitoring methodology plan during the baseline period or the activity level reporting period, as appropriate;’

(c) point (d) is replaced by the following:

‘(d) where applicable, whether the modifications referred to in point (ba) have been notified to the competent authority pursuant to Article 9(3) of Delegated Regulation (EU) 2019/331 or approved by the competent authority in accordance with Article 9(4) of that Regulation;’

(8) in Article 13(1), point (c) is replaced by the following:

‘(c) a data sampling plan setting out the scope and methods of data sampling related to data points underlying the aggregated emissions in the operator or aircraft operator’s emission report, the aggregated tonne-kilometre data in the aircraft operator’s tonne-kilometre report or the aggregated data relevant for free allocation in the operator’s baseline data report, new entrant data report or annual activity level report;’

(9) Article 16(2) is amended as follows:

(a) point (b) is replaced by the following:

‘(b) for the purposes of verifying an operator’s baseline data report, new entrant data report or annual activity level report, the boundaries of an installation and its sub-installations;’

(b) point (c) is replaced by the following:

‘(c) for the purposes of verifying an operator’s emission report, baseline data report, new entrant data report or annual activity level report, the completeness of source streams and emission sources as described in the monitoring plan approved by the competent authority or monitoring methodology plan, as appropriate;’

(c) the following point (fa) is inserted:

‘(fa) for the purposes of verifying an annual activity level report, the accuracy of the parameters listed in Articles 16(5), 19, 20, 21 or 22 of Delegated Regulation (EU) 2019/331 as well as data required under paragraphs 1, 2 and 4 of Article 6 of Implementing Regulation (EU) 2019/1842;’

(10) Article 17 is amended as follows:

(a) paragraph 3 is amended as follows:

(i) the introductory sentence is replaced by the following:

‘For the purposes of verifying the operator’s baseline data report, new entrant data report or annual activity level report, the verifier shall check whether the methodology for collecting and monitoring data defined in the monitoring methodology plan is applied in the correct way, including:’;

(ii) the following points (e) to (h) are added:

‘(e) whether the energy consumption has been correctly attributed to each sub-installation where applicable;

(f) whether the value of the parameters listed in Articles 16(5), 19, 20, 21 or 22 of Delegated Regulation (EU) 2019/331 is based on a correct application of that Regulation;

(g) for the purposes of verifying an annual activity level report and a new entrant data report, the date of start of normal operation as referred to in Article 5(2) of Delegated Regulation (EU) 2019/331;

(h) for the purposes of verifying an annual activity level report, whether the parameters listed in points 2.3 to 2.7 of Annex IV to Delegated Regulation (EU) 2019/331, as appropriate to the installation, have been monitored and reported in the correct way in accordance with the monitoring methodology plan.’;

(b) paragraph 5 is deleted;

(11) in Article 18, paragraph 3 is replaced by the following:

‘3. Where data gaps in baseline data reports, new entrant data reports or annual activity level reports have occurred, the verifier shall check whether methods are laid down in the monitoring methodology plan to deal with data gaps pursuant to Article 12 of Delegated Regulation (EU) 2019/331, whether those methods were appropriate for the specific situation and whether they have been applied correctly.

Where no applicable data gap method is laid down in the monitoring methodology plan, the verifier shall check whether the approach used by the operator to compensate for the missing data is based on reasonable evidence and ensures that the data required by Annex IV to Delegated Regulation (EU) 2019/331 or Article 3(2) of Implementing Regulation (EU) 2019/1842 are not underestimated or overestimated.’;

(12) in Article 21, paragraphs 4 and 5 are replaced by the following:

‘4. For the purposes of verifying the operator’s baseline data report, new entrant data report and annual activity level report, the verifier shall also use a site visit to assess the boundaries of the installation and its sub-installations as well as the completeness of source streams, emission sources and technical connections.

