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Background Document on Proposed Amendments to:
310 CMR 7.75 Clean Energy Standard

April 2022

Regulatory Authority:

M.G.L. c. 21A, §§ 2, 8, and 16
M.G.L. c. 21N and
M.G.L. c. 111, §§ 2C and 142A – 142E

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I. SUMMARY

The Massachusetts Executive Office of Energy and Environmental Affairs (EEA) and Department of Environmental Protection (MassDEP) are proposing changes to 310 CMR 7.75: *Clean Energy Standard* (CES) that would:

- Raise the rate of increase of the CES standard from 2% to 6% each year from 2026 to 2030, reaching 60% in 2030, and lower the rate of increase of the CES standard from 2031-2050 from 2% to 1% each year, reaching 80% in 2050.
- Increase the CES-E stringency from 20% to 25% of 2018 retail sales starting in 2023.
- Set the CES alternative compliance payment (ACP) rate at \$35/MWh and the CES-E ACP rate at \$10/MWh in 2022 through 2050.
- Align capacity market requirements with the Department of Energy Resources' (DOER) Renewable Portfolio Standard (RPS) requirements, which were updated in July and August 2021.
- Clarify language related to limitations on banking.

These changes would align the CES with the *2030 Interim Clean Energy and Climate Plan* (“Interim CECP”) and the *Massachusetts 2050 Decarbonization Roadmap Report* (“2050 Decarbonization Roadmap”), both published by EEA in December 2020.¹ The proposed changes will accelerate progress toward a fully decarbonized electricity sector, in line with Massachusetts’ goal of net zero emissions in 2050.

II. BACKGROUND

In August 2017, EEA and MassDEP finalized 310 CMR 7.75: *Clean Energy Standard* (CES Regulation) to require retail sellers of electricity to provide increasing quantities of clean electricity to their customers in Massachusetts.² The standard is defined as a percentage of electricity sales, and increases from 16% in 2018 to 80% in 2050, increasing by 2% each year. The CES Regulation includes specific eligibility requirements, including an emissions-based qualification threshold and a requirement that eligible generators must have commenced commercial operation after 2010.

The CES Regulation required MassDEP to complete a review in 2017 of options for addressing clean generators that were in operation before 2011. Issues addressed in the review were documented in a discussion document and extensive written stakeholder comments. Comments received during the review informed regulatory amendments that were finalized in December 2017 to address attributes associated with energy contracted pursuant to Chapter 188 of the Acts of 2016, *An Act to Promote Energy Diversity*. In early 2019, MassDEP released a second discussion document, which included a detailed discussion of a “CES-E” requirement to maintain the clean energy supply from pre-2011 nuclear and large hydroelectric generators. This

¹ See <https://www.mass.gov/doc/interim-clean-energy-and-climate-plan-for-2030-december-30-2020/download> and <https://www.mass.gov/info-details/ma-decarbonization-roadmap>

² See <https://www.mass.gov/guides/clean-energy-standard-310-cmr-775> for more information about the CES, including rulemaking and stakeholder documents referenced in this document.

second stakeholder process, including a stakeholder meeting and written comments, was completed in early 2019 and the regulation was amended to include a CES-E in July 2020.

The CES regulation also required MassDEP to complete a program review by December 31, 2021. In preparing for this program review, MassDEP considered both the Secretary's establishment of a 2030 Interim statewide GHG emissions limit of 45% and her establishment of net zero statewide GHG emissions limit for 2050. MassDEP also took into consideration the data and analysis presented in the draft Interim CECP and in the 2050 Decarbonization Roadmap. Finally, MassDEP considered the amendments to the Global Warming Solutions Act, M.G.L. c. 21N, that were signed into law on March 26, 2021, Chapter 8 of the Acts of 2021 – *An Act Creating a Next Generation Roadmap for Massachusetts Climate Policy*. These amendments increased the stringency of the decadal statewide GHG emissions limit for 2030 from 45% to 50% reduction of GHG emissions from the 1990 baseline, set a 75% reduction limit for 2040 and codified the net zero reduction limit for 2050. These amendments also increased the stringency of the RPS program, which is complementary to and taken into account in the CES program stringency. As outlined in more detail below, these changes add to the need for an increased stringency in the CES program rates. To explore potential options for achieving this increased rate of decarbonization, MassDEP published a stakeholder discussion document posing questions about possible changes to the CES regulations.³

In May 2021, MassDEP released a discussion document detailing CES program issues to address in the review and soliciting stakeholder feedback. Comments received in response to this third stakeholder process informed the development of the regulatory amendments proposed at this time. All three discussion documents and all stakeholder comments are available on MassDEP's CES web site.⁴ There are also other amendments to 310 CMR 7.75 currently under review in a separate regulation package related to the reporting requirements in 310 CMR 7.75(9).⁵

To provide additional background on the most recent stakeholder process, topics posed by MassDEP in the discussion document are listed below, along with a brief summary of stakeholder responses to the topics. See **DESCRIPTION OF THE PROPOSED AMENDMENTS** for how each question is approached in the proposed amendments, along with the rationale for the proposed approach.

