
STATUTORY INSTRUMENTS

2005 No. 925

**The Greenhouse Gas Emissions
Trading Scheme Regulations 2005**

PART 3

ALLOWANCES

Supplementary decisions by the regulator or the Secretary of State

25.—(1) Subject to paragraph (3), paragraph (2) shall apply where—

- (a) a person has made a false statement—
 - (i) in connection with an application under regulation 22(1); or
 - (ii) in connection with an application under regulation 24(1); and
- (b) the statement resulted in an over-allocation in respect of an installation.

(2) Where this paragraph applies, the regulator may make a supplementary decision by serving a notice on the operator.

(3) Where a person has made a false statement in connection with an application under regulation 24(1) and the application would, in accordance with the approved national allocation plan, have been refused if the statement had not been false or misleading, the regulator shall revoke the greenhouse gas emissions permit in accordance with regulation 17(1).

(4) A supplementary decision under paragraph (2) shall—

- (a) identify the false statement and specify the amount of the over-allocation;
- (b) set out the steps which the regulator will take in accordance with paragraph (5) and, if applicable, paragraph (6),

and, subject to regulation 32(10), shall take effect from the expiry of a period of two months beginning on the date of the notice.

(5) Subject to paragraph (6), where the regulator makes a supplementary decision under paragraph (2), the regulator shall take such steps as it considers necessary to ensure that the amount of allowances issued pursuant to an allocation under regulation 22(13)(b) or (18) in respect of the installation to which the false statement relates are reduced by the amount of the over-allocation.

(6) Where paragraph (2) applies and—

- (a) all allowances allocated under regulation 22(13)(b) or (18) in respect of the installation for the scheme phase to which the false statement relates have been issued; or
- (b) the amount of such allowances which have not been issued is less than the amount of the over-allocation,

the regulator shall notify the Secretary of State specifying the amount of over-allocation or, where the regulator has made a supplementary decision under paragraph (2), the remaining over-allocation.

(7) Subject to regulation 46, where—

- (a) a person has made a false statement in response to a request for information from the Secretary of State for the purposes of developing a national allocation plan under regulation 20(1) or making a decision under regulation 21(1) and the statement has resulted in an over-allocation in respect of the installation; or
- (b) the regulator notifies the Secretary of State in accordance with paragraph (6),
- the Secretary of State may make a supplementary decision by serving notice on the operator.
- (8) A supplementary decision under paragraph (7) shall—
- (a) identify the false statement and specify the amount of the over-allocation;
- (b) set out the steps which the Secretary of State will take in accordance with paragraph (9),
- and, subject to regulation 33(6), shall take effect from the expiry of a period of two months beginning on the date of the notice.
- (9) Where the Secretary of State makes a supplementary decision under paragraph (7), the Secretary of State shall take such steps as she considers necessary to ensure that the number of allowances issued in respect of the installation to which the false statement relates for—
- (a) the phase to which the false statement relates; and
- (b) where the number of allowances allocated in respect of the installation in that scheme phase which have not been issued is less than the amount of the over-allocation or, if applicable, the remaining over-allocation, a subsequent scheme phase,
- are reduced by the amount of the over-allocation or, if applicable, the remaining over-allocation.
- (10) The steps which may be taken by the Secretary of State under paragraph (9) may include—
- (a) where the supplementary decision relates to an installation situated in England (other than an offshore installation), directing the regulator; or
- (b) where the supplementary decision relates to an installation, other than an offshore installation, situated in Scotland, Wales or Northern Ireland, arranging for the appropriate authority in relation to that installation to direct the regulator,
- to take such steps as are necessary to reduce the amount of allowances issued pursuant to an allocation under regulation 22(13)(b) or (18).
- (11) As soon as practicable after the Secretary of State makes a supplementary decision under paragraph (7), she shall publish her supplementary decision under paragraph (7) in England and notify the Scottish Ministers, the National Assembly for Wales and Department of the Environment of the decision.
- (12) The Scottish Ministers shall publish in Scotland any decision notified to them under paragraph (11) as soon as practicable on notification.
- (13) The National Assembly for Wales shall publish in Wales any decision notified to them under paragraph (11) as soon as practicable on notification.
- (14) The Department of the Environment shall publish in Northern Ireland any decision notified to them under paragraph (11) as soon as practicable on notification.
- (15) A regulator which has served a notice under paragraph (2) or the Secretary of State who has served a notice under paragraph (7), may before the date on which the notice takes effect withdraw the notice.
- (16) For the purposes of this regulation—
- “false statement” means a statement which is which is false or misleading in a material particular;
- “over-allocation” means—

- (i) the number of allowances by which an allocation under regulation 21(1)(b), or if applicable, (1)(c) or regulation 22(13)(b) or (18) in respect of an installation in the scheme phase to which a false statement relates exceeds the number of allowances which would have been allocated in accordance with the approved national allocation plan for that scheme phase if the statement had not been false or misleading;
- (ii) in relation to an application under regulation 24(1), the number of allowances which are retained by the operator which would not have been retained in accordance with the approved national allocation plan if the statement had not been false or misleading;

“remaining over-allocation” means the difference between the over-allocation and the amount by which the number of allowances to be issued in respect of an installation is reduced by the supplementary decision under paragraph (2).