5. For the purposes of verifying the operator’s emission report, baseline data report, new entrant data report or annual activity level report the verifier shall decide, based on the risk analysis, whether visits to additional locations are needed, including where relevant parts of data flow activities and control activities are carried out in other locations such as company headquarters and other off-site offices.’;

(13) Article 22 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the first subparagraph is replaced by the following:

‘If the verifier identifies misstatements, non-conformities or non-compliance with Implementing Regulation (EU) 2018/2066, Delegated Regulation (EU) 2019/331 or Implementing Regulation (EU) 2019/1842 as appropriate, during the verification, it shall inform the operator or aircraft operator thereof on a timely basis and request relevant corrections.’;

(ii) the third subparagraph is replaced by the following:

‘Where a non-compliance with Implementing Regulation (EU) 2018/2066, Delegated Regulation (EU) 2019/331 or Implementing Regulation (EU) 2019/1842 has been identified, the operator or aircraft operator shall notify the competent authority and correct the non-compliance as appropriate without undue delay.’;

(b) paragraph 2 is replaced by the following:

‘2. The verifier shall document and mark as resolved in the internal verification documentation all misstatements, non-conformities or non-compliance with Implementing Regulation (EU) 2018/2066, Delegated Regulation (EU) 2019/331 or Implementing Regulation (EU) 2019/1842 that have been corrected by the operator or aircraft operator during the verification.’;

(c) in paragraph 3, the fourth subparagraph is replaced by the following:

‘If the operator or aircraft operator does not correct the non-compliance with Implementing Regulation (EU) 2018/2066, Delegated Regulation (EU) 2019/331 or Implementing Regulation (EU) 2019/1842 in accordance with paragraph 1 before the verifier issues the verification report, the verifier shall assess whether the uncorrected non-compliance has an impact on the reported data and whether this leads to material misstatement.’.

(14) in Article 23(4), the introductory sentence is replaced by the following:

‘For the purposes of verifying baseline data report, new entrant data reports or annual activity level reports, the materiality level shall be 5 % of the total reported value of the following:’;

(15) in Article 26, paragraph 3 is replaced by the following:

‘3. The verifier shall, upon request, provide the competent authority access to the internal verification documentation and other relevant information to facilitate an evaluation of the verification by the competent authority. The competent authority can set a timeframe within which the verifier must provide access to that documentation.’;

(16) Article 27 is amended as follows:

(a) in paragraph 1, the introductory sentence is replaced by the following:

‘Based on the information collected during the verification, the verifier shall issue a verification report to the operator or aircraft operator on each emission report, tonne-kilometre report, baseline data report, new entrant data report or annual activity level report that was subject to verification.’;

(b) paragraph 3 is amended as follows:

(i) the following point (ha) is inserted:

‘(ha) where it concerns the verification of the annual activity level report, aggregated annual verified data for each year in the activity level reporting period for each sub-installation for its annual activity level’;

(ii) point (i) is replaced by the following:

‘(i) the reporting period, the baseline period or the activity level reporting period subject to verification’;

(iii) point (o) is replaced by the following:

‘(o) any issues of non-compliance with Implementing Regulation (EU) 2018/2066, Delegated Regulation (EU) 2019/331 or Implementing Regulation (EU) 2019/1842 which have become apparent during the verification’;

(iv) point (r) is deleted;

(v) the following points are inserted:

‘(ra) where the verifier has observed relevant changes to the parameters listed in Articles 16(5), 19, 20, 21 or 22 of Delegated Regulation (EU) 2019/331 or changes in the energy efficiency pursuant to paragraphs 1, 2 and 3 of Article 6 of Implementing Regulation 2019/1842, a description of those changes and related remarks’;

‘(rb) where applicable, confirmation that the date of start of normal operation as referred to in Article 5(2) of Delegated Regulation (EU) 2019/331 has been checked’;

(c) paragraph 4 is amended as follows:

(i) the introductory sentence is replaced by the following:

‘The verifier shall describe the misstatements, non-conformities and non-compliance with Implementing Regulation (EU) 2018/2066, Delegated Regulation (EU) 2019/331 or Implementing Regulation (EU) 2019/1842 in sufficient detail in the verification report to allow the operator or aircraft operator as well as the competent authority to understand the following:’;

(ii) point (a) is replaced by the following:

‘(a) the size and nature of the misstatement, non-conformity or non-compliance with Implementing Regulation (EU) 2018/2066, Delegated Regulation (EU) 2019/331 or Implementing Regulation (EU) 2019/1842;’;

(iii) point (d) is replaced by the following:

‘(d) to which Article in Implementing Regulation (EU) 2018/2066, Delegated Regulation (EU) 2019/331 or Implementing Regulation (EU) 2019/1842 the non-compliance relates.’;

(17) in Article 29, the following paragraph 1a is inserted:

‘1a. For the purposes of the verification of the annual activity level report, the verifier shall assess whether the operator has corrected the non-conformities indicated in the verification report related to the corresponding baseline data report, the new entrant data report or the annual activity level report from the previous activity level reporting period.

