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## **Ordinance on the Reduction of CO<sub>2</sub> Emissions (CO<sub>2</sub> Ordinance)**

of 30 November 2012 (Status as of 19 February 2019)

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*The Swiss Federal Council,  
on the basis of the CO<sub>2</sub> Act of 23 December 2011<sup>1</sup> (CO<sub>2</sub> Act),  
ordains:*

### **Chapter 1    General Provisions Section 1    Greenhouse Gases**

#### **Art. 1**

<sup>1</sup> This Ordinance regulates the reduction in the emission of the following greenhouse gases:

- a. carbon dioxide (CO<sub>2</sub>);
- b. methane (CH<sub>4</sub>);
- c. nitrous oxide (N<sub>2</sub>O);
- d. hydrofluorocarbons (HFCs);
- e. perfluorocarbons (PFCs);
- f. sulphur hexafluoride (SF<sub>6</sub>);
- g. nitrogen trifluoride (NF<sub>3</sub>).

<sup>2</sup> The warming effect of greenhouse gases on the climate is converted into the equivalent quantity of CO<sub>2</sub> (CO<sub>2</sub>eq). The values are listed in Annex 1.

## Section 2 Definitions

### Art. 2

In this Ordinance:

- a.<sup>2</sup> *passenger cars* means passenger cars in accordance with Article 11 paragraph 2 letter a of the Ordinance of 19 June 1995<sup>3</sup> on Technical Requirements for Road Vehicles (RVTRO); in terms of this Ordinance, special-purpose vehicles in accordance with Annex II Part A point 5 of Directive 2007/46/EC<sup>4</sup> are not deemed to be passenger cars;
- abis.<sup>5</sup> *vans* means vans in accordance with Article 11 paragraph 2 letter e RVTRO; in terms of this Ordinance, vans with an unladen weight of over 2585 kg measured using the measurement procedure for heavy-duty vehicles in accordance with Regulation (EC) No 595/2009<sup>6</sup> and for which no emission values in accordance with Regulation (EC) No 715/2007<sup>7</sup> are available, and special-purpose vehicles in accordance with Annex 2 Part A point 5 of Directive 2007/46/EC are deemed not to be vans;
- ater.<sup>8</sup> *light articulated vehicles* means articulated vehicles in accordance with Article 11 paragraph 2 letter i RVTRO with a total weight of no more than 3.50 t; in terms of this Ordinance, articulated vehicles with a unladen weight of over 2585 kg, measured using the measurement procedure for heavy-duty vehicles in accordance with Regulation (EC) No 595/2009 and for which no emission values in accordance with Regulation (EC) No 715/2007 are available, and special-purpose vehicles in accordance with Annex 2 Part A point 5 of Directive 2007/46/EC are deemed not to be light articulated vehicles;
- b. *companies* means operators of fixed installations at a site;
- c. *rated thermal input* means the maximum possible supply of heating energy per unit of time for a fixed installation;

<sup>2</sup> Amended by No I of the O of 1 Nov. 2017, in force since 1 Jan. 2018 (AS 2017 6753).  
<sup>3</sup> SR 741.41

<sup>4</sup> Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (Framework Directive) (Text with EEA relevance), OJ L 263 of 9.10.2007, p. 1; last amended by Regulation (EU) No 1347/2017, OJ L 192 of 24.7.2017, p. 1.

<sup>5</sup> Inserted by No I of the O of 1 Nov. 2017, in force since 1 Jan. 2018 (AS 2017 6753).

<sup>6</sup> Regulation (EC) No 595/2009 of the European Parliament and of the Council of 18 June 2009 on type-approval of motor vehicles and engines with respect to emissions from heavy duty vehicles (Euro VI) and on access to vehicle repair and maintenance information and amending Regulation (EC) No 715/2007 and Directive 2007/46/EC and repealing Directives 80/1269/EEC, 2005/55/EC and 2005/78/EC, OJ L 188/1 of 18.7.2009, p. 1; last amended by Regulation (EU) No 133/2014, OJ L 47 of 18.2.2014, p. 1.

<sup>7</sup> Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information, OJ L 171/1 of 29.6.2007, p. 1; last amended by Regulation (EU) No 459/2012, OJ L 142 of 1.6.2012, p. 16.

<sup>8</sup> Inserted by No I of the O of 1 Nov. 2017, in force since 1 Jan. 2018 (AS 2017 6753).

- d. *total rated thermal input* means the sum of the rated thermal inputs of a company's fixed installations that are taken into account in the emissions trading scheme;
- e. *total output* means the sum of the delivered electrical and thermal nominal output of a fossil-thermal power plant;
- f. *overall efficiency* means the ratio of total output to the rated thermal input of a fossil-thermal power plant in accordance with the manufacturer's specifications.

### Section 3 Sectoral Interim Targets

#### Art. 3

<sup>1</sup> The interim targets for 2015 are:

- a. for the building sector: no more than 78 per cent of 1990 emissions;
- b. for the traffic sector: no more than 100 per cent of 1990 emissions;
- c. for the industry sector: no more than 93 per cent of 1990 emissions.

<sup>2</sup> If a sector-specific interim target listed in paragraph 1 is not achieved, then the Federal Department of the Environment, Transport, Energy and Communications (DETEC), after hearing the cantons and affected parties, shall request the Federal Council for additional measures.

### Section 4 Counting Emission Reductions achieved Abroad<sup>9</sup>

#### Art. 4 Eligible emission reductions achieved for projects abroad<sup>10</sup>

<sup>1</sup> Emission reductions achieved abroad may only be counted by companies and persons authorised by this Ordinance.

<sup>2</sup> Emission reductions achieved abroad may be counted if:

- a. they are attested to by an emission-reduction certificate of the United Nations Framework Convention on Climate Change (UNFCCC) of 9 May 1992<sup>11</sup>; and
- b. Annex 2 does not preclude their being counted.

#### Art. 4a<sup>12</sup> Letters of approval for projects

<sup>1</sup> Companies or persons wishing to obtain emission-reduction certificates for an emission-reduction project abroad can apply to the Federal Office for the Environ-

<sup>9</sup> Amended by No I of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS 2014 3293).

<sup>10</sup> Inserted by No I of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS 2014 3293).

<sup>11</sup> SR 0.814.01

<sup>12</sup> Inserted by No I of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS 2014 3293).

ment (FOEN) for the necessary letter of approval in accordance with the rules of Article 6 paragraph 3 or Article 12 paragraph 5 of the Kyoto Protocol of 11 December 1997<sup>13</sup> to the United Nations Framework Convention on Climate Change (Kyoto Protocol).

<sup>2</sup> The FOEN issues a letter of approval if the requirements of Article 4 paragraph 2 letter b are met.

## Section 5<sup>14</sup>

### Attestations for Domestic Emission-reduction Projects and Programmes

#### Art. 5 Requirements

<sup>1</sup> Attestations for emission reductions from domestic projects and programmes are issued if:

- a. Annex 3 does not preclude them;
- b. the project or programme's planned component activities:
  1. would not be economically feasible without revenues from the sale of the attestations,
  2. meet(s) at least the current state of the art, and
  3. provide(s) for measures that lead to an increase in emission reductions as measured against the reference scenario defined in Article 6 paragraph 2 letter d;
- c. the emission reductions:
  1. are verifiable and quantifiable,
  2. were not achieved by a company participating in the Emissions Trading Scheme (ETS), and
  - 3.<sup>15</sup> were not achieved by a company with a reduction obligation that at the same time is applying for attestations under Article 12; the foregoing does not apply to companies with an emissions target under Article 67, provided the emission reductions from projects or programmes are not included in the emissions target; and
- d. the beginning of the implementation of the project or programme does not predate the submission of an application in accordance with Article 7 by more than three months.

<sup>2</sup> The time when the applicant makes a significant financial commitment to a third party or itself takes organisational measures relevant to the project or programme is deemed the beginning of implementation.

<sup>13</sup> SR **0.814.011**

<sup>14</sup> Amended by No I of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS **2014** 3293).

<sup>15</sup> Amended by No I of the O of 1 Nov. 2017, in force since 1 Jan. 2018 (AS **2017** 6753).

**Art. 5a** Programmes

<sup>1</sup> Planned component activities can be grouped together into one programme if:

- a. they have a common purpose in addition to reducing emissions;
- b. they apply one of the specified technologies in the programme description;
- c. they fulfil the inclusion criteria specified in the programme description, which guarantee that the planned component activities meet the requirements of Article 5; and
- d. implementation has not yet begun.

<sup>2</sup> Planned component activities can be included in existing programmes if they meet the conditions of paragraph 1 and had already been demonstrably registered in the programme before the inclusion.

<sup>3</sup> Programmes that only comprise one planned component activity on expiry of the first crediting period shall be continued as projects under Article 5.<sup>16</sup>

**Art. 6** Validation of projects and programmes

<sup>1</sup> Companies or persons wishing to apply for attestations for an emission-reduction project or programme must have it validated at their own expense by a validator approved by the FOEN.

<sup>2</sup> A description of the project or programme is to be submitted to the validator. This must include information about:

- a. the measures for reducing emissions;
- b. the technologies applied;
- c. the delimitation from other climate and energy policy instruments;
- d. the hypothetical progression of greenhouse gas emissions if the emission-reducing measures of the project or programme were not implemented (reference scenario);
- e. total expected annual emission reductions and the underlying calculation method;
- f. the organisation of the project or programme;
- g. the anticipated investment and operating costs and expected revenues;
- h. the financing;
- i. the monitoring plan, in which the start date of the monitoring is defined and the methods for accounting for emission reductions are described;
- j.<sup>17</sup> the duration of the project, the programme and the individual planned component activities;

<sup>16</sup> Inserted by No I of the O of 1 Nov. 2017, in force since 1 Jan. 2018 (AS 2017 6753).

<sup>17</sup> Amended by No I of the O of 1 Nov. 2017, in force since 1 Jan. 2018 (AS 2017 6753).

- k. for programmes, in addition: the purpose, the criteria for the inclusion of planned component activities in the programme, the administration of the planned component activities as well as an example of a planned component activity per specified technology.

<sup>2bis</sup> In the case of projects and programmes in connection with a local heating network or landfill gas projects and programmes, the description of the information requested in paragraph 2 letters d, e and i shall meet the requirements of Annexes 3a or 3b.<sup>18</sup>

<sup>3</sup> For the validation the validator examines the information specified in paragraph 2 and whether the project meets the requirements of Article 5 or the programme meets the requirements of Articles 5 and 5a respectively.

<sup>4</sup> It summarizes the results of the examination in a validation report.

#### **Art. 7** Application for the issuance of attestations

<sup>1</sup> An application for the issuance of attestations must be submitted to the FOEN. It must include the project or programme description and the validation report.

<sup>2</sup> The FOEN may request additional information from the applicant if required for evaluating the application.

<sup>3</sup> The FOEN shall specify the form of the project or programme description.<sup>19</sup>

#### **Art. 8** Decisions about the qualification of a project or programme

<sup>1</sup> The FOEN decides whether a project or programme qualifies for issuance of attestations on the basis of the application.

<sup>2</sup> The decision is valid for seven years from the start of the implementation of the project or programme (crediting period).

<sup>3</sup> No attestations are issued for planned component activities of programmes if:

- a. a change in applicable legal provisions results in emission-reduction measures that must be implemented during the crediting period;
- b. the issuance of attestations is for claimed emission reductions attributable to the implementation of measures described in letter a; and
- c. implementation of the planned component activities had started after the coming into force of the change in legal provisions.

#### **Art. 8a** Extension of the crediting period

<sup>1</sup> The crediting period is extended for successive three-year periods if the applicant has the project or programme revalidated and submits an application for extension to the FOEN no later than six months before the end of the crediting period.

<sup>18</sup> Inserted by No I of the O of 21 Sept. 2018, in force since 1 Nov. 2018 (AS **2018** 3477).

<sup>19</sup> Inserted by No I of the O of 21 Sept. 2018, in force since 1 Nov. 2018 (AS **2018** 3477).

<sup>2</sup> The FOEN approves the extension if the requirements referred to in Articles 5 and 5a are still met.

**Art. 9** Monitoring report and verification of the monitoring report

<sup>1</sup> The applicant collects all the required data in accordance with the monitoring plan and records them in a monitoring report.

<sup>2</sup> The applicant has the monitoring report verified at its own expense by a FOEN-approved verifier. The verification may not be done by the same entity that has validated the project or programme.

<sup>3</sup> The verifier examines whether the accounted-for emission reductions meet the requirements of Article 5. For programmes it also examines whether the planned component activities meet the inclusion criteria of Article 5a paragraph 1 letter c. It may limit the verification to a single representative planned component activity.

<sup>4</sup> The verifier records the results of the verification in a verification report.

<sup>5</sup> All monitoring reports and the corresponding verification reports must be submitted to the FOEN at least every three years following the start of implementation under Article 5 paragraph 2. The emission reductions must be disclosed per calendar year.<sup>20</sup>

<sup>6</sup> The FOEN shall specify the form of the monitoring report.<sup>21</sup>

**Art. 10** Issuance of attestations

<sup>1</sup> The FOEN shall examine the monitoring report and the corresponding verification report. Where required in order to issue attestations, the FOEN shall conduct further enquiries relating to the applicant.<sup>22</sup>

<sup>1bis</sup> It shall decide whether to issue attestations on the basis of the information mentioned in paragraph 1.<sup>23</sup>

<sup>2</sup> Attestations for projects are issued for the extent to which emission reductions have demonstrably been achieved up to the end of the crediting period.

<sup>3</sup> Attestations for programmes are issued for the extent to which emission reductions have demonstrably been achieved for no longer than ten years after the end of the programme's crediting period, if the relevant planned component activity has been started during the crediting period.

<sup>4</sup> Emission reductions that are attributable to non-refundable payments from the Confederation, cantons or communes for promoting renewable energies, energy efficiency or climate protection are only attested to the applicant if it proves that the responsible public bodies have not otherwise claimed the emission reductions.

<sup>20</sup> Amended by No I of the O of 21 Sept. 2018, in force since 1 Nov. 2018 (AS **2018** 3477).

<sup>21</sup> Inserted by No I of the O of 21 Sept. 2018, in force since 1 Nov. 2018 (AS **2018** 3477).

<sup>22</sup> Amended by No I of the O of 1 Nov. 2017, in force since 1 Jan. 2018 (AS **2017** 6753).

<sup>23</sup> Inserted by No I of the O of 1 Nov. 2017, in force since 1 Jan. 2018 (AS **2017** 6753).

Emission reductions that are attributable to surcharges obtained in accordance with Article 15*b* of the Energy Act of 26 June 1998<sup>24</sup> (EnA) are not attested.

<sup>5</sup> The added ecological value of emission reductions is compensated with the issuance of attestations. If the added ecological value has already been compensated for, no attestations are issued.

**Art. 11** Substantial modifications to the project or programme

<sup>1</sup> Substantial modifications of the project or programme carried out after the decision has been made regarding qualification or the extension of the crediting period must be reported to the FOEN.

<sup>2</sup> A modification to the project or programme is in particular deemed substantial if:

- a. actual emission reductions deviate from the expected annual emission reductions specified in the project or programme description by more than 20 per cent;
- b. actual investment or operating costs deviate from the values specified in the project or programme description by more than 20 per cent.

<sup>3</sup> If necessary, the FOEN orders a revalidation. Emission reductions achieved after a substantial modification are only attested in accordance with a new decision on qualification in accordance with Article 8.

<sup>4</sup> After revalidation, from the time the substantial modification is made the crediting period lasts for:<sup>25</sup>

- a. seven years if the crediting period has not yet been extended;
- b. three years if the crediting period has already been extended.

**Section 5a**

**Attestations for Companies with Reduction Obligations and Companies with Emissions Targets for the Progression of Energy Consumption<sup>26</sup>**

**Art. 12<sup>27</sup>** Attestations for companies with reduction obligations

<sup>1</sup> Companies with reduction obligations under Article 66 paragraph 1 to which an emission target under Article 67 applies and which are not carrying out any projects or programmes in accordance with Article 5 or 5*a* that result in emission reductions covered by the emissions target shall be issued with attestations for domestic emission reductions on application if:<sup>28</sup>

<sup>24</sup> SR 730.0

<sup>25</sup> Amended by No I of the O of 21 Sept. 2018, in force since 1 Nov. 2018 (AS 2018 3477).

<sup>26</sup> Inserted by No I of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS 2014 3293).

<sup>27</sup> Amended by No I of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS 2014 3293).

<sup>28</sup> Amended by No I of the O of 1 Nov. 2017, in force since 1 Jan. 2018 (AS 2017 6753).



- a. the company can credibly report that its emissions target will be reached without counting emission-reduction certificates;
- b. the company's greenhouse gas emissions in the relevant year have been reduced by more than 5 per cent compared with the reduction course determined in accordance with Article 67; and
- c.<sup>29</sup> for emission-reduction measures, the company has received no non-refundable payments from the Confederation, cantons or communes for promoting renewable energies, energy efficiency or climate protection or from surcharges obtained in accordance with Article 35 paragraph 1 of the Energy Act of 30 September 2016<sup>30</sup> for geothermal power, biomass and waste from biomass; excepted from this are companies that had already registered for the receipt of such funds before the coming into force of the amendment of 8 October 2014.

<sup>2</sup> Attestations are issued for emission reductions to the extent of the difference between the reduction course minus 5 per cent and the greenhouse gas emissions in the relevant year, for the last time in 2020.

<sup>3</sup> ...<sup>31</sup>

**Art. 12a<sup>32</sup>** Attestations for companies with a target agreement regarding the progression of energy consumption

<sup>1</sup> Companies that have agreed with the Confederation on targets for the progression of energy consumption and also have commitments to reduce CO<sub>2</sub> emissions (target agreement with an emissions target), without being exempt from the CO<sub>2</sub> levy for this purpose, are issued attestations for domestic emission reductions on application if:

- a. the target agreement with an emissions target meets the requirements of Article 67 Paragraphs 1–3, is validated at the company's own expense by a FOEN-approved validator and has been assessed by the FOEN as qualified;
- b. the company submits a monitoring report annually no later than 31 May in accordance with Article 72;
- c. the company's CO<sub>2</sub> emissions during the before three years have in each year fallen short of the agreed reduction course in the target agreement with emissions target by more than 5 per cent; and
- d.<sup>33</sup> for emission-reduction measures, the company has received no non-refundable payments from the Confederation, cantons or communes for promoting renewable energies, energy efficiency or climate protection or from surcharges obtained in accordance with Article 35 paragraph 1 EnA<sup>34</sup>

<sup>29</sup> Amended by No I of the O of 1 Nov. 2017, in force since 1 Jan. 2018 (AS 2017 6753).

<sup>30</sup> SR 730.0

<sup>31</sup> Repealed by No I of the O of 1 Nov. 2017, with effect from 1 Jan. 2018 (AS 2017 6753).

<sup>32</sup> Inserted by No I of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS 2014 3293). The revision of 9 Dec. 2014 relates only to the French text (AS 2014 4437).

<sup>33</sup> Amended by No I of the O of 1 Nov. 2017, in force since 1 Jan. 2018 (AS 2017 6753).

<sup>34</sup> SR 730.0

for geothermal power, biomass and waste from biomass; excepted from this are companies that had already registered for the receipt of such funds before the coming into force of the amendment of 8 October 2014.

<sup>2</sup> The validated target agreement with emissions target must be submitted to the FOEN no later than 31 May of the year in which attestations are being applied for.

<sup>3</sup> Substantial and permanent changes under Article 73 as well as changes under Article 78 must be reported to the FOEN. If necessary, the FOEN orders a revalidation.

<sup>4</sup> Attestations are issued for emission reductions to the extent of the difference between the reduction course minus 5 per cent and the greenhouse gas emissions in the relevant year, for the last time in 2020.

## **Section 5b Administration of Attestations and Data Protection<sup>35</sup>**

### **Art. 13<sup>36</sup> Administration of attestations and data**

<sup>1</sup> Companies and persons that have applied for the issuance of attestations must at the same time provide the FOEN the operator or personal account to which the attestations are issued and administered in the Emissions Trading Registry in accordance with Articles 57–65.

<sup>2</sup> The following data and documents are managed in a FOEN-administered database:

- a. first names, surnames and contact information of the applicant, the validator and the verifier;
- b. the number of attestations issued;
- c. the core data for the project or programme; and
- d. the project and programme description, the validation reports, the monitoring reports and the verification reports.

<sup>3</sup> On request, the holder of an attestation is granted access to the data described in paragraph 2 letters a and b in connection with the attestation. Access to the data and documents described in paragraph 2 letters c and d may be granted subject to the preservation of manufacturing and trade secrecy.

### **Art. 14<sup>37</sup> Publication of information on projects and programmes**

<sup>1</sup> The FOEN may, subject to preservation of manufacturing and trade secrecy, publish:

- a. descriptions of domestic emission-reduction projects and programmes;
- b. validation reports in accordance with Article 6 paragraph 4;

<sup>35</sup> Inserted by No I of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS 2014 3293).

<sup>36</sup> Amended by No I of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS 2014 3293).

<sup>37</sup> Amended by No I of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS 2014 3293).

- c. monitoring reports in accordance with Article 9 paragraph 1;
- d. verification reports in accordance with Article 9 paragraph 4.

<sup>2</sup> Before publication, the FOEN shall provide the applicant with the documentation specified in paragraph 1. It shall require the applicant to indicate the information that in the applicant's opinion is subject to manufacturing and trade secrecy.<sup>38</sup>

## **Section 6 Coordination of Adaptation Measures**

### **Art. 15**

<sup>1</sup> The FOEN coordinates the measures specified in Article 8 paragraph 1 of the CO<sub>2</sub> Act.

<sup>2</sup> It thereby takes account of the cantons' measures.

<sup>3</sup> The cantons regularly inform the FOEN about their measures.

## **Chapter 2 Technical Measures for Reducing CO<sub>2</sub> Emissions from Buildings**

### **Art. 16**

<sup>1</sup> The cantons regularly report to the FOEN on technical measures for reducing CO<sub>2</sub> emissions from buildings.

<sup>2</sup> The report must contain information regarding:

- a. the CO<sub>2</sub> measures taken and planned and their effectiveness; and
- b. the progression of CO<sub>2</sub> emissions from buildings within the canton.

<sup>3</sup> On request, the cantons make available to the FOEN all necessary documents that form the basis of the report.

## **Chapter 3<sup>39</sup> Measures for reducing CO<sub>2</sub> Emissions from Passenger Cars, Vans and Light Articulated Vehicles**

### **Section 1 General Provisions**

#### **Art. 17**

<sup>1</sup> The provisions of this Chapter apply to any person who imports into Switzerland or manufactures in Switzerland a passenger car, van or light articulated vehicle

<sup>38</sup> Inserted by No I of the O of 1 Nov. 2017, in force since 1 Jan. 2018 (AS 2017 6753).

<sup>39</sup> Amended by No I of the O of 1 Nov. 2017, in force since 1 Jan. 2018 (AS 2017 6753).

which is then registered for the first time. The condition of the vehicle when first registered is decisive.

<sup>2</sup> Vehicles registered for the first time in Switzerland are deemed registered for the first time; excluded are vehicles that have been registered abroad for more than six months before a customs declaration in Switzerland.

<sup>3</sup> Registration in a customs enclave in accordance with Article 3 paragraph 3 of the Customs Act of 18 March 2005<sup>40</sup> (CustA) and in Liechtenstein is deemed registration in Switzerland. Registration in a customs enclave in accordance with Article 3 paragraph 2 CustA, with the exception of Liechtenstein, is deemed registration abroad.

<sup>4</sup> If the deadline specified in paragraph 1 leads to the significant unequal treatment of importers of vehicles that have already been registered abroad before a customs declaration in Switzerland and importers of vehicles that have not been registered abroad before a customs declaration in Switzerland, or should misuses occur, then DETEC may:

- a. shorten or extend the deadline by no more than one year;
- b. define a required minimum number of kilometres covered.

<sup>5</sup> The reference year is deemed to be the calendar year in which achievement of the individual target is verified.

## **Section 2 Importer and Manufacturer**

### **Art. 18 Major importer**

<sup>1</sup> An importer is deemed to be a large-scale importer of passenger cars in the reference year in relation to its fleets of new vehicles if at least 50 passenger cars from these fleets were registered for the first time in the year before the reference year.

<sup>2</sup> An importer is deemed to be a large-scale importer of vans or light articulated vehicles in the reference year in relation to its fleets of new vehicles if at least six such vehicles from these fleets were registered for the first time in the year before the reference year.