- **Increase the stringency of the CES from 40% to 60% or more in 2030.** Comments were generally supportive of increasing the CES stringency to 60% in 2030. Many comments stressed the importance of accommodating Canadian hydropower imports within the CES standard. Commenters were mixed on the pace and years over which the increase should occur. Some commenters supported increasing the stringency above 60% in 2030. One comment suggested creating a separate standard for contracted Canadian

³ <https://www.mass.gov/guides/clean-energy-standard-310-cmr-775#-stakeholder-input>. This document also addresses MassDEP's electricity generation sector cap program, 310 CMR 7.74: *Reducing CO₂ Emissions from Electricity Generation Facilities*. As explained in that document "Emissions from the instate power plants regulated under 310 CMR 7.74 have trended well below regulatory limits, so further reducing those limits may not be necessary to achieve reductions by 2030."

⁴ <https://www.mass.gov/guides/clean-energy-standard-310-cmr-775>

⁵ See <https://www.mass.gov/regulations/310-CMR-700-air-pollution-control#proposed-amendments-public-comment>.

hydropower imports (“83D power”) instead of increasing the CES stringency.⁶ Another commenter estimated that increasing the CES stringency to 60% in 2030 could cost \$182M. A few commenters expressed concern that the various standards, such as the RPS, Alternative Energy Portfolio Standard, CES, CES-E, and Clean Peak Energy Standard, combine to reach more than 100% of load.

- **Increase the CES-E from 20% of 2018 electricity sales to 25%.** Most comments were supportive of increasing the CES-E to 25% although one comment opposed the CES-E concept as a whole. One commenter estimated that increasing the CES-E to 25% would increase costs by up to \$9M annually. Commenters also requested changes in eligibility criteria such as allowing resources that are excluded from participating in other renewable energy credit (REC) markets.
- **Options for a comprehensive “global” CES as a substitute for, or complement to, the suite of RPS/APS/CES/CES-E policies that currently exist in Massachusetts and New England.** Comments were mixed on this topic with some supporting the concept and others preferring the existing programs that differentiate based on resource type. No comment included a detailed proposal for how a global CES might be structured.
- **Change the ACP rates to \$35/MWh for the CES and \$10/MWh for the CES-E.** Many comments supported setting fixed ACP rates and decoupling the CES and CES-E ACP rates from RPS ACP rates, although two comments preferred leaving the ACP rate unchanged. Commenters did not agree on what the ACP rates should be: one suggested \$40/MWh for the CES and \$20/MWh for the CES-E, another suggested the CES ACP be set as close to the RPS Class I ACP rate as possible, another suggested setting the CES-E ACP rate at \$5/MWh, another suggested basing ACP rates on prevailing REC prices in the region.
- **Change the structure of the standard to address behind-the-meter generation.** Stakeholders provided limited feedback on this topic. Two commenters preferred no changes to the current treatment of behind-the-meter generation. One commenter requested double counting of behind-the-meter generation not be allowed.
- **Change the requirements that apply to generators located outside of ISO-NE.** Stakeholders provided limited feedback on this topic. One commenter requested that the capacity obligation be removed, and another commenter noted that documentation requirements are burdensome.

The CES is related to DOER’s Renewable Energy Portfolio Standard (RPS) regulations in that the CES: (1) counts compliance with 225 CMR 14.00: Renewable Energy Portfolio Standard – Class I (“RPS Class I”) towards the CES compliance obligation, (2) incorporates eligibility requirements for generation units from 225 CMR 14.05(1)(a)5. through 7, and (3) ties the CES and CES-E ACP rates to the RPS Class I ACP rate.⁷ On April 5, 2019, DOER filed draft amendments to RPS Class I and 225 CMR 15.00: Renewable Energy Portfolio Standard – Class II (“RPS Class II”). After initial stakeholder feedback, DOER bifurcated the amendments into two phases: Phase I and Phase II. The final Phase I amendments were promulgated on July 9,

⁶ 310 CMR 7.75(6)(b)7. specifies that any generation attributes retained under contract pursuant to St. 2008, c. 169, § 83D(h), as inserted by St. 2016, c. 188, § 12 will be counted toward compliance with the CES based on each retail seller's proportion of the total retail electricity product sold statewide by all such retail sellers.

⁷ See <https://www.mass.gov/doc/frequently-asked-questions-massdep-clean-energy-standard/download> page 1 for a description of how these programs interact.