If the operator has not corrected those non-conformities, the verifier shall consider whether the omission increases or may increase the risk of misstatements.

The verifier shall report in the verification report whether those non-conformities have been resolved by the operator.’;

(18) in Article 30(1), point (e) is replaced by the following:

‘(e) the monitoring and reporting of data for baseline data reports, new entrant data reports and annual activity level reports.’;

(19) Article 31 is amended as follows:

(a) paragraph 3 is amended as follows:

(i) points (a) and (b) are replaced by the following:

‘(a) when an operator’s emission report or annual activity level report is verified for the first time by the verifier;

(b) for the purposes of verifying the operator’s emission report, if a verifier has not carried out a site visit in two reporting periods immediately preceding the current reporting period;’;

(ii) the following point (ba) is inserted:

‘(ba) for the purposes of verifying the operator’s annual activity level report, if a verifier has not carried out a site visit during the verification of an annual activity level report or a baseline data report in the two activity level reporting periods immediately preceding the current activity level reporting period;’;

(iii) the following point (ca) is inserted:

‘(ca) if, during the activity level reporting period, there have been significant changes to the installation or its sub-installations which require significant modifications to the monitoring methodology plan, including those changes referred to in Article 9(5) of Delegated Regulation (EU) 2019/331.’;

(b) paragraph 4 is replaced by the following:

‘4. Points (c) and (ca) of paragraph 3 are not applicable where, during the reporting period, there have been only modifications of the default value as referred to in Article 15(3)(h) of Implementing Regulation (EU) 2018/2066 or Article 9(5)(c) of Delegated Regulation (EU) 2019/331.’;

(20) Article 32 is amended as follows:

(a) in point (1), the introductory sentence is replaced by the following:

‘the verification of an operator’s emission report concerns a category A installation referred to in Article 19(2)(a) of Implementing Regulation (EU) 2018/2066 or a category B installation referred to in Article 19(2)(b) of that Implementing Regulation whereby;’

(b) in point (2), the introductory sentence is replaced by the following:

‘the verification of an operator’s emission report concerns a category A installation referred to in Article 19(2)(a) of Implementing Regulation (EU) 2018/2066 or a category B installation referred to in Article 19(2)(b) of that Implementing Regulation whereby;’

(c) point (3) is replaced by the following:

‘(3) the verification of an operator’s emission report concerns an installation with low emissions as referred to in Article 47(2) of Implementing Regulation (EU) 2018/2066 and paragraphs (a) to (c) of point (2) are applicable;’

(d) the following points (3a), (3b) and (3c) are inserted:

‘(3a) the verification of an operator’s annual activity level report concerns an installation as referred to in point 1, 2 or 3 whereby:

(a) that installation has no other sub-installation than one sub-installation to which a product benchmark pursuant to Article 10(2) of Delegated Regulation (EU) 2019/331 is applicable; and

(b) the production data relevant for the product benchmark has been evaluated as part of an audit for financial accounting purposes and the operator provides evidence thereof.

