

**Commonwealth of Massachusetts
Department of Environmental Protection**

Response to Comment on Amendments to:

**310 CMR 7.70 *CO₂ Budget Trading Program*
225 CMR 13.00 *DOER CO₂ Budget Trading Program Auction Regulation***

September 21, 2018

Regulatory Authority

**DEP: M.G.L. c. 111, sections 142A-E,
M.G.L. c. 21A, §2, § 8 and § 22, and M.G.L. c. 21N
DOER: M.G.L. c. 25A and c., 21A, § 22.**

Background and Purpose

The Massachusetts Department of Environmental Protection (MassDEP) proposed amendments to 310 CMR 7.70 - The Massachusetts CO₂ Budget Trading Program regulation, concurrent with the Massachusetts Department of Energy Resources' (DOER) proposed amendments to 225 CMR 13.00 – The DOER CO₂ Budget Trading Program Auction Regulation. This is MassDEP's regulation to implement the Regional Greenhouse Gas Initiative (RGGI) in the Commonwealth in accordance with M.G.L. c. 21, § 22 and MassDEP's general authority to reduce GHG emissions in Massachusetts, M.G.L. c. 21A, § 2, and § 8, and M.G.L. c. 21N, otherwise known as the Global Warming Solutions Act. The final amendments implement the program changes agreed to by the nine RGGI participating states after completing the 2016 Program Review. The final amendments strengthen the RGGI program, make it more effective, and extend the regional cap through 2030. Additional information about 310 CMR 7.70 is available at <https://www.mass.gov/doc/310-cmr-770-proposed-co2-budget-trading-program-amendments>. Additional information about 225 CMR 14.00 is available at <https://www.mass.gov/service-details/rggi-program-review-proposed-amendments>. MassDEP is finalizing the regulations as proposed in the public hearing draft, other than a technical correction explained at the end of this document.

Public Comment Process

During the 2016 program review, MassDEP and DOER held informal (in addition to the public process requirements of M.G.L. c. 30A) stakeholder meetings to solicit input on the RGGI program with a particular focus on considerations for Massachusetts Environmental Justice Communities. Those meetings were held in Springfield on November 9, 2016 and in Dartmouth on November 15, 2016. Furthermore, in response to MassDEP and DOER's obligation to RGGI/GWSA activities and commitment to keep the EJ communities/advocates informed of the promulgation of RGGI regulations, on May 4, 2018 MassDEP and DOER published the public hearing notice on the amendments to the RGGI regulations in four newspapers: the Boston Globe, the Springfield Republican, the Worcester Telegraph, and the Cape Cod Standard Times. The public hearing notices were also published in the Massachusetts Register on May 4, 2018, and interested parties were notified via electronic mail. The hearing notice was translated into the following languages: Vietnamese, Chinese, Cape Verdean Creole, Spanish and Arabic. MassDEP and DOER held the public hearings at MassDEP's Boston office on May 30, 2018, at the Springfield Library on May 30, 2018, at the MassDEP's Worcester office on May 31, 2018, and at the MassDEP's Lakeville office on May 31, 2018. The public comment period closed on June 11, 2018. A list of commenters is included at the end of this Response to Comments document. A redline version of the proposed amendments to the regulations and a Technical Support Document were published on the web site referenced above to provide commenters with detailed information about the proposed amendments, the rationale for those amendments, and other relevant background information.

MassDEP and DOER are also supportive of the low-income, minority and English isolation population's concerns about air quality and access to funding opportunities, and have committed

to conduct more effective outreach (interpreter/translation services as appropriate) in an effort to afford the EJ communities equal opportunities as non-EJ communities.

Comments and Responses

Comment: Commenters commended Massachusetts (MassDEP and DOER) for the proposed changes to strengthen the RGGI program including; future cap reductions out to 2030, accelerating the cap decline, the third adjustment for banked allowances, implementation of the Emissions Containment Reserve, and the changes to the Cost Containment Reserve size and price triggers.

Response: MassDEP and DOER appreciate these comments and intend to finalize the amendments as proposed.

