

The Greenhouse Gas Emissions Trading Scheme (Miscellaneous Provisions) Regulations 2011

Standalone regulations

Citation and commencement

1 These Regulations may be cited as the Greenhouse Gas Emissions Trading Scheme (Miscellaneous Provisions) Regulations 2011 and come into force on [1 April 2011].

Specification of approved national allocation plan

2(1) Regulation 2 of the Greenhouse Gas Emissions Trading Scheme (Miscellaneous Provisions) Regulations 2007¹ is revoked.

(2) For the purposes of the Greenhouse Gas Emissions Trading Scheme Regulations 2005², the document entitled “EU Emissions Trading Scheme: Approved Phase II National Allocation Plan 2008-2012”³ published by the Secretary of State on [] 2011 is specified as the approved national allocation plan for the five year period beginning on 1st January 2008.

Proposed amendments of The Greenhouse Gas Emissions Trading Scheme Regulations 2005 (SI 2005/925)

Note: All proposed amendments are shown in red text. For the purpose of context some proposed amendments are shown alongside the existing legislation.

Regulation 2 (interpretation) [*amendment of existing provision by amendment of definition*]

“approved NAP regulations” means, in relation to a scheme phase, regulations made by the Secretary of State under section 2(2) of the European Communities Act 1972

¹ SI 2007/1096

² SI 2005/925 as amended by SI 2005/2903, SI 2006/737, SI 2007/465, SI 2007/1096 and SI 2007/3433

³ Published on the DECC website at <http://>

specifying as the approved national allocation plan a national allocation plan developed for that scheme phase which has not been rejected by the European Commission or in relation to which the European Commission has accepted amendments ~~in accordance with Article 9(3) of the Directive;~~

Regulation 16A (partial or complete cessation of nitric acid production activities) *[insertion of new regulation]*

16A(1) Where regulation 16 does not apply, this regulation applies to an operator who, pursuant to an approved national allocation plan, is deemed during 2011 to have partially or completely ceased to carry out in an installation nitric acid production activities authorised by a greenhouse gas emissions permit in relation to that installation.

(2) The operator must, by 30 January 2012, notify the regulator of any partial or complete cessation of nitric acid production in an installation in 2011.

(3) A notification given under paragraph (2) must include-

(a) information regarding the cessation of activities and the degree of reduction in the level of nitric acid production; and

(b) evidence to support the information given pursuant to subparagraph (a).

(4) The regulator may by notice require the operator to supply to it further information in relation to the reduction or cessation in its level of nitric acid production.

(5) The regulator must, having had regard to an approved national allocation plan-

(a) re-calculate the number of allowances due to the operator; and

(b) serve a notice on the operator and the Secretary of State specifying the re-calculation of allowances.

(6) Where an operator fails to comply with paragraph (2), (3) or (4) and is allocated allowances in excess of the number of allowances to which it is entitled, the regulator must serve a notice on the operator.

(7) A notice served pursuant to paragraph (6) must require the operator to surrender, by the date specified in the notice, allowances equal to the total number of allowances which have been allocated in respect of the installation which would not have been allocated if the operator had complied with paragraph (3) or (4).

Regulation 21 (allocation and issue of allowances) *[amendment of existing provision by deletion of text]*

- (2) Decisions under paragraph (1) shall-
- (a) be based upon the national allocation plan for the relevant phase which has not been rejected by the European Commission or in relation to which the European Commission has accepted amendments ~~in accordance with Article 9(3) of the Directive~~; and ...

Regulation 22 (Application for an allocation from the new entrant reserve) *[amendment of existing provision by insertion of additional paragraph]*

(1) Where an approved national allocation plan provides for a new entrant reserve in the scheme phase to which it relates, an operator of an installation may apply to the regulator for an allocation of allowances in respect of that installation from the new entrant reserve.

(1A) An operator of an installation may not apply to the regulator under paragraph (1) in respect of an allocation of allowances relating to nitric acid production if nitric acid production has been carried out at the installation prior to 30 June 2010.

Regulation 27A (use of CERs and ERUs) *[amendment of existing provision by insertion of two new additional paragraphs]*

(2A) An operator may not use CERs or ERUs to comply with an obligation relating to emissions of nitrous oxide.

Regulation 38 (Offences)

(1) It is an offence for a person-

...

(b) to fail to comply with or to contravene a condition of a greenhouse gas emissions permit (except where regulation 39, 40 or 40A apply to such failure to comply or contravention);

...

(f) to make a statement which he knows to be false or misleading in a material particular, or recklessly to make a statement which is false or misleading in a material particular, where the statement is made-

(i) in purported compliance with a requirement imposed by a notice under regulation 8(5), 14(6), 15(10), 16(16), 16A(4), 22(7), 24(6) or 35(2);

Regulation 40A (civil penalties: failure to surrender over-allocation of allowances where there has been a partial or complete cessation of nitric acid production activities) [new regulation]

(1) Where regulation 16A applies, any operator who fails to comply with the requirement to surrender allowances pursuant to regulation 16A(7) shall be liable to a penalty.

(2) The amount of the penalty to which the operator is liable under paragraph (1) shall be the excess allocation multiplied by the over-allocation penalty.

(3) For the purposes of paragraph (2)-

(a) “excess allocation” means the number of allowances allocated to an operator in excess of the number of allowances to which it was entitled as a consequence of a partial or complete cessation of nitric acid production; and

(b) “over-allocation penalty” means €[100] in respect of each individual allowance in the excess allocation.

Schedule 1

(Part 1:activities and specified emissions) [amendment of existing provision by insertion of additional text]

Activities

Specified emissions

4.3 Activities of installations for the production of nitric acid

nitrous oxide