THE UK GREENHOUSE GAS EMISSIONS TRADING
(AMENDMENT) (NO. 2) SCHEME 2005

The Secretary of State, in exercise of the powers conferred on her by rule G1 of the UK
Greenhouse Gas Emissions Trading Scheme 2002(a), makes the following scheme:

Citation and Commencement

1. This scheme may be cited as the UK Greenhouse Gas Emissions Trading (Amendment) (No.
2) Scheme 2005 and shall come into force on 30th September 2005.

Amendment of the UK Greenhouse Gas Emissions Trading Scheme 2002

2. The UK Greenhouse Gas Emissions Trading Scheme 2002 shall be amended in accordance
with the following provisions.

3. In rule C3 after paragraph (5), the following paragraphs shall be inserted—
“(5A) Where a direct participant’s source list is amended in accordance with Schedule 3 as
a result of the removal of an incorrectly included source, the direct participant shall be
liable to repay with interest the corresponding proportion of any incentive payments which
he has received from the Secretary of State, calculated in accordance with paragraph (5B)
and any such payment shall be recoverable as a civil debt.
(5B) The amount to be repaid (A) under paragraph (5A) is the result of the following
calculation—

\[ A = \frac{B_5 \times I_P}{B_O} \]

Where—

- \( B_5 \) is the figure for the baseline emissions of the source for which was incorrectly
  included;
- \( I_P \) is the total amount of incentive payments received by the participant prior to
  the withdrawal;
- \( B_O \) is the participant’s baseline prior to the incorrect inclusion;

(5C) Paragraph 7(5)(a) of Schedule 2 shall apply to determine whether a source has been
incorrectly included for the purposes of paragraphs (5A) and (5B).”

4. In rule C5(2), after the words “Subject to”, the words “paragraph 2A and” shall be inserted.

5. Immediately before rule C5(3), the following paragraphs shall be inserted—
“(2A) Where, in 2005 or 2006—
(a) a direct participant’s source list contains a source in respect of which a certificate of
temporary exclusion has been served under regulation 11 of the Greenhouse Gas
Emissions Trading Scheme Regulations 2005(b) or an equivalent provision in any
superseding legislation, and the certificate is in force; and

(a) The 2002 Scheme was amended on 1st January 2005 by the UK Greenhouse Gas Emissions Trading (Amendment) Scheme
(b) S.I. 2005/925.
(b) the Secretary of State has made her decision under sub-paragraph (1)(b) of regulation 19 of the Greenhouse Gas Emissions Trading Scheme Regulations 2003(a),

the number of allowances to be allocated to the participant in respect of that source shall be calculated in accordance with the methodology set out in the document, “UK application to provide for temporary exclusion from the EU Emissions Trading Scheme for Direct Participants in the UK Emissions Trading Scheme” as revised in May 2004, as read with paragraph (2) of this rule.

(2B) Where, in 2005 or 2006—

(a) a direct participant’s source list contains a source in respect of which a certificate of temporary exclusion has been served under regulation 11 of the Greenhouse Gas Emissions Trading Scheme Regulations 2005 or an equivalent provision in any superseding legislation; and

(b) the Secretary of State has made her decision under sub-paragraph (1)(b) of regulation 19 of the Greenhouse Gas Emissions Trading Scheme Regulations 2003 after allowances have been allocated in accordance with paragraph (2),

the Secretary of State shall cancel allowances from the compliance account of the participant in question equivalent to the difference between the number of allowances allocated and the number of allowances that would have been allocated in accordance with paragraph (2A) had paragraph (2A) applied at the time of allocation.

(2C) If, in relation to any direct participant, the Secretary of State is unable to comply with paragraph (2B) due to there not being sufficient allowances in the participant’s compliance account, she shall notify the participant of—

(a) the number of allowances that she was required to cancel under paragraph (2B);

(b) the number of allowances that she has cancelled under paragraph (2B); and

(c) the number of outstanding allowances.

(2D) A direct participant shall cancel the number of outstanding allowances within 21 days of the Secretary of State sending a notice to him under paragraph (2C).

(2E) If a direct participant fails to comply with paragraph (2D), the direct participant shall be deemed to have failed to comply with his emissions limitation commitment as set out in rule C6(1) for that commitment year, and his excess emissions for the purpose of rule C6 shall be increased by the number of outstanding allowances.

(2F) For the purposes of this rule, “outstanding allowances” means the number of allowances that the Secretary of State is obliged to cancel under paragraph (2B) in relation to a direct participant minus the number of allowances cancelled under both paragraphs (2B) and (2D) in relation to that participant.”.

6.—(1) Schedule 2 is amended in accordance with the following paragraphs of this rule.

(2) In paragraph 7(6), the word “For” at the start of the sub-paragraph shall be deleted and substituted by the words “Except where paragraph (7) applies, for”.

(3) After paragraph 7(6), the following sub-paragraph shall be inserted—

“(7) Where a change of operation takes place after 30th June in any commitment year, for the purpose of calculating a direct participant’s annual emissions under paragraph 8 of this Schedule, any amendments made to a direct participant’s source list, baseline and targets pursuant to Schedule 3 shall take effect from 1st July of that commitment year.”.

