

**Commonwealth of Massachusetts
Executive Office of Energy and Environmental Affairs
and
Department of Environmental Protection**

Response to Comment on Proposed Amendments to:

310 CMR 7.74 *Reducing CO₂ Emissions from Electricity Generating Facilities*

July, 2018

Regulatory Authority:

**M.G.L. c. 21A, §§ 2, 8, and 16
M.G.L. c. 21N, §§ 2(a)(5), 3(b)-(d), 4, and 7
and M.G.L. c. 111, §§ 2C and 142A – 142E**

Background and Purpose

In August 2017, the Massachusetts Executive Office of Environmental Affairs (EEA) and the Massachusetts Department of Environmental Protection (MassDEP) finalized 310 CMR 7.74 *Reducing CO₂ Emissions from Electricity Generating Facilities*, which creates an allowance trading program that requires large power plants in Massachusetts to comply with an annually declining limit on carbon dioxide (CO₂) emissions. EEA and MassDEP are amending 310 CMR 7.74 to modify regulatory requirements related to allowance auctions and compliance flexibility. Additional information about 310 CMR 7.74 is available at <https://www.mass.gov/guides/electricity-generator-emissions-limits-310-cmr-774>.

Public Comment Process

MassDEP held one public hearing and solicited oral and written comments on the proposed amendments to 310 CMR 7.74 in accordance with M.G.L. Chapter 30A. On April 11, 2018, MassDEP published in two newspapers, the Boston Globe and the Springfield Republican, notice of the public hearing and public comment period on the proposed amendments. The public hearing notice was also published in the Massachusetts Register on April 20, 2018, and interested parties were notified via electronic mail. The public hearing was held at MassDEP's Boston office on May 3, 2018, and the public comment period closed on May 14, 2018. A list of commenters is included at the end of this Response to Comments document. A Technical Support Document was published on the web site referenced above to provide commenters with detailed information about the rationale for the proposed amendments and other relevant background information.

Comments and Responses

Comment: Many commenters addressed allowance auctions. Commenters that explicitly addressed the proposed auction phase-in schedule expressed support. (ISO-NE, Vistra, Calpine, NRG, GenOn) Other commenters supported retaining free allocations or using a longer phase-in schedule, such as four or five years. (TMLP, TSG, BELD, Dighton & Milford) Finally, several commenters asked MassDEP to auction at least a fraction of each year's allowances before the beginning of the compliance year (e.g., to auction allowances that can be used to comply in 2019 before the end of 2018). (ISO-NE, NRG, GenOn) One commenter requested confirmation that unsold allowances will be offered for sale in future auctions. (BELD)

Response: EEA and MassDEP are finalizing the proposed auction phase-in schedule, which will retain free allocation of a portion of the allowances in 2019 and 2020. This option was explicitly supported by several commenters and, because it extends the use of free allocation to 2019 and 2020, partially addresses other commenters' preference for free allocations over auctions. EEA and MassDEP appreciated comments on auction timing and treatment of any unsold allowances, and will consider these comments in establishing the schedule for auctioning allowances in consultation with the auction administrator and market monitor.

Comment: Many commenters supported the proposal to extend the emergency deferred compliance option to emergencies (as defined in the regulation) that occur at any time of the year. (TSG, ISO-NE, Vistra, NRG, GenOn, BELD, Dighton & Milford) One commenter

suggested an additional change that would eliminate the requirement for deferred compliance to occur on a 2:1 basis. (TSG)

Response: EEA and MassDEP are finalizing the proposed amendments to add compliance flexibility for facilities by extending emergency deferred compliance to apply throughout the year, including all of 2018. The 2:1 compliance requirement is being retained to encourage facilities to comply without the use of emergency deferred compliance when possible.

Comment: Commenters expressed differing perspectives on EEA and MassDEP's proposed approach to allowing unlimited banking of allowances. Supportive commenters suggested that the change would improve liquidity, reduce price volatility, add flexibility, and encourage early emissions reductions. (ISO-NE, Vistra, Calpine, Veolia, NRG, GenOn, Dighton & Milford) However, other commenters expressed concern about market impacts, including "hoarding," in several cases advocating facility-specific bid limits as a potential solution. (TMLP, BELD, NRG, TSG, GenOn) There were also conflicting comments among market participants on the potential impacts of unlimited banking; while one commenter cited potential benefits for "peaking units" (Calpine), others cited potential risks for smaller market participants. (TSG, TMLP) One commenter expressed support for the existing banking provisions. (TSG)