(3b) the verification of an operator’s annual activity level report concerns an installation as referred to in point 1, 2 or 3 whereby:

(a) the installation has a maximum of two sub-installations;

(b) the second sub-installation contributes less than 5 % to the installation’s total final allocation of allowances; and

(c) the verifier has sufficient data available to assess the split of sub-installations if relevant;

(3c) the verification of an operator’s annual activity level report concerns an installation as referred to in point 1, 2 or 3 whereby:

(a) the installation has only heat benchmark or district heating sub-installations; and

(b) the verifier has sufficient data available to assess the split of sub-installations if relevant;’

(e) point (4) is amended as follows:

(a) the introductory sentence is replaced by the following:

‘the verification of the operator’s emission report or annual activity level report concerns an installation located on an unmanned site whereby;’

(b) point (c) is replaced by the following:

‘(c) the meters have already been inspected on site by the operator or a laboratory in accordance with Article 60 of Implementing Regulation (EU) 2018/2066 or Article 11 of Delegated Regulation (EU) 2019/331 and a signed document or date-stamped photographic evidence provided by the operator demonstrates that no metering or operational changes have occurred at the installation since that inspection;’

(f) point (5) is amended as follows:

(a) the first paragraph is amended as follows:

(i) the introductory sentence is replaced by the following:

‘the verification of the operator’s emission report or annual activity level report concerns an installation located on a remote or inaccessible site, in particular an off-shore installation, whereby;’

(ii) point (b) is replaced by the following:

‘(b) the meters have already been inspected on site by the operator or a laboratory in accordance with Article 60 of Implementing Regulation (EU) 2018/2066 or Article 11 of Delegated Regulation (EU) 2019/331 and a signed document or date-stamped photographic evidence provided by the operator demonstrates that no metering or operational changes have occurred at the installation since that inspection.’;

(b) the following paragraph is added:

‘Point (3a)(b) must be applied if the sub-installation contributing 95 % or more to the installation’s total final allocation of allowances as referred to in point (3b)(b) is a sub-installation to which a product benchmark pursuant to Article 10(2) of Delegated Regulation (EU) 2019/331 is applicable.’;

(21) the following Article is inserted:

‘Article 34a

Virtual site visits

1. By way of derogation from Article 21(1), where serious, extraordinary and unforeseeable circumstances, outside the control of the operator or aircraft operator, prevent the verifier from carrying out a physical site visit and where these circumstances cannot, after using all reasonable efforts, be overcome, the verifier may decide, subject to the approval of the competent authority in accordance with paragraph 3 of this Article, to carry out a virtual site visit.

The verifier shall take measures to reduce the verification risk to an acceptable level to obtain reasonable assurance that the operator’s or aircraft operator’s report is free from material misstatements. A physical visit to the site of the installation or aircraft operator shall be carried out without undue delay.

The decision to carry out a virtual site visit shall be based on the outcome of the risk analysis and after determining that the conditions for carrying out a virtual site visit are met. The verifier shall inform the operator or aircraft operator thereof without undue delay.

2. The operator or aircraft operator shall submit an application to the competent authority requesting the competent authority to approve the verifier’s decision to carry out a virtual site visit. The application shall include the following elements:

(a) evidence that it is not possible to carry out a physical site visit because of the serious, extraordinary and unforeseeable circumstances, outside the control of the operator or aircraft operator;

(b) information on how the virtual site visit will be carried out;

(c) the information on the outcome of the risk analysis by the verifier;

(d) evidence of the measures taken by the verifier to reduce the verification risk to an acceptable level to obtain reasonable assurance that the operator’s or aircraft operator’s report is free from material misstatements.

3. On an application submitted by the operator or aircraft operator concerned, the competent authority shall decide whether to approve the verifier’s decision to carry out a virtual site visit, taking into consideration the elements specified in paragraph 2.

4. By way of derogation from paragraph 3, where a large number of installations or aircraft operators are affected by the similar serious, extraordinary and unforeseeable circumstances, outside the control of the operator or aircraft operator, and immediate action is needed because of legally imposed national health reasons, the competent authority may authorise verifiers to carry out virtual site visits without a need for an individual approval referred to in paragraph 3 provided that:

- (a) the competent authority has established that there are serious extraordinary and unforeseeable circumstances, outside the control of the operator or aircraft operator and immediate action is needed because of legally imposed national health reasons;
- (b) the operator or aircraft operator informs the competent authority about the verifier's decision to carry out a virtual site visit, including the elements specified in paragraph 2.

