

**PROPOSED RENEWABLE ENERGY PORTFOLIO STANDARD**

**225 CMR 14.00**

**SUMMARY OF PUBLIC COMMENTS AND AGENCY RESPONSES**

**February 6, 2002**

**Division of Energy Resources**

**David O'Connor, Commissioner**

## **Introduction**

In October 2001, the Massachusetts Division of Energy Resources (the Division) released a proposed Regulation and supporting Background Document for the Renewable Energy Portfolio Standard (RPS). The RPS was developed pursuant to the 1997 Electric Utility Industry Restructuring Act (the Act) and was presented as the proposed Regulation, 225 CMR 14.00. This document summarizes and responds to comments that were received during the public comment period.

Pursuant to MGL Chapter 30A, the Division held two public hearings and solicited written testimony on the proposed Regulation. The hearings were held on:

Thursday, October 25, 2001 in Springfield, Massachusetts  
Friday, October 26, 2001 in Boston, Massachusetts

Public notices of the hearings and comment opportunity were published in four newspapers across Massachusetts, posted on the Division's website and were sent to numerous interested parties. The deadline for submission of comments was November 2, 2001. Some sixty-one individuals and organizations submitted comments.

The Division appreciates the input from those that testified at the public hearings and submitted written comments into the hearing docket. In many instances comments have led the Division to modify the Regulation. Please note that citations in this document refer to the Final Proposed Regulation, rather than the Public Hearing Draft, the version of the Regulation that was released for public comment in October 2001. Capitalized terms used in this document are defined in the Final Proposed Regulation.

The Public Hearing Draft, Final Proposed Regulation and other associated documents are available to the public at the Division's website: [www.state.ma.us/doer](http://www.state.ma.us/doer).

## Comments and Commenters

Comments are grouped according to the following topics:

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Commenters are listed in alphabetical order in Table 1. Comment Numbers for the organizations or individuals that submitted comments are used to identify the authors of comments throughout the document. Commenters who made particular comments are listed by number in brackets following each comment.

Table 1  
COMMENTERS

<b>Commenter Number</b>	<b>Written Testimony</b>
1	Abrams, Richard, et al
2	AES NewEnergy
3	Associated Industries of Massachusetts
4	Ameresco Energy Services
5	American Wind Energy Association
6	Atlantic Renewable Energy Corporation and Zilkha Renewable Energy
7	Bell, Vaughn
8	Biomass Combustion Systems, Inc.
9	Burlington Electric Department (VT)
10	Center for Ecological Technology
11	City of Cambridge
12	Competitive Power Coalition of New England, Inc.
13	Connecticut Department of Environmental Protection
14	Connecticut Department of Public Utility Control
15	Endless Energy Corporation
16	Energy Management, Inc.
17	Enron Corporation
18	Enxco
19	Gozemba, Patricia (et al)
20	Green Mountain Energy Company
21	Green Seal Environmental
22	Hanscom, Alan
23	Houqua & Company (Roy, Leo)
24	Independent Energy Producers of Maine
25	Industrial Power Services Corporation
26	Integrated Waste Services Association
27	Jet-A-Way, Inc.
28	Keegan, Werlin & Pabian for the Medical Area Total Energy Plant, Inc.
29	Massachusetts Department of Environmental Protection
30	Massachusetts Electric Company and Nantucket Electric Company
31	Massachusetts Energy Consumers Alliance
32	Massachusetts Renewable Energy Trust
33	Massachusetts Public Interest Research Group
34	McCormick, Gail
35	Methanex Inc.
36	Mount Wachusett Community College
37	Massachusetts Water Resources Authority