7.—(1) Schedule 3 is amended in accordance with the following paragraphs of this rule.

(2) The words “notify the Secretary of State of the fact, and on receipt of such notification, the Secretary of State shall” shall be inserted—

(a) S.I. 2003/3311. These Regulations have been revoked, save that regulation 19(1) shall continue to apply until the obligations under that regulations are fulfilled in respect of the period 2005-2007 – see regulation 47 of the Greenhouse Gas Emissions Trading Scheme Regulations 2005 (S.I. 2003/3311).
(a) after the word “must” in paragraph 2(3)(b); and
(b) after the word “shall” in paragraph 4(1)(b).

(3) After paragraph 1(5)(a), the following paragraph shall be inserted—

“(aa) where management control of the source is divested by virtue of paragraph 3(1)(d), 1st January 2005 or, if later, the date upon which the Schedule 1 activity commenced.”.

(4) In paragraph 1(5)(b), for the words “paragraph (a)” there shall be substituted “paragraphs (a) and (aa)”.

(5) In paragraph 1(5)(c), for the words “paragraphs (a) and (b)” there shall be substituted “paragraphs (a), (aa) and (b)”.

(6) The word “or” at the end of paragraph 3(1)(b) shall be deleted.

(7) The word “or” shall be inserted at the end of paragraph 3(1)(c).

(8) The following paragraph shall be inserted after paragraph 3(1)(c)—

“(d) a source, whose emissions are not excluded emissions, is an installation, or part of an installation, carrying out a Schedule 1 activity.”.

(9) In sub-paragraph 3(2), for the words “(1)(b) and (c)” there shall be substituted “(1)(b), (c) and (d)”.

(10) In paragraph 10(2), for the word “For” at the start of the sub-paragraph there shall be substituted “Subject to sub-paragraph (3), for”.

(11) After paragraph 10(2), the following sub-paragraph shall be inserted—

“(3) For the purposes of this paragraph, if a direct participant opens or re-opens a source, then insofar as the source emits, in relation to any Schedule 1 activity, any of the greenhouse gas emissions specified in that Schedule in relation to that activity, then the direct participant shall not be taken as acquiring a substitute source.”.

(12) In paragraph 11(3)(b)(i)(bb), for the words “excess allowances shall be cancelled by the participant” there shall be substituted “the participant shall notify the Secretary of State of the number of excess allowances, and on receipt of such notification, the Secretary of State shall cancel those allowances”.

(13) The following paragraph shall be inserted immediately after paragraph 13—

“13A.—(1) If, in relation to any direct participant, the Secretary of State is unable to comply with her obligations to cancel allowances under this Schedule due to there not being sufficient allowances in the participant’s compliance account she shall notify the participant of—

(a) the number of allowances that she was required to cancel under this Schedule;
(b) the number of allowances that she has cancelled under this Schedule; and
(c) the number of outstanding allowances.

(2) A direct participant shall cancel the number of outstanding allowances within 21 days of the Secretary of State sending a notice to him under sub-paragraph (1).

(3) If a direct participant fails to comply with paragraph (2), the direct participant shall be deemed to have failed to comply with his emissions limitation commitment as set out in rule C6(1) for that commitment year, and his excess emissions for the purpose of rule C6 shall be increased by the number of outstanding allowances.

(4) For the purposes of this paragraph, “outstanding allowances” means the number of allowances that the Secretary of State is obliged to cancel under this Schedule in relation to a direct participant minus the number of allowances cancelled by the Secretary of State pursuant to that obligation, and the number of allowances cancelled in accordance with sub-paragraph (2).”.

(14) After paragraph 17(5), the following sub-paragraph shall be inserted—

“(6) Where a direct participant divests management control of a source after 30th June in a commitment year the calculations in sub-paragraphs (3) to (5) shall be performed in two stages—
(a) the calculations to determine the amended baseline and targets for the commitment year in which the source was divested shall be performed as set out in sub-paragraphs (3) to (5) but using “½BS” instead of “BS”, and

(b) the calculations to determine the baseline and targets for subsequent years shall be performed as set out in sub-paragraphs (3) to (5).”.

(15) After paragraph 18(5), the following sub-paragraph shall be inserted—

“(6) Where a direct participant acquires a source after 30th June in a commitment year the calculations in sub-paragraphs (3) to (5) shall be performed in two stages—

(a) the calculations to determine the amended baseline and targets for the commitment year in which the source was acquired shall be performed as set out in sub-paragraphs (3) to (5) but using “½B5” instead of “B5”, and

(b) the calculations to determine the baseline and targets for subsequent years shall be performed as set out in sub-paragraphs (3) to (5).”.

(16) Paragraph 19 shall be renumbered as sub-paragraph (1) of that paragraph.

(17) After paragraph 19(1), as so renumbered, the following sub-paragraph shall be inserted—

“(2) Where a direct participant divests a source after 30th June in a commitment year, the calculation in sub-paragraph (1) shall be performed using “½B5” instead of “B5”.”.

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

Chris Leigh
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(on behalf of the Secretary of State)