2021. The Phase II amendments were repropounded under a new rulemaking process on March 4, 2022.⁸ A summary of the amendments relevant to the CES is provided below.⁹

Phase I Amendments:

- Increase the RPS Class I minimum standard to 16% in 2020 and 2% annually thereafter until 2030. After 2030 the RPS Class I minimum standard increases 1% annually.
- Set the ACP rate for RPS Class I at \$60/MWh in 2021, \$50/MWh in 2022, and \$40/MWh in 2023.
- Remove the obligation that required RPS Class I Generation Units to commit the capacity of the unit claimed as RPS Class I Renewable Generation to the ISO-NE Forward Capacity Auction.
- Simplify the documentation requirements for Generation Units located in a control area adjacent to ISO-NE.

Proposed Phase II Amendments:

- Increase the Minimum Standard from 2% per year to 3% per year for the years 2025 to 2029, to reflect the changes of Section 32 of Chapter 8 of the Acts of 2021.
- Exclude new biomass facilities located in or within 5 miles of an Environmental Justice (EJ) population from qualifying for RPS Class I.
- Require 60% efficiency for any biomass facility with a commercial operation date (COD) after December 31, 2020 to qualify for RPS Class I.
- Remove the prior 40%-50% efficiency requirement for biomass facilities with CODs between December 31, 1997 and December 31, 2020.¹⁰
- Change the definitions of eligible biomass fuel, biogas fuel, and liquid biofuel.

Because the Phase II amendments will revise 225 CMR 14.05(1)(a)7., which is referenced in 310 CMR 7.75(7)(a)1.b., the Phase II amendments will also apply to eligibility under the CES. In particular, facilities that do not meet the requirements of 225 CMR 14.05(1)(a)7. are not eligible to qualify as clean generation units under the CES. Before finalizing these amendments, EEA and MassDEP may consider clarifying amendments to 310 CMR 7.75 to ensure consistency between the corresponding regulatory requirements, including amendments to relevant definitions.

In summary, EEA and MassDEP are proposing amendments to the CES Regulation at this time in order to address two concerns that emerged from the program review, namely that there is a need to accelerate the schedule for decarbonizing the electricity supply and that regulated entities need additional certainty regarding ACP rates. The accelerated schedule is consistent with Massachusetts' Net Zero greenhouse gas (GHG) emissions goal for 2050, announced in January 2020, the 2050 Decarbonization Roadmap, and the goals set out for 2030 and 2050 in the Interim CECP.¹¹ In addition, the current proposed amendments incorporate feedback received during the

⁹ See <https://www.mass.gov/service-details/rps-class-i-ii-rulemaking> for a summary of the 2019-2021 rulemaking process, including stakeholder engagement, and <https://www.mass.gov/service-details/2022-rps-class-i-ii-rulemaking> for the current proposal.

¹⁰ Note this could allow some existing older biomass facilities that were previously excluded into RPS Class I.

¹¹ See <https://www.mass.gov/doc/2025-2030-cecp-public-hearings-presentationenglish/download>, slide 15, for an April, 2022 update addressing the role of the CES in EEA's CECP planning process.

2021 program review and address recent changes to DOER’s RPS regulations, as described above.

III. DESCRIPTION OF THE PROPOSED AMENDMENTS

The proposed amendments would:

- Raise the rate of increase of the CES standard from 2% to 6% each year from 2026 to 2030, reaching 60% in 2030, and lower the rate of increase of the CES standard from 2031-2050 from 2% to 1% each year, reaching 80% in 2050.
- Increase the CES-E stringency from 20% to 25% of 2018 retail sales starting in 2023.
- Set the CES alternative compliance payment (ACP) rate at \$35/MWh and the CES-E ACP rate at \$10/MWh in 2022 through 2024, and adjust by the Consumer Price Index thereafter.
- Align capacity market requirements with the Department of Energy Resources’ (DOER) Renewable Portfolio Standard (RPS) requirements, which were updated in 2021.
- Clarify language related to limitations on banking.

The proposed amendments are described in detail below and are included in the proposed regulatory text. EEA and MassDEP welcome comment on all aspects of this proposal.