<b>38</b>	New Bedford Waste Services, LLC
<b>39</b>	New England Renewable Power Producers Association
<b>40</b>	Peregrine Energy Group for the Solar Energy Business Association of New England
<b>41</b>	PG&E National Energy Group
<b>42</b>	Plainville Generating Company, LLC
<b>43</b>	Ridgewood Power, LLC
<b>44</b>	Select Energy, Inc.
<b>45</b>	SEMASS Partnership
<b>46</b>	Short, William P., III, for the New England Power Pool GIS Advisory Committee
<b>47</b>	Sithe Energies, Inc.
<b>48</b>	Strategic Energy, LLC
<b>49</b>	Sun Power Electric for the Renewable Energy Barriers Project
<b>50</b>	Sustainable Energy Advantage, LLC
<b>51</b>	Town of Fairhaven for Council of SEMASS Communities
<b>52</b>	Trans Canada Power Marketing Ltd.
<b>53</b>	Union of Concerned Scientists
<b>54</b>	Ware Cogen, LP
<b>55</b>	Wetmore, Robert
<b>56</b>	Wind Management, LLC
<b>57</b>	Western Massachusetts Electric Company
	<b>Oral Testimony</b>
<b>58</b>	Bright, Jane (Health Link)
<b>59</b>	Burns, Art (Chartres Institute)
<b>60</b>	Clean Water Action
<b>61</b>	Kerzner, Jeffrey (Youth Empowerment Summit)

## **1. BIOMASS ELIGIBILITY**

### **1. BIOMASS ELIGIBILITY**

**1.A COMMENT:** The Commenters state that the definition for “eligible wood” is overly restrictive and will prohibit the use of appropriate biomass resources. Some Commenters stressed the need to include clean wood and forest biomass in the definition. [1, 8, 9, 21, 23, 24, 25, 27, 36, 39, 49, 50, 54]

**RESPONSE:** The Division agrees with the points raised by Commenters and, after conferring with the Department of Environmental Protection (DEP), we have revised the definition to read:

Eligible Biomass Fuel. Fuel sources including brush, stumps, lumber ends and trimmings, wood pallets, bark, wood chips, shavings, slash and other clean wood that are not mixed with other solid wastes; agricultural waste, food material and vegetative material as those terms are defined by the Department of Environmental Protection at 310 CMR 16.02; energy crops; biogas; organic refuse-derived fuel that is collected and managed separately from municipal solid waste; and neat biodiesel and other neat liquid fuels that are derived from such fuel sources.

**1.B COMMENT:** The Commenter does not approve of the eligibility of certain fuels such as municipal waste. [20]

**RESPONSE:** Consistent with the Act, the Final Proposed Regulation includes municipal solid waste as a renewable fuel but excludes it from use for New Renewable Generation.

**1.C COMMENT:** The Commenter urges the Division to clarify that anaerobic digester gas generation is included in the definition of Eligible New Renewable Fuel. [25, 37]

**RESPONSE:** The Division agrees and has modified 225 CMR 14.06 (1)(a)5 to include anaerobic digester gas by name.

**1.D COMMENT:** The Commenter requests the Division to clarify that liquid methanol from certain fuel sources (landfill methane gas, renewable digester methane gas; sewage; and biomass wood and crops) will qualify for treatment as Eligible Biomass Fuel, Eligible Renewable Fuel, and New Renewable Generation Units, as appropriate. [35]

**RESPONSE:** The Division agrees and has modified the definition of Eligible Renewable Fuels to include the following: “neat biodiesel and other neat liquid fuels that are derived from such fuel sources.”

**1.E COMMENT:** The Commenter requests that construction and demolition debris be included in the definition of Eligible Biomass Fuel in Section 14.03. [25, 26]

**RESPONSE:** On this matter, the Division defers to the DEP, which has jurisdiction over the management and disposal of construction and demolition debris. A letter from DEP stating their position on this matter is attached to these comments as Attachment A.

