

**Commonwealth of Massachusetts
Department of Energy Resources**

**Response to Comments on:
225 C.M.R. 14.00, Renewable Energy Portfolio Standard- Class I
225 C.M.R. 15.00, Renewable Energy Portfolio Standard- Class II**

June 24, 2022

Regulatory Authority:

**M.G.L. c. 25A, §§ 11F Renewable Energy Portfolio Standard for retail electricity suppliers
Executive Order No. 562 To Reduce Unnecessary Regulatory Burden**

I. INTRODUCTION

The Massachusetts Department of Energy Resources’ (“Department”) Renewable Energy Portfolio Standard (“RPS”) – Class I (225 CMR 14.00) and Renewable Energy Portfolio Standard – Class II (225 CMR 15.00) aim to increase the amount of renewable electric energy consumed within the Commonwealth by requiring retail electricity suppliers (both regulated distribution utilities and competitive suppliers) to obtain a percentage of the electricity they serve to their customers from qualifying renewable energy facilities.

In 1997, *An Act Relative to Restructuring the Electric Utility Industry* was passed by the Massachusetts’ Legislature granting the authority to the Department to design and implement the RPS. In 2002, the Department promulgated 225 CMR 14.00 and implemented the RPS in 2003. A rulemaking in 2007 addressed changes to biomass emissions and import provisions. In 2008, the *An Act Relative to Green Communities* (“Green Communities Act” or “GCA”) expanded the RPS and created the Class I and Class II framework as well as the Solar Carve-Out (“SREC”) program. Rulemakings in 2009 and 2010 incorporated the new GCA requirements. In 2012, the Department reviewed biomass eligibility for Generation Units (“GU”) and implemented changes that included, but were not limited to, sustainable forestry, lifecycle greenhouse gas emissions reductions, and overall efficiency. In 2013 and 2014, the Department revised the RPS – Class I and Class II regulations to incorporate requirements from *An Act Relative to Competitively Priced Electricity* to change to the size limitations for small hydroelectric Generation Units, as well as the administration of the SREC program for the RPS Class I program. In 2013 and 2014, two rulemakings respectively extended the SREC program and implemented its successor program, the Solar Carve-Out II (SREC II). In 2016, an emergency rulemaking extended the SREC II program while the Department developed a successor tariff program. In 2019, the Department began a rulemaking process to implement Chapter 227 of the Acts of 2018, make changes to improve the regulation, streamline requirements, reduce costs, and eliminate unnecessary or onerous provisions as contemplated by Executive Order 562, and other policy related changes that were identified by DOER during its comprehensive review of the existing regulations.

Last year, DOER announced a phased rulemaking for the Renewable Energy Portfolio Standard regulations, 225 CMR 14.00: Renewable Energy Portfolio Standard – Class I (RPS Class I), and 225 CMR 15.00: Renewable Energy Portfolio Standard – Class II (RPS Class II). The Phase 1 changes were finalized on July 9, 2021.

The Secretary of State has taken the position that in order to publish the proposed biomass changes (Phase II changes), a new rulemaking process was necessary. Thus, the Phase II RPS Class I and RPS Class II regulations were not finalized with the Secretary of State in November 2021.

II. RPS CLASS I & II RULEMAKING AND PUBLIC REVIEW PROCESS

On February 18, 2022, the Department published draft regulations to amend portions of the RPS Class I and II regulations. The proposed amendments revised the RPS Class I and II regulations to address policy related changes, including changes required to implement Section 32 of Chapter 8 of the Acts of 2021, now codified at M.G.L. c. 25A, § 11F.

Unofficial versions of each of the draft regulations are posted on the Department website at <https://www.mass.gov/service-details/2022-rps-class-i-ii-rulemaking>. Official copies of the regulations may be obtained by contacting the Secretary of State's office at regs@sec.state.ma.us.

On Friday, March 4, 2022, the Department filed a Notice of Public Review of the proposed 225 CMR 14.00 Renewable Energy Portfolio Standard – Class I regulation and 225 CMR 15.00 Renewable Energy Portfolio Standard – Class II.¹

As part of the review process, the Department hosted a virtual public hearing on the draft regulation on Tuesday, March 29, 2022.

Interpretation services for the hearing were provided in American Sign Language, Spanish, Portuguese, Chinese, and other languages as requested.

The deadline for public comments on the proposed regulation (“RPS Class I and II Comments”) was April 1, 2022.

III. BACKGROUND

The Department proposed changes to the RPS Class I regulations in the following areas:

- 1) Minimum Standard Revisions
- 2) Eligibility Criteria and Ongoing Generator Compliance Requirements
 - a) General Eligibility Criteria
 - b) Woody Biomass
- 3) Other Administrative Changes

The Department proposed changes to the RPS Class II regulations in the following areas:

- 1) Eligibility Criteria and Ongoing Generator Compliance Requirements
 - a) General Eligibility Criteria
 - b) Woody Biomass
- 2) Other Administrative Changes

Many of the proposed changes were consistent between the RPS Class I and Class II regulations.