A. Increase the CES to 60% in 2030 and the CES-E to 25% in 2023

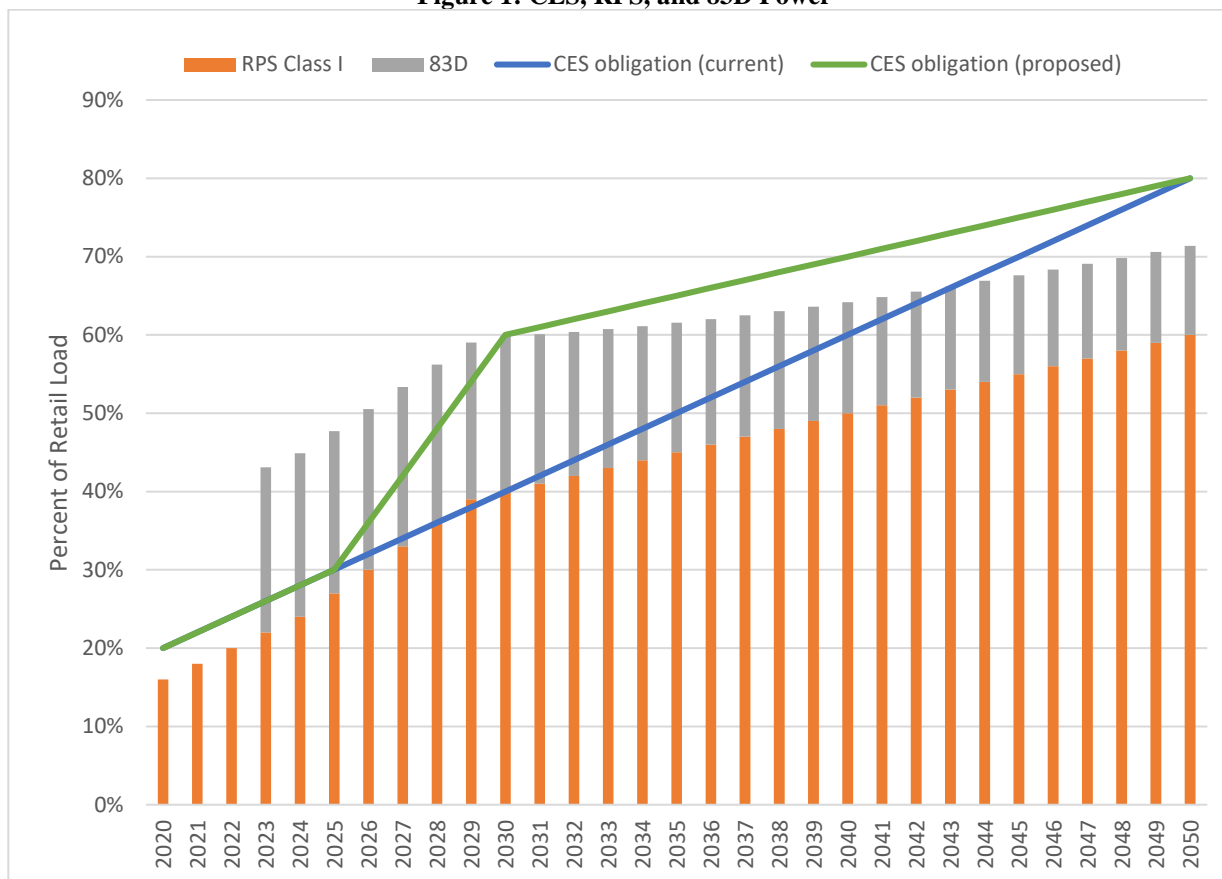
EEA and MassDEP are proposing to increase the CES standard to 60% by 2030 in 310 CMR 7.75(4), Table A. The current CES standard rises 2% annually until reaching 80% in 2050. Under the proposal, the CES standard would increase from the prior year’s standard by 6% annually from 2026 to 2030 to reach 60%. From 2031 to 2050 the CES standard would then increase by 1% annually until reaching 80% in 2050.

The Interim CECP states: “To impact markets for new clean generating resources in 2030, the CES would need to be raised from 40% to at least 60% to exceed the RPS and not be overtaken by the clean energy anticipated under the section 83D hydroelectric procurement.”¹² Figure 1 shows the interaction between the CES and RPS Class I obligations and the section 83D power.¹³

¹² See <https://www.mass.gov/doc/interim-clean-energy-and-climate-plan-for-2030-december-30-2020/download> page 40.

¹³ Megawatt-hours used towards compliance with the RPS Class I obligation are credited toward compliance with the CES. The remaining MWh required to meet the CES obligation are the “net CES obligation.” Clean energy that is not RPS-eligible, including section 83D power, is eligible to meet the net CES obligation.

Figure 1: CES, RPS, and 83D Power



Note: For this illustration, the 9,450,000 MWh procured under section 83D has been converted to percent of retail load assuming that retail load grows following the trajectory set out in the ‘All Options’ pathway in the *Energy Pathways to Deep Decarbonization* report published by EEA in December 2020.¹⁴

Under the current CES standard and accounting for the increases in the RPS Class I obligation set out in Chapter 8 of the Acts of 2021 – *An Act Creating a Next Generation Roadmap for Massachusetts Climate Policy*, the RPS Class I obligation will be greater than or equal to the CES obligation from 2028-2030. In addition, imported Canadian hydroelectric power is not eligible to be counted under RPS Class I. Without amending the CES, the 9,450,000 MWh specified in the 83D power authorizing legislation would be in excess of the CES obligation until the mid 2040s and the clean generation attributes associated with the section 83D power cannot be used or sold into other renewable energy credit markets. In the 2021 program review, many stakeholders expressed concern that the section 83D power could not be credited toward the CES due to the level of the current CES minimum standard.¹⁵ Figure 1 demonstrates how the proposed increases to the CES standard would prevent the RPS Class I obligation from exceeding the CES obligation in all years and be able to accommodate the power procured under section 83D after 2030. While Figure 1 illustrates how the CES standard could be met through

¹⁴ See <https://www.mass.gov/doc/energy-pathways-for-deep-decarbonization-report/download> page 43. Under the All Options pathway, load nearly doubles by 2050, so the 83D contribution would fall by approximately half on a percentage basis.

