

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

Technical Support Document on Proposed Regulatory Amendments to:

310 CMR 7.75 Clean Energy Standard

November 3, 2017

Regulatory Authority:

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

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I. INTRODUCTION

The Massachusetts Executive Office of Energy and Environmental Affairs (EEA) and the Massachusetts Department of Environmental Protection (MassDEP) are proposing to amend 310 CMR 7.75: *Clean Energy Standard* (CES). The amendments will ensure that the Commonwealth’s policies related to clean energy generation are aligned by enabling all clean energy procured pursuant to Chapter 188 of the Acts of 2016, *An Act to Promote Energy Diversity*, to qualify for the CES.

II. BACKGROUND AND PURPOSE

In August 2017, EEA and MassDEP finalized 310 CMR 7.75, which sets a minimum percentage of electricity sales that utilities and competitive suppliers must procure from clean energy sources. Under the regulation, clean energy sources are defined based on an emissions threshold, but qualifying generators must also meet two “vintage” requirements: they must have commenced commercial operation after 2010 and, if they are located outside New England, they must demonstrate the use of transmission capacity that commenced operation after 2016.¹

The purpose of the vintage requirements is described in the Technical Support Document (TSD) that was published with the proposed regulation in December 2016, but the TSD and final regulation also identify the need for further consideration of the role of generators that do not meet those requirements. Specifically, the final regulation includes the following requirement at 310 CMR 7.75(10):

Not later than December 31, 2017, the Department shall complete a review, including an opportunity for public comment, of options for including generators that meet all

¹ Additional information about 310 CMR 7.75, including documents referenced in this TSD, is available at <http://www.mass.gov/eea/agencies/massdep/climate-energy/climate/ghg/ces.html>.

requirements of 310 CMR 7.75, except for the commercial operation date requirements in 310 CMR 7.75 (7)(a)2. and (b)1., in the clean energy standard.

MassDEP has commenced the required review. Early in the review process, the Department of Energy Resources (DOER) identified consistency between the CES and the requirements of *An Act to Promote Energy Diversity* as an important focus of the review. DOER Commissioner Judith Judson described the specific issue to MassDEP Commissioner Martin Suuberg in a letter dated October 2, 2017:

On August 8, 2016, Governor Baker signed the Act, which requires the Commonwealth's electric distribution companies to jointly and competitively solicit proposals for clean energy generation. Specifically, Section 83D of the Act allows for the procurement of 9,450,000 megawatt-hours of clean energy generation comprised of hydro-electric and new RPS Class I eligible renewable energy generation resources. The legislation was a bi-partisan effort to assist the Commonwealth in reducing energy costs while strengthening the Commonwealth's clean energy economy and progressing towards the Commonwealth's greenhouse gas reduction requirements. The current CES may not allow clean energy procured by Massachusetts utilities under the Section 83D procurement to count towards meeting the CES. DOER requests that DEP address this eligibility issue as part of its announced stakeholder process, pursuant to 310 C.M.R. § 7.75(10), to achieve consistency between the Act and the regulations in an efficient and timely manner, and further align the policy goals and objectives of the Commonwealth.

DOER and stakeholders have informed EEA and MassDEP that the differences between the CES eligibility requirements and the Section 83D RFP eligibility requirements, including the vintage requirement, may limit whether the clean energy procured by Massachusetts utilities pursuant to Section 83D could be counted towards meeting the CES.

MassDEP has initiated the public comment process required by the review. The issue of consistency between the CES and the Section 83D procurement process was discussed at two stakeholder meetings in October 2017, and written pre-rulemaking comments on this topic were requested by October 30 to ensure that they would be available for MassDEP, DOER, and EEA to consider before specific regulatory amendments were proposed for public comment. Please note that, because the specific amendments described in this TSD were proposed after October 30, commenters that wish to comment on any aspect of the amendments must submit comments after the date that the amendments were proposed, in accordance with instructions provided in the hearing notice, even if the comments are similar or identical to comments submitted in advance of the October 30 deadline.

MassDEP requests comment on all aspects of the proposed amendments, including whether there are any other policy implications with expanding CES eligibility to include clean energy generation procured to align with the Energy Diversity Act implementation.

Please note that other aspects of the review required by 310 CMR 7.75(10) are ongoing and are not addressed by the proposed amendments described in this TSD.

III. DESCRIPTION OF THE PROPOSED AMENDMENTS

The only proposed change to the regulatory provisions of 310 CMR 7.75 is an amendment to the definition of “clean energy attribute” to include attributes associated with energy contracted pursuant to Section 83D of *An Act to Promote Energy Diversity*. “Attribute” is a technical term used to refer to non-energy characteristics of electricity generation, such as emissions and fuels. Attributes are tracked using “certificates”, such as “renewable energy certificates” or “RECs.” *An Act to Promote Energy Diversity* requires the retention of certificates to represent attributes. Therefore, the inclusion of “attributes” in the CES is consistent with the requirement to retain “certificates” in *An Act to Promote Energy Diversity*. Because the regulation requires the use of “clean energy attributes” to demonstrate compliance, this change is sufficient to enable all clean energy procured pursuant to *An Act to Promote Energy Diversity* to qualify for the CES.

EEA and MassDEP seek comment on whether these proposed amendments are sufficient to align the CES implementation with the requirements of the Section 83D procurement process. For example, EEA and MassDEP are aware of the need to clarify how attributes procured and retained pursuant to Section 83D will be counted toward all retail sellers’ compliance obligations, including competitive suppliers’ compliance obligations. EEA and MassDEP are currently planning to accomplish this administratively within the existing regulatory structure, but seek comment on whether this should be accomplished administratively, or whether additional amendments are necessary.

IV. ECONOMIC IMPACTS

The amendments improve consistency among requirements and are not expected to have significant economic impacts.

V. AGRICULTURAL IMPACTS

The amendments will not have any impacts on agricultural production.

VI. IMPACT ON MASSACHUSETTS MUNICIPALITIES

The amendments to the CES regulation do not currently apply to municipally-owned electric utilities and therefore do not have impacts on cities or towns.

VII. MASSACHUSETTS ENVIRONMENTAL POLICY ACT (MEPA)

Pursuant to 301 CMR 11.03(12) (MEPA Regulations), these proposed regulatory amendments 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. Promulgation of these regulatory amendments, therefore, does not require the filing of an Environmental Notification Form under MEPA.

VIII. IMPACTS ON OTHER PROGRAMS – AIR TOXICS

Air toxics are a group of chemical air contaminants that are associated with significant environmental impacts or adverse health effects such as cancer, reproductive effects and birth

defects. The federal Clean Air Act requires EPA to promulgate source-specific controls based on Maximum Achievable Control Technologies (MACT) for air toxics. MassDEP implements MACT standards as EPA promulgates them. In addition, MassDEP controls air toxics through reductions of criteria pollutants and through its Toxics Use Reduction Program. Toxics use reduction is a MassDEP priority. Toxics use reduction is defined as in-plant practices that reduce or eliminate the total mass of contaminants discharged to the environment. The amendments to the regulations will not affect toxics.

IX. PUBLIC PARTICIPATION

EEA and MassDEP are providing the opportunity to review the proposed amendments to 310 CMR 7.75, the background document, and any technical information. 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@state.ma.us.