### **Art. 19 Provisional treatment as a large-scale importer**

<sup>1</sup> An importer may apply to the Swiss Federal Office of Energy (SFOE) to be provisionally treated as a large-scale importer in the reference year in relation to its fleets of new vehicles if no more than 49 passenger cars or, where applicable, no more than five vans or light articulated vehicles were registered for the first time from these fleets in the year before the reference year.

<sup>2</sup> Passenger cars or, where applicable, vans or light articulated vehicles that are registered for the first time in the reference year after the date on which the applica-

<sup>40</sup> SR 631.0

tion in terms of paragraph 1 is approved shall be included in the relevant fleet of new vehicles.

<sup>3</sup> If no more than 49 passenger cars or, where applicable, no more than five vans or light articulated vehicles are registered for the first time in the reference year, the importer must account individually for each vehicle in the relevant fleet of new vehicles.

**Art. 20** Small-scale importers

An importer is deemed to be small-scale importer be in relation to its fleets of new vehicles in the reference year if it registered no more than 49 passenger cars or, where applicable, no more than five vans or light articulated vehicles from its fleets for the first time in the year before the reference year and if it is not provisionally treated as a large-scale importer in the reference year.

**Art. 21** Manufacturer

Depending on the number of a manufacturer's vehicles that are registered for the first time in the year before the reference year, either the provisions of this Chapter for large-scale importers or those for small-scale importers apply to that manufacturer by analogy in the reference year.

**Art. 22** Emission pools

<sup>1</sup> Importers and manufacturers that wish to be treated as an emission pool must apply to the SFOE by 30 November of the year before the reference year to be treated as an emission pool for a duration of one to five years.

<sup>2</sup> An emission pool must appoint a representative.

**Section 3 Bases for Assessments**

**Art. 23** Documentation to be submitted

<sup>1</sup> A vehicle imported by a large-scale importer may not be registered until the Federal Roads Office (FEDRO) has, by submission of a type approval, been notified of the data required for calculating any sanction and for the allocation of the vehicle to a fleet of new vehicles.

<sup>2</sup> In the case of vehicles without type approval, the large-scale importer must submit the following documentation to FEDRO before the vehicle is registered for the first time:

- a. the completed inspection report in accordance with Article 6 paragraph 3 of the Ordinance of 19 June 1995<sup>41</sup> on the Type Approval of Road Vehicles (RVTAO);

<sup>41</sup> SR 741.511

- b. the application for attestation; and
- c. any evidence required in accordance with Article 25 paragraph 1 or 2.

<sup>3</sup> A vehicle imported by a small-scale importer may be registered for the first time if the small-scale importer has paid FEDRO the sanction in accordance with Article 13 of the CO<sub>2</sub> Act where a sanction is due, and has submitted the following documentation:

- a. the completed inspection report in accordance with Article 6 paragraph 3 RVTAO;
- b. the application for attestation;
- c. any evidence required in accordance with Article 24 paragraph 1 or 3 or Article 25 paragraph 1 or 2.

<sup>4</sup> If an importer wishes to have a vehicle that it has imported accounted for in the fleet of new vehicles of a large-scale importer, it must notify FEDRO of this before the vehicle is registered for the first time by applying for attestation. The application must include the signature of the large-scale importers assuming responsibility.

#### **Art. 24** CO<sub>2</sub> emissions and unladen weight of vehicles with type approval

<sup>1</sup> To determine the CO<sub>2</sub> emissions and the unladen weight of vehicles with type approval, the data in the type approval in accordance with the RVTAO are decisive, unless the importer submits the data in accordance with paragraphs 3 or 4 to FEDRO before the deadline.

<sup>2</sup> If details of the unladen weight are not included in the type approval of vans and light articulated vehicles, the unladen weight recorded at the vehicle inspection in the inspection report in accordance with Article 6 paragraph 3 RVTAO is decisive.

<sup>3</sup> The importer may submit the following data based on the certificate of conformity (COC) in accordance with Article 18 of Directive 2007/46/EC<sup>42</sup> FEDRO within the deadline in paragraph 5:

- a. for passenger cars, vans and light articulated vehicles:
  - 1. the vehicle identification number (VIN),
  - 2. the CO<sub>2</sub> emissions (combined) in accordance with Position 49.1,
  - 3. any eco-innovations, and
  - 4. the unladen weight if available in accordance with Position 13.2, otherwise in accordance with Position 13;

<sup>42</sup> See footnote to Art. 2 lett. a.

- b. for vans and light articulated vehicles with multi-stage type approval in accordance with Article 3 point 7 of Directive 2007/46/EC in order to determine the CO<sub>2</sub> emissions and unladen weight of the completed vehicle in accordance with Annex XII point 5 of Regulation (EC) No 692/2008<sup>43</sup>:
  1. the data in accordance with letter a points 1–3,
  2. the unladen weight of the basic vehicle, and
  3. the technically permitted total weight of the basic vehicle when laden.

<sup>4</sup> For vehicles with type approval that are converted to use a different fuel before the vehicle is registered for the first time, the evidence in accordance with Article 25 paragraph 1 letters b–d must be submitted to FEDRO within the deadline in accordance with paragraph 5.

<sup>5</sup> The data and evidence in accordance with paragraphs 3 and 4 must be submitted by the 31 January following the reference year or, in the case of a small-scale importers, before the vehicle is registered for the first time.

<sup>6</sup> In order to verify the data in accordance with paragraphs 3 and 4, FEDRO and the SFOE may require the importer to submit the COC in original form.

**Art. 25** CO<sub>2</sub> emissions and unladen weight of vehicles without type approval

<sup>1</sup> In determining the CO<sub>2</sub> emissions and unladen weights of vehicles that are exempt from type approval (Art. 4 RVTAO<sup>44</sup>), the following evidence is decisive:

- a. the data based on the COC in accordance with Article 24 paragraph 3 letter a;
- b. written evidence contained in an inspection report from an inspection centre listed in Annex 2 RVTAO (conformity assessment) or a foreign inspection centre (conformity certificate) that the vehicle complies with the Swiss regulations;
- c. the approval of a foreign state in accordance with national or international law that is listed in Annex 2 RVTRO<sup>45</sup> or which is at least equivalent to the Swiss regulations; or
- d. the inspection report from an inspection centre that is competent in accordance with Annex 2 RVTAO or which has been provisionally licensed by FEDRO in accordance with Article 17 paragraph 2 RVTAO.

<sup>2</sup> If the vehicle is a van or a light articulated vehicle with a multi-stage type approval in accordance with Article 3 point 7 of Directive 2007/46/EC<sup>46</sup>, in determining the

<sup>43</sup> Commission Regulation (EC) No 692/2008 of 18 July 2008 implementing and amending Regulation (EC) No 715/2007 of the European Parliament and of the Council on type-approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information, OJ L 199 of 28.7.2008, p. 1; amended by Regulation (EU) 143/2013, OJ L 47 of 20.2.2013, p. 51.

<sup>44</sup> SR 741.511

<sup>45</sup> SR 741.41

<sup>46</sup> See footnote to Art. 2 lett. a.

CO<sub>2</sub> emissions and unladen weights of the completed vehicle the evidence in accordance with paragraph 1 letters b–d and in accordance with Article 24 paragraph 3 letter b is decisive.

<sup>3</sup> In the case of vehicles for which evidence in accordance with paragraph 1 or 2 is not available, the CO<sub>2</sub> emissions are calculated in accordance with Annex 4. The unladen weight in kg in accordance with Article 7 RVTRO is decisive. The importer must provide proof of this unladen weight value in the form of a certificate of weight.

<sup>4</sup> If the CO<sub>2</sub> emissions of a vehicle cannot be calculated in accordance with paragraph 3, passenger cars shall be assumed to produce emissions of 300 g CO<sub>2</sub>/km and vans and light articulated vehicles 400 g CO<sub>2</sub>/km.

**Art. 26** CO<sub>2</sub>-reducing factors for vehicles

<sup>1</sup> A reduction in the average CO<sub>2</sub> emissions of a fleet of new vehicles in the case of large-scale importers or, where applicable, in the CO<sub>2</sub> emissions of a vehicle in the case of small-scale importers achieved by using recognised innovative technologies in accordance with Article 12 of Regulation (EC) No 443/2009<sup>47</sup> or in accordance with Article 12 of Regulation (EC) No 510/2011<sup>48</sup> (eco-innovations) shall be taken into account to the extent of no more than 7 g CO<sub>2</sub>/km.

<sup>2</sup> For passenger cars that are wholly or partially fuelled by natural gas, the SFOE shall reduce the level of CO<sub>2</sub> emissions by the percentage of the eligible biogenic component of the gas mixture.

**Art. 27** Calculating the average CO<sub>2</sub> emissions for large-scale importers

<sup>1</sup> The average CO<sub>2</sub> emissions of a fleet of new vehicles of a large-scale importer is calculated based on the arithmetical mean of the CO<sub>2</sub> emissions of the passenger cars or, where applicable, vans and light articulated vehicles of the large-scale importer registered for the first time in the reference year, rounded to three decimal places.

<sup>2</sup> In order to calculate the average CO<sub>2</sub> emissions of a fleet of new vehicles in accordance with paragraph 1, the following percentage of vehicles from the fleet of new vehicles with the lowest CO<sub>2</sub> emissions in the reference years 2020–2022 shall be taken into account:

- a. in the reference year 2020: 85 per cent;

<sup>47</sup> Regulation (EC) No 443/2009 of the European Parliament and of the Council of 23 April 2009 setting emission performance standards for new passenger cars as part of the Community's integrated approach to reduce CO<sub>2</sub> emissions from light-duty vehicles, OJ L 140 of 5.6.2009, p. 1; last amended by Regulation (EU) No 6/2015, OJ L 3 of 7.1.2015, p. 1.

<sup>48</sup> Regulation (EU) No 510/2011 of the European Parliament and of the Council of 11 May 2011 setting emission performance standards for new light commercial vehicles as part of the Union's integrated approach to reduce CO<sub>2</sub> emissions from light-duty vehicles, OJ L 145 of 31.5.2011, p. 1; last amended by Regulation (EU) No 748/2017, OJ L 113 of 29.4.2017, p. 9.



- b. in the reference year 2021: 90 per cent;
- c. in the reference year 2022: 95 per cent.

<sup>3</sup> In order to calculate the average CO<sub>2</sub> emissions of a fleet of new vehicles in accordance with paragraph 1, vehicles with CO<sub>2</sub> emissions of less than 50 g CO<sub>2</sub>/km shall be taken into account up to a reduction in the average CO<sub>2</sub> emissions of the fleet of new vehicles of a maximum total of 7.5 g CO<sub>2</sub>/km for the reference years 2020–2022 as follows:

- a. in the reference year 2020: double;
- b. in the reference year 2021: 1.67 times;
- c. in the reference year 2022: 1.33 times.

#### **Art. 28** Individual target

<sup>1</sup> The individual target for CO<sub>2</sub> emissions of the fleet of new vehicles of a large-scale importer or of the individual vehicle of a small-scale importer is calculated in accordance with Annex 4a.

<sup>2</sup> If a manufacturer has been granted a derogation from the target in accordance with Article 11 of Regulation (EC) No 443/2009<sup>49</sup> or Article 11 of Regulation (EC) No 510/2011<sup>50</sup>, the individual target shall be modified for the makes of vehicle concerned.

<sup>3</sup> If a large-scale importer wishes to have vehicles with a modified individual target accounted for, it must notify the SFOE of this before any vehicle is registered for the first time in the reference year. These vehicles, irrespective of their number, each be accounted for as a separate fleet of new vehicles.

#### **Art. 29** Sanction amounts

<sup>1</sup> DETEC shall determine the amounts in accordance with Article 13 paragraph 1 of the CO<sub>2</sub> Act each year for the following reference year in Annex 5. It shall use as a basis the amounts applicable in the European Union in accordance with Article 9 of Regulation (EC) No 443/2009<sup>51</sup> and Article 9 the Regulation (EU) No 510/2011<sup>52</sup> and the exchange rate in accordance with paragraph 2.

<sup>2</sup> For the conversion into Swiss francs, the average daily exchange rate for selling francs in the twelve months prior to 30 June in the year before the reference year applies.

<sup>49</sup> See footnote to Art. 26.

<sup>50</sup> See footnote to Art. 26.

<sup>51</sup> See footnote to Art. 26.

<sup>52</sup> See footnote to Art. 26.

## Section 4 Calculating and Collecting the Sanction from Large-Scale Importers

### Art. 30 Sanction for exceeding individual targets

<sup>1</sup> At the end of the reference year, the SFOE shall check for each large-scale importer whether the average CO<sub>2</sub> emissions of the fleet of new vehicles exceed the individual target.

<sup>2</sup> Emissions exceeding the individual target are rounded down to the nearest tenth of a gram of CO<sub>2</sub>/km to calculate the penalty.

<sup>3</sup> If the individual target is exceeded, the SFOE determines the sanction in accordance with Article 13 paragraph 1 of the CO<sub>2</sub> Act and Annex 5 and draws up the final invoice, taking into account any advance payments in accordance with Article 31 paragraph 2.

<sup>4</sup> If the final invoice results in a surplus in favour of the large-scale importer, the SFOE refunds the surplus.

### Art. 31 Quarterly advance payments

<sup>1</sup> The SFOE shall send each large-scale importer a quarterly list of vehicles first placed on the market in the current reference year, and of the average CO<sub>2</sub> emissions and the individual target for its fleets of new vehicles.

<sup>2</sup> It may invoice large-scale importers for quarterly advance payments for any sanction in the reference year, in particular if:

- a. the importer is provisionally treated as a large-scale importer in the reference year;
- b. the large-scale importer is based abroad;
- c. the large-scale importer is currently subject to debt enforcement proceedings or has existing certificates of loss;
- d. the average CO<sub>2</sub> emissions of a fleet of new vehicles exceed the individual target in the reference year by more than 5g CO<sub>2</sub> / km.

<sup>3</sup> The SFOE shall calculate the amount of the advance payments on the basis of the data in paragraph 1. Advance payments already made are taken into account in preparing the invoice.

### Art. 32 Payment deadline and interest

<sup>1</sup> The large-scale importer shall pay the invoices and the final invoice within 30 days of receipt.

<sup>2</sup> Refunds in accordance with Article 30 paragraph 4, plus interest on refunds, shall be made within the same period.

<sup>3</sup> If a large-scale importer does not pay an invoice or the final invoice on time, it shall owe interest on arrears.

<sup>4</sup> The rates of interest on arrears and reimbursement interest are specified in the Annex to the FDF Ordinance of 10 December 1992<sup>53</sup> on the Due Date for and Interest on Direct Federal Taxes.

**Art. 33** Sanction order

If a large-scale importer does not pay an invoice or a final invoice despite a reminder, the SFOE shall order the sanction.

**Art. 34** Security

<sup>1</sup> If a large-scale importer is in arrears with the payment of an invoice, the SFOE may order it to be treated as a small-scale importer until the amount owed has been paid in full.

<sup>2</sup> If the SFOE considers the payment of the penalty or interest on arrears to be at risk, it may order that it be secured in the form of a cash deposit or a bank guarantee.

## **Section 5** **Calculation and Levying of Sanctions for Small-Scale Importers**

**Art. 35**

<sup>1</sup> For each vehicle of a small-scale importer, FEDRO shall check whether the CO<sub>2</sub> emissions of the vehicle exceed the individual target.

<sup>2</sup> If the individual target is exceeded, FEDRO shall determine the sanction in accordance with Article 13 paragraph 1 of the CO<sub>2</sub> Act and Annex 5 and invoice it. In the reference years 2020–2022, the penalty for each vehicle shall be multiplied by the percentages in accordance with Article 27 paragraph 2.

<sup>3</sup> Articles 30 paragraph 2, 32 and 33 also apply.

<sup>4</sup> FEDRO is responsible for imposing the sanction in accordance with Article 33.

## **Section 6**      **Reporting and Informing the Public**

**Art. 36**

<sup>1</sup> In 2019 and every three years thereafter, DETEC shall report to the responsible committees of the National Council and the Council of States on the individual targets reached and the effectiveness of measures to reduce CO<sub>2</sub> emissions from passenger cars.

<sup>2</sup> Reports on vans and light articulated vehicles shall be submitted for the first time in 2022 and every three years thereafter.

<sup>53</sup> SR 642.124

<sup>3</sup> The SFOE shall inform the public in some suitable form about the targets reached and publish the following information in particular:

- a. the total sanctions levied and the administrative expense;
- b. the number of large-scale importers or emission pools;
- c. the number and type of fleets of new vehicles.

## **Section 7**

### **Use of the Proceeds from the Sanction in accordance with Article 13 of the CO<sub>2</sub> Act**

#### **Art. 37**

<sup>1</sup> Any income from the sanction under Article 13 of the CO<sub>2</sub> Act will be allocated to the fund for financing national highways and suburban transport in accordance with the Federal Act of 30 September 2016<sup>54</sup> on the National Highways and Suburban Transport Fund (HSFA) in the following year, after the final accounts of the SFOE have been prepared.

<sup>2</sup> The proceeds are equal to the sanctions levied for the reference year, including default interest and less implementation costs, bad debt losses and reimbursement interest.

#### **Art. 38 and 39**

*Repealed*

## **Chapter 4 Emissions Trading Scheme**

### **Section 1 Participation**

#### **Art. 40** Companies obliged to participate

<sup>1</sup> A company is obliged to participate in the ETS if it is engaged in an activity listed in Annex 6.<sup>55</sup>

<sup>2</sup> A company that newly engages in an activity listed in Annex 6 notifies the FOEN no later than three months after starting the activity.

#### **Art. 41** Exemption from the obligation to participate

<sup>1</sup> An ETS company may apply each year by 1 June to be exempted from the obligation to participate with effect from the beginning of the following year if the company's greenhouse gas emissions in the before three years were less than 25 000 tonnes CO<sub>2</sub>eq per year.

<sup>54</sup> SR 725.13

<sup>55</sup> Amended by No I of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS 2014 3293).

<sup>2</sup> The company must continue to submit a monitoring plan (Art. 51) and a monitoring report (Art. 52) unless it has made a commitment to reduce greenhouse gas emissions in accordance with Article 31 paragraph 1<sup>56</sup> of the CO<sub>2</sub> Act.

<sup>3</sup> If the company's greenhouse gas emissions increase to more than 25 000 tonnes CO<sub>2</sub>eq during a year, then it must again participate in the ETS in the following year.

#### **Art. 42** Participation by application

<sup>1</sup> A company may participate in the ETS by application if:

- a. it is engaged in an activity listed in Annex 7; and
- b. it thereby has a total rated thermal input of at least 10 MW.

<sup>2</sup> A company that newly fulfils the participation conditions listed in paragraph 1 must submit the application no later than six months from the date of fulfilment.

<sup>2bis</sup> A company that withdraws its application despite meeting the conditions specified in paragraphs 1 or 2 has the opportunity to resubmit an application for participation if the total rated thermal input has increased by at least 10 per cent since the last application. The application must be submitted no later than six months after the increase.<sup>57</sup>

<sup>3</sup> The application must contain information about:

- a. the activities listed in Annex 7;
- b.<sup>58</sup> the installed rated thermal inputs of the company's fixed installations;
- c. the greenhouse gases emitted from the company's fixed installations in the before three years.

<sup>4</sup> The FOEN may request additional information if required for assessing the application.

#### **Art. 43** Fixed installations not taken into account

<sup>1</sup> In determining whether a company meets the conditions of Article 40 paragraph 1 or Article 42 paragraph 1 or 2<sup>bis</sup>, and in calculating the extent to which emission allowances or emission-reduction certificates must be surrendered annually to the Confederation, fixed installations in hospitals are not taken into account.<sup>59</sup>

<sup>2</sup> A company may request that the following fixed installations not be taken into account:

- a. installations used exclusively for the research, development and testing of new products and processes;

<sup>56</sup> The reference was amended on 1 Jan. 2018 pursuant to Art. 12 para. 2 of the Publications Act of 18 June 2004 (SR **170.512**).

<sup>57</sup> Inserted by No I of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS **2014** 3293).

<sup>58</sup> Amended by No I of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS **2014** 3293).

<sup>59</sup> Amended by No I of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS **2014** 3293).

b.<sup>60</sup> installations used primarily for the disposal of hazardous waste in accordance with Article 3 letter c of the Waste Management Ordinance of 4 December 2015<sup>61</sup> (WastMA).

<sup>3</sup> For thermal fuels used in fixed installations that are not taken into account, the CO<sub>2</sub> levy is not refunded.

**Art. 43a**<sup>62</sup>      Withdrawal

An ETS company may, no later than 1 June, apply to withdraw from the ETS with effect from the beginning of the following year if it permanently ceases to meet the conditions of Article 40 paragraph 1 or 42 paragraph 1.

**Art. 44**            Ruling

The FOEN rules regarding the participation of companies in the ETS and regarding fixed installations not taken into account in accordance with Article 43.

## **Section 2      Emission Allowances and Emission Reduction Certificates**

**Art. 45**            Maximum available quantity of emission allowances

<sup>1</sup> The FOEN calculates the maximum available quantity of emission allowances each year for all ETS companies as a whole in accordance with Annex 8.

<sup>2</sup> It retains 5 per cent of these emission allowances annually in order to make them accessible to new market entrants and ETS companies that significantly increase their capacity.

**Art. 46**            Emission allowances to be allocated free of charge

<sup>1</sup> The FOEN calculates the quantity of emission allowances to be allocated free of charge annually to ETS companies, based on the benchmarks and adaptation factors described in Annex 9 and taking account of European Union regulations.

<sup>2</sup> If the total quantity of emission allowances to be allocated free of charge exceeds the maximum quantity available minus the reserve in accordance with Article 45 paragraph 2, then the FOEN reduces the emission allowances allocated to individual ETS companies pro rata.

<sup>60</sup> Amended by Annex 6 No 2 of the Waste Management Ordinance of 4 Dec. 2015, in force since 1 Jan. 2016 (AS **2015** 5699).

<sup>61</sup> SR **814.600**

<sup>62</sup> Inserted by No 1 of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS **2014** 3293).

**Art. 46a<sup>63</sup>** Allocating emission allowances free of charge to new ETS participants

<sup>1</sup> A company that participates for the first time in the ETS after 1 January 2013 receives an allocation of emission allowances free of charge from the reserve in accordance with Article 45 paragraph 2 from the start of its participation in the ETS.

<sup>2</sup> Emission allowances are allocated free of charge in accordance with Article 46.

<sup>3</sup> If a company's participation in the ETS occurs after the extension of a fixed installation or after a significant increase in physical capacity, then it is allocated emission allowances free of charge in accordance with Articles 46 and 46c.

**Art. 46b<sup>64</sup>** Reduction of emission allowances to be allocated free of charge

<sup>1</sup> The quantity of emission allowances to be allocated free of charge annually to ETS companies is reduced from the beginning of the following year if:

- a. a physical change in a fixed installation leads to a reduction of at least 10 per cent in the installed capacity of a unit decisive for emission allowances to be allocated free of charge (sub-installation); physical modifications that serve solely to reduce greenhouse gas emissions are excluded;
- b. the company's operations cease.

<sup>2</sup> In the case of partial closures, the quantity of emission allowances allocated free of charge annually to an ETS company is reduced from the beginning of the following year as follows:

- a. by 50 per cent if the sub-installation's activity rate is reduced by at least 50 per cent but less than 75 per cent;
- b. by 75 per cent if the sub-installation's activity rate is reduced by at least 75 per cent but less than 90 per cent;
- c. by 100 per cent if the sub-installation's activity rate is reduced by at least 90 per cent.

**Art. 46c<sup>65</sup>** Increase in the emission allowances to be allocated free of charge

<sup>1</sup> The quantity of emission allowances to be allocated free of charge annually to an ETS company is increased if a physical change in a fixed installation or the expansion of a new fixed installation leads to an increase of at least 10 per cent in a sub-installation's installed capacity.

<sup>2</sup> The additional emission allowances are allocated from the date on which the additional capacity has been used for 90 days at an average of at least 40 per cent (normal operation).

<sup>3</sup> If a new sub-installation is created by a physical change in a fixed installation or by the expansion of a new fixed installation, the ETS company is allocated emission

<sup>63</sup> Inserted by No I of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS 2014 3293).

<sup>64</sup> Inserted by No I of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS 2014 3293).

<sup>65</sup> Inserted by No I of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS 2014 3293).

allowances according to the greenhouse gas emissions emitted in the time between the initial physical operation and the start of normal operation and in accordance with the benchmarks specified in Annex 9. No emission allowances are allocated free of charge for the production of electricity.