The competent authority shall review the information provided by the operator or aircraft operator in accordance with point (b) during the assessment of the operator's or aircraft operator's report and inform the national accreditation body about the outcome of the assessment.;

(22) in Article 37(5), the second subparagraph is replaced by the following:

'Where the verifier is carrying out verification of baseline data reports, new entrant data reports or annual activity level reports the verification team shall include in addition at least one person with the technical competence and understanding required to assess the specific technical aspects regarding the collection, monitoring and reporting of data relevant for free allocation.;

(23) in Article 38(1), point (a) is replaced by the following:

'(a) knowledge of Directive 2003/87/EC, Implementing Regulation (EU) 2018/2066, Delegated Regulation (EU) 2019/331 and Implementing Regulation (EU) 2019/1842 in the case of verification of the baseline data report, new entrant data report or annual activity level report, this Regulation, relevant standards, and other relevant legislation, applicable guidelines, as well as relevant guidelines and legislation issued by the Member State in which the verifier is carrying out a verification.;

(24) Article 41 is amended as follows:

(a) in paragraph 1, the second sentence is replaced by the following:

'When establishing and implementing these procedures and processes the verifier shall carry out the activities listed in Annex II of this Regulation in accordance with the harmonised standard referred to in that Annex.;

(b) paragraph 2 is replaced by the following

'2. A verifier shall design, document, implement and maintain a management system in accordance with the harmonised standard referred to in Annex II to ensure consistent development, implementation, improvement and review of the procedures and processes referred to in paragraph 1. The management system shall include at least the following:

- (a) policies and responsibilities;
- (b) management review;
- (c) internal audits;
- (d) corrective action;
- (e) actions to address risk and opportunities and to take preventive action;
- (f) control of documented information.;

(25) in Article 42, paragraph 1 is replaced by the following:

'1. A verifier shall maintain and manage records, including records on the competence and impartiality of personnel, to demonstrate compliance with this Regulation.;

(26) Article 43 is amended as follows:

(a) in paragraph 2, the second sentence is replaced by the following:

'For the purposes of this Regulation, the relevant requirements on the structure and organisation of the verifier laid down in the harmonised standard referred to in Annex II shall apply.;

- (b) in the first subparagraph of paragraph 3, the following sentence is added:

‘For this purpose, the verifier shall monitor the risks to impartiality and take appropriate action to address those risks.’;

- (c) paragraph 5 is amended as follows:

- (a) in the first subparagraph, the first sentence is replaced by the following:

‘A verifier shall not outsource the closing of the agreement between the operator or aircraft operator and the verifier, the independent review or the issuance of the verification report.’;

- (b) the second subparagraph is replaced by the following:

‘However, contracting individuals to carry out verification activities shall not constitute outsourcing for the purposes of the first subparagraph if the verifier, when contracting those persons, takes full responsibility for the verification activities performed by contracted personnel. When contracting individuals for carrying out verification activities the verifier shall require these individuals to sign a written agreement that they comply with the procedures of the verifier and that there is no conflict of interest in carrying out these verification activities.’;

- (d) the following paragraph 6a is inserted:

‘6a. When verifying the same operator or aircraft operator as in the previous year, the verifier shall consider the risk to impartiality and take measures to reduce the risk to impartiality.’;

- (e) the following paragraph 8 is added:

‘8. If the EU ETS lead auditor undertakes annual verifications for a period of five consecutive years for a given installation, then the EU ETS lead auditor shall take a three consecutive year break from providing verification services to that same installation. The five years maximum period includes EU ETS verifications of emissions or allocation data performed for the installation starting after 1 January 2021.’;

- (27) in Article 44, the second subparagraph is replaced by the following:

‘For the purpose of verifying baseline data reports, new entrant data reports or annual activity level reports, a verifier issuing a verification report to an operator shall in addition be accredited for activity group No 98 referred to in Annex I.’;

- (28) in Article 46(1), the first subparagraph is replaced by the following:

‘Any legal person established under national law of a Member State may request accreditation pursuant to Article 5(1) of Regulation (EC) No 765/2008 and the provisions of this Chapter.’;

- (29) in Article 59(1), point (b) is replaced by the following:

- ‘b) have knowledge of Directive 2003/87/EC, Implementing Regulation (EU) 2018/2066, Delegated Regulation (EU) 2019/331 and Implementing Regulation 2019/1842 where the assessor assesses the verifier’s competence and performance for scope no 98 referred to in Annex I of this Regulation, this Regulation, relevant standards and other relevant legislation as well as applicable guidelines’;

