Citation and commencement

1. This scheme may be cited as the UK Greenhouse Gas Emissions Trading (Amendment) Scheme 2007 and comes into force on 30 January 2007.

Amendment of the UK Greenhouse Gas Emissions Trading Scheme 2002

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

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

4. After rule D3, insert the following rule—

   “EU-ETS overlap

   D3A.—(1) This rule applies where—

   (a) (i) in a case falling within rule D1(3), an operator; or
   (ii) in a case falling within rule D1(4), an operator of a facility within a trading group,
   is (or has been) an EU ETS participant in respect of an EU ETS installation comprised within a facility forming part of a target unit or trading group; and
   (b) in relation to that facility, an EU ETS overlap occurs (or has occurred).

   (2) An EU ETS overlap occurs to the extent that any emissions from the facility are also reportable emissions from the relevant EU ETS installation.

   Notification of EU ETS overlap

   (3) For the purpose of assessment of any EU ETS overlap during each target period—

   (a) the operator; or
   (b) where at the time of notification the relevant target unit for the facility in question is part of a trading group, the sector association,
   shall, in respect of each scheme year specified in the table below, provide the Secretary of State with the notification required by paragraph (4) on or by each notification deadline—

   ____________________________


   (b) The consultation was held in 2004. A copy of Defra’s consultation paper is available on request. This scheme is prepared on the basis of the consideration of the responses received during that consultation.
(4) In respect of the relevant scheme year, the operator or sector association (as the case may be) shall, in accordance with Schedule 5A, specify—

(a) the EU ETS overlap; and

(b) in relation to that overlap—
   (i) the EU ETS overachievement;
   (ii) the EU ETS underachievement; or
   (iii) that there has been neither.

(5) For the purpose of paragraph (4)(b)—

(a) an EU ETS overachievement occurs where the overlap emissions emitted during the scheme year are less than the number of EU ETS allowances allocated to the relevant EU ETS installation for that year and which are attributable to those emissions, the difference between the two constituting the overachievement; and

(b) an EU ETS underachievement occurs where the overlap emissions emitted during the scheme year are greater than the number of EU ETS allowances allocated to the relevant EU ETS installation for that year and which are attributable to those emissions, the difference between the two constituting the underachievement.

Reserve powers of Secretary of State

(6) 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

(7) Paragraphs (8) to (10) 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.

(8) 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 its 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 target unit applicable to the overlap emissions at the time of the adjustment; or

(b) the umbrella agreement which provides for the identification of the relevant trading group applicable to the overlap emissions 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 thus deemed to have been transferred shall constitute a negative balance in relation to that target unit or trading group.

(9) In all cases of an EU ETS underachievement, the notification shall, for the purposes set out in paragraphs (8)(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 thus deemed to have been transferred shall constitute a positive balance in relation to that target unit or trading group.
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 (8) and (9).

**Guidance**

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**

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);

(b) an “EU ETS participant” means an “operator” within the meaning of that regulation who also falls within the ambit of paragraph (1)(a) above;

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

(d) “overlap emissions” are emissions falling within paragraph (2).”.

5. At 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 (10))”;
   (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(3) and (4)”.

6. At 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 (10))”.

7. At 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(3) and (4).”.

8. After Schedule 5, insert the following Schedule—

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(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 under rule D3A(4).

(2) For the purposes of this Schedule, references to an “operator” are to be taken as a reference to a sector association in cases falling within rule D3A(3)(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 each EU ETS installation the emissions of which constitute the EU ETS overlap with the facility in question, the operator shall—
   (a) identify the relevant EU ETS installation, and its National Allocation Plan ID;
   (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(11), specify—
   (a) the overlap emissions emitted from the facility in question; and
   (b) the extent to which the reportable emissions from the relevant EU ETS installation do not constitute overlap emissions in the particular case,

providing the Secretary of State (and, where relevant, any verifier) with the necessary data and calculations to justify its notification in respect of sub-paragraphs (a) and (b).

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(11), specify—
   (a) (i) the amount of the EU ETS overachievement; or
   (ii) the amount of the EU ETS underachievement,
      expressed, in either case, in terms of the number of EU ETS allowances to which that overachievement or underachievement is equal; or
   (b) where there has been neither, that fact,

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 that it has already retired a number of EU ETS allowances at least equal to its EU ETS overachievement, if this is the case.

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 establish an EU ETS overlap, an EU ETS overachievement or an EU ETS underachievement (or to establish that neither has occurred) in the particular case.”.

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

Signed

Dated 29 January 2007