<sup>4</sup> If the operation of a fixed installation restarts after a partial closure in accordance with Article 46*b* paragraph 2, the free-of-charge allocation is adjusted accordingly as of the following year.

**Art. 47<sup>66</sup>** Auction of emission allowances

<sup>1</sup> The FOEN regularly auctions to ETS companies all the emission allowances that have not been allocated free of charge.

<sup>2</sup> If it suspects agreements affecting competition or unlawful practices by dominant companies, FOEN may cancel the auction without accepting a bid. It must report any suspicion to the competition authorities.

<sup>3</sup> It may award an ETS company a limited quantity of emission allowances at the price corresponding to the result of the auction simultaneously carried out.

<sup>4</sup> It may commission private organisations to conduct the auction.

**Art. 47<sup>a67</sup>** Participation in the auction and the binding nature of auction bids

<sup>1</sup> ETS companies that participate in the auction must submit the following information to the FOEN in advance:

- a. first names, surnames, postal and e-mail addresses, mobile phone number and proof of identity of at least one, but no more than two, authorised auction agents;
- b. first names, surnames, postal and e-mail addresses, mobile phone number and proof of identity of at least one, but no more than two, bid validators.

<sup>2</sup> The information is recorded in the Emissions Trading Registry.

<sup>3</sup> Auction bids are binding after a bid validator gives consent.

**Art. 48** Emission reduction certificates

<sup>1</sup> The maximum quantity of emission-reduction certificates that an ETS company may surrender is calculated as follows:<sup>68</sup>

- a. for fixed installations that have already been taken into account in the ETS in the years 2008–2012: 11 per cent of five times the average allowances allocated annually in this period; the emission reduction certificates taken into account in this period are deducted;

<sup>66</sup> Amended by No 1 of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS **2014** 3293).

<sup>67</sup> Inserted by No 1 of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS **2014** 3293).

<sup>68</sup> Amended by No 1 of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS **2014** 3293).



- b. for the remaining fixed installations and greenhouse gas emissions: 4.5 per cent of the greenhouse gas emissions of the years 2013–2020.

<sup>2</sup> For fixed installations that in the years 2013–2020 have only been intermittently taken into account in the ETS, the maximum quantity of emission-reduction certificates is reduced according to the applicable duration.<sup>69</sup>

**Art. 49<sup>70</sup>** Recalculation of the quantity of emission-reduction certificates

<sup>1</sup> The maximum quantity of emission-reduction certificates is recalculated with effect from the beginning of the following year if:

- a. a physical change in at least one fixed installation leads to a significant increase or reduction in a sub-installation's installed capacity;
- b. the company's activities cease; or
- c. the activities of the essential parts of the company's fixed installations are reduced by at least half.

<sup>2</sup> The maximum quantity of emission-reduction certificates for fixed installations in accordance with Article 48 paragraph 1 letter a is reduced to a maximum of 8 per cent of five times the average allowances allocated annually in the years 2008–2012 minus the emission-reduction certificates taken into account in this period.

### **Section 3 Data Collection and Monitoring**

**Art. 50** Data collection

<sup>1</sup> The FOEN or a FOEN-authorized entity collects data to calculate the maximum quantity of emission allowances to be made available and the quantity of emission allowances to be allocated free of charge to individual ETS companies.

<sup>2</sup> An ETS company is required to cooperate. If it violates its obligation to cooperate, then it will be denied emission allowances free of charge.

**Art. 51** Monitoring plan

<sup>1</sup> A company obliged to participate in the ETS shall submit a monitoring plan to the FOEN for approval no later than three months after the deadline for notification of new activities specified in Article 40 paragraph 2.

<sup>2</sup> A company that is participating in the ETS by application submits a monitoring plan to the FOEN for approval no later than three months after the deadline for the submission of the application to participate specified in Article 42 paragraph 2 or 2<sup>bis</sup>.<sup>71</sup>

<sup>3</sup> The monitoring plan must specify how the company ensures that:

<sup>69</sup> Amended by No I of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS 2014 3293).

<sup>70</sup> Amended by No I of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS 2014 3293).

<sup>71</sup> Amended by No I of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS 2014 3293).

- a. standardised or other established procedures are used for the measurement or calculation of greenhouse gas emissions;
- b. the greenhouse gas emissions are as completely, consistently and accurately recorded as is technically and operationally possible and economically feasible;
- c. the measurement, calculation and documentation of greenhouse gas emissions are traceable and transparent.

<sup>4</sup> An ETS company amends the monitoring plan if it no longer meets the requirements of paragraph 3 or if an amendment is necessary due to a change under Articles 46b and 46c. It submits the amended monitoring plan to the FOEN for approval.<sup>72</sup>

**Art. 52<sup>73</sup>** Monitoring report

<sup>1</sup> An ETS company submits to the FOEN annually by 31 March of the following year a monitoring report that must contain:

- a. information about the progression of greenhouse gas emissions;
- b. information about the progression of production volumes;
- c. an accounting of thermal fuels;
- d. information about any changes in installed capacities.

<sup>2</sup> The data must be shown in a summary table with comparative data of the previous years. The FOEN issues guidelines on the form of the monitoring report.

<sup>3</sup> The FOEN may request additional information if required for monitoring.

<sup>4</sup> It may require at any time that the monitoring report be verified by a FOEN-approved verifier.

<sup>5</sup> If an ETS company submits an incomplete monitoring report or fails to submit it by the deadline, the FOEN estimates the company's greenhouse gas emissions.

**Art. 53** An ETS company's obligation to report changes

An ETS company informs the FOEN without delay about:

- a. changes that could affect the emission allowances to be allocated free of charge;
- b. changes in contact information.

**Art. 54** The cantons' duties

<sup>1</sup> The cantons verify whether ETS companies have met their information obligations under Articles 40 paragraphs 2 and 53 and whether the information provided is complete and traceable.

<sup>2</sup> The FOEN makes the required information available to the cantons.

<sup>72</sup> Amended by No I of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS 2014 3293).

<sup>73</sup> Amended by No I of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS 2014 3293).

<sup>3</sup> If a canton determines that the requirements of this Ordinance have not been met, it informs the FOEN without delay.

## **Section 4**

### **Obligation to Surrender Emission Allowances and Emission Reduction Certificates**

#### **Art. 55**          Obligation

<sup>1</sup> An ETS company annually surrenders to the FOEN emission allowances and, if permitted, emission reduction certificates. Decisive are the relevant greenhouse gas emissions of the fixed installations that have been taken into account.

<sup>2</sup> An ETS company meets these obligations each year by 30 April for the greenhouse gas emissions of the previous year.

#### **Art. 55a**<sup>74</sup>      Case of hardship

<sup>1</sup> On application, the FOEN may increase the maximum quantity of emission-reduction certificates that an ETS company may surrender under Article 48 if it proves that:

- a. it cannot meet its surrender obligation in accordance with Article 55 without the increase;
- b. it has participated in an auction of emission allowances in accordance with Article 47 and thus has made offers for the required quantity of emission allowances at market prices;
- c. procuring the lacking emission allowances outside auctions would significantly impede the ETS company's competitiveness; and
- d. it is prepared to acquire European emission allowances to the extent of the additional emission-reduction certificates applied for.

<sup>2</sup> To assess significant impairment to competitiveness, the FOEN also takes into account in particular the company's receipts from the sale of emission allowances.

<sup>3</sup> The application is to be submitted to the FOEN no later than 31 March of the year following the year for which the case of hardship is claimed for the first time. The FOEN decides the quantity of additional eligible emission-reduction certificates annually.

<sup>4</sup> European emission allowances acquired in accordance with paragraph 1 letter d must be transferred annually to an account of the Swiss Confederation in the European Union Emissions Trading System.

<sup>5</sup> The FOEN transfers back the European emission allowances transferred by an ETS company in accordance with paragraph 4 to the company if no convention regarding

<sup>74</sup> Inserted by No I of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS 2014 3293).

the linking of the Swiss ETS with the European Union Emissions Trading System comes into force by 31 December 2018.

<sup>6</sup> It transfers back the additional emission-reduction certificates delivered in accordance with paragraph 3 to the company by 31 December 2018 if a convention regarding the linking of the Swiss ETS with the European Union Emissions Trading System comes into force. European emission allowances will be taken into account towards meeting the obligation.

**Art. 56** Non-compliance with obligations

<sup>1</sup> If an ETS company does not meet its obligations to surrender emission allowances or emission reduction certificates by the deadline, then the FOEN rules on a penalty in accordance with Article 21 of the CO<sub>2</sub> Act.

<sup>2</sup> The payment deadline is 30 days from the issue of the ruling. If a payment is late, default interest at the rate of 5 per cent per year is charged.

<sup>3</sup> If an ETS company does not surrender emission allowances or emission reduction certificates by 31 January of the following year, then they will be offset against the emission allowances allocated to the company free of charge for that year.

**Section 5 Emissions Trading Registry<sup>75</sup>**

**Art. 57<sup>76</sup>** Principles

<sup>1</sup> ETS companies must have an operator account in the Emissions Trading Registry.

<sup>2</sup> Companies with reduction obligations under Chapter 5, operators of fossil-thermal power plants in accordance with Chapter 6 and importers and manufacturers of fossil motor fuels in accordance with Chapter 7 that hold emission allowances, emission-reduction certificates or attestations in the Emissions Trading Registry, or want to trade them, must have an operator account or a personal account.

<sup>3</sup> All other companies and persons that hold emission allowances, emission-reduction certificates or attestations in the Emissions Trading Registry, or want to trade them, must have a personal account.

<sup>4</sup> Companies and persons that receive attestations for a project or a programme in accordance with Article 5, for emission reductions in accordance with Article 12, or for emission reductions arising from a target agreement with an emissions target in accordance with Article 12a may have them issued directly to a third party's operator or personal account.

<sup>75</sup> Amended by No I of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS 2014 3293).

<sup>76</sup> Amended by No I of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS 2014 3293).

**Art. 58<sup>77</sup>** Opening an account

<sup>1</sup> Companies and persons under Article 57 paragraphs 1–3 must apply to the FOEN to open an account.

<sup>2</sup> The application must include:

- a. for companies: an extract from the commercial register and a copy of the passport or other proof of identity of the person authorised to represent the company;
- b. for individual persons: a proof of identity;
- c. first names, surnames, postal and e-mail addresses and proof of identity of the applicant;
- d. first names, surnames, postal and e-mail addresses, mobile phone number and proof of identity of at least one and no more than four authorised representatives for the account;
- e. first names, surnames, postal and e-mail addresses, mobile phone number and proof of identity of at least one and no more than four transaction validators;
- f. a declaration that the applicant accepts the General Terms and Conditions of the Emissions Trading Registry.

<sup>3</sup> Companies registered in a State in which no commercial register is maintained confirm by another form of supporting document their existence and the authorisation to sign of the person entitled to represent the company.

<sup>4</sup> The FOEN may require the information in accordance with paragraphs 2 and 3 to be authenticated.

<sup>5</sup> It may request additional information if it requires the same for the account to be opened. This includes in particular criminal record certificates.

<sup>6</sup> It opens the requested account after reviewing the information and supporting documents and as soon as the applicant has paid the fee.

**Art. 59** Address for service

<sup>1</sup> Any company or person with a personal account under Article 57 must designate an address for service in Switzerland for the following persons:<sup>78</sup>

- a. for companies, the person entitled to represent the company, or for persons, the account holder;
- b. the authorised representatives for the account; and
- c.<sup>79</sup> the transaction validators.

<sup>2</sup> Paragraph 1 does not apply if the account was opened before 1 January 2012.

<sup>77</sup> Amended by No I of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS 2014 3293).

<sup>78</sup> Amended by No I of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS 2014 3293).

<sup>79</sup> Amended by No I of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS 2014 3293).

**Art. 59a<sup>80</sup>** Rejection of account opening

<sup>1</sup> The FOEN rejects the account opening or the entry of authorised representatives for the account, authorised auction agents, transaction validators and bid validators if:

- a. the transmitted information or documents are incorrect or not traceable;
- b.<sup>81</sup> the company, the managing director or one of the persons mentioned in the introductory sentence has been convicted in the before ten years of money laundering or criminal offences against property or of other criminal offences in connection with emission trading or the legislation on financial market infrastructures.

<sup>2</sup> It suspends the account opening or entry if an investigation is pending against the company or a person mentioned in paragraph 1 letter b due to one of the criminal offences described in paragraph 1 letter b.

<sup>3</sup> If the FOEN rejects the account opening of a company that is obliged to participate in the ETS, then the FOEN opens a frozen account to which the emission allowances allocated under Article 46 are credited. The account remains frozen until the reasons that led to the rejection of the account opening have been eliminated.

**Art. 60<sup>82</sup>** Entry in the Emissions Trading Registry

<sup>1</sup> All emission allowances, emission-reduction certificates, attestations and auction bids must be recorded in the Emissions Trading Registry.

<sup>2</sup> Changes in the holding of emission allowances, emission-reduction certificates and attestations are valid only if they are recorded in the Emissions Trading Registry.

<sup>3</sup> Emission-reduction certificates for the following emission reductions may not be recorded in the Emissions Trading Registry:

- a. long-term certified emission reductions (lCER);
- b. temporary certified emission reductions (tCER);
- c. certified emission reductions from projects for CO<sub>2</sub> capture and geological CO<sub>2</sub> sequestration (CCS).

<sup>4</sup> The FOEN maintains a record of the issuance of attestations and emission allowances for the second commitment period 2013–2020 in the form of an electronic database.

**Art. 61<sup>83</sup>** Transactions

<sup>1</sup> Emission allowances, emission-reduction certificates and attestations are freely tradable.

<sup>80</sup> Inserted by No I of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS **2014** 3293).

<sup>81</sup> Amended by Annex 1 No 8 of the Financial Market Infrastructure Ordinance of 25 Nov. 2015, in force since 1 Jan. 2016 (AS **2015** 5413).

<sup>82</sup> Amended by No I of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS **2014** 3293).

<sup>83</sup> Amended by No I of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS **2014** 3293).

<sup>2</sup> The authorised representatives for the account, authorised auction agents and the transaction validators and bid validators have the right to secure access to the Emissions Trading Registry.

<sup>3</sup> When ordering a transaction involving emission allowances, emission-reduction certificates or attestations, authorised representatives for the account must give details of:

- a. the source and destination accounts; and
- b. type and quantity of emission allowances, emission-reduction certificates or attestations to be transferred.

<sup>4</sup> The emission allowances, emission-reduction certificates or attestations are transferred when the transaction validator consents to the transfer.

<sup>5</sup> The transaction is carried out according to a standardised procedure.

#### **Art. 62<sup>84</sup>** Registry management

<sup>1</sup> The FOEN manages the Emissions Trading Registry electronically and records all transactions and auction bids.

<sup>2</sup> It ensures that it is possible to reproduce all the data relevant to transactions and auction bids at any time.

<sup>3</sup> In addition to the information submitted when an account is opened, it may also require further information at any time if necessary for the secure operation of the Registry.

#### **Art. 63** Exclusion of liability

The Confederation accepts no liability for any losses incurred due to:

- a.<sup>85</sup> errors in transactions involving emission allowances, emission-reduction certificates, attestations and auction bids;
- b. restricted access to the Emissions Trading Registry;
- c. misuse of the Emissions Trading Registry by third parties.

#### **Art. 64<sup>86</sup>** Account freezing and closure

<sup>1</sup> If the Emissions Trading Registry regulations are contravened or if an investigation is pending due to an offence under Article 59a paragraph 1 letter b, then the FOEN freezes the user access or accounts concerned. The freeze lasts until such time as the regulations are adhered to or the investigation is concluded.

<sup>2</sup> The FOEN may close accounts that do not contain any emission allowances, emission-reduction certificates or attestations and that have not been used for at least a year.

<sup>84</sup> Amended by No I of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS 2014 3293).

<sup>85</sup> Amended by No I of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS 2014 3293).

<sup>86</sup> Amended by No I of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS 2014 3293).

**Art. 65<sup>87</sup>** Data protection

<sup>1</sup> The FOEN may, subject to preservation of manufacturing and trade secrecy, electronically publish data held in the Emissions Trading Registry.

<sup>2</sup> The Emissions Trading Registry includes the following data:

- a. account number;
- b. for the following persons, contact details and data in accordance with proof of identity:
  1. persons in accordance with Article 57 paragraphs 1–3,
  2. bid validators,
  3. authorised auction agents;
- c. emission allowances, emission-reduction certificates and attestations per account;
- d. for ETS companies: auction bids, installation and emissions data, the quantity of emission allowances allocated free of charge and the quantity of emission allowances and emission-reduction certificates delivered to meet their obligation;
- e. for domestic emission-reduction projects and programmes: the quantity of attestations issued per monitoring period and account number of the operator or personal accounts to which the attestations for the project or programme have been issued;
- f. for persons with compensation obligations: the amount of the compensation obligation and the quantity of attestations and emission-reduction certificates delivered to meet the obligation;
- g. for companies with reduction obligations: the quantity of emission-reduction certificates delivered to meet the obligation.

**Chapter 5 Commitment to reduce Greenhouse Gas Emissions****Art. 66<sup>88</sup>** Requirements

<sup>1</sup> In accordance with Article 31 paragraph 1<sup>89</sup> of the CO<sub>2</sub> Act, a company may commit to reduce its greenhouse gas emissions (companies with reduction obligations) if it:

- a. is engaged in an activity listed in Annex 7;
- b. produces at least 60 per cent of its greenhouse gas emissions due to an activity listed in Annex 7; and

<sup>87</sup> Amended by No I of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS **2014** 3293).

<sup>88</sup> Amended by No I of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS **2014** 3293).

<sup>89</sup> The reference was amended on 1 Jan. 2018 pursuant to Art. 12 para. 2 of the Publications Act of 18 June 2004 (SR **170.512**).



- c. has emitted a total of more than 100 tonnes CO<sub>2</sub>eq of greenhouse gases in one of the before two years.
- <sup>2</sup> The extent to which greenhouse gas emissions are reduced is determined by means of an emissions target or a measures target.
- <sup>3</sup> Several companies may make a joint commitment to reduce greenhouse gas emissions if:
- a. each of them is engaged in an activity listed in Annex 7;
  - b. the source of at least 60 per cent of each of their greenhouse gas emissions is an activity listed in Annex 7; and
  - c. together they have emitted a total of more than 100 tonnes CO<sub>2</sub>eq of greenhouse gases in one of the before two years.
- <sup>4</sup> The companies are deemed a single company. They must designate a representative.

**Art. 67** Emissions target

- <sup>1</sup> The emissions target is the maximum total amount of greenhouse gases that a company may emit by the end of 2020.
- <sup>2</sup> The FOEN calculates the emissions target on the basis of a linear reduction course.
- <sup>3</sup> The linear reduction course is based on Article 31 paragraph 3 of the CO<sub>2</sub> Act and:
- a. on the company's greenhouse gas emissions of the before two years;
  - b. on the state of the art of the technology used at the company;
  - c. on the already realised greenhouse-gas-effective measures and their effect;
  - d. on the remaining reduction potential;
  - e. on the economic efficiency of the possible greenhouse-gas-effective measures;
  - f. on the portion of produced electricity that, in comparison with 2012, has additionally been used outside the company;
  - g. on the portion of district heating or cooling produced;
  - h. on the extent to which CO<sub>2</sub> levies can be saved.
- <sup>4</sup> A company that was under a reduction obligation in the years 2008–2012 and would like to seamlessly continue from 2013 may apply for a simplified determination of the reduction course.
- <sup>5</sup> A simplified determination of the reduction course is based on the company's greenhouse gas emissions in 2010 and 2011 and Article 3 of the CO<sub>2</sub> Act. Insofar as companies have achieved additional reductions that exceed their commitments in the years 2008–2012, this will be taken into account in determining the reduction course, except for additional reductions achieved as the result of using waste fuels.

**Art. 68** Measures target

<sup>1</sup> A company that normally emits no more than 1500 tonnes CO<sub>2</sub>eq per year may request that the extent of its reduction be determined by means of a measures target.

<sup>2</sup> The measures target includes the total amount of greenhouse gas emissions that the company must reduce by the end of 2020 by means of measures.

<sup>3</sup> The measures target is determined based on Article 31 paragraph 3 of the CO<sub>2</sub> Act and:

- a. on the state of the art of the technology used at the company;
- b. the remaining reduction potential;
- c. on the economic efficiency of the possible greenhouse-gas-effective measures;
- d. on the portion of produced electricity that, in comparison with 2012, has additionally been used outside the company;
- e. on the portion of district heating or cooling produced;
- f. on the extent to which CO<sub>2</sub> levies can be saved.

**Art. 69** Application for the determination of a reduction obligation

<sup>1</sup> An application for the determination of a reduction obligation must be submitted to the FOEN by 1 September of the previous year. On request, the FOEN may appropriately extend the application deadline. It issues guidelines on the form of the application.<sup>90</sup>

<sup>2</sup> The application must contain information about:

- a. the activities listed in Annex 7;
- b. the greenhouse gas emissions and production volumes of the previous two years;
- c. the emissions target or measures target that the company strives for.

<sup>2bis</sup> The proposal for the measures target must be prepared in consultation with one of the private organisations commissioned by the FOEN in accordance with Article 130 paragraph 6.<sup>91</sup>

<sup>3</sup> The FOEN may request additional information if required for the determination of reduction obligations, particularly about:

- a. the state of the art of the technology used at the company;
- b.<sup>92</sup> already implemented greenhouse-gas-effective measures, their effect and financing;

<sup>90</sup> Amended by No I of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS **2014** 3293).

<sup>91</sup> Inserted by No I of the O of 8 Oct. 2014 (AS **2014** 3293). Amended by No I of the O of 22 June 2016, in force since 1 Aug. 2016 (AS **2016** 2473).

<sup>92</sup> Amended by No I of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS **2014** 3293).

- c. the possible technical and economic greenhouse-gas-effective measures, with an evaluation of their effect and costs.

<sup>4</sup> It may request the company to submit a monitoring plan in accordance with Article 51.

#### **Art. 70** Ruling

The FOEN rules on reduction obligations.

#### **Art. 71** Product improvements outside a company's own production plants

<sup>1</sup> Emission reductions that a company has achieved due to product improvements outside its own production plants may on request be taken into account towards meeting reduction obligations if they are:

- a. analogous with the requirements of Article 5; and
- b. directly related to the company's activity.

<sup>2</sup> The procedure is described in Articles 6–11.

#### **Art. 72**<sup>93</sup> Monitoring report

<sup>1</sup> A company must submit annually by 31 May of the following year a monitoring report to a private organisation commissioned by the FOEN in accordance with Article 130 paragraph 6, which forwards the monitoring report to the FOEN.

<sup>2</sup> The monitoring report must contain:

- a. information about the progression of greenhouse gas emissions;
- b. information about the progression of production volumes;
- c. an accounting of thermal fuels;
- d. a description of implemented greenhouse-gas-effective measures;
- e. information about possible deviations from the reduction course or measures target with a justification and planned corrective measures.

<sup>3</sup> The data must be contrasted in a summary table with comparative data from previous years. The FOEN defines the form of the monitoring report in a directive.

<sup>4</sup> The FOEN may request additional information if required for monitoring.

#### **Art. 73** Amendment of the emissions target

<sup>1</sup> The FOEN amends the emissions target if a company's greenhouse gas emissions exceed or fall short of the reduction course due to a significant and permanent change in production amount or product mix or due to the procurement of heating or cooling from a third party:<sup>94</sup>

<sup>93</sup> Amended by No I of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS 2014 3293).

<sup>94</sup> Amended by No I of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS 2014 3293).

- a. in three consecutive years by at least 10 per cent per year; or
- b. in one year by at least 30 per cent.

<sup>2</sup> It amends the emissions target retroactively from the beginning of the year in which the company's greenhouse gas emissions first exceeded or fell short of the reduction course.

<sup>3</sup> It takes account of the criteria in Article 67 paragraph 3.

#### **Art. 74** Amendment of the measures target

<sup>1</sup> The FOEN amends the measures target if the company's greenhouse gas emissions change significantly due to a change in production amount or product mix or due to the procurement of heating or cooling from a third party.<sup>95</sup>

<sup>2</sup> It takes account of the criteria in Article 68 paragraph 3.

#### **Art. 74a<sup>96</sup>** Deducting attestations from the emissions target

Emission reductions resulting in the issuance of attestations in accordance with Article 12 paragraph 2 and emission reductions achieved under projects or programmes in accordance with Article 5 or 5a, shall be considered to be a company's emissions with a view to meeting its emissions target.