¹⁵ See <https://www.mass.gov/doc/electricity-sector-program-review-comments-august-2021/download> for stakeholder comments received.

full compliance with RPS and delivery of 9,450,000 MWh of 83D power, it is important to note that the regulatory text prioritizes achievement of the standard over supporting any particular energy resource by allowing retail electricity sellers to meet the standard using any combination of RPS Class I-eligible resources, 83D power, and other qualifying clean energy.

EEA and MassDEP are also proposing to increase the CES-E from 20% to 25% of 2018 retail electricity sales starting in 2023. As detailed in the October 2019 Background Document published when the CES-E was proposed, the CES-E requirement was set conservatively, and as discussed above, stakeholders and the Interim CECP have suggested increasing the standard.¹⁶ Establishing a CES-E of 25% will better ‘lock in’ the historic contribution of existing clean energy resources into the future.

When addressing raising the CES and CES-E stringency, several commenters raised concerns about when and to what extent the combined clean energy policies in Massachusetts would exceed 100% of retail load. Figure 2 and Figure 3 demonstrate how the current standards in Massachusetts and the proposed CES and CES-E changes combine in terms of percent of retail electricity load.¹⁷ The standards represented include:

- CES
- CES-E
- RPS Class I, including Solar Carve-Out I and II (“SREC I + II”)
- RPS Class II, waste-to-energy (“WTE”) and renewable
- Clean Peak Energy Standard (“CPS”)¹⁸
- Alternative Energy Portfolio Standard (“APS”)¹⁹

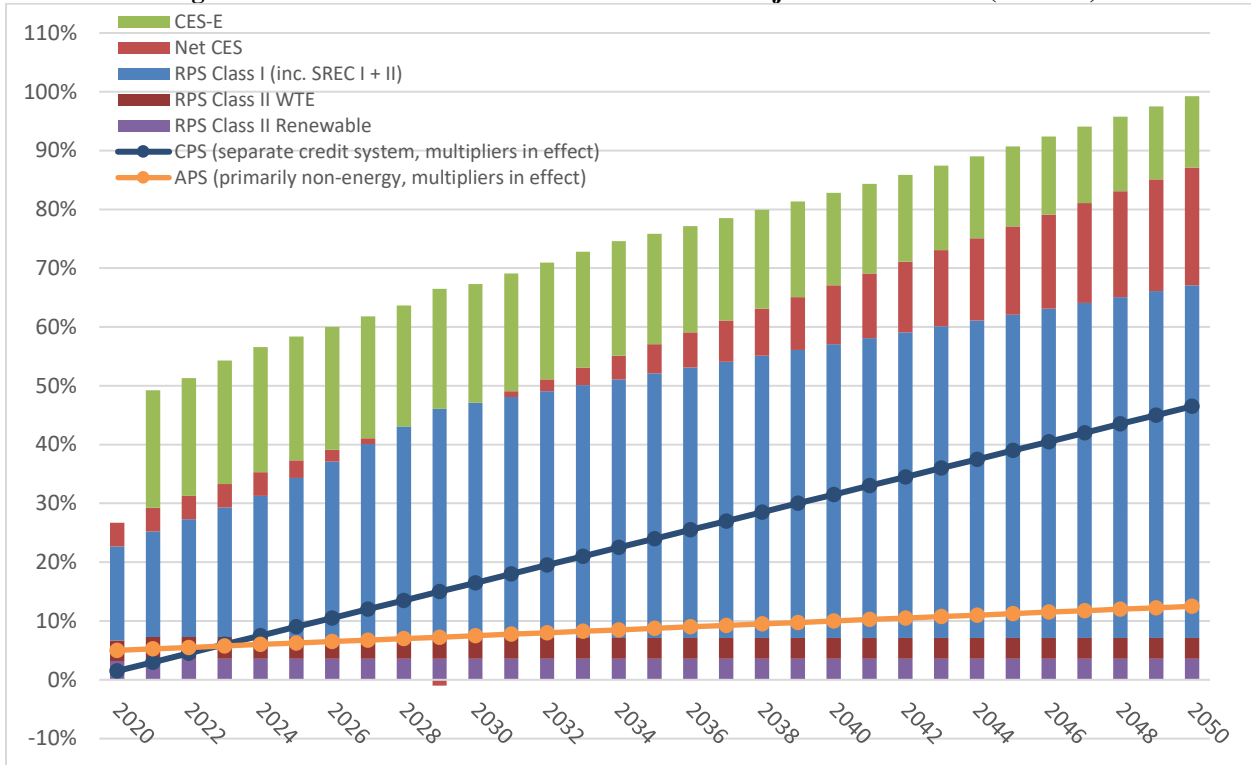
¹⁶ See <https://www.mass.gov/doc/310-cmr-775-background-document-october-2019/download>. Also see <https://www.mass.gov/doc/2017-stakeholder-presentation-options-for-expanding-the-ces/download>, slides 10-11, for technical information that was considered in establish the level of the CES-E standard conservatively.