Comment: Eliminate the category of eligible biomass, and count all emissions from the burning of anything toward the cap. Burning organic material emits particulate matter (PM), nitrogen oxides (NO_x), carbon monoxide (CO), sulfur dioxide (SO₂), lead, mercury, and other hazardous air pollutants (HAPs). Air pollutants like PM, and NO_x are directly linked to the development and exacerbation of asthma.

Response: MassDEP and DOER appreciate this comment, but addressing it is not within the scope of this rulemaking because MassDEP did not propose amendments to the regulation to add facilities greater than 25MW that burn biomass to the applicability criteria. As was explained in the Technical Support Document issued when MassDEP originally promulgated 310 CMR 7.70 in 2008, the RGGI Program was designed as a Cap and Trade program addressing CO₂ emissions from fossil fuel fired electric generating facilities. There are not, nor are there expected to be, any electric generating facilities in the Commonwealth that co-fire biomass (all the coal fired electric generation that had the capacity to co-fire with biomass have since shut down). Therefore, there are no facilities in Massachusetts which exempt CO₂ emissions generated from burning eligible biomass from their compliance obligation. Currently there is only one electric generating facility in the Commonwealth combusting biomass for fuel, and that facility is below the 310 CMR 7.70 applicability size threshold of 25 MW. That facility is required to report those CO₂ emissions as part of the GHG Reporting program, 310 CMR 7.71, and those emissions are included in the Commonwealth's GHG inventory. Lastly, MassDEP consulted with the other eight states participating in RGGI. None of the other eight states plan to eliminate the category of eligible biomass.

Comment: Commenters expressed concern that market-based cap and invest programs do not sufficiently address pollution in communities hardest hit by the effects of fossil fuel extraction and other forms of pollution. Those commenters urged the Commonwealth to address these concerns by conducting an equity analysis that looks at the proximity (how close to vulnerable communities) and cumulative impacts (what else is already polluting those places). Such analyses should consider the impacts of pollution that are linked to health problems like asthma, including emissions of SO_x, NO_x and fine particles.

Response: MassDEP and DOER appreciate this comment but did not conduct an equity analysis, noting that there have been dramatic reductions in air emissions from the electric generating units covered by Massachusetts CO₂ Budget Trading Program that have occurred in the Commonwealth since the RGGI program was launched. CO₂ emissions have dropped more than 40 percent, and NO_x emissions more than 72 percent, and SO₂ emissions more than 96 percent. Some of these reductions have occurred purely as a function of market forces (e.g., lower natural gas prices relative to oil and coal) and some of the reduction is a direct result of policies, and programs implemented by the Commonwealth (including RGGI, the Renewable Portfolio Standard and aggressive investment in energy efficiency). In addition, the four coal-fired electric generating plants that were operating when the RGGI program was launched, no longer burn coal. Mt Tom, Brayton Point, and Somerset Station have shutdown altogether, and Salem Station has been repowered with combined cycle natural gas fired units. These changes in the electric system have resulted in air quality benefits at the local, state, regional and global level, including environmental justice communities. In addition, when new facilities (above certain size thresholds) are constructed in the Commonwealth, New Source Review (NSR) Permitting rules require the consideration of other existing major sources in the area of the proposed new facility. The NSR process includes interactive air dispersion modeling to evaluate the cumulative air quality impacts from the proposed new facility along with the emissions from existing major facilities.

Comment: Additional time and resources should be invested in the programs that are supported by RGGI to ensure that frontline and environmental justice communities benefit at the same rate as whiter, wealthier communities. MassSAVE regulations should be adapted to more adequately serve low to moderate income consumers, renters, communities of color, and people whose first language is not English.

Response: MassDEP and DOER appreciate this comment, but setting priorities for spending RGGI proceeds is outside the scope of these regulations and is completed through other policy and planning processes. MassDEP has been working and will continue to work with its agency partners to address these concerns. By statute 80% of the RGGI program revenues are required to be invested in the Mass Save electric energy efficiency programs, and further that a minimum of 10% of the total electric energy efficiency program budget is allocated to serve low income customers. Beyond the statutory requirements, both MassDEP and DOER (as chair) sit on the Energy Efficiency Advisory Council (EEAC) and have requested improvements in the equity and transparency of service to customers in the Mass Save programs in both the current 3-year plans (2016-2018) and in the process of planning for the next 3 years. Most recently, the EEAC resolution (passed in February 2018) on the upcoming 2019-2021 plans states it is the EEAC's top priority:

to "Increase participation by, and savings from, hard to reach and underserved populations and geographies, including moderate income, renters, small business, and non-profits."

www.ma-eeac.org/wordpress/wp-content/uploads/2019-2021-RECOMMENDATIONS-RESOLUTION-final-1.pdf

Comment: One commenter suggested Massachusetts either leave the RGGI program or directly allocate allowances to facilities in the Program rather than Auction them.