#### **Art. 74b<sup>97</sup>** Adjustment of the reduction obligation of companies operating CHP plants

<sup>1</sup> On request, the FOEN shall adjust the reduction obligation of companies operating CHP plants and applying for a refund of the CO<sub>2</sub> levy in accordance with Article 96a.

<sup>2</sup> Applications must be submitted to the FOEN by 31 May of the following year.

<sup>3</sup> Applications must contain information on:

- a. CO<sub>2</sub> emissions in 2012 resulting from the measured production of electricity fed into the grid;
- b. the annual development of CO<sub>2</sub> emissions resulting from the measured production of electricity fed into the grid.

<sup>4</sup> The FOEN shall specify the form of the application.

#### **Art. 75** Counting emission reduction certificates

<sup>1</sup> A company that has not reached its emissions target or measures target and has not been issued attestations in accordance with Article 12 may have emission reduction certificates taken into account towards meeting its reduction obligations to the following extent:

<sup>95</sup> Amended by No I of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS 2014 3293).

<sup>96</sup> Inserted by No I of the O of 1 Nov. 2017, in force since 1 Jan. 2018 (AS 2017 6753).

<sup>97</sup> Inserted by No I of the O of 1 Nov. 2017, in force since 1 Jan. 2018 (AS 2017 6753).

- a. for companies that were already subject to a reduction obligation in the years 2008–2012: 8 per cent of five times the average allowed emissions annually in this period, minus the emission reduction certificates that were taken into account during 2008–2012 but that were not required for meeting the company's 2008–2012 reduction obligations;
- b. for the remaining companies and greenhouse gas emissions: 4.5 per cent of the greenhouse gas emissions of the years 2013–2020.

<sup>2</sup> The extent to which emission-reduction certificates are taken into account in accordance with paragraph 1 is as follows:<sup>98</sup>

- a. for a company that was only intermittently subject to a reduction obligation in the years 2013–2020: correspondingly reduced for this time period;
- b. for a company that, in comparison with 2012, produces additional electricity that is used outside the company: increased by 50 per cent of the required increase in additional reduction performance;
- c.<sup>99</sup> for a company under paragraph 1 letter a, the emissions or measures target of which has been amended: increased or reduced in accordance with the amendment; the quantity of eligible emission-reduction certificates are thereby reduced to a maximum of 8 per cent of five times the average allowed emissions annually in this period, minus the emission-reduction certificates that were taken into account in the years 2008–2012.

**Art. 76** Failure to meet reduction obligations and the investment obligation<sup>100</sup>

<sup>1</sup> If a company fails to meet its reduction obligation, then the FOEN rules on a penalty in accordance with Article 32 of the CO<sub>2</sub> Act.

<sup>1bis</sup> If a company that operates CHP plants fails to meet the investment obligation in accordance with Article 96a paragraph 2 or Article 98a paragraph 2, the FOEN shall order the repayment of 40 per cent of the refund paid for fuels used for electricity production in accordance with Article 32a of the CO<sub>2</sub> Act.<sup>101</sup>

<sup>2</sup> The payment deadline is 30 days from the entry of the ruling. If a payment is late, default interest at the rate of 5 per cent per year is charged.

<sup>3</sup> The amounts repaid in accordance with paragraph 1<sup>bis</sup> shall be deemed to be revenue from the CO<sub>2</sub> levy.<sup>102</sup>

**Art. 77** Security for the penalty

If a company is at risk of not meeting its target, then the FOEN may require security for the expected penalty until the risk no longer exists.

<sup>98</sup> Amended by No I of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS 2014 3293).

<sup>99</sup> Amended by No I of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS 2014 3293).

<sup>100</sup> Amended by No I of the O of 1 Nov. 2017, in force since 1 Jan. 2018 (AS 2017 6753).

<sup>101</sup> Inserted by No I of the O of 1 Nov. 2017, in force since 1 Jan. 2018 (AS 2017 6753).

<sup>102</sup> Inserted by No I of the O of 1 Nov. 2017, in force since 1 Jan. 2018 (AS 2017 6753).

**Art. 78** A company's obligation to report changes

A company informs the FOEN without delay about:

- a. changes that could affect its reduction obligations;
- b. changes in contact information.

**Art. 79** Publication of information

The FOEN may subject to the preservation of manufacturing and trade secrecy, publish:

- a. the names of companies with reduction obligations;
- b. the emissions targets or measures targets;
- c. the greenhouse gas emissions of each company;
- d. the extent to which emission reductions were taken into account in meeting each company's reduction obligation in accordance with Article 71;
- e. the quantity of emission reduction certificates that each company surrenders;
- f. the quantity of credits that have been taken into account towards meeting each company's reduction obligations in accordance with Article 138 paragraph 1 letter b;
- g. the quantity of attestations that have been issued to each company in accordance with Article 12.

## **Chapter 6 Compensation of CO<sub>2</sub> Emissions from Fossil-Thermal Power Plants**

**Art. 80** Power plants primarily for heat production

A power plant that has an overall efficiency of at least 80 per cent is deemed a power plant primarily for heat production.

**Art. 81** Overall efficiency

<sup>1</sup> A power plant must have an overall efficiency of at least 62 per cent.

<sup>2</sup> The overall efficiency of a power plant at a location at which a power plant was earlier operated must be at least 58.5 per cent.

**Art. 82** Installations not deemed power plants

An installation is not deemed a power plant if:

- a. it has a total output of less than 1 MW;
- b. it is at a location for less than two years or operates for less than 50 hours per year;

- c. it is used exclusively for the research, development and testing of new products and processes; or
- d.<sup>103</sup> its main function is the disposal of municipal or hazardous waste in accordance with Article 3 letters a and c respectively WastMA<sup>104</sup>.

**Art. 83** Permissible compensation measures

<sup>1</sup> The following are permissible to meet a compensation obligation:

- a.<sup>105</sup> domestic emission-reduction projects and programmes self-implemented by the power plant operator that meet the requirements of Articles 5 and 5a;
- b. investment in installations for the domestic production of heat or electricity using renewable energy sources that meet the requirements of Article 5;
- c. the replacement of existing fossil-fuel heat sources with heat produced and directly decoupled by the power plant;
- d. the surrender of attestations for domestic emission reductions;
- e. the surrender of emission reduction certificates.

<sup>2</sup> Compensation measures in accordance with paragraph 1 letters a–c are taken into account to the extent of the accounted-for emission reductions. Emission reductions that are attributable to non-refundable payments from the Confederation, cantons or communes for promoting renewable energies, energy efficiency or climate protection are only attested to the applicant if it proves that the emission reductions have not otherwise been claimed by the competent public body. Emission reductions that are attributable to surcharges obtained in accordance with Article 35 paragraph 1 EnA<sup>106</sup> are not attested.<sup>107</sup>

<sup>3</sup> For the calculation of emission reductions that have been achieved through investments under paragraph 1 letter b, the CO<sub>2</sub> emissions that on average arise from the domestic production of electricity are decisive.

**Art. 84** Compensation contract

<sup>1</sup> A compensation contract is concluded between the power plant operator and the FOEN.

<sup>2</sup> It specifically contains:

- a. the requirements for compensation measures;
- b. the specifications for reporting on the progression of the power plant's CO<sub>2</sub> emissions;

<sup>103</sup> Amended by Annex 6 No 2 of the Waste Management Ordinance of 4 Dec. 2015, in force since 1 Jan. 2016 (AS **2015** 5699).

<sup>104</sup> SR **814.600**

<sup>105</sup> Amended by No I of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS **2014** 3293).

<sup>106</sup> SR **730.0**

<sup>107</sup> Amended by No I of the O of 1 Nov. 2017, in force since 1 Jan. 2018 (AS **2017** 6753).

- c. the specifications for reporting on the compensation measures taken by the power plant operator domestically and abroad;
- d. the details of the contractual penalty that the power plant operator must pay if the CO<sub>2</sub> emissions are not compensated in accordance with the contract.

<sup>3</sup> Negotiations with the power plant operator are carried out jointly by the SFOE and the FOEN. If the parties fail to reach an agreement, then the power plant operator may request the FOEN for a ruling regarding the Confederation's contractual offer.

#### **Art. 85** Tasks of the cantons

The cantons inform the FOEN:

- a. annually about the existing power plants within the canton;
- b. without delay about the receipt of applications for licences to build and operate power plants.

## **Chapter 7 Compensation of CO<sub>2</sub> Emissions from Motor Fuels**

#### **Art. 86** Compensation obligation

<sup>1</sup> Persons or companies are subject to compensation obligations if:

- a. they release motor fuels for consumption in accordance with Annex 10; or
- b. they convert fossil gases for combustion purposes to gases for use as motor fuels in accordance with Annex 10.

<sup>2</sup> CO<sub>2</sub> emissions from motor fuels that, in accordance with Article 17 of the Mineral Oil Tax Act of 21 June 1996<sup>108</sup>, are entirely exempt from mineral oil tax, need not be compensated.

#### **Art. 87** Exemptions from the compensation obligation for small quantities

<sup>1</sup> The obligations in Article 86 paragraph 1 do not apply to persons who, in the before three years, have released such small quantities of motor fuels for consumption that their use as energy has resulted in emissions of less than 1000 tonnes CO<sub>2</sub> per year.

<sup>2</sup> The exemption from the compensation obligation extends until the beginning of the year in which the CO<sub>2</sub> emissions resulting from the use as energy of motor fuels for consumption exceed 1000 tonnes.

#### **Art. 88** Compensation pools

<sup>1</sup> Persons with compensation obligations may apply to the FOEN each year by 30 November of the previous year to be treated as a compensation pool.

<sup>108</sup> SR 641.61



<sup>2</sup> A compensation pool has the rights and obligations of an individual person with compensation obligations.

<sup>3</sup> It has a designated representative.

#### **Art. 89** Compensation rate

<sup>1</sup> CO<sub>2</sub> emissions that result from the use as energy of motor fuels released for consumption in the relevant year must be compensated. The compensation rate is:

- a. for 2014 and 2015: 2 per cent;
- b. for 2016 and 2017: 5 per cent;
- c. for 2018 and 2019: 8 per cent;
- d. for 2020: 10 per cent.

<sup>2</sup> The CO<sub>2</sub> emissions of each motor fuel are calculated using the emission factors listed in Annex 10.

#### **Art. 90**<sup>109</sup> Permissible compensation measures

<sup>1</sup> The following are allowed to meet compensation obligations:

- a. for persons with compensation obligations, self-implemented domestic emission-reduction projects and programmes that meet the requirements of Articles 5 and 5a;
- b. the surrender of attestations for domestic emission reductions.

<sup>2</sup> Compensation measures in accordance with paragraph 1 letter a are taken into account to the extent of the emission reductions accounted for. Emission reductions that are attributable to non-refundable payments from the Confederation, cantons or communes for promoting renewable energies, energy efficiency or climate protection are only attested to the applicant if it proves that the emission reductions have not otherwise been claimed by the competent public body. Emission reductions that are attributable to surcharges obtained in accordance with Article 35 paragraph 1 EnA<sup>110</sup> are not attested.<sup>111</sup>

#### **Art. 91** Meeting the compensation obligation

<sup>1</sup> A company or person with a compensation obligation is required to meet that obligation each year by 1 October of the following year.<sup>112</sup>

<sup>2</sup> For meeting a compensation obligation in 2020, only emission reductions achieved in 2020 are taken into account.

<sup>3</sup> Emission reductions from self-implemented emission-reduction projects and programmes must be proven by means of a verified monitoring report that meets the

<sup>109</sup> Amended by No I of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS 2014 3293).

<sup>110</sup> SR 730.0

<sup>111</sup> Amended by No I of the O of 1 Nov. 2017, in force since 1 Jan. 2018 (AS 2017 6753).

<sup>112</sup> Amended by No I of the O of 21 Sept. 2018, in force since 1 Nov. 2018 (AS 2018 3477).

requirements of Article 9. A monitoring report and accompanying verification report per project and programme are to be submitted to the FOEN.<sup>113</sup>

<sup>4</sup> To meet a compensation obligation, the company or person submits a detailed and transparent report on the costs of each tonne CO<sub>2</sub> compensated. For self-implemented projects and programmes, development costs and operational expenses are to be separately documented.<sup>114</sup>

<sup>5</sup> The following data and documents are managed in a FOEN-administered database per person with a compensation obligation:

- a. the extent of the compensation obligation;
- b. the monitoring reports and verification reports of the self-implemented projects or programmes;
- c. emission reductions from self-implemented projects or programmes that are accounted-for;
- d. the quantity of emission reductions from self-implemented projects or programmes that have not yet been used for compensation;
- e. the quantity of emission reductions that have not yet been for compensation;
- f. information about the costs of each tonne CO<sub>2</sub> compensated;
- g. development and operating costs of self-implemented projects or programmes.<sup>115</sup>

#### **Art. 92** Failure to meet a compensation obligation

<sup>1</sup> If a company or person obliged to compensate does not do so by the deadline, then the FOEN grants an appropriate grace period.

<sup>2</sup> If a company or person obliged to compensate does not do so within the grace period, then the FOEN rules on a penalty in accordance with Article 28 of the CO<sub>2</sub> Act.

<sup>3</sup> The payment deadline is 30 days from the issue of the ruling. If a payment is late, default interest at the rate of 5 per cent per year is charged.

<sup>4</sup> The lacking emission reduction certificates must be surrendered by 1 June of the following year.

## **Chapter 8 CO<sub>2</sub> Levy**

### **Section 1 General Provisions**

#### **Art. 93** Subject to the levy

The production, extraction and import of the following are subject to the CO<sub>2</sub> levy:

<sup>113</sup> Amended by No 1 of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS 2014 3293).

<sup>114</sup> Amended by No 1 of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS 2014 3293).

<sup>115</sup> Inserted by No 1 of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS 2014 3293).

- a. coal;
- b. other thermal fuels listed in Article 2 paragraph 1 of the CO<sub>2</sub> Act insofar as they are subject to a mineral oil tax under the Mineral Oil Tax Act of 21 June 1996<sup>116</sup>.

**Art. 94** Rate of the levy

<sup>1</sup> The levy shall be increased as follows:

- a. from 1 January 2014: at 60 francs per tonne CO<sub>2</sub>, if the CO<sub>2</sub> emissions from thermal fuels in 2012 exceed 79 per cent of 1990 emissions;
- b. from 1 January 2016:
  1. at 72 francs per tonne CO<sub>2</sub> if the CO<sub>2</sub> emissions from thermal fuels in 2014 exceed 76 per cent of 1990 emissions,
  2. at 84 francs per tonne CO<sub>2</sub> if the CO<sub>2</sub> emissions from thermal fuels in 2014 exceed 78 per cent of 1990 emissions;
- c. from 1 January 2018:
  1. at 96 francs per tonne CO<sub>2</sub> if the CO<sub>2</sub> emissions from thermal fuels in 2016 exceed 73 per cent of 1990 emissions,
  2. at 120 francs per tonne CO<sub>2</sub> if the CO<sub>2</sub> emissions from thermal fuels in 2016 exceed 76 per cent of 1990 emissions.

<sup>2</sup> The CO<sub>2</sub> levy is imposed in accordance with the tariffs listed in Annex 11.

**Art. 95** Declaration of payment of the levy

Any company or person that trades in thermal fuels in accordance with Article 93 must declare the applicable rate of the levy on invoices submitted to buyers.

## Section 2 Refund of the CO<sub>2</sub> Levy

**Art. 96** Claim for refund

<sup>1</sup> The following companies and persons may apply for a refund of the CO<sub>2</sub> levy:

- a. those exempt from the CO<sub>2</sub> levy;
- b. those that operate CHP plants, which neither participate in the ETS nor are subject to a reduction obligation (Art. 32a para. 1 CO<sub>2</sub> Act); or
- c. those that have paid a levy on thermal fuels that were not used to produce energy (Art. 32c CO<sub>2</sub> Act).<sup>117</sup>

<sup>2</sup> The following are exempt from the CO<sub>2</sub> levy:

- a. ETS companies (Art. 17 CO<sub>2</sub> Act);

<sup>116</sup> SR 641.61

<sup>117</sup> Amended by No I of the O of 1 Nov. 2017, in force since 1 Jan. 2018 (AS 2017 6753).

- b. power plant operators (Art. 25 CO<sub>2</sub> Act); and
- c.<sup>118</sup> companies with reduction obligations (Art. 31 CO<sub>2</sub> Act).

**Art. 96a**<sup>119</sup> Refund for companies with a reduction obligation operating CHP plants

<sup>1</sup> On request, a company with a reduction obligation operating CHP plants shall be refunded 60 per cent of the CO<sub>2</sub> levy on fuel used for electricity production in accordance with Article 32a of the CO<sub>2</sub> Act if:

- a. one or more CHP plants each have a rated thermal input of at least 0.5 MW and no more than 20 MW;
- b. one or more CHP plants produced an additional 1.22GWh per year of fossil fuel electricity per year compared to 2012; and
- c. the additional electricity produced was used outside the company.

<sup>2</sup> It is entitled to the refund of the remaining 40 per cent of the CO<sub>2</sub> levy on the fuels used for electricity production in accordance with Article 32a of the CO<sub>2</sub> Act if:

- a. it allocates this amount to the measures set out in Article 31a paragraph 2 of the CO<sub>2</sub> Act;
- b. the measure effectively serves to increase energy efficiency;
- c. it does not implement the measures in another company subject to a reduction obligation or participating in the ETS;
- d. it does not claim the effect of the measures elsewhere;
- e. it implements the measures by 2020;
- f. it regularly reports to the FOEN in accordance with Article 72; and
- g. it notifies the FOEN of any derogations from the investment obligation in accordance with letter a with reasons and details of the planned corrective measures.

<sup>3</sup> On application, the FOEN may extend the period referred to in paragraph 2 letter e by two years.

**Art. 97** Application for refund by companies exempt from the CO<sub>2</sub> levy

<sup>1</sup> An application for refund must be submitted to the Swiss Federal Customs Administration (FCA) in the prescribed form.

<sup>2</sup> It must include:

- a. a complete compilation of the CO<sub>2</sub> levy paid;
- b. the invoices for the CO<sub>2</sub> levy paid;

<sup>118</sup> Amended by No I of the O of 1 Nov. 2017, in force since 1 Jan. 2018 (AS 2017 6753).

<sup>119</sup> Inserted by No I of the O of 1 Nov. 2017, in force since 1 Jan. 2018 (AS 2017 6753).

- c. the quantity and type of acquired thermal fuels;
- d. the applicable rate of the CO<sub>2</sub> levy.

<sup>3</sup> The FCA may demand further evidence if required for determining the refund.

**Art. 98** Periodicity of the refund for companies exempt from the CO<sub>2</sub> levy

<sup>1</sup> An application for refund may cover a period of 1–12 months.

<sup>2</sup> It must be submitted by 30 June for the CO<sub>2</sub> levy paid for:

- a. the previous year;
- b. the fiscal year that ended in the previous year.

<sup>3</sup> A claim for refund is forfeited if the application is not submitted by the deadline.

**Art. 98a**<sup>120</sup> Refund for companies that operate CHP plants and are neither participating in the ETS nor subject to a reduction obligation

<sup>1</sup> On request, a company which is neither a participant in the ETS nor subject to a reduction obligation and which operates CHP plants in accordance with Article 32a paragraph 1 of the CO<sub>2</sub> Act shall be refunded 60 per cent of the CO<sub>2</sub> levy on the fuels used for electricity production for each CHP plant which has a rated thermal input of at least 0.5 MW and no more than 20 MW.

<sup>2</sup> The company is entitled to a refund of the remaining 40 per cent of the CO<sub>2</sub> levy on the fuels used to produce electricity if:

- a. it allocates this amount to the measures set out in Article 32b paragraph 2 of the CO<sub>2</sub> Act;
- b. the measure effectively serves to increase energy efficiency;
- c. it does not implement the measures in a company subject to a reduction obligation or participating in the ETS;
- d. it does not claim the effect of the measures elsewhere; and
- e. it implements the measures within three subsequent years.

<sup>3</sup> The FOEN may, on request, extend the period referred to in paragraph 2 letter e by two years.

**Art. 98b**<sup>121</sup> Application for a refund for companies operating CHP plants and neither participating in the ETS nor subject to a reduction obligation

<sup>1</sup> Companies that operate CHP plants and are neither participating in the ETS nor subject to a reduction obligation shall submit the application for a refund to the FOEN for the attention of the enforcement authority by 30 June. In particular, it must contain:

<sup>120</sup> Inserted by No I of the O of 1 Nov. 2017, in force since 1 Jan. 2018 (AS 2017 6753).

<sup>121</sup> Inserted by No I of the O of 1 Nov. 2017, in force since 1 Jan. 2018 (AS 2017 6753).

- a. the quantity of taxed fuels used for electricity production, calculated on the basis of the annual quantity of electricity shown on the guarantee of origin and of the calorific value of the energy source used;
- b. the proof of origin in accordance with Article 9 paragraph 1 EnA<sup>122</sup>;
- c. information on the rated thermal input;
- d. the monitoring report;
- e. information on the annual development of the CO<sub>2</sub> emissions resulting from the measured production of electricity;
- f. confirmation from the local canton that the Ordinance on Air Pollution Control has been complied with;
- g. information on planned measures;
- h. information on the quantity and type of fossil fuels used for electricity production in the form of records of fuel input, output, consumption and stocks;
- i. invoices for the CO<sub>2</sub> levies paid;
- j. the rate of the CO<sub>2</sub> levy.

<sup>2</sup> The FOEN shall specify the form of the application.

<sup>3</sup> It shall check compliance with the requirements specified in paragraph 1 letters a–g and forward the application to the FCA for a decision.

<sup>4</sup> The monitoring report referred to in paragraph 1 letter d shall in particular contain information on the development of CO<sub>2</sub> emissions resulting from electricity production and a description of the measures and investments implemented. The FOEN specifies the form of the report.

**Art. 98c**<sup>123</sup> Periodicity of refunds for companies operating CHP plants and neither participating in the ETS nor subject to a reduction obligation

<sup>1</sup> Applications for a refund in accordance with Article 98b shall be submitted for a period of 12 months and apply to fuels consumed in the previous year or in the financial year that ended in the previous year.

<sup>2</sup> The refund is made by the FCA and covers 100 per cent of the CO<sub>2</sub> levy on the fuels used to produce electricity.

<sup>3</sup> The right to a refund is forfeited if the application is not submitted in due time.

**Art. 99** Refund for fuels not used to produce energy

<sup>1</sup> Any person who has paid a levy on thermal fuels that were not used to produce energy and wants to apply for a refund must prove the quantity that was not used to produce energy. To this end, records (consumption control) must be maintained for

<sup>122</sup> SR 730.0

<sup>123</sup> Inserted by No I of the O of 1 Nov. 2017, in force since 1 Jan. 2018 (AS 2017 6753).

the input, output and consumption of the thermal fuels as well as for warehouse stocks.

<sup>2</sup> The refund application must be submitted to the FCA in the prescribed form.

<sup>3</sup> It must contain information about:

- a. the type of usage for non-energy purposes;
- b. the quantity and type of thermal fuels that were not used to produce energy;
- c. the applicable rate of the CO<sub>2</sub> levy.

<sup>4</sup> The FCA may request additional information if required for determining the refund.

**Art. 100**      Periodicity of the refund for fuels not used to produce energy

<sup>1</sup> A refund application may cover a period from 1–12 months.

<sup>2</sup> It must be submitted within three months of the end of the fiscal year.

<sup>3</sup> For thermal fuels that have not been used for more than two years before the application has been submitted, there may no longer be a claim for refund.

**Art. 101**      Document retention

All documents relevant to the refund are to be retained for five years and submitted to the FCA if requested.

**Art. 102**      Minimum amount and refund fee

<sup>1</sup> Refund amounts of less than 100 francs per request will not be paid out.

<sup>2</sup> A fee of 5 per cent of the refund is charged per application, amounting to at least 50 but no more than 500 francs.<sup>124</sup>

**Art. 103**      Deferral of the refund

If a company or person violates the obligation to cooperate in accordance with Article 96 of this Ordinance, then the FCA may, in agreement with the FOEN, defer refund of the CO<sub>2</sub> levy.

<sup>124</sup> Amended by No I of the O of 21 Sept. 2018, in force since 1 Nov. 2018 (AS **2018** 3477).