¹ Acting under the statutory authority in M.G.L. Ch. 25A, § 17. The notice was filed with the Secretary of State for the Commonwealth and published in the *Massachusetts Register* March 4, 2022

IV. PUBLIC STAKEHOLDER COMMENTS AND DEPARTMENT RESPONSE

The Department received over 50 comments on the proposed regulation. The Department also took into consideration the public comments previously filed in the rulemaking commenced in 2019 on the RPS Class I and II regulations that related to Phase II changes (“2019 Comments”). The Department’s responses to those comments are memorialized on the Department’s website at <https://www.mass.gov/doc/rps-reponse-to-comments-12-04-20/download> and incorporated herein by reference. The Department considered whether any change in circumstances or new information might justify a change in how the Department responded to the 2019 Comments and, after careful consideration, has determined that no changes are warranted. Sections V and VI of this Response to Comments document provide responses to various topics raised by commenters in the current rulemaking process only, and provides the Department’s rationale for the regulatory changes that the Department intends to make final. Although the document may not directly respond to all comments received, all comments were considered and are posted on our website here: <https://www.mass.gov/service-details/2022-rps-class-i-ii-rulemaking>.

V. 225 CMR 14.00 RENEWABLE ENERGY PORTFOLIO STANDARD – CLASS I

A. Eligible Biogas Fuel

Comment: Some commenters stated that Eligible Biogas Fuel produced from woody biomass should not be considered a Manufactured Biomass Fuel and subject to the environmental justice populations restrictions for new facilities. Commenters stated that biogas from woody biomass utilizes clean biogas like an anaerobic digester and should not be compared to a furnace that burns wood to produce steam. Therefore, Eligible Biogas Fuel, regardless of its source feedstock, should not be subject to the environmental justice population restrictions for new facilities. A commenter asked the Department to reverse its decision to incorporate environmental justice changes in the proposed regulations. A commenter asked the Department to revise the regulations to state that Eligible Biogas Fuel shall not be considered a Manufactured Biomass Fuel.

Response: The proposed regulatory changes are being retained in the final regulation. The definitions for Eligible Biogas and Manufactured Biomass Fuel align with the definitions in the Alternative Energy Portfolio Standard. Maintaining the same definitions provides administrative efficiencies to the program. Additionally, Eligible Biogas Fuel generated from Manufactured Biomass Fuel should continue to be treated as a Woody Biomass Fuel, enabling the lifecycle greenhouse gas emissions to be reflective of the feedstock.

B. Environmental Justice - Existing Facilities

Comment: Some commenters stated that the exception to the environmental justice population restrictions should not extend to all biomass facilities that were in operation prior to January 1, 2022. Commenters stated that this would allow existing biomass facilities near environmental justice populations in other states to be eligible. Instead, the Department should limit the exemption to only those biomass facilities that were qualified for the RPS program as of January 1, 2022.

Response: The proposed regulatory changes are being retained in the final regulation. The environmental justice population restrictions are designed to influence siting of future biomass facilities, not impact existing biomass facilities, regardless of the state they are in. Accordingly, the Department believes that the appropriate place to draw the line is operation rather than qualification. The Department notes that out of state facilities must meet all other applicable eligibility requirements in the regulation.

C. Environmental Justice - Facility Size

Comment: A commenter stated that the environmental justice population restriction should not apply to all woody biomass facilities. Commenters stated that the Commonwealth should support high efficiency combined heat and power systems that use woody biomass. Commenters recommended that the environmental justice population restriction should apply only to those projects that are over 2 megawatts.

Response: The proposed regulatory changes are being retained in the final regulation. Based on current market conditions where developers are seeking greater revenue certainty, the RPS program alone is unlikely to incentivize woody biomass combined heat and power systems to be built. Additional incentives outside of the RPS would be required if these systems are to be supported.

D. Load Exemption

Comment: A commenter stated that the increase of the minimum standard would be highly disruptive to existing customer contracts. The commenter stated that in the past, the Department has exempted load under existing contracts from compliance with the increased minimum standard. The commenter requested that the Department offer a similar exemption for existing load that is subject to signed contracts on or before the RPS Effective Date.

Response: The proposed regulatory changes are being retained in the final regulation. Chapter 227 of the Act of 2018, which increased the minimum standard from 1% to 2% between 2020-2029, included an exemption for load under existing contracts. Chapter 8 of the Acts of 2021, which increased the minimum standard from 2% to 3% between 2025-2029, did not include such a provision. Additionally, the legislation increasing the RPS Class I minimum standard was passed in 2020, and does not amend requirements until 2025. As Retail Electricity Suppliers have adequate time to modify existing contracts and ensure new contracts accommodate the increase, the Department determined that an exemption for existing load is not necessary or appropriate.

VI. 225 CMR 15.00 RENEWABLE ENERGY PORTFOLIO STANDARD – CLASS II

A. Minimum Standard

Comment: A commenter stated that the current RPS Class II non-waste-to-energy (non-WTE) market is currently volatile and unpredictable. A commenter stated that due to this market dynamic, small scale hydroelectric generation units are unable to invest in operational improvements to maintain the assets. A commenter provide a report which analyzed the RPS Class II non-WTE market. Based on this analysis, the commenter recommended that the Department maintain its methodology to annual re-set the RPS Class II non-WTE minimum standard and to include a provision which states that the minimum standard shall not be “lower than 3.6 per cent nor higher than 5.5%.”

Response: The proposed regulatory changes are being retained in the final regulation. Maintaining the existing methodology to adjust the minimum standard annually based on market conditions, and capping the minimum standard at 3.6% appropriately manages risk to ratepayers while promoting the continued operation of existing energy generation resources, such as small scale hydroelectric generation units. Additionally, the Department has analyzed varying scenarios and anticipates that the RPS Class II non-WTE minimum standard will remain below 3.6% for the foreseeable future, due in part from the increase in electric load that is forecasted by ISO-NE.