THE UK GREENHOUSE GAS EMISSIONS TRADING
(AMENDMENT) SCHEME 2008

The Secretary of State makes the following scheme in accordance with rule G1(1) of the

He has consulted(b) participants in accordance with rule G1(3).

Citation and commencement

1. This scheme may be cited as the UK Greenhouse Gas Emissions Trading

Replacement and revocation

2. This scheme replaces, and revokes, the UK Greenhouse Gas Emissions Trading
   (Amendment) Scheme 2007.

Amendment of the UK Greenhouse Gas Emissions Trading Scheme 2002

3. The UK Greenhouse Gas Emissions Trading Scheme 2002 is amended as follows.

4. After rule D1(2)(b), insert—
   “(ba) rule D3A sets out the requirements in cases of an EU ETS overlap”.

5. After rule D3, insert the following rule—

   “EU-ETS overlap

   D3A.—(1) This rule applies in the case of any facility where (and to the extent
   that)—
   (a) any Schedule 1 activity takes place within that facility; or
   (b) that facility imports—
   (i) heat or electricity from a separate combined heat and power plant; or
   (ii) steam from a separate boiler,
   where that plant or boiler undertakes a Schedule 1 activity,
   (these cases, or any combination of them at the same facility, being an “EU ETS
   overlap”).

   Notification of EU ETS overlap
   (2) For each facility falling within this rule—
   (a) in a case falling within rule D1(3), the operator; or
   (b) in a case falling within rule D1(4), the sector association,

(a) The UK Greenhouse Gas Emissions Trading Scheme 2002 has been amended by the UK Greenhouse Gas Emissions Trading
   (Amendment) Scheme 2004; the UK Greenhouse Gas Emissions Trading (Amendment) Scheme 2005; the UK Greenhouse
   Gas Emissions Trading (Amendment) (No. 2) Scheme 2005; the UK Greenhouse Gas Emissions Trading (Amendment) Scheme

(b) The consultation was held from 10 January to 15 February 2008. This scheme is prepared on the basis of the consideration
   of the responses received during that consultation; a further (brief) consultation was held with CCA sector associations from
   23 to 30 April 2008 to seek views on amendments made (to the new rule D3A(1) and (4) and the new paragraph 4(b) of
   Schedule 5A) following consideration of the responses to the initial consultation. The new scheme largely re-enacts the UK
shall, in respect of each scheme year specified in the table below, provide the Secretary of State with the notification required by paragraph (3) on or by the notification deadline—

<table>
<thead>
<tr>
<th>Scheme year</th>
<th>Notification deadline</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007</td>
<td>7 February 2009</td>
</tr>
<tr>
<td>2009</td>
<td>7 February 2011</td>
</tr>
</tbody>
</table>

(3) The notification consists of confirmation of—
(a) the EU ETS overlap; and
(b) any—
   (i) EU ETS overachievement; or
   (ii) EU ETS underachievement,
in accordance with Schedule 5A.

(4) For the purpose of paragraph (3)(b)—
(a) an EU ETS overachievement occurs where reportable emissions from the Schedule 1 activity are less than the number of attributable EU ETS allowances; and
(b) an EU ETS underachievement occurs where reportable emissions from the Schedule 1 activity are greater than the number of attributable EU ETS allowances,

where the attributable EU ETS allowances are those EU ETS allowances allocated to the relevant EU ETS installation for the scheme year in question and which are attributable to the Schedule 1 activity taking place within the facility concerned or, in a case falling under paragraph (1)(b), to the relevant import.

Reserve powers of Secretary of State

(5) The Secretary of State may require the operator or sector association to—
(a) obtain a verification opinion in respect of its notification; or
(b) review or amend its notification.

Effect of notification

(6) Paragraphs (7) to (9) apply for the purpose of adjusting the CCA target or trading group target applying to the facility in question so that the target takes account of any EU ETS overachievement or EU ETS underachievement notified.

(7) In the case of an EU ETS overachievement, except where the operator or the sector association has already retired a number of EU ETS allowances at least equal to the overachievement, the notification shall, for the purpose of the emissions trading provisions of—
(a) the underlying agreement which applies to the facilities making up the relevant target unit at the time of the adjustment; or
(b) the umbrella agreement which provides for the identification of the relevant trading group at the time of the adjustment,
be deemed to be the transfer from that target unit or trading group target of an equivalent number of carbon emission allowances, in accordance with a trading scheme established by the Secretary of State which applies to the relevant agreement, and the number of allowances deemed to have been transferred shall constitute a negative balance in relation to that target unit or trading group.