## Chapter 9 Use of the Revenues from the CO<sub>2</sub> Levy

### Section 1<sup>125</sup>

### Global Financial Assistance for the long-term Reduction of CO<sub>2</sub> Emissions from Buildings

#### Art. 104 Eligibility for global financial assistance

<sup>1</sup> The Confederation shall grant the cantons global financial assistance in accordance with Article 34 paragraph 1 of the CO<sub>2</sub> Act for the promotion of measures for the long-term reduction of CO<sub>2</sub> emissions from buildings, including a reduction in power consumption in the winter period if:

- a. the requirements set out in Articles 55–60 of the Energy Ordinance of 1 November 2017<sup>126</sup> (EnO) are met;
- b. the measures effectively reduce CO<sub>2</sub> emissions, including reducing power consumption in the winter period; and
- c. the measures are implemented in a harmonised manner throughout the cantons.

<sup>2</sup> It shall not grant global financial assistance in particular for measures:

- a. that are implemented in companies that are subject to a reduction obligation under the CO<sub>2</sub> Act or that participate in the ETS;
- b. that are implemented within the framework of agreements with the Confederation in accordance with Article 4 paragraph 3 of the CO<sub>2</sub> Act to achieve the statutory reduction target where no additional emission target is thereby achieved;
- c. the measures are already supported elsewhere by the Confederation or a private organisation in the climate sector, if no additional emission target is thereby achieved.

#### Art. 105 Procedure

The procedure is governed by Articles 63, 64 and 67 EnO<sup>127</sup>, whereby:

- a. the canton applying for global financial assistance must additionally declare its willingness to implement a programme with measures in accordance with Article 104;
- b. the SFOE forwards the application to the FOEN for information.

#### Art. 106 Use of funds

The canton must use at least 80 per cent the funds resulting from the Confederation's global financial assistance and the loans provided by the canton for the rele-

<sup>125</sup> Amended by No I of the O of 1 Nov. 2017, in force since 1 Jan. 2018 (AS 2017 6753).

<sup>126</sup> SR 730.01

<sup>127</sup> SR 730.01



vant programme for energy and waste heat measures in accordance with Article 50 EnA<sup>128</sup>.

**Art. 107** Payment of global financial assistance

Global financial assistance is paid annually to the cantons.

**Art. 108** Implementation costs

<sup>1</sup> In return for implementing the measures, the canton is paid a lump sum from the funds made available for the long-term reduction the CO<sub>2</sub> emissions from buildings in accordance with Article 34 paragraph 1 of the CO<sub>2</sub> Act and in the form of global financial assistance. The lump sum amounts to five per cent of the allocated promotional contributions credited as the federal share of the subsidy.

<sup>2</sup> Out of the same funds, the SFOE is paid a maximum of one million francs per year for programme communication.

**Art. 109** Communication

<sup>1</sup> The SFOE is responsible for the nationwide communication of the programme to reduce CO<sub>2</sub> emissions from buildings. It also lays down basic principles to ensure uniform communication across cantons.

<sup>2</sup> The cantons shall publicise the funding programme and draw appropriate attention to the fact that part of the funding comes from the proceeds of the CO<sub>2</sub> levy.

**Art. 110** Reporting

<sup>1</sup> Reporting is based on Article 59 EnO<sup>129</sup>.

<sup>2</sup> The report must provide adequate information on the emission reductions expected and achieved with the funding programme, in addition to the information in accordance with Article 59 paragraph 3 EnO per project funded and broken down by the individual measures.

<sup>3</sup> The SFOE shall forward the report to the FOEN for information purposes.

**Art. 111** Control

Control of the correct use of the global financial assistance is governed by Article 60 EnO<sup>130</sup>.

**Art. 111a**

*Repealed*

<sup>128</sup> SR 730.0

<sup>129</sup> SR 730.01

<sup>130</sup> SR 730.01

### Section 1a. Support for Projects for the Direct Use of Geothermal Energy for the Provision of Heat<sup>131</sup>

**Art. 112**<sup>132</sup> Projects eligible for assistance

<sup>1</sup> For projects involving the direct use of geothermal energy to provide heat (Art. 34 para. 2 CO<sub>2</sub> Act), assistance may be granted for prospecting and developing geothermal reservoirs if the projects meet the requirements of Annex 12.

<sup>2</sup> Assistance shall not exceed 60 per cent of the eligible investment costs of the project as set out in Annex 12.

**Art. 113**<sup>133</sup> Application

<sup>1</sup> Applications for financial assistance must be submitted the SFOE.

<sup>2</sup> They must meet the requirements of Annex 12 point 3.1 and include evidence that the applications for the authorisations and licences required for the project have been submitted in full to the competent authorities and that the financing of the project has been secured.

<sup>3</sup> The SFOE will consult a panel of up to six experts, independent of the project, to examine applications. In addition, the canton concerned may appoint a representative to the expert panel.

<sup>4</sup> The panel of experts evaluates the applications and makes a recommendation for the SFOE's assessment of the project. The cantonal representative has no vote in the recommendation to the SFOE. The panel of experts may call in further experts to carry out its tasks.

<sup>5</sup> If the conditions for granting financial assistance are met, the Confederation shall conclude an administrative contract with the applicant. In particular, it shall specify the conditions for reclaiming the financial assistance in accordance with Article 113b.

**Art. 113a**<sup>134</sup> Order of consideration

<sup>1</sup> If no funds or insufficient funds are available for a project, the SFOE shall place the project on a waiting list unless it clearly does not meet the eligibility criteria. The SFOE shall inform the applicant accordingly.

<sup>2</sup> When funds are again available, the SFOE shall take the most advanced projects into account. If several projects are equally advanced, the project for which the application was submitted in full earliest will be considered.

<sup>131</sup> Inserted by No I of the O of 1 Nov. 2017, in force since 1 Jan. 2018 (AS 2017 6753).

<sup>132</sup> Amended by No I of the O of 1 Nov. 2017, in force since 1 Jan. 2018 (AS 2017 6753).

<sup>133</sup> Amended by No I of the O of 1 Nov. 2017, in force since 1 Jan. 2018 (AS 2017 6753).

<sup>134</sup> Inserted by No I of the O of 1 Nov. 2017, in force since 1 Jan. 2018 (AS 2017 6753).

**Art. 113<sup>b</sup>** Reclaiming financial assistance

<sup>1</sup> Articles 28–30 of the Subsidies Act of 5 October 1990<sup>136</sup> (SubA) apply *mutatis mutandis* to reclaiming financial assistance. Financial assistance can also be reclaimed if the operations of the plant generate profits that subsequently make the financial assistance appear unnecessary.

<sup>2</sup> If the project is used for other purposes and a profit is made, the SFOE may demand a pro rata or full repayment of the financial assistance paid out.

<sup>3</sup> The SFOE must be informed of any other use or sale regarding:

- a. the planned type of use;
- b. ownership and sponsorship;
- c. profits and their amount.

## Section 2 Promotion of Technologies for the Reduction of Greenhouse Gas Emissions

**Art. 114** Guarantee

<sup>1</sup> The Confederation guarantees loans for equipment and processes in accordance with Article 35 paragraph 3 of the CO<sub>2</sub> Act if:

- a. there are market opportunities for the equipment and processes;
- b. the borrower can credibly demonstrate creditworthiness; and
- c. the lender takes the guarantee into account in determining the interest on the loan.

<sup>2</sup> It only guarantees loans granted by a bank in accordance with the Federal Act of 8 November 1934<sup>137</sup> on Banks and Savings Banks or another appropriate lender.

<sup>3</sup> The guarantee may secure all or part of the loan but may not exceed three million francs.

**Art. 115** Granting of the guarantee

<sup>1</sup> On application, the FOEN shall grant the borrower a guarantee if the requirements of Article 114 are met.

<sup>2</sup> The application for granting the guarantee must include:

- a. information about the borrower's organisational form and financial structure;
- b. technical documentation of the project, including a description of the equipment and processes and planned development and marketing;

<sup>135</sup> Inserted by No I of the O of 1 Nov. 2017, in force since 1 Jan. 2018 (AS 2017 6753).

<sup>136</sup> SR 616.1

<sup>137</sup> SR 952.0

- c. a description of the project's business model;
- d. information regarding the extent to which the equipment and processes meet the requirements of Article 114.

<sup>3</sup> The FOEN may request additional information if it is required for assessing the application.

<sup>4</sup> It may require collateral to secure the guarantee in well-founded cases.<sup>138</sup>

#### **Art. 116** Notification obligation and reporting

<sup>1</sup> A borrower who has received a loan guarantee must inform the FOEN without delay during the duration of the guarantee about:

- a. changes that could have an effect on the guarantee;
- b. changes in contact information.

<sup>2</sup> It must submit a report every quarter to the FOEN on:<sup>139</sup>

- a. the status of the guaranteed loans;
- b.<sup>140</sup> the course of business and its expected development; and
- c.<sup>141</sup> the liquidity and financial structure.

<sup>3</sup> It provides the business report, balance sheet and statement of financial performance to the FOEN annually. These must be submitted no later than three months following their completion.<sup>142</sup>

#### **Art. 117**<sup>143</sup> Implementation

<sup>1</sup> DETEC appoints a steering committee to administer the technology fund and by means of an administrative contract, a guarantee committee and an administrative office. It determines the principles for awarding guarantees and for the organisation.

<sup>2</sup> The steering committee has strategic leadership over the technology fund.

<sup>3</sup> The guarantees committee assesses the guarantee requests on behalf of the FOEN at the request of the administrative office.

<sup>4</sup> The administrative office manages the technology fund's operations. It is responsible in particular for the assessment of guarantee requests, administration of the guarantees and the processing of guarantee cases as well as control of the reporting under Article 116. It submits a report on the technology fund's activities and financial situation to the steering committee.

<sup>138</sup> Inserted by No I of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS 2014 3293).

<sup>139</sup> Amended by No I of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS 2014 3293).

<sup>140</sup> Amended by No I of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS 2014 3293).

<sup>141</sup> Amended by No I of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS 2014 3293).

<sup>142</sup> Inserted by No I of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS 2014 3293).

<sup>143</sup> Amended by No I of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS 2014 3293).

<sup>5</sup> The administrative office invoices guarantee holders for fees. The fee is calculated according to costs; it amounts to no more than 0.9 per cent of the guaranteed amount per year.

**Art. 118**      Financing

<sup>1</sup> The resources for the technology funds are provided in the budget.

<sup>2</sup> The Federal Assembly decides on the funding commitments for granting the guarantees.

<sup>3</sup> The sum of the guarantees may never exceed 500 million francs.

**Section 3**      **Distribution to the Public**

**Art. 119**      Portion of the revenue for the public

<sup>1</sup> The portion of the levy revenue for the public includes the portion of the collection year's estimated annual revenue for the public and the difference from the amount estimated two years earlier and the public's share of the funds not used two years earlier in accordance with Article 34 paragraph 4 of the CO<sub>2</sub> Act.<sup>144</sup>

<sup>2</sup> The estimated annual revenue equals the anticipated receipts plus positive or minus negative interest as of 31 December.

**Art. 120**      Distribution

<sup>1</sup> The portion of the revenue for the public is distributed by insurers in each collection year on behalf of, and under the supervision of, the FOEN. The difference between estimated and actual annual revenues and the public's share of the unused funds in accordance with Article 34 paragraph 4 of the CO<sub>2</sub> Act are balanced in the distribution two years later.<sup>145</sup>

<sup>2</sup> The following are deemed insurers:

- a. providers of mandatory health insurance under the Federal Act of 18 March 1994<sup>146</sup> on Health Insurance (HInsA);
- b. providers of military insurance under the Federal Act of 19 June 1992<sup>147</sup> on Military Insurance (MilIA).

<sup>3</sup> Insurers distribute the portion of the revenue to the public in even payments to all persons who in the collection year:

- a. are subject to an insurance obligation under the HInsA or under Article 2 paragraph 1 or 2 MilIA; and
- b. have their domicile or place of residence in Switzerland.

<sup>144</sup> Amended by No I of the O of 1 Nov. 2017, in force since 1 Jan. 2018 (AS 2017 6753).

<sup>145</sup> Amended by No I of the O of 1 Nov. 2017, in force since 1 Jan. 2018 (AS 2017 6753).

<sup>146</sup> SR 832.10

<sup>147</sup> SR 833.1

<sup>4</sup> Distributions to persons who are only intermittently insured by an insurer during the collection year are in proportion to the duration of their stay.

<sup>5</sup> The insurers settle the amounts by deducting the distributions from the premiums due in the collection year.

**Art. 121** Payouts to the insurers

<sup>1</sup> The portion of the revenue for the public is proportionately paid out to insurers by 30 June of the collection year.

<sup>2</sup> Decisive for the calculation of the amount for each insurer is the number of persons it has insured who meet the requirements of Article 120 paragraph 3 as of 1 January of the collection year.

<sup>3</sup> The difference between the amounts paid out and the sum of the actual distributed amounts is balanced in each subsequent year.

**Art. 122** Organisation

<sup>1</sup> Each insurer shall notify the Federal Office of Public Health (FOPH) by 20 March of the collection year regarding:

- a. the number of persons it has insured who, as of 1 January of the collection year, meet the requirements of Article 120 paragraph 3;
- b. the sum of its actual distributions in the previous year.

<sup>2</sup> Insurers inform the insured persons regarding the amounts to be distributed when they inform them of new premiums for the collection year.

**Art. 123** Compensation of the insurers

For the expenses for implementation of this Ordinance as well as the Ordinance of 12 November 1997<sup>148</sup> on the Incentive Tax on Volatile Organic Compounds, insurers shall be compensated a total of 30 cents per insured person who, as of 1 January of the collection year, meets the requirements of Article 120 paragraph 3.

**Section 4** Distribution to the Private Sector

**Art. 124** Portion of the revenue for the business community

<sup>1</sup> The portion of the levy revenue for the business community (portion of the revenue for the business community) includes the portion of the collection year's estimated annual revenue for the business community and the difference from the amount estimated two years earlier and the amount of unused funds in accordance with Article 34 paragraph 4 of the CO<sub>2</sub> Act minus the public's share of the funds not used two years earlier in accordance with Article 34 paragraph 4 of the CO<sub>2</sub> Act.<sup>149</sup>

<sup>148</sup> SR 814.018

<sup>149</sup> Amended by No I of the O of 1 Nov. 2017, in force since 1 Jan. 2018 (AS 2017 6753).

<sup>2</sup> The estimated annual revenue equals the anticipated receipts plus positive or minus negative interest as of 31 December.

#### **Art. 125**      Distribution

<sup>1</sup> The portion of the revenue for the business community is distributed to employers in accordance with the directives of the Federal Social Insurance Office by the OASI compensation offices (compensation offices) in each collection year on behalf of, and under the supervision of, the FOEN. The difference between estimated and actual annual revenues and the public's share of the unused funds in accordance with Article 34 paragraph 4 of the CO<sub>2</sub> Act are balanced in the distribution two years later.<sup>150</sup>

<sup>2</sup> The compensation offices shall distribute the portion of the revenue for the business community by 30 September of the collection year. If justified, these deadlines may be appropriately extended by the FOEN on application.<sup>151</sup>

<sup>3</sup> They distribute the portion of the revenue for the business community in proportion to the employees' qualifying salary for OASI two years before the collection year. Salaries subsequently corrected due to employer reviews will not be taken into account.

<sup>4</sup> The compensation offices distribute the portion of the revenue for the business community by offsetting them against employers' contributions due in the collection year or by a pay-out to employers. Amounts of 50 francs or more that cannot be offset will be paid out. In the event of changes being made, amounts of 50 francs or more will be offset or paid out.<sup>152</sup>

#### **Art. 126**      Organisation

<sup>1</sup> The FOEN notifies the compensation offices annually of the distribution factor.

<sup>2</sup> The compensation offices inform claim-eligible employers annually about the distribution factor and the paid-out sums.

#### **Art. 127**      Remuneration of the compensation offices

<sup>1</sup> The FOEN determines the remuneration of the compensation offices in consultation with the Federal Social Insurance Office.

<sup>2</sup> The remuneration is based on a cost code, taking into account the number of employers with which the compensation offices concerned are required to settle.

<sup>150</sup> Amended by No I of the O of 1 Nov. 2017, in force since 1 Jan. 2018 (AS **2017** 6753).

<sup>151</sup> Amended by No I of the O of 1 Nov. 2017, in force since 1 Jan. 2018 (AS **2017** 6753).

<sup>152</sup> Amended by No I of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS **2014** 3293).

## Chapter 10 Basic and Advanced Training and Information

### Art. 128 Promotion of basic and advanced training

<sup>1</sup> In cooperation with the cantons and professional organisations in accordance with Article 1 of the Federal Act of 13 December 2002<sup>153</sup> on Vocational and Professional Education and Training, the FOEN shall promote the basic and advanced training of persons engaged in activities related to the reduction of greenhouse gas emissions or coping with the consequences of increased greenhouse gas concentrations in the atmosphere.

<sup>2</sup> Within the scope of authorised financial assistance, the FOEN shall provide grants to public and private organisations that offer basic and advanced training in the field of climate protection and coping with the consequences of increased greenhouse gas concentrations in the atmosphere.

### Art. 129 Information

The FOEN informs the public particularly about:

- a. the consequences of climate change;
- b. measures for reducing greenhouse gas emissions in Switzerland and abroad;
- c. measures for coping with the consequences of increased greenhouse gas concentrations in the atmosphere.

## Chapter 11 Implementation

### Art. 130 Implementation authorities

<sup>1</sup> The FOEN shall implement this Ordinance. Paragraphs 2–6 remain reserved.

<sup>2</sup> The SFOE shall implement the provisions relating to the reduction of CO<sub>2</sub> emissions from passenger cars, vans and light articulated vehicles. It is supported by the FEDRO.<sup>154</sup>

<sup>3</sup> The FCA shall implement the provisions relating to the CO<sub>2</sub> levy.

<sup>4</sup> In consultation with the SFOE, the FOEN shall implement the provisions on attestations for domestic emission reductions and on the promotion of technologies for the reduction of greenhouse gas emissions.<sup>155</sup>

<sup>4bis</sup> The SFOE shall implement the provisions on global financial assistance with the long-term reduction of CO<sub>2</sub> emissions from buildings and on assistance with the direct use of geothermal energy.<sup>156</sup>

<sup>153</sup> SR 412.10

<sup>154</sup> Amended by No I of the O of 1 Nov. 2017, in force since 1 Jan. 2018 (AS 2017 6753).

<sup>155</sup> Amended by No I of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS 2014 3293).

<sup>156</sup> Inserted by No I of the O of 8 Oct. 2014 (AS 2014 3293). Amended by No I of the O of 1 Nov. 2017, in force since 1 Jan. 2018 (AS 2017 6753).



<sup>5</sup> In consultation with the SFOE, the FOEN implements provisions relating to the promotion of basic and advanced training.

<sup>6</sup> The SFOE and private organisations commissioned by the SFOE or the FOEN support the FOEN in implementing the provisions relating to commitments to reduce greenhouse gas emissions.

**Art. 131** Greenhouse gas inventory

<sup>1</sup> The FOEN maintains the greenhouse gas inventory.

<sup>2</sup> Based on the greenhouse gas inventory, it calculates whether the reduction target under Article 3 of the CO<sub>2</sub> Act has been met. To this end, CO<sub>2</sub> emissions from fossil-thermal power plants and emission reductions achieved within the scope of compensations agreements until 2020 will not be taken into account.

**Art. 132**<sup>157</sup> Compensation for expenses

Compensation for implementation expenses is 1.4 per cent of the receipts received from the CO<sub>2</sub> levy (receipts).<sup>158</sup> If receipts increase, the DETEC appropriately reduces the percentage in consultation with the Federal Department of Finance.

**Art. 133** Controls and disclosure obligations

<sup>1</sup> Implementation authorities may at any time carry out controls without prior notification, particularly of ETS companies, companies with reduction obligations, companies and persons obliged to pay the CO<sub>2</sub> levy and companies and persons that have applied for refunds of the CO<sub>2</sub> levy.

<sup>2</sup> The implementation authorities must on request:

- a. be given all information required for implementation of this Ordinance;
- b. be provided with all books, business papers, electronic data and documents required for implementation of this Ordinance.

**Art. 134** Data processing

<sup>1</sup> The data collected for implementation of this Ordinance shall be made available to the implementation authorities concerned if required for implementation. In particular:

- a.<sup>159</sup> FEDRO shall transmit to the SFOE the data required for implementation of Chapter 3 of this Ordinance (Art. 31);
- b.<sup>160</sup> the FOEN transmits to the SFOE the data required for the assessment of:
  1. applications for the issuance of attestations (Art. 7, 12 and 12a),
  2. applications for the determination of a reduction obligation, and

<sup>157</sup> Amended by No I of the O of 8 Oct. 2014, in force since 1 Jan. 2015 (AS 2014 3293).

<sup>158</sup> Amended by No I of the O of 1 Nov. 2017, in force since 1 Jan. 2018 (AS 2017 6753).

<sup>159</sup> Amended by No I of the O of 1 Nov. 2017, in force since 1 Jan. 2018 (AS 2017 6753).

<sup>160</sup> Amended by No I of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS 2014 3293).

3. monitoring reports (Art. 9, 52, 72 and 91);
- c.<sup>161</sup> the FCA transmits to the FOEN the data required for the assessment of:
  1. the fulfilment of a compensation obligation for motor fuels,
  2. monitoring reports (Art. 9, 52, 72 and 91), and
  3. applications for the issuance of attestations (Art. 7, 12 and 12a);
- d. the FOEN transmits to the FCA the data required for the refund of the CO<sub>2</sub> levy.

<sup>2</sup> The FCA and the Swiss Organisation for Compulsory Stockpiling of Oil Products (Carbura) may exchange data in order to implement provisions relating to the compensation of CO<sub>2</sub> emissions from motor fuels.<sup>162</sup>

### Art. 135 Amendments to the Annexes

DETEC shall amend:

- a. Annex 2: in accordance with the criteria of Article 6 paragraph 2 of the CO<sub>2</sub> Act;
- b. Annex 3: in accordance with technical and economic development;
- b<sup>bis</sup>.<sup>163</sup> Annex 3a: in accordance with technical and economic development;
- b<sup>ter</sup>.<sup>164</sup> Annex 3b: in accordance with technical and economic development;
- c.<sup>165</sup> Annex 4a number 2: for determining each year the average unladen weight of passenger cars, vans and light articulated vehicles registered for the first time in the previous calendar year;
- c<sup>bis</sup>.<sup>166</sup> Annex 5: for determining each year the amounts in accordance with Article 13 paragraph 1 of the CO<sub>2</sub> Act;
- d. Annex 7: if additional economic sectors are subject to similar framework conditions;
- d<sup>bis</sup>.<sup>167</sup> Annex 9 no 3: if Decision 2014/746/EU<sup>168</sup> is amended;
- e. Annex 11: corresponding to increases in the rate of the levy (Art. 94, para. 1).

<sup>161</sup> Amended by No I of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS **2014** 3293).

<sup>162</sup> Amended by Annex No 1 of the O of 23 Oct. 2013, in force since 1 Jan. 2014 (AS **2013** 4479).

<sup>163</sup> Inserted by No I of the O of 21 Sept. 2018, in force since 1 Nov. 2018 (AS **2018** 3477).

<sup>164</sup> Inserted by No I of the O of 21 Sept. 2018, in force since 1 Nov. 2018 (AS **2018** 3477).

<sup>165</sup> Amended by No I of the O of 1 Nov. 2017, in force since 1 Jan. 2018 (AS **2017** 6753).

<sup>166</sup> Inserted by No I of the O of 1 Nov. 2017, in force since 1 Jan. 2018 (AS **2017** 6753).

<sup>167</sup> Inserted by No I of the O of 8 Oct. 2014 (AS **2014** 3293). Amended by No I of the O of 22 June 2016, in force since 1 Aug. 2016 (AS **2016** 2473).

<sup>168</sup> COMMISSION DECISION 2014/746/EU of 27 October 2014 determining, pursuant to Directive 2003/87/EC of the European Parliament and of the Council, a list of sectors and subsectors which are deemed to be exposed to a significant risk of carbon leakage, for the period 2015 to 2019, OJ. L 1 of 5.1.2010, p. 10; last amended by Decision 2014/9/EU, OJ L 308 of 29.10.2014, p. 114.

## Chapter 12 Final provisions

### Section 1 Repeal and changes to current legislation

#### Art. 136 Repeal of current legislation

The following ordinances are being repealed:

1. CO<sub>2</sub> Crediting Ordinance of 22 June 2005<sup>169</sup>;
2. CO<sub>2</sub> Ordinance of 8 June 2007<sup>170</sup>;
3. DETEC Ordinance of 27 September 2007<sup>171</sup> on the National Emissions Trading Registry;
4. CO<sub>2</sub> Compensation Ordinance of 24 November 2010<sup>172</sup>;
5. Ordinance of 16 December 2011<sup>173</sup> on the Reduction of CO<sub>2</sub> Emissions from Passenger Cars.