- (30) in Article 60(2), point (a) is replaced by the following:

- ‘(a) have knowledge of Directive 2003/87/EC, Implementing Regulation (EU) 2018/2066, Delegated Regulation (EU) 2019/331 and Implementing Regulation 2019/1842 where the technical expert assesses the verifier’s competence and performance for scope no 98 referred to in Annex I of this Regulation, this Regulation, relevant standards, and other relevant legislation as well as applicable guidelines’;

- (31) in Article 77(1), point (b) is replaced by the following:

- ‘(b) the address and contact details of the operators or aircraft operators whose emissions, tonne-kilometre reports, baseline data reports, new entrant data reports or annual activity level reports are subject to its verification’;

- (32) Annex II is amended in accordance with the Annex to this Regulation.

Article 2

Corrections to Implementing Regulation (EU) 2018/2067

Implementing Regulation (EU) 2018/2067 is corrected as follows:

- (1) Article 3 is corrected as follows:
 - (a) in point 11, '.../...' is replaced by '2019/331';
 - (b) in point 28, '.../...' is replaced by '2019/331';
 - (c) in point 29, '.../...' is replaced by '2019/331';
- (2) the second subparagraph of Article 7(4) is amended as follows:
 - (a) in the first sentence, '.../...' is replaced by '2019/331';
 - (b) in the second sentence, '.../...' is replaced by '2019/331';
- (3) in the second subparagraph of Article 7(6), '.../...' is replaced by '2019/331';
- (4) Article 10(1) is corrected as follows:
 - (a) in point (e), '.../...' is replaced by '2019/331';
 - (b) in point (f), '.../...' is replaced by '2019/331';
 - (c) point (l) is replaced by the following:

'(l) where applicable, the reports referred to in Article 69(1) and 69(4) of Implementing Regulation (EU) 2018/2066;';
- (5) Article 17(3) is corrected as follows:
 - (a) in point (a), '.../...' is replaced by '2019/331';
 - (b) in point (c), '.../...' is replaced by '2019/331';
- (6) in Article 17(4), the first subparagraph is replaced by the following:

'4. Where transferred CO₂ is subtracted in accordance with Article 49 of Implementing Regulation (EU) 2018/2066 or transferred N₂O is not counted as emitted in accordance with Article 50 of that Regulation, and the CO₂ or N₂O transferred is measured by both the transferring and receiving installation, the verifier shall check whether differences between the measured values at both installations can be explained by the uncertainty of the measurement systems and whether the correct arithmetic average of the measured values has been used in the emission reports of both installations.';
- (7) in Article 19(3), '.../...' is replaced by '2019/331';
- (8) in point (e) of Article 27(1), '.../...' is replaced by '2019/331';
- (9) Article 27(3) is corrected as follows:
 - (a) in point (f), '.../...' is replaced by '2019/331';
 - (b) in point (q), '.../...' is replaced by '2019/331';
- (10) in point (e) of Article 28, '.../...' is replaced by '2019/331';
- (11) in point (c) of Article 30(1), '.../...' is replaced by '2019/331';
- (12) in the third subparagraph of Article 58(2), '.../...' is replaced by '2019/331';
- (13) in Article 69(1), '.../...' is replaced by '2019/331'.

Article 3

Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2021.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 14 December 2020.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

In Annex II, the following points (g) and (h) are added:

- ‘(g) a procedure or process to ensure that the verifier takes full responsibility for verification activities performed by contracted individuals;
 - (h) processes ensuring the proper functioning of the management system as referred to in Article 41(2), including:
 - i. processes for the review of management system at least once a year, not exceeding 15 months between management reviews;
 - ii. processes for conducting internal audits at least once a year, not exceeding 15 months between internal audits;
 - iii. processes for identifying and managing non-conformities in the verifier's activities and taking corrective action to address those non-conformities;
 - iv. processes for identifying risks and opportunities in verifier's activities and taking preventive actions to mitigate those risks;
 - v. processes for the control of documented information.’.
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