¹⁷ Note that this analysis does not address the impact of increasing levels of behind-the-meter solar generation on calculation of the standard. The combined impact of the standards would be smaller if the figures depicted the contributions as a percentage of total electricity consumption (vs. retail electricity load).

¹⁸ The CPS incentivizes clean energy technologies that can either supply electricity or reduce demand during peak seasonal demand as established by DOER. Clean Peak Energy Certificates are distinct from renewable energy credits. In addition, the CPS uses multipliers that can provide more than one Clean Peak Energy Certificate per MWh depending on the specific characteristics of the resource. In this figure, the CPS standard is not depicted as additive because the same MWh of generation can be used to meet both standards. See <https://www.mass.gov/clean-peak-energy-standard> for more information.

¹⁹ The APS is complementary to the RPS and provides incentives for alternative energy technologies. Eligible technologies include combined heat and power, flywheel storage, and efficient steam technologies, which generate Alternative Energy Certificates, subject to multipliers. In the figure, the APS standard is not depicted as additive because most of the resources in the APS do not serve retail electricity load in Massachusetts. See <https://www.mass.gov/alternative-energy-portfolio-standard> for more information.

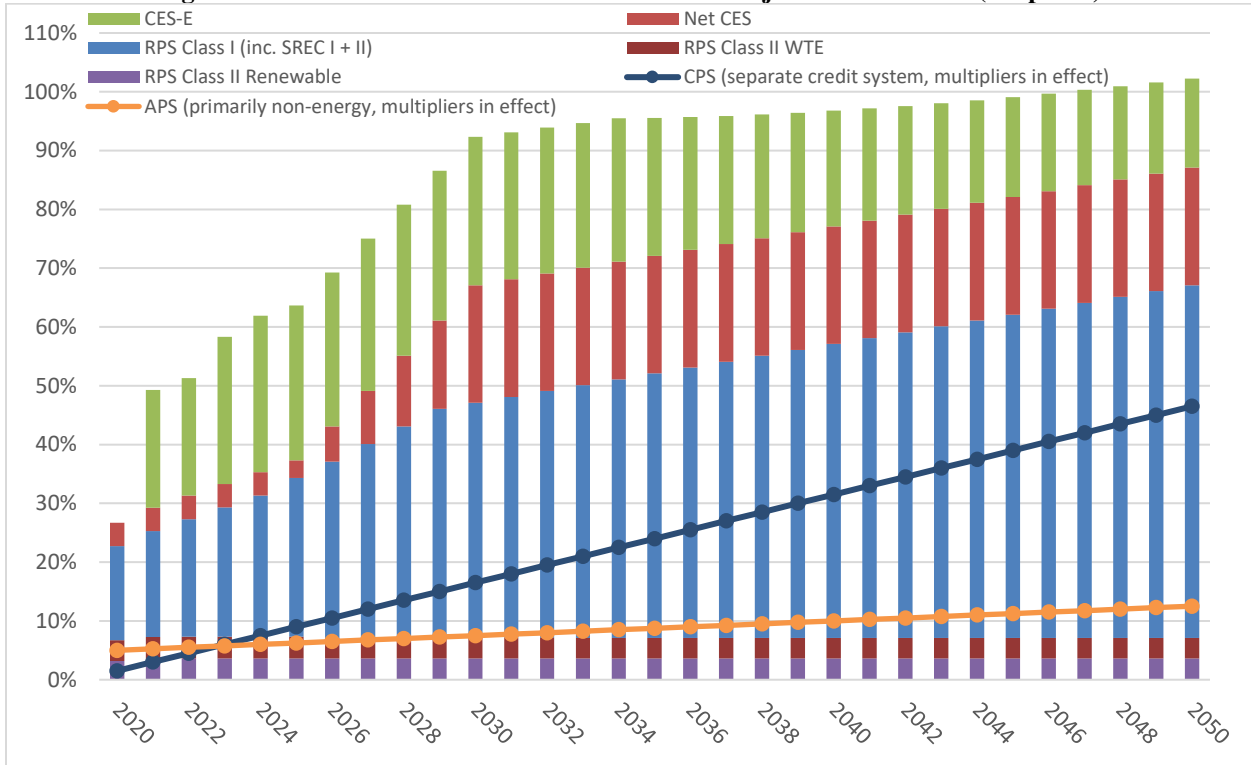
Figure 2: Combined MA Standards as Percent of Projected Retail Sales (Current)



Note: The CES-E percentage over time has been calculated assuming that retail load grows following the trajectory set out in the ‘All Options’ pathway in the *Energy Pathways to Deep Decarbonization* report.²⁰

²⁰ See <https://www.mass.gov/doc/energy-pathways-for-deep-decarbonization-report/download> page 43. Under the All Options pathway, load nearly doubles by 2050, so the CES-E contribution would fall by approximately half on a percentage basis.