Response: EEA and MassDEP are finalizing the proposed amendments to allow unlimited banking of allowances by facilities. Most facilities are supportive of the change. Even commenters who expressed concerns about potential impacts were, in several cases, supportive of unlimited banking as long as protections are in place to prevent potential allowance hoarding. EEA and MassDEP believe that the existing provision in 310 CMR 7.74(6)(h)1.g., which allows the agencies to establish bid limits, including for individual facilities, will provide sufficient protection against potential hoarding and the related risks. However, EEA and MassDEP are also finalizing minor amendments to 310 CMR 7.74(6)(h)1.g. to clarify the agencies' existing authority regarding auction bid limits. EEA and MassDEP, in consultation with the market monitor, will monitor the allowance market, and are prepared to utilize their authority to set bid limits to address issues that may arise, as suggested by several commenters.

Comment: Several commenters recommended against amending the regulation to allow participation in the allowance market by entities that are not regulated facilities under 310 CMR 7.74, citing potential impacts on the allowance market. (TSG, Vistra, BELD, Dighton & Milford)

Response: EEA and MassDEP are not amending the regulation to allow participation in the allowance market by entities that are not regulated facilities.

Comment: One commenter requested that EEA and MassDEP add a mechanism to cap allowance prices, such as a "soft cap" or "set aside." (Dighton & Milford)

Response: As explained in the Response to Comments document published when 310 CMR 7.74 was originally promulgated in August 2017, these types of flexibility mechanisms would not ensure annually declining emissions limits. That said, the Agencies, at that time, did see the value of affording facilities with some flexibility. The emergency deferred compliance option, for example, was included in the regulation promulgated in August 2017 to provide flexibility to generators if allowance supplies are limited and the operation of their facility may be needed to ensure electricity reliability. In the amended regulation, as explained above, EEA and MassDEP are amending the emergency deferred compliance option to afford facilities with additional

flexibility. EEA and MassDEP believe that change adequately addresses the issue raised by the two commenters, and that a “soft cap” or “set aside” is therefore not necessary.

Comment: One commenter asked EEA and MassDEP to work with ISO-NE to ensure that the requirements of 310 CMR 7.74 can be addressed in a manner consistent with the ISO-NE bidding process. (TMLP)

Response: MassDEP will continue to work with a market monitor to consider issues that may affect the allowance market, such as ISO-NE’s bidding process. EEA and MassDEP also note that ISO-NE has not addressed this topic in any of the comment letters that it has submitted on 310 CMR 7.74.

Comment: One commenter suggested the use of “consignment auctions” to distribute allowances under 310 CMR 7.74. (Veolia)

Response: EEA and MassDEP are not amending the regulation to include a consignment auction. As was explained in the Response to Comments document published when the regulation was finalized in August 2017, the auction approach is modeled on the approach used successfully in the Regional Greenhouse Gas Initiative (RGGI) program, which does not utilize consignment auctions. Because consignment auctions would be a significant departure from the RGGI approach, additional stakeholder engagement would be necessary. Therefore, consignment auctions would be an appropriate topic for the program review scheduled for 2021, not the current rulemaking.

Comment: One commenter requested that EEA and MassDEP exempt emissions that occur during required testing. (TMLP)

Response: EEA and MassDEP appreciate this comment, but addressing it is not within the scope of this rulemaking. EEA and MassDEP note that including all emissions reported to US EPA is consistent with other allowance trading programs.

Comment: One commenter expressed concern that the regulation may cause “a negative incentive to decentralize power plants.” (ABC Soils)

Response: EEA and MassDEP appreciate this comment, but addressing it is not within the scope of this rulemaking. EEA and MassDEP do not believe that the regulation will have any impact on centralization of power plants.

Comment: One commenter expressed support for the use of liquid biofuels to reduce emissions at electricity generating facilities. (NBD)

Response: EEA and MassDEP appreciate this comment, but addressing it is not within the scope of this rulemaking.

Comment: One commenter identified a typographical error in which 310 CMR 7.75 is referenced instead of 310 CMR 7.74. (BELD)

Response: This error has been corrected.

List of Commenters

ABC Soils, Inc.
Braintree Electric Light Department (BELD)

Calpine Corporation (Calpine)
Dighton Power, LLC and Milford Power, LLC (Dighton & Milford)
GenOn Energy, Inc. (GenOn)
ISO New England (ISO-NE)
National Biodiesel Board (NBD)
NRG Energy, Inc. (NRG)
Tanner Street Generation, LLC (TSG)
Taunton Municipal Light Plant (TMLP)
Veolia North America (Veolia)
Vistra Energy (Vistra)