**1.F COMMENT:** Many Commenters argue that the requirements set forth in the Public Comment Draft Regulation regarding “low emission, advanced biomass conversion technologies” eligibility would severely limit the ability of biomass generation units to qualify as New Renewable Generation. Some Commenters argue that biomass gasification is not a technology, but rather is a method used by various technologies to produce combustible gases. Some Commenters urge the Division to include fluidized-bed combustion, pile burn, stoker combustion or similar technologies among the eligible technologies. Some Commenters urge the Division to drop the technology test and include only an emissions test. One Commenter urges that eligibility criteria include not only the characteristics of the combustion unit, but also the sustainability of the fuel “life cycle.” Some Commenters suggest that biomass facilities should be required to meet the same emission standards as new electric generating units. [1, 4, 8, 9, 23, 24, 25, 31, 33, 36, 39, 43, 44, 49, 50, 53, 54]

**RESPONSE:** The Division agrees that a technology test would be difficult to administer and may turn out to restrict the eligibility of certain biomass units that perform in a manner consistent with the intent of the Act. The Final Proposed Regulation relies on the comprehensive technology review that is inherent in air emissions permitting to determine eligibility under the “low emission, advanced biomass power conversion technologies” provision in the Act. The Division believes this modification will allow participation of biomass units consistent with the intent of the Act.

**1.G COMMENT:** The Commenters state that the proposed case-by-case review of biomass facilities for eligibility under the “low emissions, advanced biomass conversion technology” standard will be time-consuming, expensive and administratively burdensome, and they argue that the review process will necessarily result in market uncertainty. [1, 23, 25, 31, 33, 36, 43, 49, 50, 53, 54]

**RESPONSE:** The Division agrees that the technology requirements for eligibility would be better addressed by relying on the comprehensive technology review that is inherent in air emissions permitting to determine eligibility under the “low emission, advanced biomass power conversion technologies” provision in the Act. The Final Proposed Regulation, as described in the Response to Comment 1.H, below, will significantly reduce the number of instances where a case-by-case review is required.

**1.H COMMENT:** Some Commenters support the proposed case-by-case review of biomass technologies that are neither categorically included nor excluded. However, they suggest that, to the extent possible, the proposed Regulation include a set of criteria against which the technology of such proposed generating units would be evaluated to create an objective basis for the review of proposed units. They argue that such criteria would enable developers to have a clear understanding of their obligations while also placing bounds on the scope of public comment. [30, 49, 52, 53, 56]

**RESPONSE:** The Final Proposed Regulation relies on the comprehensive technology review inherent in the air emissions permitting process for determination of eligibility under the “low emission, advanced biomass power conversion technologies” provision in the Act. In consultation with the DEP, the Division has determined that a biomass Generation Unit with a Commercial Operation Date after December 31, 1997 and a Valid Air Permit issued after December 31, 1997 from the jurisdiction in which it is located, will be eligible. The Final Proposed Regulation requires that a biomass Generation Unit with a Vintage Waiver must demonstrate, in a case-by-case review, that the emission rates in its Valid Air Permit are consistent with emission rates for comparable biomass units permitted in Massachusetts during 1990 through 1997. The Final Proposed Regulation requires that a biomass Generation Unit that does not require an air permit must demonstrate, in a case-by-case review, that its emission rates are consistent with emission rates for comparable biomass units in a manner that will be described in the Guidelines.

**1.I COMMENT:** One Commenter asserts that the Act did not intend for older biomass technologies, such as fluidized bed combustion, to fall within the scope of “advanced” approved biomass technologies, and urges the Division to clarify that these technologies are indeed not eligible under RPS. [56]

**RESPONSE:** The Division believes that fluidized bed combustion in biomass Generation Units with a valid air permit from the jurisdiction in which it is located may meet the requirements for eligibility. Please see the Response to Comment 1.H.

**1.J COMMENT:** The Commenter notes that to be certified as “low-emission,” a Generation Unit is required to possess a valid air permit from the state or other jurisdiction in which it is located. The Commenter argues that this definition would potentially disqualify smaller generation units with advanced power conversion technology that are not required to have an air permit due to their low potential emissions. They urge the Division to modify the regulation to allow such units to qualify. [29]

**RESPONSE:** The Division agrees. The opportunity for a Generation Unit that, because of its size, does not require an air permit to be eligible has been specifically addressed in 225 CMR 14.06(1)(a)6c.



