

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

**Technical Support Document on Proposed Re-promulgation of Regulations:
310 CMR 7.74 *Reducing CO₂ Emissions from Electricity Generating Facilities***

September 18, 2020

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**

Contents

I. INTRODUCTION 2

II. BACKGROUND AND PURPOSE..... 2

III. DESCRIPTION OF THE PROPOSED REGULATION 4

IV. IMPACTS OF PROPOSED REGULATION..... 4

V. MASSACHUSETTS ENVIRONMENTAL POLICY ACT (MEPA) 4

VI. PUBLIC HEARING AND COMMENT 4

I. INTRODUCTION

The Massachusetts Executive Office of Energy and Environmental Affairs (EEA) and the Massachusetts Department of Environmental Protection (MassDEP) are proposing to re-promulgate the requirements of 310 CMR 7.74 starting on January 1, 2021, without modification at this time. Instructions for commenting on this proposed action are provided at the end of this Technical Support Document (TSD).

II. BACKGROUND AND PURPOSE

On August 11, 2017, EEA and MassDEP promulgated 310 CMR 7.74 (Reducing CO₂ Emissions from Electricity Generating Facilities) to assist in reducing emissions of greenhouse gases associated with the electricity generation sector. This regulation establishes an allowance trading program that initially allocated allowances to the applicable large power plants in Massachusetts and transitions to requiring these large power plants to purchase carbon dioxide (CO₂) allowances at auctions to comply with an annually declining limit on CO₂ emissions each year until 2050. The transition to auctions was completed through a rulemaking that was completed in 2018 and was informed by a public stakeholder process.

Additional information about this program is available on MassDEP’s website at <https://www.mass.gov/guides/electricity-generator-emissions-limits-310-cmr-774>. This information, which is updated regularly, includes all documents referenced in this Technical Support Document and was considered during the current review of 310 CMR 7.74:

- All stakeholder and rulemaking documents
- A link to the allowance registry, which includes a list of regulated facilities, including three “new” facilities that were added after the regulation was finalized
- Market monitor reports, including auction reports
- A link to auction materials (updated before each auction)

- A Frequently Asked Questions document that is updated regularly to address questions from regulated facilities

EEA and MassDEP are proposing to re-promulgate the emissions limits in 310 CMR 7.74, without modification for years 2021 - 2050. The purpose of this proposal is to comply with the Massachusetts Supreme Judicial Court's September 2018 decision in New England Power Generators Ass'n, Inc. v. Dep't of Env'tl. Prot., 480 Mass. 398 (2018) ("NEPGA"). In the NEPGA decision, the SJC held that "the most sensible reading of Section 16 [of G.L. c. 21N], is that, after December 31, 2020, only the current regulations promulgated under 3(d) expire." NEPGA at 410. MassDEP's authority and obligation to promulgate a new regulation under 3(d) after December 31, 2020 is undisturbed. Id. The proposed rulemaking satisfies the Court's directive to promulgate "new regulations" effective after December 31, 2020 based on "updated information," to ensure that the future Statewide limits for 2030, 2040, and 2050 will be met.

310 CMR 7.74, and its partner regulation 310 CMR 7.75: Clean Energy Standard, already include requirements to complete program reviews in 2021. As explained in the December 2016 Background Document for both regulations, which was published when 310 CMR 7.74 and 7.75 were first proposed, the program review could not be scheduled for earlier than 2021 because the 2030 emissions limit would not be set until the end of 2020 and that limit was critical to evaluating and re-setting the limits in both regulations:

A primary purpose of this review would be to evaluate post-2020 reduction requirements considering . . . the 2030 emission limit that will have been established pursuant to GWSA.

Because the 2030 emission limit has not yet been established, EEA and MassDEP have determined that the best way to address the Court's directive to consider the full record of relevant "updated information" when setting post-2020 requirements is to conduct two evaluations of the 310 CMR 7.74 limits. In the current rulemaking, EEA and MassDEP are considering the information available to date to determine whether repromulgation is appropriate at this time. Then, in 2021, EEA and MassDEP will re-evaluate that information, plus other updated information, and will consider the 2030 limit during the scheduled program reviews in 2021 for both regulations.

As part of the review of the information presented to date, EEA and MassDEP have evaluated the compliance information submitted by the regulated parties and the Market Monitor reports for the first two compliance years of the program, 2018 and 2019. These reports, which comprehensively address most aspects of the program and are published several times each year, are the primary source of updated information that MassDEP is considering at this time.

The Market Monitor reports indicate that emissions fell in both years and have remained below the regulatory emissions limits each year. Emissions fell from 7.35 million metric tons in 2018 to just 5.83 million metric tons in 2019. The Market Monitor Report for the Fourth Quarter 2019 concludes

that most regulated entities were able to bank allowances from 2019, since their emissions were lower than their allowance holdings at the deadline for 2019 compliance. The report also concludes that there were enough allowances available for the existing and new regulated entities to allow compliance with the 2019 emission limit. This observation is consistent with that fact that all facilities complied with the allowance holding requirements for 2018 and 2019.

Based on the updated information outlined above, EEA and MassDEP have determined that the existing declining emission limits in 310 CMR 7.74:

- have been effective over the last three years at capping and reducing CO₂ emissions from the regulated facilities, thus helping move toward achieving the goals of the GWSA; and
- are sufficient to and do need to remain in place to ensure that Commonwealth remains on track to achieve the 2050 goals until a program review can be completed in 2021.

III. DESCRIPTION OF THE PROPOSED REGULATION

The agencies are proposing to add a provision to the regulation to state clearly that the new regulation takes effect as of January 1, 2021

IV. IMPACTS OF PROPOSED REGULATION

Economic Impacts: Because EEA and MassDEP are not proposing any changes to any provisions of 310 CMR 7.74 at this time, there will not be any new economic impacts.

Impact on Massachusetts Municipalities: Because EEA and MassDEP are not proposing any changes to any provisions of 310 CMR 7.74 at this time, there will not be any new impacts on Massachusetts municipalities.

V. MASSACHUSETTS ENVIRONMENTAL POLICY ACT (MEPA)

Pursuant to 301 CMR 11.03(12) (MEPA Regulations), this proposal will not reduce standards for environmental protection, opportunities for public participation in permitting or other review processes, or public access to information generated or provided in accordance with these regulations. This proposal, therefore, does not require the filing of an Environmental Notification Form under MEPA.

VI. PUBLIC HEARING AND COMMENT

A public hearing will be held in accordance with the procedures of M.G.L. Chapter 30A. The hearing notice and proposed amendments are available on MassDEP's website at www.mass.gov/eea/agencies/massdep/news/comment/. Questions about this document may be addressed to Will Space at 617-292-5610 or william.space@mass.gov.