Figure 3: Combined MA Standards as Percent of Projected Retail Sales (Proposed)



Note: The CES-E percentage over time has been calculated assuming that retail load grows following the trajectory set out in the ‘All Options’ pathway in the *Energy Pathways to Deep Decarbonization* report.

As shown in Figure 2, the current suite of standards in Massachusetts has the electricity sector on track to approach 100% clean energy in 2050. The proposed changes to the CES and CES-E stringencies will accelerate the decarbonization of the electricity sector, particularly over the next decade.

Note that the projected effect of the combined standards slightly exceeds 100% of retail load in the late 2040s. This is appropriate because the projection is an estimate based on uncertain assumptions about future electricity load, generation by RPS Class II resources, the continued operation of municipal waste combustors, the impact of increasing levels of behind-the-meter solar generation on calculation of the standard, etc., and because it is prudent to retain the contribution of existing resources at this time even if it is uncertain whether they will be needed in 2050. However, MassDEP acknowledges the need to better calibrate the standards before 2050 and is therefore proposing the addition of required program reviews every ten years in 310 CMR 7.75(11).²¹ MassDEP welcomes comment on this issue, including comment on whether the annual 1% increases in the standard should end in 2045 instead of 2050.

B. ACP Rate

²¹ This would align the review schedule with 310 CMR 7.74, which already requires a review every 10 years.

In the current regulation, the CES ACP rate is set at 0.50 times the RPS Class I ACP rate for 2021-2050. Similarly, the CES-E ACP rate is set at 0.10 the RPS Class I ACP rate for 2021-2050.

In the amendments finalized on July 9, 2021, DOER established the following ACP rates for RPS Class I: \$60/MWh in 2021, \$50/MWh in 2022, and \$40/MWh in 2023 and thereafter. Because the CES and CES-E ACP rates are tied to the RPS Class I ACP rate, in the absence of MassDEP's proposed amendments, the DOER changes will lower the CES and CES-E ACP rates by 33% from 2021 to 2023.²²

To avoid this result and provide more regulatory certainty, EEA and MassDEP are proposing to establish an ACP rate of \$35/MWh for the CES and \$10/MWh for the CES-E for 2022-2050. In setting these rates, MassDEP considered the rationale for setting CES ACP rates provided when the CES was first proposed: "establish a consistent relationship between corresponding components of the two programs [RPS and CES] and send a clear market signal that renewable energy remains the preferred source of clean energy."²³

C. Capacity Market Requirements

EEA and MassDEP are proposing to eliminate the capacity obligation in 310 CMR 7.75(7)(a)4. to align with DOER's amendments to RPS Class I. The capacity obligation was originally included in the CES regulation to mirror the condition for RPS Class I resources that required clean generation units to commit the capacity of the unit claimed as clean generation to the ISO-NE Forward Capacity Auction. As noted above, on April 5, 2019, DOER filed draft amendments to the RPS Class I regulation that included the removal of the capacity obligation to simplify the regulation and improve market efficiency. The amendments removing the capacity obligation were finalized and published in the Massachusetts Register on July 9, 2021. The CES is intended to be complementary to the RPS and no stakeholder concerns with removing the capacity obligation were raised in the feedback received on the 2021 program review discussion document. Consequently, removal of the capacity obligation from the CES will align the CES with the RPS, providing consistency for regulated entities, without negatively impacting the intent of the regulation.

EEA and MassDEP are also proposing to delete the definition of "Intermittent Generation Unit" because it is only used in the section EEA and MassDEP propose to eliminate, 310 CMR 7.75(7)(a)4.

D. Banking Clarification

²² For example, the CES ACP rate was \$53.68/MWh in 2020 and will be \$30/MWh in 2021. Without the proposed amendments, the CES ACP will be \$25.00/MWh in 2022 and \$20.00/MWh in 2023. The CES-E ACP rate will be \$6.00/MWh in 2021 and without the proposed amendments, would fall to \$5.00/MWh in 2022 and to \$4.00/MWh in 2023.

²³ <https://www.mass.gov/doc/background-document-proposed-global-warming-solutions-act-regulations-december-2016/download>, p. 28.