#### Art. 137 Changes to current legislation

...<sup>174</sup>

### Section 2 Transitional provisions

#### Art. 138 Conversion of unused emission allowances

<sup>1</sup> Emission allowances that have not been used in the years 2008–2012 shall be converted on 30 June 2014:

- a. for ETS companies: into emission allowances in accordance with this Ordinance;
- b. for companies with reduction obligations: into credits to compensate a failure to meet their emissions target or measures target;
- c. for remaining companies and persons: into attestations for domestic emission reductions.

<sup>2</sup> Companies with reduction obligations may apply at any time to have their credits converted into attestations in accordance with paragraph 1 letter b.

<sup>169</sup> [AS 2005 3581, 2007 2915 Art. 33, 2012 1195]

<sup>170</sup> [AS 2007 2915, 2009 5945, 2010 953 2167, 2011 17 Art. 6 1945 3331 Annex 3 No 15, 2012 355 Art. 29]

<sup>171</sup> [AS 2007 4531, 2011 6205]

<sup>172</sup> [AS 2011 17]

<sup>173</sup> [AS 2012 355 1817]

<sup>174</sup> The amendments may be consulted under AS 2012 7005.

**Art. 139** Carry-over of unused emission-reduction certificates from the 2008-2012 period<sup>175</sup>

<sup>1</sup> ETS companies, companies with reduction obligations and power plant operators may apply to the FOEN to carry-over a maximum of as many unused emission-reduction certificates from the 2008–2012 period into the 2013–2020 period as it is anticipated they will be permitted to surrender to meet their obligations under this Ordinance.<sup>176</sup>

<sup>2</sup> Only emission reduction certificates that comply with the requirements of Article 4 may be carried over.

<sup>3</sup> The FOEN determines the total amount that may be carried over on the basis of Switzerland's international commitments.

<sup>4</sup> ETS companies and companies with reduction obligations will be given priority for the carry over.

<sup>5</sup> Emission-reduction certificates that have not been carried over can be surrendered towards meeting commitments under this Ordinance by 30 April 2015 if they comply with the requirements of Article 4.<sup>177</sup>

<sup>6</sup> Emission-reduction certificates that have not been carried over will be cancelled by the FOEN after 30 April 2015.<sup>178</sup>

**Art. 140** Attestations for domestic emission-reduction projects

<sup>1</sup> The current CO<sub>2</sub> Act applies to projects that the FOEN has assessed as appropriate domestic compensation projects before 1 January 2013.

<sup>2</sup> Emission reductions achieved from projects in accordance with paragraph 1 before 1 January 2013 and confirmed by the FOEN are eligible for application by 31 December 2014 for attestations for emission reductions under this Ordinance.

**Art. 141** Calculation of CO<sub>2</sub> emissions from passenger cars

To calculate decisive CO<sub>2</sub> emissions from large-scale importers, passenger cars with CO<sub>2</sub> emissions of less than 50 g CO<sub>2</sub>/km will be taken into account as follows:

- a. 2013: 3.5 times;
- b. 2014: 2.5 times;
- c. 2015: 1.5 times.

**Art. 142** Participation in the ETS

<sup>1</sup> ETS companies that are engaged in the activities listed in Annex 6 when this Ordinance comes into force must register with the FOEN by 28 February 2013, and

<sup>175</sup> Amended by No 1 of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS **2014** 3293).

<sup>176</sup> Amended by No 1 of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS **2014** 3293).

<sup>177</sup> Amended by No 1 of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS **2014** 3293).

<sup>178</sup> Inserted by No 1 of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS **2014** 3293).

submit a monitoring plan to the FOEN for approval in accordance with Article 51 by 31 May 2013.

<sup>2</sup> Companies that are engaged in the activities listed in Annex 7 when this Ordinance comes into force must submit an application to participate in the ETS by 1 June 2013, and submit a monitoring plan to the FOEN for approval in accordance with Article 51 by 1 September 2013.

<sup>3</sup> ETS companies that wish to be exempted from the obligation to participate in the ETS starting in 2013 must submit an application to do so by 1 June 2013.

#### **Art. 143**<sup>179</sup>

#### **Art. 144** Commitment to reduce greenhouse gas emissions

<sup>1</sup> Companies with commitments to reduce greenhouse gas emissions in accordance with Article 66 that would like to apply for a refund of the CO<sub>2</sub> levy for 2013 must submit an application for a determination of its reduction obligation by 1 June 2013. In the application, they must provide information regarding their greenhouse gas emissions in 2010 and 2011.

<sup>2</sup> To assess whether the commitment has been met and to assess penalties for a possible failure to meet the commitment in the 2008–2012 period, the previous legislation applies.

#### **Art. 145** Legally authorised power plants

<sup>1</sup> For power plants that have been legally authorised before 1 January 2011, the following apply until 31 December 2020:

- a. Articles 80–85 do not apply;
- b. the CO<sub>2</sub> levy will not be refunded.

<sup>2</sup> Paragraph 1 does not apply to power plants that fall within the scope of the Federal Decree of 23 March 2007<sup>180</sup> on the Compensation of CO<sub>2</sub> Emissions from Gas-fired Combined-cycle Power Plants.

#### **Art. 146** Refund of the CO<sub>2</sub> levy

<sup>1</sup> The FCA may on request provisionally refund the CO<sub>2</sub> levy if the company:

- a. was subject to a reduction obligation in the years 2008–2012; and
- b. has reported to the FOEN its obligation to participate in the ETS from 2013, or submitted an application for determination of its reduction obligation or its participation in the ETS from 2013.

<sup>179</sup> Repealed by No I of the O of 8 Oct. 2014, with effect from 1 Dec. 2014 (AS 2014 3293).  
<sup>180</sup> AS 2008 5

<sup>2</sup> If a company fails to fulfil the requirements for participation in the ETS or if its application for a determination of its reduction obligation is rejected, then it must fully repay the refunded amounts with interest.

## **Section 2a<sup>181</sup>**

### **Transitional Provisions to the Amendment of 8 October 2014**

#### **Art. 146a** Attestations for domestic emission reductions

The FOEN must transfer attestations for domestic emission reductions that have been issued within the FOEN-administered database to the Emissions Trading Registry no later than 30 June 2015.

#### **Art. 146b** Emission-reduction certificates that can no longer be entered into the Emissions Trading Registry

<sup>1</sup> Emission-reduction certificates under Article 60 paragraph 3 that are entered into the Emissions Trading Registry before the coming into force of the amendment of 8 October 2014 must no later than 30 April 2015:

- a. be transferred into the emissions trading registry of another contractual party under Annex B of the Kyoto Protocol of 11 December 1997<sup>182</sup>; or
- b. be voluntarily cancelled under the rules of the Kyoto Protocol.

<sup>2</sup> Emission-reduction certificates under Article 60 paragraph 3 that expire before 30 April 2015 may be replaced with the corresponding number of emission-reduction certificates that may be counted in accordance with Article 4 under the rules of the Kyoto Protocol.

<sup>3</sup> Expired emission-reduction certificates will be cancelled.

## **Section 2b<sup>183</sup> Transitional Provisions<sup>184</sup>**

#### **Art. 146c**

<sup>1</sup> In the case of programme agreements under Article 34 paragraph 1 letter a of the CO<sub>2</sub> Act that are entered into before the Amendment of 22 June 2016 comes into force, Article 104–110, 112 and 113 apply in their previous wording, together with Article 111a; Article 111 does not apply.

<sup>2</sup> Unused funds from programme agreements entered into before the Amendment of 22 June 2016 comes into force shall be returned by the canton to the Confederation within three years at the latest of the expiry of the programme agreement.

<sup>181</sup> Inserted by No I of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS **2014** 3293).

<sup>182</sup> SR **0.814.011**

<sup>183</sup> Inserted by No I of the O of 22 June 2016, in force since 1 Aug. 2016 (AS **2016** 2473).

<sup>184</sup> Amended by No I of the O of 1 Nov. 2017, in force since 1 Jan. 2018 (AS **2017** 6753).

**Art. 146d**<sup>185</sup>

The provisions of Chapter 3, insofar as they concern vans and light articulated vehicles, apply from the reference year 2020.

**Art. 146e**<sup>186</sup>

When Article 37 is applied for the first time, the final accounts shall also include the funds from the sanctions imposed under the Article 13 of the CO<sub>2</sub> Act up to the date on which this Ordinance comes into force.

**Section 3 Commencement****Art. 147**

This Ordinance comes into force on 1 January 2013.

<sup>185</sup> Inserted by No I of the O of 1 Nov. 2017, in force since 1 Jan. 2018 (AS 2017 6753).

<sup>186</sup> Inserted by No I of the O of 1 Nov. 2017, in force since 1 Dec. 2017 (AS 2017 6753).

*Annex I*  
(Art. 1 para. 2)

### Warming effect of greenhouse gases on the climate in CO<sub>2</sub>eq

Greenhouse gas	Chemical formula	Effect in CO <sub>2</sub> eq
Carbon dioxide	CO <sub>2</sub>	1
Methane	CH <sub>4</sub>	25
Nitrous oxide	N <sub>2</sub> O	298
Hydrofluorocarbons (HFCs)		
– HFC-23	CHF <sub>3</sub>	14 800
– HFC-32	CH <sub>2</sub> F <sub>2</sub>	675
– HFC-41	CH <sub>3</sub> F	92
– HFC-43-10mee	CF <sub>3</sub> CHFCHFCF <sub>2</sub> CF <sub>3</sub>	1 640
– HFC-125	C <sub>2</sub> HF <sub>5</sub>	3 500
– HFC-134	C <sub>2</sub> H <sub>2</sub> F <sub>4</sub> (CHF <sub>2</sub> CHF <sub>2</sub> )	1 100
– HFC-134a	C <sub>2</sub> H <sub>2</sub> F <sub>4</sub> (CH <sub>2</sub> FCF <sub>3</sub> )	1 430
– HFC-143	C <sub>2</sub> H <sub>3</sub> F <sub>3</sub> (CHF <sub>2</sub> CH <sub>2</sub> F)	353
– HFC-143a	C <sub>2</sub> H <sub>3</sub> F <sub>3</sub> (CF <sub>3</sub> CH <sub>3</sub> )	4 470
– HFC-152	CH <sub>2</sub> FCH <sub>2</sub> F	53
– HFC-152a	C <sub>2</sub> H <sub>4</sub> F <sub>2</sub> (CH <sub>3</sub> CHF <sub>2</sub> )	38
– HFC-161	CH <sub>3</sub> CH <sub>2</sub> F	12
– HFC-227ea	C <sub>3</sub> HF <sub>7</sub>	3 220
– HFC-236cb	CH <sub>2</sub> FCF <sub>2</sub> CF <sub>3</sub>	1 340
– HFC-236ea	CHF <sub>2</sub> CHFCF <sub>3</sub>	1 370
– HFC-236fa	C <sub>3</sub> H <sub>2</sub> F <sub>6</sub>	9 810
– HFC-245ca	C <sub>3</sub> H <sub>3</sub> F <sub>5</sub>	693
– HFC-245fa	CHF <sub>2</sub> CH <sub>2</sub> CF <sub>3</sub>	1 030
– HFC-365mfc	CH <sub>3</sub> CF <sub>2</sub> CH <sub>2</sub> CF <sub>3</sub>	794
Perfluorocarbons (PFCs)		
– Perfluoromethane – PFC-14	CF <sub>4</sub>	7 390
– Perfluoroethane – PFC-116	C <sub>2</sub> F <sub>6</sub>	12 200
– Perfluoropropane – PFC-218	C <sub>3</sub> F <sub>8</sub>	8 830
– Perfluorobutane – PFC-3-1-10	C <sub>4</sub> F <sub>10</sub>	8 860
– Perfluorocyclobutane – PFC-318	c-C <sub>4</sub> F <sub>8</sub>	10 300
– Perfluoropentane – PFC-4-1-12	C <sub>5</sub> F <sub>12</sub>	9 160
– Perfluorohexane – PFC-5-1-14	C <sub>6</sub> F <sub>14</sub>	9 300
– Perfluorodecalin – PFC-9-1-18	C <sub>10</sub> F <sub>18</sub>	>7 500
Sulphur hexafluoride	SF <sub>6</sub>	22 800
Nitrogen trifluoride	NF <sub>3</sub>	17 200



*Annex 2*<sup>187</sup>  
(Art. 4 para. 2 let. b)

## **Emission reductions achieved abroad that will not be counted**

1. The following emission reduction certificates are not taken into account:
  - a. certificates for emission reductions that were not achieved in one of the least developed countries (Least Developed Countries, LDC) on the list of the United Nations;
  - b. certificates for emission reductions that were achieved from projects for biological CO<sub>2</sub> sequestration or geological CO<sub>2</sub> capture and CO<sub>2</sub> sequestration;
  - c. certificates for emission reductions that were achieved through the use of hydro power plants with installed production capacity of over 20 MW;
  - d. other certificates for emission reductions that were not achieved through the use of renewable energy, the end user's improved energy efficiency, methane flaring and avoidance of methane emissions at landfills, municipal waste recycling or waste incineration plants, recycling of agricultural waste, waste water treatment or through composting;
  - e. already used emission reduction certificates.
2. In addition, emission reduction certificates are not taken into account if:
  - a. the emission reductions were achieved in violation of human rights;
  - b. the emission reductions were achieved under conditions that had significant negative social or ecological effects;
  - c. their counting would contravene Swiss foreign and development policy.
3. Number 1 letter a does not apply to:
  - a. emission reduction certificates from projects that have been registered before 1 January 2013 in accordance with Article 12 of the Kyoto Protocol of 11 December 1997<sup>188</sup>;
  - b. emission reduction certificates for emission reductions achieved before 1 January 2013 from projects in accordance with Article 6 of the Kyoto Protocol of 11 December 1997.

<sup>187</sup> Revised in accordance with No II of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS 2014 3293).

<sup>188</sup> SR 0.814.011

*Annex 3*<sup>189</sup>  
(Art. 5 let. a)

## **Domestic emission reductions for which no attestations will be issued**

No attestations are issued for a domestic emission-reduction project or programme if the emission reductions have been achieved through:

- a. the use of nuclear energy;
- b. the use of biological or geological CO<sub>2</sub> sequestration; exempted is the biological CO<sub>2</sub> sequestration in wood products;
- b<sup>bis</sup>. the re-waterlogging of moors and wetlands;
- c. research and development or information and consultation;
- d. the use of biogenic fuels that do not meet the requirements of the Mineral Oil Tax Act of 21 June 1996<sup>190</sup> and associated implementing regulations;
- e. a motor fuel changeover from petrol or diesel vehicles to natural gas vehicles; excluded is the change of entire vehicle fleets;
- f. the replacement of fossil-fuelled heating boilers with fossil-fuelled heating boilers.

<sup>189</sup> Revised in accordance with No II of the O of 8 Oct. 2014 (AS **2014** 3293) and No II para. 1 of 1 Nov. 2017, in force since 1 Jan. 2018 (AS **2017** 6753).

<sup>190</sup> SR **641.61**

*Annex 3a*<sup>191</sup>  
(Art. 6 para. 2<sup>bis</sup>)

## **Requirements for the calculation of emission reductions and the monitoring concept for projects and programmes in connection with local heating networks**

### **1 Scope of application**

The requirements of this Annex apply to projects and programmes if they involve:

- a. constructing a new heating network with a predominantly CO<sub>2</sub>-neutral heat source;
- b. replacing a central, fossil-fuelled boiler in an existing heating network that uses exclusively fossil-fuel heat sources with one or more predominantly CO<sub>2</sub>-neutral heat sources;
- c. adding one or more predominantly CO<sub>2</sub>-neutral heat sources to a central, fossil-fuelled boiler in an existing heating network that uses exclusively fossil-fuel heat sources;
- d. constructing a new heating network that also entails replacing a central, fossil-fuelled boiler in an existing heating network that uses exclusively fossil-fuel heat sources with one or more predominantly CO<sub>2</sub>-neutral heat sources; or
- e. constructing a new heating network that also entails adding one or more predominantly CO<sub>2</sub>-neutral heat sources to a central, fossil-fuelled boiler in an existing heating network with exclusively fossil-fuel heat sources.

### **2 Definitions**

In this Annex:

- a. *local heating network* means a network to distribute heat with centralised sources and decentralised consumers (heat consumers);
- b. *existing consumers* means heat consumers that were already connected to an existing local heating network before the start of implementation under Article 5 paragraph 2;
- c. *new buildings* means buildings that are under construction at the time of connection to the local heating network and which are not existing consumers.

<sup>191</sup> Inserted by No II para. 1 of the O of 21 Sept. 2018, in force since 1 Nov. 2018 (AS 2018 3477). Corrected on 19 Feb. 2019 (AS 2019 683).

### 3 Requirements for the calculation of emission reductions

#### 3.1 Metrological requirements

Projects and programmes must meet all the following metrological requirements in particular:

- a. the consumption of all fossil energy sources used by the heating system and the electricity consumption of heat pumps used by the heating system must be measured;
- b. the quantities of heat used by all heat consumers must be measured; the quantities of heat used by new buildings and by companies exempted from the CO<sub>2</sub> levy under Article 96 paragraph 2 must be shown separately.

#### 3.2 System boundaries

The system boundaries for the project or programme must encompass the heating system, the heating network and all consumers, incoming energy flows and emissions resulting from the project.

#### 3.3 Reference scenario

1. The description of the project or programme must include at least two plausible alternative scenarios for the project or the programme.
2. In these scenarios, the following situations must be described as a minimum:
  - a. continuing with the existing situation, without implementing the project or programme; and
  - b. the projections for the local heating network, but without receipts from attestations.
3. The probability of these scenarios occurring must be explained in the description of the project or programme, with the most probable scenario being chosen as the reference scenario.

#### 3.4 Calculation of the reference emissions

The total annual emissions in the reference scenario are calculated as follows:

$$RE_y = (RE_{new,y} + RE_{existing,y}) * F_{CRF} \quad (1)$$

in which:

$RE_y$  are the reference scenario emissions in year y [tCO<sub>2</sub>eq].

$RE_{new,y}$  are the reference scenario emissions from new consumers in year y [tCO<sub>2</sub>eq], see equation (2)

$RE_{existing,y}$  are the reference scenario emissions from existing consumers in year y [tCO<sub>2</sub>eq] see equation (3)

$F_{CRF}$  is the allowance factor for the feed-in remuneration at cost (CRF); this parameter must be set at 1.

If the heat source for the local heating network is used to produce electricity and if this is compensated for by feed-in remuneration at cost, the parameter to be used is determined as follows:

1. for CRF projects before the 1 January 2018, Annex 1.5 of the Energy Ordinance of 7 December 1998<sup>192</sup> (EnO) stipulates that the minimum requirement for heat utilisation must be set in relation to the total heat utilisation of the plant; or

2. for CRF-projects from 1 January 2018, Annex 1.5 of the Ordinance of 1 November 2017<sup>193</sup> on the Promotion of Electricity Production from Renewable Energies (EnPO) stipulates that the minimum requirement for heat utilisation must be set in relation to the total heat utilisation of the plant.

The individual terms are calculated as follows:

$$RE_{neu,y} = \sum_i W_{neu,i,y} * EF_{WV} \quad (2)$$

in which:

$W_{neu,i,y}$  is the expected heat supply to new consumers in the heating network in year y [MWh]; this parameter is replaced in the monitoring by the value measured in accordance with number 4.2.

i are all new consumers, with the exception of new buildings and companies exempted from the CO<sub>2</sub> levy under Article 96 paragraph 2.

$EF_{WV}$  is the standard emission factor for the local heating network = 0.22 tCO<sub>2</sub>eq/MWh.

$$RE_{existing,y} = \sum_k W_{existing,k,y} * EF * RF_y * I / (1 - WVN) \quad (3)$$

in which

$W_{existing,k,y}$  are the expected heat supplies to existing consumers in year y [MWh]; this parameter is replaced in the monitoring by the value measured in accordance with number 4.2.

k are all existing heat consumers, with the exception of companies exempted from the CO<sub>2</sub> levy.

$RF_y$  is the reference factor for year y; this amounts to 100 % if year y falls within 20 years of the installation of the old boiler, otherwise it amounts to 70 %.

$WVN$  is the standard deduction for heat losses from the heating network of 10 %.

<sup>192</sup> SR 730.01

<sup>193</sup> SR 730.03

$EF_{\text{existing}}$	is the emission factor for the local heating network, depending on the type of central boiler to be replaced. when replacing a gas-fired boiler, the emission factor for the local heating network amounts to $EF_{\text{Gas}} / 90 \%$ . when replacing a oil-fired boiler, the emission factor for the local heating network amounts to $EF_{\text{heating oil}} / 85 \%$ .
$EF_{\text{gas}}$	is the emission factor for natural gas in accordance with Annex 10 converted into tCO <sub>2</sub> eq/MWh. For converting the unit tCO <sub>2</sub> eq/TJ into tCO <sub>2</sub> eq/MWh the factor 0.0036 TJ/MWh must be used.
$EF_{\text{heating oil}}$	is the emission factor for heating oil; this amounts to 0.265 tCO <sub>2</sub> eq/MWh.
$EF_{\text{electricity}}$	is the emission factor for electric current; this amounts to $29.8 * 10^{-6}$ tCO <sub>2</sub> eq/kWh.

### 3.5 Calculation of the project or programme emissions

The annual project emissions for the project or the project emissions for each component of the programme are calculated as follows:

$$PE_y = EF_{\text{heating oil}} * M_{\text{heating oil},y} + EF_{\text{gas}} * M_{\text{gas},y} + EF_{\text{el}} * M_{\text{el},y} \quad (4)$$

in which

$PE_y$	are the expected project emissions from the project or of the component of the programme in year y [tCO <sub>2</sub> eq]
$M_{\text{heating oil},y}$	is the expected quantity of heating oil burned to operate the heating system in year y [l]; this parameter is replaced in the monitoring by the value measured in accordance with number 4.4.
$M_{\text{gas},y}$	is the expected quantity of gas burned to operate the heating system in year y [Nm <sup>3</sup> ]; this parameter is replaced in the monitoring by the value measured in accordance with number 4.5.
$M_{\text{el},y}$	is the expected quantity of electrical energy used to operate heat pumps in the heating system in year y [kWh]; this parameter is replaced in the monitoring by the value measured in accordance with number 4.6.
$EF_{\text{gas}}$	is the emission factor for natural gas in accordance with Annex 10 converted into tCO <sub>2</sub> eq/Nm <sup>3</sup> or into tCO <sub>2</sub> eq/MWh depending on which unit is used for $M_{\text{gas}}$ . The factor 0.0036 TJ/MWh must be used to convert the tCO <sub>2</sub> /TJ unit into the tCO <sub>2</sub> eq/MWh unit.
$EF_{\text{heating oil}}$	is the emission factor for heating oil; this amounts to 2.65 tCO <sub>2</sub> eq/1000 l.

### 3.6 Calculation of emission reductions

The annual emission reductions for projects or components of programmes are calculated as follows:

$$ER_y = RE_y - PE_y \quad (5)$$

in which

$ER_y$  are the emission reductions in year y [tCO<sub>2</sub>eq].

$RE_y$  are the reference scenario emissions in year y [tCO<sub>2</sub>eq].

$PE_y$  are the project emissions of the local heating network in year y [tCO<sub>2</sub>eq].

## 4 Requirements for the monitoring concept

1. For projects and programmes in accordance with this Annex, the measurement results, documents and requirements listed in numbers 4.1–4.6 must be taken into account in the monitoring report.
2. The calculation of the emission reductions must be made on the basis of the measurement results.

### 4.1 List of heat consumer with documented heat supplies

1. A list of all heat consumers with details of the quantity of heat supplied in the monitoring period in MWh must be included with the monitoring report; the quantity of heat in MWh must be broken down by calendar year. The measurement must be made in accordance with number 4.2.
2. In the case of new buildings, the name and address must also be provided.
3. In addition, in the case of companies exempted from the CO<sub>2</sub> levy under Article 96 paragraph 2:
  - a. the name and address must be provided; and
  - b. the reference scenario emissions in tCO<sub>2</sub>eq for each company must be indicated.
4. The emissions in accordance with number 3 letter b are calculated as follows:

$$RE_{company,new,m,y} = W_{company,new,m,y} * EF_{WV}$$

in which

$W_{company,new,m,y}$  is the heat supply from the new local heating network to the company exempted from the CO<sub>2</sub> levy m in year y [MWh].