Response: The Green Communities Act mandates that the Commonwealth participate in RGGI and auction up to 100% of the CO₂ allowances.

Comment: One commenter stated that MassDEP should not eliminate the offset creation provisions adding that as the RGGI CO₂ cap becomes increasingly restrictive, offsets may be the only option for acquiring allowances needed by a generator to remain in operation.

Response: As stated in the Technical Support Document, over the past ten years of the RGGI program, MassDEP has not received one application for offset allowances and MassDEP believes it is unlikely any offset applications will be applied for in Massachusetts in the foreseeable future.

Comment: One commenter stated that if Massachusetts remains in RGGI, then it should not adopt the Emissions Containment Reserve like New Hampshire and Maine because the ECR acts to raise the Allowances Auction Clearing price by reducing the supply of available Allowances. Since the 310 CMR 7.74 Program is more restrictive than RGGI, for Massachusetts the effect of the ECR will be to raise Electric Generator dispatch prices, without any resulting benefit on CO₂ emissions.

Response: The agencies intend to finalize the proposed amendments, including adding the Emission Containment Reserve (ECR). The addition of the ECR will provide flexibility and emissions containment for the program. The ECR will respond to supply and demand in the market if emission reduction costs are lower than projected. If prices of CO₂ allowances fall below established ECR trigger prices, then Massachusetts, along with most of the other participating states, will withhold CO₂ allowances from the auction to secure additional emissions reductions. See pp. 9-10 in the Technical Support Document.

Comment: One commenter recommended that the definition of Eligible Biomass be modified such that liquid biofuels could qualify as Eligible Biomass.

Response: The RGGI model rule definition of Eligible Biomass specifically states: “Liquid biofuels do not qualify as eligible biomass.” MassDEP consulted with the other RGGI participating states and determined that the definition of Eligible Biomass would not be changed at this time.

Comment: One commenter suggested Massachusetts should follow NY’s lead and include in RGGI smaller units below 25MW.

Response: At this time, MassDEP and DOER are not changing the applicability threshold as part of this rulemaking and are retaining the current applicability threshold.

Comment: One commenter suggested that Massachusetts should add a new category to the regulations that allows RGGI money to be spent on emissions controls and environmental projects.

Response: The Green Communities Act limits how the RGGI auction proceeds can be spent, and it does not include expending the money for emission controls at power plants and environmental projects.

Comment: One commenter stated their organization did not support MassDEP or DOER opening up the RGGI funds for discretionary projects.

Response: MassDEP and DOER agree. See response above.

Note: In the final regulations, MassDEP is making a technical correction to the definition of “Third Adjustment for Banked Allowances.” This correction changes the deadline for making the third banked adjustment from March 17, 2021, as proposed, to March 15, 2021. This change is being made to be consistent with the regulatory deadline specified in 310 CMR 7.70(5)(b)2.c. In addition, a small number of minor formatting and typographical errors were corrected.

List of Commenters

Acadia Center
Appalachian Mountain Club
Berkshire Environmental Action Team
Climate Action Now
Climate Crisis Task Force
Climate XChange
Coalition for Social Justice
Conservation Law Foundation
E2 Environmental Entrepreneurs
Elders Climate Action Massachusetts
Mass Quaker Legislative Action Network
National Resources Council of Maine
National Resources Defense Council
No Fracked Gas in Mass
No Sharon Gas Pipeline/Clean Energy Now
Pace Energy and Climate Center
Partnership for Policy Integrity
Pioneer Valley Asthma Coalition
Sierra Club

StopNED
Taunton Municipal Lighting Plant
The National Biodiesel Board
Toxics Action Center
Unitarian Universalist Mass Action Network