## 2. IMPORTS

**2.A COMMENT:** The Commenters support the proposal to require unit contracts for imports. In particular, some Commenters believe that physical delivery to ISO-NE is critical to meet the legislative intent that attributes of power generated with renewable fuels be delivered to end-use customers in Massachusetts. They assert that, to the extent that imports are allowed to qualify for RPS credit, it is essential that such imports be delivered pursuant to “unit contracts.” By contrast, “system power” contracts do not identify the source of the generation or the fuel used for generation. Some Commenters note that since the fundamental goal of the RPS is to encourage and track unit-specific attributes, imports of interchangeable system power should not be allowed. [16, 24, 25, 29, 52]

**RESPONSE:** The Division agrees that the New Renewable Generation Attributes claimed for RPS compliance must reflect production of power by New Renewable Generation Units. Furthermore, with respect to electricity imported to New England, New Renewable Generation Attributes should correspond to the quantity of electricity actually delivered to the New England Control Area. The Final Proposed Regulation embodies these principles. The NE-GIS will provide a rigorous accounting of Generation Attributes based on financial settlement data for electricity transactions within New England, as well as for transactions involving imports to or exports from the ISO-NE Control Area. The NE-GIS will issue unit-specific certificates for each MWh to New Renewable Generation Units that operate in New England or that deliver power to New England via unit contracts. The certificate will identify the Generation Unit, the total generation by the Unit during each month and the attributes associated with that Unit’s operation. The Division has identified the NE-GIS unit-specific certificates as the preferred method for documenting compliance with RPS.

**2.B COMMENT:** The Commenters believe that requiring imports to demonstrate physical delivery of energy into NEPOOL is burdensome and unnecessary to protect either Massachusetts customers or the integrity of the RPS Attributes. The Commenters advocate for the “un-bundled” sale of energy and green attributes. [6, 17, 41, 44, 52]

**RESPONSE:** The Act directs the Division to establish a RPS for electricity sales from eligible Generation Units to End-Use Customers. To achieve this goal, the Final Proposed Regulation requires that a Retail Electricity Supplier verify the following information for all Attributes that are being claimed for compliance:

- Identification of the New Renewable Generation Unit that produced the Attributes claimed;
- Documentation that such Unit produced electricity in a given month at least equal to the Attributes claimed;
- Documentation that the electricity was delivered to the New England Control Area in a given month at least equal to the Attributes claimed; and

- Certification that the Attributes claimed have not otherwise been, nor will be sold, retired, claimed, or represented as part of electricity output or sales or used to satisfy obligation in a jurisdiction other than Massachusetts.

For Attributes claimed on the basis of generation by New Renewable Generation Units located within the New England Control Area, NE-GIS certificates will provide sufficient verification of the accuracy of the above information.

For Attributes claimed on the basis of electricity imported into the New England Control Area, NE-GIS certificates will also provide verification of the accuracy of the above information because the NE-GIS will only issue unit specific attribute certificates when several conditions required by the Division have been met. Those conditions are enumerated in 225 CMR 14.06 (5) that reads in pertinent part as follows:

- (a) An External Unit Contract shall be executed between the Generation Unit Owner or Operator and an electricity purchaser located in the ISO-NE Control Area for delivery of the Unit's electricity to the ISO-NE Control Area. The External Unit Contract shall include associated transmission rights for delivery of the Unit's electricity over the ties from an adjacent control area to the ISO-NE Control Area.
- (b) The Generation Unit Owner or Operator shall provide documentation, satisfactory to the Division, that:
  1. the electricity delivered pursuant to the External Unit Contract was settled in the ISO-NE Monthly Settlement System;
  2. the Generation Unit produced, during the applicable month, the amount of MWhs claimed, as verified by the NE-GIS administrator;
  3. the electricity delivered under the External Unit Contract received a North American Electricity Reliability Council Tag confirming transmission from the originating Control Area to the ISO-NE Control Area; and
  4. the New Renewable Generation Attributes have not otherwise been, nor will be, sold, retired, claimed or represented as part of electricity output or sales, or used to satisfy obligations in jurisdictions other than Massachusetts.