$EF_{WV}$  is the standard emission factor for the local heating network = 0.22 tCO<sub>2</sub>eq/MWh.

$$RE_{company,existing,n,y} = W_{company,existing,n,y} * EF * RF_y * 1 / (1 - WVN)$$

in which

$W_{company,existing,n,y}$	is the heat supply from the existing local heating network to the company exempted from the CO <sub>2</sub> levy n in year y [MWh].
$RF_y$	is the reference factor for year y; this amounts to 100 % if year y falls within 20 years of the installation of the old boiler, otherwise it amounts to 70 %.
WVN	is the standard deduction for heat losses from the heating network of 10 %..
$EF_{existing}$	is the emission factor for the local heating network, depending on the type of central boiler to be replaced. when replacing a gas-fired boiler, the emission factor for the local heating network amounts to $EF_{1Gas} / 90 \%$ . when replacing a oil-fired boiler, the emission factor for the local heating network amounts to $EF_{1heating\ oil} / 85 \%$ .
$EF_{1gas}$	is the emission factor for natural gas in accordance with Annex 10 converted into tCO <sub>2</sub> eq/MWh. For converting the unit tCO <sub>2</sub> eq/MJ into tCO <sub>2</sub> eq/MWh the factor 0.0036 TJ/MWh must be used.
$EF_{1heating\ oil}$	is the emission factor for heating oil; this amounts to 0.265 tCO <sub>2</sub> eq/MWh.
$EF_{electricity}$	is the emission factor for electric current; this amounts to $29.8 * 10^{-6}$ tCO <sub>2</sub> eq/kWh.

## 4.2 Quantity of heat measured at the consumers

When measuring the heat supplied ( $W_{neu,l,y}$ ) ( $W_{existing,l,y}$ ) to new and existing consumers, the following requirements must be met:

- the heat supplied to the consumer l in year y must be measured;
- a heat meter must be used as the data source;
- the measurement must be recorded in megawatt hours (MWh);
- the measurement must be made continuously;
- quality assurance must meet the requirements of the Measuring Instruments Ordinance of 15 February 2006<sup>194</sup> (MIO) and the related implementing provisions issued by the Federal Department of Justice and Police (FDJP); and
- the point of transfer from the local heating network to the consumer must be used as the measuring point.

<sup>194</sup> SR 941.210



### 4.3 Age of the replaced boiler

When determining the reference factor, the year of manufacture or of installation of the replaced or extended fossil-fuelled boiler must be taken into account.

### 4.4 Quantity of heating oil

When measuring the quantity of heating oil ( $M_{\text{heating oil},y}$ ), all the following requirements must be met:

- a. the quantity of heating oil burned to operate the heating system in year  $y$  must be measured;
- b. a heating oil meter or a heating oil stock balance must be used as the data source;
- c. the measurement must be recorded in litres (l);
- d. the measurement must be made for each monitoring period or, if this is longer than a calendar year, for each calendar year;
- e. quality assurance is achieved by calibrating the fuel oil meter, otherwise a plausibility check must be carried out using alternative data sources.

### 4.5 Quantity of gas

When measuring the quantity of gas ( $M_{\text{Gas},y}$ ), all the following requirements must be met:

- a. the measured quantity of gas burned to operate the heating system in year  $y$  must be measured;
- b. a gas meter must be used as the data source;
- c. the measurement must be recorded in standard cubic metres (Nm<sup>3</sup>);
- d. the measurement must be made continuously;
- e. quality assurance must meet the requirements of the MIO and the related implementing provisions issued by the FDJP.

### 4.6 Electrical energy

When measuring electrical energy ( $M_{\text{el},y}$ ), all the following requirements must be met:

- a. the measured quantity of electrical energy to operate heat pumps in the heating system in year  $y$  must be measured;
- b. an electricity meter must be used as the data source;
- c. the measurement must be recorded in kilowatt hours (kWh) or megawatt hours (MWh);

- d. the measurement must be made continuously;
- e. quality assurance must meet the requirements of the MIO and the related implementing provisions issued by the FDJP.

*Annex 3b*<sup>195</sup>  
(Art. 6 para. 2<sup>bis</sup>)

## **Requirements for calculating emission reductions and for the monitoring concept for landfill gas projects and programmes**

### **1 Scope of application**

The requirements of this Annex apply to landfill gas projects and programmes provided:

- a. these involve landfills or former landfills that produce methane emissions without the planned lean gas treatment and that contain a sufficiently high proportion of organic waste;
- b. the planned lean gas treatment is not already required by law or by official order; and
- c. the planned lean gas treatment corresponds as a minimum to the state of the art and has been optimised according to the current and future composition of the landfill gas.

### **2 Definitions**

In this Annex:

- a. *flare efficiency (FE)* means the percentage of methane effectively burned during flaring or generally oxidised in gas treatment processes;
- b. *aerobic degradation* means the microbial degradation of organic matter under aerobic conditions;
- c. *anaerobic degradation* means the microbial degradation of organic matter under anaerobic conditions;
- d. *landfill* means a waste plant in which waste is deposited under controlled conditions;
- e. *landfill gas* means gas formed by the biological conversion of organic matter contained in landfills;
- f. *intermittent flaring* means the irregular combustion of landfill gas due to insufficient methane content;
- g. *oxidation factor (OX)* means the percentage of methane in the landfill gas that oxidises in the boundary layer before escaping into the atmosphere;
- h. *suction efficiency (SE)* means the percentage of landfill gases treated by a degassing system;

<sup>195</sup> Inserted by No II para. 1 of the O of 21 Sept. 2018, in force since 1 Nov. 2018 (AS 2018 3477).

- i. *lean gas treatment* means a process for oxidising landfill gas with a methane concentration of less than 25 vol.-%. Oxidation may occur in a flare or in another technical device;
- j. *existing degassing systems* means collection systems for landfill gas used for feeding the lean gas treatment process which existed before implementation begins under Article 5 paragraph 2;
- k. *new degassing systems* means collection systems for as yet uncollected landfill gas used for feeding the lean gas treatment process which were installed after implementation begins under Article 5 paragraph 2.

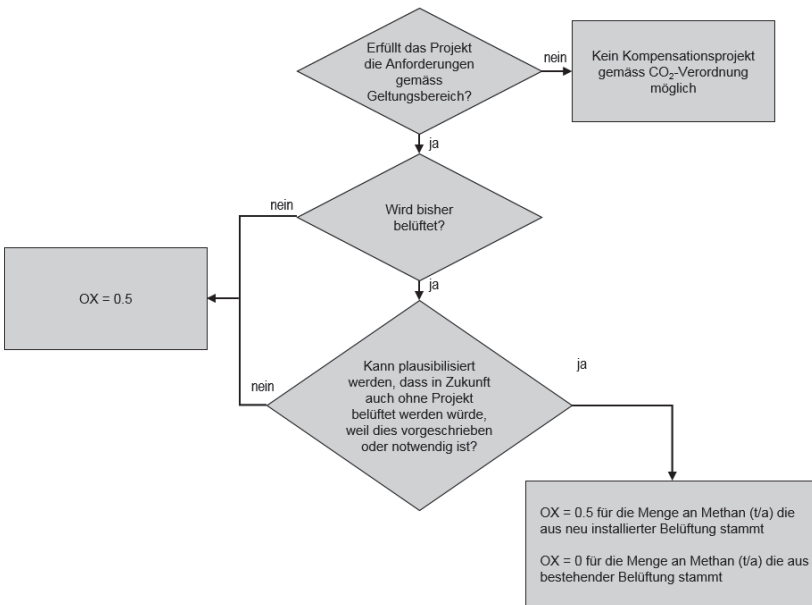
### 3 Requirements for calculating emission reductions

#### 3.1 System boundaries

1. The system boundaries of the project or programme must encompass the landfill and the fossil-fuel emissions from the lean gas treatment.
2. The supply routes for the deposited waste must lie outside the system boundary.

#### 3.2 Determining an oxidation factors

For determining the value of the oxidation factor parameter (OX) required to calculate the emission reductions, the following decision tree must be used:



### 3.3 Ex-ante calculation of emission reductions

The emission reductions can be calculated ex-ante based on measurement data from the previous one to three years or calculated using the following formula:

$$ER_{ex-ante,y,flare} = (FE - OX) * SE * FOD_{CH_4,y} * GWP_{eff,CH_4} - PE_y \quad (1)$$

in which

$ER_{ex-ante,y,flare}$  are the estimated emission reductions from lean gas treatment in year y (tCO<sub>2</sub>eq).

$GWP_{eff,CH_4}$  is the effective greenhouse gas potential of methane (22.25 tCO<sub>2</sub>eq / t CH<sub>4</sub>).

FE is the flare efficiency.

OX is the oxidation factor.

SE is the suction efficiency.

$FOD_{CH_4,y}$  is the quantity of methane calculated using a “first order decay” formula that is produced by the landfill in year y (t CH<sub>4</sub>); see formula (2).

$PE_y$  are the project emissions in year y

$$FOD_{CH_4,y} = (16/12) * F * DOC_f * \sum_x \sum_j A_{j,x} * DOC_j * \text{Exp}(-k_j(y-x)) * (1 - \text{Exp}(-k_j)) \quad (2)$$

in which

y is the year for which the methane emissions are calculated.

x is the year in which the landfill was filled with a specific quantity of waste  $A_{j,x}$  of category j, which falls between OY and y.

16/12 is the molecular weight ratio of CH<sub>4</sub> to C.

F = 0.5; percentage of methane in the methane/carbon dioxide mixture in the landfill gas.

$DOC_f$  is the percentage of biodegradable carbon that is degraded under anaerobic conditions (% by mass).

$A_{j,x}$  is the quantity of waste in waste category j that was deposited in year x (t waste).

OY is the year the landfill was opened, the first year in which waste was deposited.

j is the waste category.

$DOC_j$  is the percentage of degradable organic carbon in the relevant waste category (t C / t waste).

$k_j$  is the degradation constant for the relevant waste category j (1/year).

### 3.4 Ex-post calculation of emission reductions

For new and existing degassing systems, the reduction in methane is calculated ex-post as follows:

$$ER_{ex-post,y,flare} = (FE - OX) * GWP_{effCH4} * V_{DG,y} * c_{CH4} * D_{CH4} - PE_y \quad (3)$$

in which

$ER_{ex-post,y,flare}$  are the eligible emission reductions determined ex-post with the aid of the emissions measured during the lean gas treatment in year y (tCO<sub>2</sub>eq).

FE is the flare efficiency.

OX is the oxidation factor.

$GWP_{eff,CH4}$  is the effective greenhouse gas potential of methane (22.25 tCO<sub>2</sub>eq/tCH<sub>4</sub>).

$V_{DG,y}$  is the volume flow of landfill gas that is measured at the entry to the lean gas treatment process in year y (Nm<sup>3</sup>); this parameter is replaced in the monitoring by the value measured in accordance with number 4.

$c_{CH4}$  is the methane content in the landfill gas (% by volume); this parameter is replaced in the monitoring by the value measured in accordance with number 4.

$D_{CH4}$  is the methane density under standard conditions (0.0007202 tCH<sub>4</sub>/Nm<sup>3</sup>).

$PE_y$  are the project emissions in year y.

### 3.5 Calculation of the project emissions

The project emissions from operating the lean gas treatment process are calculated as follows based on the energy sources used:

$$PE_y = EF_{Gas} * M_{Gas,y} \quad (4)$$

in which

$EF_{Gas}$  is the emission factor for the gas used [tCO<sub>2</sub>eq/Nm<sup>3</sup>]; this parameter is replaced in the monitoring by the value measured in accordance with number 4.

$M_{Gas,y}$  is the expected quantity of gas burned in year y [Nm<sup>3</sup>]; this parameter is replaced in the monitoring by the value measured in accordance with number 4.

## 4 Requirements for the monitoring concept

1. For projects and programmes in accordance with this Annex, the monitoring report must be accompanied by the measurement results and documents listed in numbers 4.1–4.6.
2. The calculation of the emission reductions must be substantiated by the measurement results.

### 4.1 Flare efficiency

The flare efficiency (FE) value must be determined in the monitoring report as follows:

- a. the percentage of methane that is effectively burned during flaring or generally oxidised in gas treatment processes must be stated;
- b. the following procedure applies:
  1. a value of 90 % must be used as the standard value for the combustion efficiency of a closed flare.
  2. applicants may also use the manufacturer's specifications, provided it can be shown that these have been complied with.
  3. applicants may make their own measurements.
- c. flare efficiency must be stated as a percentage (%);
- d. its value must be determined each year.

### 4.2 Volume flow of landfill gases

When determining the volume flow ( $V_{DG,y}$ ) all the following requirements must be met:

- a. the volume flow of the landfill gases must be determined;
- b. measuring devices for determining volume flow must be used as the data source;
- c. the measurement must be recorded in standard cubic metres (Nm<sup>3</sup>);
- d. the measurement must be made continuously;
- e. the form and regularity for calibrating the measuring devices must be specified in the first monitoring report.

### 4.3 Methane content of landfill gases

When measuring the methane content ( $c_{CH_4}$ ), all the following requirements must be met:

- a. the methane content in the landfill gas must be measured;
- b. a methane measuring sensor must be used as the data source;

- c. the measurement must be recorded as per cent by volume (Vol-%);
- d. the measurement must be made continuously;
- e. the form and duration for calibrating the measuring devices must be specified in the first monitoring report.

#### 4.4 Newly installed degassing systems

A comprehensible explanation must be provided of how the collection system has been changed and what degassing systems in accordance with number 2 letter k are designated as new degassing systems.

#### 4.5 Emission factor for gas

When determining the emission factor for the gas used ( $EF_{Gas}$ ), all the following requirements must be met:

- a. the Swiss greenhouse gas inventory or a comparable publication must be used as the data source. For liquid gas (butane, propane), Annex 10 must be used;
- b. the factor must be recorded in tonnes of carbon dioxide equivalent per standard cubic metre ( $tCO_2eq/Nm^3$ ) or in the case of liquid gas (butane, propane) in tonnes of carbon dioxide equivalent per tonne ( $tCO_2eq/t$ ).

#### 4.6 Quantity of gas

When determining the quantity of gas ( $M_{gas,y}$ ), all the following requirements must be met:

- a. the quantity of gas burned for the lean gas treatment in year y must be determined;
- b. volume flow measuring devices or the delivery documents for gas cylinders must be used as the data source;
- c. the measurement must be recorded in standard cubic metres ( $Nm^3$ ) or by indicating the number of gas cylinders delivered, together with their content (l);
- d. the measurement must be made continuously or when each delivery of gas cylinders is made;
- e. quality assurance must be based on the manufacturer's specifications.



*Annex 4*<sup>196</sup>  
(Art. 25 para. 2)

## **Calculation of CO<sub>2</sub> emissions from vehicles lacking the information listed in Article 24 or 25 paragraph 1**

### **1 Calculation of CO<sub>2</sub> emissions**

- 1.1 Petrol motor and manual gear change:  
 $\text{CO}_2 = 0.047 m + 0.561 p + 56,621$
- 1.2 Petrol motor and automatic gear change:  
 $\text{CO}_2 = 0.102 m + 0.328 p + 9,481$
- 1.3 Petrol motor and hybrid electric drive:  
 $\text{CO}_2 = 0.116 m - 57,147$
- 1.4 Diesel motor and manual gear change:  
 $\text{CO}_2 = 0.108 m - 11,371$
- 1.5 Diesel motor and automatic gear change:  
 $\text{CO}_2 = 0.116 m - 6,432$   
 $\text{CO}_2$ : CO<sub>2</sub> emissions (combined) in g/km  
m: unladen weight of the vehicle in kg  
p: maximum engine power in kW

### **2 Rounding of the CO<sub>2</sub> emissions**

The CO<sub>2</sub> emissions are rounded to the nearest whole number as follows:

- a. If the digit following the decimal point is 4 or less, then the number is rounded down.
- b. If the digit following the decimal point is 5 or greater, then the number is rounded up.

<sup>196</sup> Amended by No II para. 2 of the O of 1 Nov. 2017, in force since 1 Jan. 2018 (AS 2017 6753).

*Annex 4a*<sup>197</sup>  
(Art. 28 para. 1)

## Calculation of the individual target

### 1 Calculation of the individual target for small-scale importers and manufacturers

- 1.1 For small-scale importers, the individual CO<sub>2</sub> emissions target is calculated individually for each vehicle using the following formula and rounded to three decimal places:

Individual target for the vehicle:  $z + a \cdot (m - M_{t-2})$  g CO<sub>2</sub>/km;

- 1.2 For large-scale importers, the individual target for the average CO<sub>2</sub> emissions is calculated individually for each fleet of new vehicles using the following formula and rounded to three decimal places:

Individual target for the fleet of new vehicles:  $z + a \cdot (M_{i,t} - M_{t-2})$  g CO<sub>2</sub>/km;

z: target value for CO<sub>2</sub> emissions in accordance with Article 10 paras 1 and 2 of the CO<sub>2</sub> Act:

for passenger cars: 130g CO<sub>2</sub>/km up to and including reference year 2019, 95g CO<sub>2</sub>/km from reference year 2020

for vans and light articulated vehicles: 147g CO<sub>2</sub>/km from reference year 2020

a: slope of the target value line:

for passenger cars: 0.0457 up to and including reference year 2019, 0.0333 from reference year 2020

for vans and light articulated vehicles: 0.096 from reference year 2020

m: unladen weight of passenger cars or, where applicable, of vans or of light articulated vehicles in kg (Art. 24 and 25)

$M_{i,t}$ : average unladen weight of the importer's passenger cars registered for the first time in the reference year or, where applicable, vans or light articulated vehicles of the large-scale importers in kg, rounded to three decimal places

$M_{t-2}$ : average unladen weight of the passenger cars registered for the first time in Switzerland in the penultimate calendar year before the reference year or, where applicable, vans or light articulated vehicles in kg

<sup>197</sup> Inserted by No II para. 3 of the O of 1 Nov. 2017 (AS 2017 6753). Revised by No I para. 1 of the DETEC Ordinance of 21 Sept. 2018, in force since 1 Nov. 2018 (AS 2018 3497).

**2 Average unladen weight**

The average unladen weight of passenger cars registered for the first time amounted in:

2015 1532 kg

2016 1563 kg

2017 1588 kg

*Annex 5*<sup>198</sup>  
(Art. 29 para. 1)

## **Sanction amounts for exceeding individual targets (Art. 13 para. 1 of the CO<sub>2</sub> Act)**

### **1 Sanction amounts for the reference year 2017**

The sanction amounts to be paid if the individual target is exceeded for the reference year 2017:

- a. for the first gram of CO<sub>2</sub>/km (from 0.1 gram up to and including 1 gram) above the individual target: CHF 5.50;
- b. for the second gram of CO<sub>2</sub>/km (from 1.1 gram up to and including 2 grams) above the individual target: CHF 16.50;
- c. for the third gram of CO<sub>2</sub>/km (from 2.1 grams up to and including 3 grams) above the individual target: CHF 27.50;
- d. for every additional gram of CO<sub>2</sub>/km (from 3.1 grams) above the individual target: CHF 103.50.

### **2 Sanction amounts for the reference year 2018**

The sanction amounts to be paid if the individual target is exceeded for the reference year 2018:

- a. for the first gram of CO<sub>2</sub>/km (from 0.1 gram up to and including 1 gram) above the individual target: CHF 5.50;
- b. for the second gram of CO<sub>2</sub>/km (from 1.1 gram up to and including 2 grams) above the individual target: CHF 16.50;
- c. for the third gram of CO<sub>2</sub>/km (from 2.1 grams up to and including 3 grams) above the individual target: CHF 27.50;
- d. for every additional gram of CO<sub>2</sub>/km (from 3.1 grams) above the individual target: CHF 104.50.

### **3 Sanction amounts for the reference years 2019 and subsequent**

The sanction amounts to be paid if the individual target is exceeded amount for each gram of CO<sub>2</sub>/km (from 0.1 grams):

- a. for the reference year 2019: CHF 111.00.

<sup>198</sup> Amended by No I para. 2 of the DETEC Ordinance of 21 Sept. 2018, in force since 1 Nov. 2018 (AS **2018** 3497).

*Annex 6*<sup>199</sup>  
(Art. 40 para. 1)

## Companies obliged to participate in the ETS

A company that engages in at least one of the following activities must participate in the ETS:

1. combustion of fossil-fuel or partial fossil-fuel fuels with a total rated thermal input of over 20 MW; excluded is the combustion of fossil-fuel or partial fossil-fuel fuels in fixed installations whose main function is the disposal of municipal waste in accordance with Article 3 letter a of the WastMA<sup>200</sup>;
2. refining of mineral oil;
3. production of coke;
4. roasting or sintering, including palletisation, of metal ore, including sulphide ore;
5. production of pig iron or steel (primary or secondary fusion) including continuous casting, with a capacity of over 2.5 tonnes per hour;
6. production or processing of ferrous metals including ferro-alloys in which combustion units with a total rated thermal input of over 20 MW are operated;
7. production of primary aluminium;
8. production of secondary aluminium in which combustion units with a total rated thermal input of over 20 MW are operated;
9. production or processing of non-ferrous metals, including production of alloys, refining, foundry casting, etc., in which combustion units with a total rated thermal input (including fuels used as reducing agents) of over 20 MW are operated;
10. production of cement clinker in rotary kilns with an installed production capacity of over 500 tonnes per day or in other furnaces with a production capacity of over 50 tonnes per day;
11. production of lime or calcination of dolomite or magnesite in rotary kilns or in other furnaces with an installed production capacity of over 50 tonnes per day;
12. manufacture of glass including glass fibre with a melting capacity of over 20 tonnes per day;

<sup>199</sup> Revised in accordance with No II of the O of 8 Oct. 2014 (AS 2014 3293) and with Annex 6 No 2 of the Waste Management Ordinance of 4 Dec. 2015, in force since 1 Jan. 2016 (AS 2015 5699).

<sup>200</sup> SR 814.600

13. manufacture of ceramic products by firing, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain, with an installed production capacity of over 75 tonnes per day;
14. manufacture of mineral wool insulation material using glass, rock or slag with a melting capacity of over 20 tonnes per day;
15. drying or calcination of gypsum or production of plaster boards and other gypsum products in which combustion units with a total rated thermal input of over 20 MW are operated;
16. production of pulp from timber or other fibrous materials;
17. production of paper or cardboard with an installed production capacity of over 20 tonnes per day;
18. production of carbon black involving the carbonisation of organic substances such as oils, tars, cracker and distillation residues, where combustion units with a total rated thermal input of over 20 MW are operated;
19. production of nitric acid;
20. production of adipic acid;
21. production of glyoxal and glyoxylic acid;
22. production of ammonia;
23. production of bulk organic chemicals by cracking, reforming, partial or full oxidation or by similar processes, with an installed production capacity of over 100 tonnes per day;
24. production of hydrogen (H<sub>2</sub>) and synthesis gas by reforming or partial oxidation with an installed production capacity of over 25 tonnes per day;
25. production of soda ash (Na<sub>2</sub>CO<sub>3</sub>) and sodium bicarbonate (NaHCO<sub>3</sub>).

*Annex 7<sup>201</sup>*

(Art. 42 para. 1 lett. a and 66 para. 1 lett. a and b and 3 lett. a and b)

**Activities that qualify for participation in the ETS or for exemption from reduction obligations**

1. cultivation of plants in greenhouses;
2. quarrying of rock, soil or other mining activities;
3. processing of agricultural and fishery products for the production of food products or animal feed products;
- 3<sup>bis</sup>. fattening of pigs and poultry;
4. manufacture of beverages;
5. manufacture of tobacco products;
6. manufacture and cleaning of textiles;
7. manufacture of veneer sheets, plywood, wood fibre and wood-based panels as well as pellets;
8. manufacture of wood-fibre pulp, pulp, paper, paperboard, cardboard, products made out of paper and paperboard such as corrugated paper, packing materials, hygiene products and wallpapers, manufacture of drying-intensive print products (without printing of newspapers, heliographs and reprography);
9. manufacture of coke and refined petroleum products;
10. manufacture of chemical and pharmaceutical products and the associated technology development;
11. manufacture of plastic products;
12. manufacture of glass, glass products and ceramics, processing of rock and soils (without processing and treatment of natural stone) and the manufacture of asphalt products;
13. manufacture and processing of basic metals, heat treatment and coating of metals as well as painting of bodywork, except in mechanical workshops and locksmith shops;
14. manufacture of central heating, metal forging and roll-forming, manufacture of wire products, chain and springs;
15. manufacture of generators, transformers, domestic appliances and electrical wires and cables;
16. manufacture of watches and clocks;

<sup>201</sup> Revised in accordance with No II of the O of 8 Oct. 2014 (AS 2014 3293) and No II para. 1 of 1 Nov. 2017, in force since 1 Jan. 2018 (AS 2017 6753).