EEA and MassDEP are proposing a clarification to the provisions for banking of Clean Generation Attributes in 310 CMR 7.75(5)(b)1.b. These clarifications have been included in the Frequently Asked Questions (FAQ) document for the CES since its initial publication in July 2018.²⁴ As explained in that document, the 30% banking limit is calculated on the net CES obligation, as defined in footnote 13 above and depicted in Figures 2 - 3.

E. Miscellaneous Amendments

EEA and MassDEP are also proposing several corrective and minor clarifying amendments throughout the regulation. These amendments include the deletion of a reference to indirect emissions in the definition of “lifecycle greenhouse gas emissions”, which is proposed solely to avoid confusion with the definition of “indirect emissions” in the GWSA and does not have any substantive effect on the meaning of that definition or the regulation. This and other corrective and clarifying amendments are indicated in the redlined draft regulation published with the public notice of this rule-making.²⁵

IV. IMPACTS OF PROPOSED AMENDMENTS

Economic Impacts

Very minor economic impacts are anticipated as a result of the proposed amendments.²⁶ The adjustments to the stringency in the CES are calibrated to accommodate the RPS Class I requirement and the contracted section 83D power through 2030, so no economic impacts beyond the cost of meeting these existing mandates are expected from the proposed amendments.²⁷ Similarly, fixing the CES and CES-E ACP rates as dollar amounts that are uncoupled from the recently updated RPS Class I ACP rates simply maintains ACP rates in line with the 2021 rate and the rates evaluated when the CES and CES-E were originally proposed.²⁸ Raising the CES-E requirement from the conservatively set 20% to 25% starting in 2023 could result in very minor impacts, such as the \$9M in increased electricity costs annually estimated by one of the commenters discussed above, but MassDEP believes this is an overestimate and, at any rate, notes that \$9M would represent less than 0.1% of electricity bills.²⁹ Furthermore, there

²⁴ The current FAQ states that “CECs may only be banked for up to two years, and banked CECs must not exceed 30% of the CES compliance obligation in a given year (i.e., the portion above the RPS requirement)” and is available at <https://www.mass.gov/doc/frequently-asked-questions-massdep-clean-energy-standard/download>

²⁵ <https://www.mass.gov/service-details/massdep-public-hearings-comment-opportunities>

²⁶ See <https://www.mass.gov/lists/past-310-cmr-775-rulemaking-stakeholder-documents> for past CES rulemaking documents.

²⁷ The clean generation attributes from the power procured through section 83D will be assigned to all retail sellers in proportion to their share of retail electricity sales. Clean generation attributes from section 83D power would be sufficient to meet the increase in stringency of the CES above the RPS Class I obligation through 2030.

Consequently, retail sellers would not need to procure additional RECs or CECs to meet this increased stringency.

²⁸ See <https://www.mass.gov/doc/310-cmr-775-background-document-october-2019/download> page 9 and <https://www.mass.gov/doc/background-document-proposed-global-warming-solutions-act-regulations-december-2016/download> page 33.

²⁹ A commenter provided the estimate of \$9M, which represents the difference in potential maximum cost when assuming an ACP rate of \$6/MWh versus \$10/MWh (calculated as 5% of 2018 retail load times \$10/MWh minus 5% of 2018 retail load times \$6/MWh). Massachusetts’ retail electricity sales were 51,336,598 with an average retail price of approximately \$180/MWh in 2019. See <https://www.eia.gov/electricity/state/massachusetts/>.

could be long-term cost savings associated with the increased CES-E standard if it helps to retain additional existing low-cost generation that would otherwise need to be replaced with higher-cost new clean energy generators. The removal of the capacity obligation, clarification to the banking requirements, and addition of future program reviews are administrative changes that will not have economic impacts.

Impacts on Massachusetts Municipalities

Pursuant to Executive Order 145, state agencies must assess the fiscal impact of new regulations on the Commonwealth's municipalities. The proposed amendments will not affect cities or towns because municipally-owned retail electricity sellers are not currently required to comply with the CES Regulation.

Massachusetts Environmental Policy Act (MEPA)

Pursuant to 301 CMR 11.03(12) (MEPA Regulations), EEA and MassDEP are not required to file an Environmental Notification Form (ENF) regarding the proposed amendments. The proposed amendments will not reduce standards for environmental protection, nor do they reduce opportunities for public participation in review processes or public access to information generated or provided in accordance with these regulations.

V. PUBLIC HEARING AND COMMENT

EEA and MassDEP will hold a public hearing on the proposed amendments in accordance with M.G.L c. 30A and will publish a notice of the hearing and comment period at least 21 days before the public hearing. EEA and MassDEP will accept written comments for 10 days after the public hearing. The public hearing notice and proposed amendments are available on MassDEP's website at: <https://www.mass.gov/service-details/massdep-public-hearings-comment-opportunities>. For further information, please contact William Space at 617-292-5610 or william.space@mass.gov.