(8) In cases of an EU ETS underachievement, the notification shall, for the purposes set out in paragraphs (7)(a) and (b), be deemed to be the transfer to that target unit or trading group target of an equivalent number of carbon emission allowances, in accordance with a trading scheme established by the Secretary of
State which applies to the relevant agreement, and the number of allowances deemed to have been transferred shall constitute a positive balance in relation to that target unit or trading group.

(9) Where a notification is amended, that amendment shall be deemed to be the transfer of the commensurate number of carbon emission allowances to reflect the amendment, in accordance with the principles of paragraphs (7) and (8).

Guidance

(10) The operator or sector association shall have regard to any guidance issued by the Secretary of State in respect of the application of this rule.

Interpretation

(11) For the purposes of this rule and Schedule 5A—

(a) “EU ETS installation” is an “installation” within the meaning of regulation 2(1) of the Greenhouse Gas Emissions Trading Scheme Regulations 2005(a); and

(b) “reportable emissions” and “scheme year”, have the meaning set out in that regulation.”.

6. In rule D4—

(a) in paragraph (2)—

(i) in sub-paragraph (a), between “the CCA target” and “for that target unit”; and

(ii) at the end of sub-paragraph (b),

insert and add (respectively) “(as adjusted in accordance with rule D3A(7) to (9))”; and

(b) (i) in paragraph (4)(b); and

(ii) in paragraph (10)(b),

add, at the end of each of those paragraphs, “and, where it is relevant, the notification procedure under rule D3A(2) and (3)”. 

7. In rule D5(1)—

(a) between “CCA target” and “for a target unit”; and

(b) between “trading group target” and “by retiring allowances”,

insert “(as adjusted in accordance with rule D3A(7) to (9))”.

8. In rule D7(1)—

(a) at the end of sub-paragraph (b), delete “or”;

(b) at the end of sub-paragraph (c), replace the full stop with “; or”; and

(c) after sub-paragraph (c), add the following sub-paragraph—

“(d) an operator or sector association fails to notify the Secretary of State as required by rule D3A(2) and (3).”.

9. In Schedule 1, paragraph 3, delete the following defined expression—

“‘Secretary of State’ means the Secretary of State for Environment, Food and Rural Affairs;”.

10. After Schedule 5, insert the following Schedule—

(a) S.I. 2005/925.
“SCHEDULE 5A
Notification of an EU ETS overlap

Introduction

1.—(1) This Schedule prescribes the information an operator or sector association is required to submit to the Secretary of State for the purpose of rule D3A(3).

(2) In this Schedule, references to an “operator” are to be taken as a reference to a sector association in cases falling within rule D3A(2)(b).

The EU ETS overlap

2. In respect of the CCA facility and target, the operator shall—
   (a) identify the facility, including the facility number; and
   (b) specify the target unit applying to the facility, including in particular—
       (i) where the target is a relative target, details of throughput;
       (ii) where the target unit has an energy target, details of the fuel split from the facility and the relevant carbon emission factors used.

3. In respect of the relevant EU ETS installation, the operator shall—
   (a) identify the installation, and its National Allocation Plan ID; and
   (b) confirm—
       (i) the number of EU ETS allowances issued to that installation; and
       (ii) the level of emissions emitted from that installation, in respect of the scheme year notified.

4. The operator shall, in accordance with the methodology set out in any guidance issued by the Secretary of State under rule D3A(10), specify the extent to which the Schedule 1 activities of that EU ETS installation—
   (a) take place within the facility; or
   (b) are attributable to an import referred to under rule D3A(1)(b), providing the Secretary of State (and, where relevant, any verifier) with the necessary data and calculations in support.

EU ETS overachievement or underachievement

5. The operator shall, in accordance with the methodology set out in any guidance issued by the Secretary of State under rule D3A(10), specify—
   (a) the amount of any EU ETS overachievement; or
   (b) the amount of any EU ETS underachievement, expressed, in either case, in terms of the number of EU ETS allowances to which that overachievement or underachievement is equal and providing the Secretary of State (and, where relevant, any verifier) with the necessary data and calculations to justify its notification in respect of this paragraph.

Retirement of EU ETS allowances

6. The operator shall confirm if it has already retired a number of EU ETS allowances at least equal to its EU ETS overachievement.
Other information

7. In addition to supplying the information required by this Schedule, the operator shall provide any other information—

   (a) which is requested by the Secretary of State; or
   (b) which it considers would be relevant to the application of rule D3A.”.

MADE ON BEHALF OF THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS,

Signed

[Signature]

Dated November 2008