- 
17. manufacture of machines for activities described in numbers 1–16, of pumps, compressors, automobiles, other vehicles and motors;
  18. operation of public baths, artificial ice-skating rinks, tourist hotels and steam-driven locomotives and ships;
  19. warehousing operations in distribution centres;
  20. production of fossil-fuel-generated heating or cooling energy, possibly coupled with the production of electricity that feeds into regional district heating or cooling networks or is delivered to companies that are engaged in the activities listed in numbers 1–19 and 21.
  21. cleaning of barrels, containers and other packaging that are used in connection with the activities listed in this Annex.



*Annex 8*<sup>202</sup>  
(Art. 45 para. 1)

## Calculation of the maximum available quantity of emission allowances

1. The maximum total quantity of emission allowances available each year to all ETS companies as a whole is calculated as follows:

$$\text{Cap}_i = [\sum \text{ØFZ} + \sum \text{Øemissions}] * [1 - (i-2010) * 0.0174]$$

Cap<sub>i</sub>: Emissions cap for the year i

∑ ØFZ: Sum of the average emission allowances allocated annually in the 2008–2012 period to fixed installations that were already taken into account in the ETS in the 2008–2012 period and will again be taken into account in the ETS starting in 2013

∑ Øemissions: Sum of the average greenhouse gases emitted annually in the 2009–2011 period by the fixed installations and the greenhouse gas emissions that will be newly taken into account in the ETS starting in 2013

2. The quantity referred to in number 1 is reduced if an ETS company that produced its needed heat from fossil-fuel fuels draws the heat for the first time from a fossil-fuel-thermal power plant under Article 22 of the CO<sub>2</sub> Act.

<sup>202</sup> Revised by No II of the O of 8 Oct. 2014, in force since 1 Dec. 2014 (AS 2014 3293).

*Annex 9*<sup>203</sup>

(Art. 46 para. 1 and 46c para. 3)

## Calculation of emission allowances to be allocated free of charge

### 1 Benchmarks

1.1 The quantity of emission allowances to be allocated free of charge annually is based on the following product benchmarks:

Product	Product benchmark (number of emission allowances per tonne of manufactured products)
Coke	0.286
Iron ore sinter	0.171
Hot metal	1,328
Pre-bake anodes	0.324
Aluminium	1,514
Grey cement clinker	0.766
White cement clinker	0.987
Lime	0.954
Dolomite lime	1,072
Sintered dolomite	1,449
Float glass	0.453
Bottles and containers made of clear glass	0.382
Bottles and containers made of coloured glass	0.306
Products made of continuous glass fibre	0.406
Facing bricks	0.139
Paving bricks	0.192
Roofing tiles	0.144
Spray-dried powder	0.076
Gypsum	0.048
Dried secondary gypsum	0.017
Short-fibre sulphate pulp	0.12
Long-fibre sulphate pulp	0.06
Sulphite pulp, thermo-mechanical and mechanical pulp	0.02
Pulp made of recycled paper	0.039
Newsprint paper	0.298
Uncoated fine paper	0.318
Coated fine paper	0.318
Tissue paper	0.334
Test liner and fluting	0.248
Uncoated paperboard	0.237
Coated paperboard	0.273

<sup>203</sup> Revised in accordance with No II of the O of 8 Oct 2014 (AS 2014 3293) and of 22 June 2016, in force since 1 Aug. 2016 (AS 2016 2473).

Product	Product benchmark (number of emission allowances per tonne of manufactured products)
Nitric acid	0.302
Adipic acid	2,79
Vinyl chloride monomer (VCM)	0.204
Phenol/ acetone	0.266
S-pvc	0.085
E-pvc	0.238
Soda ash	0.843
Refinery products	0.0295
Carbon steel obtained using the electric arc process	0.283
High-alloy steel obtained using the electric arc process	0.352
Cast iron	0.325
Mineral wool	0.682
Gypsum paperboard	0.131
Industrial soot («Carbon Black»)	1,954
Ammonia	1,619
Steam cracking	0.702
Aromatics	0.0295
Styrene	0.527
Hydrogen	8,85
Synthetic gas	0.242
Ethylene oxide and ethylene glycol	0.512

- 1.2 If no product benchmark applies, then the quantity of emission allowances to be allocated free of charge annually is calculated based on the heat benchmark as follows:  
62.3 emission allowances per TJ of measurable heat.
- 1.3 If neither a product benchmark nor a heat benchmark applies, then the quantity of emission allowances to be allocated free of charge annually is calculated on the basis on the following thermal-fuel benchmark:  
56.1 emission allowances per TJ heating value of the used thermal fuels.
- 1.4 If none of the benchmarks described in numbers 1.1–1.3 is applicable, then the quantity of emission allowances to be allocated free of charge annually is calculated on the basis of 0.97 times the median of the annual process emissions in the years 2005–2008 or 2009–2010.
- 1.5 No emission allowances are allocated free of charge for the production of electricity.
- 1.6 No emission allowances are allocated free of charge for heat resulting from the manufacture of nitric acid.

## 2 General calculation of the emission allowances to be allocated free of charge

- 2.1 The free-of-charge allocation is calculated per sub-installation for each year of participation in the ETS, subject to number 4, according to the following formula:

$$Allocation_i = BM * AR * AF_i * SKF_i$$

Allocation<sub>i</sub>: Allocation in year i

BM Benchmark

AR Activity rate (referring to the relevant benchmark)

AF<sub>i</sub> Adaptation factor in year i in accordance with Annex 9 no 3

SKF<sub>i</sub> Cross-sectoral correction factor in year i

- 2.2 The benchmark is determined per sub-installation on the basis of the benchmark hierarchy described in numbers 1.2–1.4.
- 2.3 The activity rate refers to the relevant benchmark. It is determined at the initial allocation for each sub-installation and is adapted for each significant capacity change. The activity rate for the initial allocation generally corresponds to the median annual values in the years 2005–2008 or 2009–2010. If no sufficiently long representative reference period exists for the derivation of the activity rate or a significant capacity change has occurred, then the installed capacity as well as a decisive load factor are used to derive the activity rate relevant for allocation.
- 2.4 The installed capacity of an installation refers to the installation's sub-installations. It is a measure that is used to assess the materiality of capacity changes and to calculate the free-of-charge allocation of new installations and significantly modified installations. The FOEN calculates the installed capacity of an installation on the basis of the two highest monthly activity rates in a predefined time period.

## 3 Adaptation factors

- 3.1 For sectors and subsectors that are not listed in the Annex to Decision 2014/746/EU<sup>204</sup>, the quantities calculated in accordance with numbers 2 and 4 are multiplied by the following of adaptation factors:
- 3.1.1 for the year 2013: 0.8
  - 3.1.2 for the year 2014: 0.7286
  - 3.1.3 for the year 2015: 0.6571
  - 3.1.4 for the year 2016: 0.5857
  - 3.1.5 for the year 2017: 0.5143

<sup>204</sup> See footnote to Art. 135 lett. dbis.

- 3.1.6 for the year 2018: 0.4429  
 3.1.7 for the year 2019: 0.3714  
 3.1.8 for the year 2020: 0.3
- 3.2 If an ETS company delivers heat to a third party, then the customer's adaptation factor is decisive.

#### 4 Special adaptation factors for thermal fuels and electricity operated production processes

- 4.1 No emission allowances are allocated free of charge for indirect emissions from the use of electricity. For benchmarks of production processes that can be operated with either thermal fuels or electricity, 0.465 t CO<sub>2</sub> per MWh will be deducted for the indirect emissions from electricity used.

The quantity of emission allowances to be allocated free of charge annually is calculated in these cases as follows:

$$Allocation_i = (E_{direct} / (E_{direct} + E_{indirect})) * BM * AR * AF_i * SKF_i$$

Allocation<sub>i</sub> Allocation in year i

E<sub>direct</sub> Direct emissions from within the corresponding sub-installation with product benchmark in the selected reference period. These include emissions from heat consumed within the sub-installation that was obtained directly from other ETS companies.

E<sub>indirect</sub> Indirect emissions from heat consumed within the corresponding sub-installation with product benchmark that was obtained from a third party outside the ETS, as well as the electricity consumed within the sub-installation in the selected reference period.

BM Benchmark

AR Activity rate (referring to the relevant benchmark)

AF<sub>i</sub> Adaptation factor in year i in accordance with Annex 9, no 3

SKF<sub>i</sub> Cross-sectoral correction factor in year i

- 4.2 Production processes that are covered by the following product benchmarks can be operated either with thermal fuels or electricity:
- 4.2.1 Refinery products  
 4.2.2 Carbon steel obtained using the electric arc process  
 4.2.3 High-alloy steel obtained using the electric arc process  
 4.2.4 Cast iron  
 4.2.5 Mineral wool  
 4.2.6 Gypsum paperboard

- 4.2.7 Industrial soot («Carbon Black»)
- 4.2.8 Ammonia
- 4.2.9 Steam cracking
- 4.2.10 Aromatics
- 4.2.11 Styrene
- 4.2.12 Hydrogen
- 4.2.13 Synthetic gas
- 4.2.14 Ethylene oxide and ethylene glycol

*Annex 10*<sup>205</sup>  
(Art. 86 para. 1 and 89 para. 2)

### Motor fuels for which CO<sub>2</sub> emissions must be compensated

Customs tariff number <sup>206</sup>	Description	Emission factor t CO <sub>2</sub> per 1000 kg	Emission factor t CO <sub>2</sub> per TJ	Emission factor t CO <sub>2</sub> per m <sup>3</sup>
2710.1211	Petroleum spirit and fractions thereof, and mineral oil content in mixtures of this number, not including aviation fuel	3.15	73.80 at a calorific value (Hu) of 42.6 MJ/kg	2.32 with a density* of 737 kg/m <sup>3</sup>
ex 2710.1211	Aviation fuel	3.17	72.50 at a calorific value (Hu) of 43.7 MJ/kg	2.27 with a density* of 715 kg/m <sup>3</sup>
2710.1911	Petroleum oil, incl. aviation petrol	3.14	72.80 at a calorific value (Hu) of 43.2 MJ/kg	2.51 with a density* of 799 kg/m <sup>3</sup>
2710.1912	Diesel oil, and mineral oil content in mixtures of this number	3.15	73.30 at a calorific value (Hu) from 43.0 MJ/kg	2.62 with a density* of 830 kg/m <sup>3</sup>
2710.2010	Mineral oil content in mixtures of this number	3,15	73,30 at a calorific value (Hu) of 43,0 MJ/kg	2,62 with a density* of 830 kg/m <sup>3</sup>
2711.1110	Liquefied natural gas	2.58	56.4 at a calorific value (Hu) of 45.7 MJ/kg	1.16 with a density** of 451 kg/m <sup>3</sup>
2711.2110	Natural gas in gaseous state	2.58	56.4 at a calorific value (Hu) from 45.7 MJ/kg	0.002 with a density*** of 0.795 kg/m <sup>3</sup>
ex 2711	LPG (butane, propane)	3.01	65.50 at a calorific value (Hu) of 46.0 MJ/kg	1.63 with a density* of 540 kg/m <sup>3</sup>
3824.9920	Mineral oil content in mixtures of this number	3,15	73,80 at a calorific value (Hu) of 42,6 MJ/kg	2,32 with a density* of 737 kg/m <sup>3</sup>
3826.0010	Mineral oil content in mixtures of this number	3,15	73,30 at a calorific value (Hu) of 43,0 MJ/kg	2,62 with a density* of 830 kg/m <sup>3</sup>

\* at 15 °C  
\*\* at -161.5 °C  
\*\*\* at 0 °C, 1 bar

<sup>205</sup> Inserted by Annex 2 No 3 of the O of 29 March 2017 on the Federal Inventory of Landscapes and Natural Monuments, in force since 1 June 2017 (AS 2017 2815).

<sup>206</sup> SR 632.10 Annex

*Annex I I*<sup>207</sup>  
(Art. 94 para. 2)

## Tariff of the CO<sub>2</sub> levy for thermal fuels: 94 francs per tonne CO<sub>2</sub>

Customs tariff number <sup>208</sup>	Description	Levy in CHF
		per 1000 kg
2701.	Coal; briquettes, ovoids and similar solid fuels manufactured from coal:	
	– black coal, whether pulverized or not, but not agglomerated:	
1100	– – anthracite	226.60
1200	– – bituminous coal	226.60
1900	– – other coal	226.60
2000	– briquettes, ovoids and similar solid fuels manufactured from coal	226.60
2702.	Lignite, whether agglomerated or not, excluding jet:	
1000	– lignite, whether agglomerated or not, but not agglomerated	217.90
2000	– agglomerated lignite	217.90
2704. 0000	Coke and semi-coke of coal, of lignite or of peat, whether or not agglomerated; retort carbon	272.60
		per 1000 l at 15°C
2710.	Petroleum oils or oils obtained from bituminous minerals, other than crude; preparations not elsewhere specified or included, containing by weight 70% or more of oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations; waste oils:	
	– petroleum oils or oils obtained from bituminous minerals (other than crude) and preparations not elsewhere specified or included, containing by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations, other than those containing biodiesel and other waste oils:	
	– – light oils and preparations:	
	– – – for use as fuel:	
1291	– – – – petroleum spirit and fractions thereof	222.70
1292	– – – – white spirit	222.70
1299	– – – – other	222.70
	– – – other:	
	– – – – for use as fuel:	
1991	– – – – petroleum oil	241.00
1992	– – – – heating oils:	
	– – – – – extra light	254.40
		per 1000 kg
	– – – – – medium, having a sulphur content	304.30
1999	– – – – other distillates and products:	

<sup>207</sup> Amended by No II para. 2 of the O of 21 Sept. 2018, in force since 1 Nov. 2018 (AS 2018 3477).

<sup>208</sup> SR 632.10 Annex



Customs tariff number	Description	Levy in CHF
		per 1000 l at 15°C
1999	----- gas oil	254.40
	----- other	per 1000 kg 304.30
		per 1000 l at 15°C
	– petroleum oils or oils obtained from bituminous minerals (other than crude) and preparations not elsewhere specified or included, containing by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals, these oils the basic constituents of the preparations, containing biodiesel, other than waste oils:	
2090	– – for other uses (only fossil-fuel portion)	254.40
2711.	Petroleum gases and other gaseous hydrocarbons:	
	– liquefied:	
	– – natural gas:	
1190	– – – other	115.20
	– – propane:	
1290	– – – other	145.90
	– – butane:	
1390	– – – other	169.00
	– – ethylene, propylene, butylene and butadiene:	
1490	– – – other	187.20
	– – other:	
1990	– – – other	187.20
		per 1000 kg
	– in gaseous state:	
	– – natural gas:	
2190	– – – other	255.40
	– – other:	
2990	– – – other	268.80
2713.	Petroleum coke, petroleum bitumen and other residues of petroleum oils or of oils obtained from bituminous minerals:	
	– petroleum coke:	
1100	– – not calcined	279.40
1200	– – calcined	279.40
		per 1000 l at 15°C
2905.	Acyclic alcohols and their halogen, sulfo-, nitro- or nitroso derivatives:	
	– saturated monovalent alcohols:	
	– – methanol (methyl alcohol):	
1190	– – – other (only fossil-fuel portion)	104.60
3826.	Biodiesel and mixtures thereof, not containing or containing less than 70 % by weight of petroleum oils or oils obtained from bituminous minerals:	
0090	– other (only fossil-fuel portion)	254.40
...	thermal fuels from other fossil-fuel source materials	222.70

*Annex I* 2<sup>209</sup>  
(Art. 112–113*b*)

## **Direct use of geothermal energy for the provision of heat**

### **1 Prospecting and development**

- 1.1 Prospecting covers investigations which on the one hand serve to indirectly characterise the subsoil of a presumed geothermal reservoir and, on the other hand, determine the above-ground site and the underground landing point of an exploration well.
- 1.2 Development covers exploration by drilling and extracting hot water and the possibility of returning the extracted water (via a second drill hole) into the geothermal reservoir.

### **2 Eligible investment costs**

- 2.1 Eligible costs comprise only the investment costs for prospecting that are actual costs and are directly necessary for the economic and appropriate implementation of the project and which cover:
  - a. the acquisition of new geodata in the prospecting area;
  - b. work required for the acquisition of new geodata;
  - c. analysis and interpretation.
- 2.2 Eligible costs comprise only the investment costs for development that are actual costs and are directly necessary for the economic and appropriate implementation of the project and which cover:
  - a. the preparation, construction and dismantling of the drilling site;
  - b. drilling, including pipework, cementation and completion for the planned exploration well, the well for returning extracted water and microseismic monitoring wells;
  - c. well stimulation;
  - d. borehole tests;
  - e. borehole measurements including instrumentation;
  - f. analyses of substances found;
  - g. geological monitoring, data analysis and interpretation.
- 2.3 The costs incurred within the framework of official processes concerning prospecting and development shall not constitute eligible costs.

<sup>209</sup> Inserted by No II para. 3 of the O of 1 Nov. 2017, in force since 1 Jan. 2018 (AS 2017 6753).

### **3 Procedure to support prospecting**

#### **3.1 Application**

The application must provide information on the technical, economic, legal, safety, environmental protection and organisational aspects of the project, in particular on:

- a. the current state of knowledge in the exploration area including all existing processed geodata, analyses and interpretations;
- b. the geological prospecting planned for determining the sites and landing points of a well and the location and characterisation of a geothermal well, and the expected added value in terms of an increase in the probability of successful development;
- c. utilisation concepts for successful prospecting and preliminary feasibility studies;
- d. detailed schedules and cost estimates with deviations of no more than 20 per cent;
- e. the measures planned to identify hazards and risks to health, occupational and operational safety, and the environment, in particular drinking water resources, and the measures planned to reduce these risks to a level that is as low, reasonable and practicable as possible.

#### **3.2 Examination of the application**

3.2.1 The SFOE BFE shall appoint a representative of the Federal Office of Topography (swisstopo) to the independent panel of experts, in particular to assess the geoscientific project components and the added value for exploration in Switzerland.

3.2.2 The panel of experts shall examine and assess the application on the basis of the information referred to in point 3.1 and in particular with regard to:

- a. the planned prospecting work and project management;
- b. the technical and qualitative state of the planned work and the degree of innovation;
- c. the question of how much the prospecting work increases the probability of finding and closing a geothermal reservoir;
- d. the added value for exploring the substrate of Switzerland for geothermal reservoirs;
- e. the management of risks to health, occupational and operational safety and the environment.

3.2.3 If the panel of experts assesses the project positively, it shall in particular make a recommendation to the SFOE on:

- a. the expected increase in the probability of finding a geothermal reservoir;
- b. the deadlines for the project stages;
- c. the amount of the contribution to be granted for prospecting;
- d. the appointment of a representative of swisstopo as project supervisor.

### 3.3 Contract

Where the contribution for prospecting can be granted, the following points in particular shall be regulated in the contract under Article 113 paragraph 5:

- a. the milestones to be reached by the applicant and the deadlines to be met;
- b. the applicant's obligation to inform the SFOE, in particular with regard to financial reports, final accounts and any changes to the project;
- c. the scope, conditions and due date of the contribution for prospecting;
- d. subject to cantonal monopolies, the transfer, free of charge, of the installation to the Confederation and the granting to the Confederation of the right to purchase the property if a project is discontinued and not used for any other purpose;
- e. the disclosure of all financial data necessary to calculate any losses or gains under Article 113*b*;
- f. reasons leading to termination of the contract;
- g. further requirements.

### 3.4 Project implementation and completion

3.4.1 The project engineer carries out the planned prospecting work.

3.4.2 The project supervisor oversees the project during prospecting work; he or she evaluates the results and reports regularly to the panel of experts.

3.4.3 If the milestones or deadlines under point 3.3 letter a are not met, the SFOE may terminate the contract immediately.

3.4.4 After completion of the work, the panel of experts shall evaluate the results of the prospecting work for the SFOE and assess them with regard to the expected increase in the probability of finding a suspected geothermal reservoir.

## 4 Procedures to support development

4.1 An application for support for development may only be submitted if prospecting has been carried out beforehand in the area concerned and a prospecting report regarding the probability of a presumed geothermal reservoir is available.

### 4.2 Application

The application must provide information on the technical, economic, legal, safety, environmental protection and organisational aspects of the project, and in particular on:

- a. the detailed drilling, completion, measuring and testing programme for all planned drilling;
- b. detailed schedules and cost estimates with deviations of no more than 20 per cent;

- c. the expected properties of the presumed geothermal reservoir, in particular its temperature in the borehole at the level of the reservoir and its transport properties;
  - d. the planned use of the wells and the geothermal reservoir if the results do not meet expectations;
  - e. the measures planned to identify hazards and risks to health, occupational and operational safety, and the environment, in particular drinking water resources, and the measures planned to reduce these risks to a level that is as low, reasonable and as practicable as possible;
  - f. the innovations planned to open up geothermal reservoirs in Switzerland in a reliable and promising manner;
  - g. the importance of development works in relation to the exploration of Switzerland's subsoil for geothermal reservoirs;
  - h. the intended legal form or name and business of the operating company;
  - i. the financing and administrative costs of the development, construction, extension, operation and dismantling phases;
  - j. the use of the hot groundwater obtained on the basis of a utilisation concept, a description of the planned heat consumers and their integration into the project, including the expected reductions in CO<sub>2</sub> emissions.
- 4.3 Examination of the application
- 4.3.1 The SFOE BFE shall appoint a representative of swisstopo to the independent panel of experts, in particular to assess the geoscientific project components and the added value for exploration in Switzerland.
- 4.3.2 The panel of experts shall examine and assess the application on the basis of the information referred to in point 4.2 and in particular with regard to:
- a. the expected properties of the geothermal reservoir, in particular with regard to the temperature in the borehole at the level of the reservoir and its transport properties;
  - b. the technical and qualitative state of the planned work and the degree of innovation;
  - c. the added value for exploring the substrate of Switzerland for geothermal reservoirs;
  - d. the management of risks to health, occupational and operational safety and the environment.
- 4.3.3 If the panel of experts assesses the application positively, it shall in particular make a recommendation to the SFOE on:
- a. the expected temperature of the reservoir in the borehole at the level of the reservoir and its transport properties;
  - b. the deadlines for the project stages;
  - c. the amount of the development contribution to be granted;
  - d. the appointment of an independent expert to accompany the project.

#### 4.4 Contract

Where the contribution for development may be granted, the following points in particular shall be settled in the contract under Article 113 paragraph 5:

- a. the milestones to be reached by the applicant and the deadlines to be met;
- b. the applicant's obligation to inform the SFOE, in particular with regard to financial reports, final accounts and any changes to the project;
- c. scope, conditions and due date of the contribution for development;
- d. subject to cantonal monopolies, the transfer, free of charge, of the installation to the Confederation and the granting to the Confederation of the right to purchase the property if a project is discontinued and not used for any other purpose,;
- e. the disclosure of all financial data necessary to calculate any losses or gains under Article 113*b*;
- f. reasons leading to termination of the contract;
- g. further requirements.

#### 4.5 Project implementation and completion

- 4.5.1 The project engineer carries out the planned development work.
- 4.5.2 The project supervisor oversees the project during prospecting work; he or she evaluates the results, in particular with regard to the temperature and transport properties of the reservoir, and reports regularly to the panel of experts.
- 4.5.3 If the milestones or deadlines under point 4.4 letter a are not met, the SFOE may terminate the contract immediately.
- 4.5.4 No later than six months after completion of the development work, the panel of experts shall evaluate the results of the development work.
- 4.5.5 The SFOE shall inform the project engineer of the results of the assessment, in particular those relating to the geothermal reservoir.

### 5 Geodata

- 5.1 The applicant shall make the respective geodata available free of charge to swisstopo and to the canton where the prospecting and development is taking place in accordance with the technical specifications of swisstopo no later than six months after the data was collected.
- 5.2 swisstopo may use and process these geodata in accordance with the objectives of the Geoinformation Act of 5 October 2007<sup>210</sup> and the Geological

<sup>210</sup> SR 510.62

Survey Ordinance of 21 May 2008<sup>211</sup>; the cantons with prospecting and development sites may do so in accordance with their respective regulations.

- 5.3 It shall make the primary and the processed primary geodata available to the public within 24 months after completion of prospecting and within 12 months after completion of development.

<sup>211</sup> SR 510.624