**2.C COMMENT:** The Commenters believe that requiring the physical delivery of electricity into ISO-NE for imports is problematic because it:

- a) creates an economic barrier to entry;
- b) limits the ability of a Retail Electricity Supplier to meet the RPS requirements;
- c) increases costs for all market participants; and
- d) may result in New England-based renewable generators having market power.

The Commenters urge the Division to include a reference to alternative mechanisms and establish a transition period to incorporate these as tools. [2, 6, 17, 20, 30, 50]

**RESPONSE:** The Division believes that physical delivery of electricity to the New England Control Area is consistent with the statutory requirement that renewable energy be delivered to Massachusetts End-Use Customers. Physical delivery of electricity to the New England Control Area, in conjunction with the NE-GIS, will assure market participants that imports fully and accurately qualify for eligibility under RPS. Units located outside of New England will incur the cost to deliver New Renewable Generation Attributes to this region. The cost of transmitting electricity from a distant location is an inherent cost of doing business and not a barrier to entry. At the same time, allowing imports of New Renewable Generation from outside New England increases the supply of attributes available for Retail Electricity Suppliers to use for compliance and should reduce the marginal cost of compliance accordingly.

A substantial supply of attributes will minimize the risk of any generation owner exercising market power. The Division projects that existing and planned Renewable Energy Generation from within the New England Control Area, plus potential imports from the New York Control Area, will exceed the minimum RPS requirements in 2003 for Massachusetts, Connecticut and Maine. In addition, Alternative Compliance, Early Compliance and Banked Compliance provisions will further alleviate the potential for any generator to exercise market power.

**2.D COMMENT:** The Commenters support modifying the proposed regulation to provide for more flexibility to accommodate possible changes that are expected to ISO-NE rules. The commenters recommend that the Division use explicit language in reference to potential market rule changes to allow application of RPS under new conditions that might supersede the current NEPOOL rules. [5, 29, 30, 41, 44, 47, 50, 53]

**RESPONSE:** In response to this comment, the Final Proposed Regulation accommodates the possibility of subsequent changes to NEPOOL Rules by including in the definition of External Unit Contract a reference to such rules “or any successor rule.”

**2.E COMMENT:** The Commenters argue that there is no statutory basis for the inclusion of remote units in the requirements for new renewable energy. Citing Massachusetts' compelling state interest, the Commenters recommend that while all external market participants ought to be allowed to sell their products into the Massachusetts marketplace, they should not be eligible to participate in the RPS program. [12]

**RESPONSE:** The Act is silent on geographic location as a qualification for eligibility as a New Renewable Generation Unit. After extensive analysis and consultation, the Division has determined that it does not have the authority to restrict eligibility based solely on geographic location.

**2.F COMMENT:** The Commenters urge the Division to require reciprocity in determining eligibility for imports. Specifically, they request that the Division consider excluding from eligibility as New Renewable Generation, the electricity produced by Generation Units: a) owned by vertically integrated utilities; and b) located in jurisdictions that do not allow retail competition. They also suggest that the Division consider excluding from eligibility as New Renewable Generation, the electricity produced by Generation Units in jurisdictions that do not have: (i) a comparable GIS, (ii) a comparable RPS, and/or (iii) comparable access to retail and wholesale competition. [5, 12, 16, 24, 42, 49, 56]

**RESPONSE:** The Division has determined that it does not have the authority to restrict eligibility on the basis of reciprocity of attribute laws, retail competition, corporate structure or the method of capitalizing the units. A comparable RPS or comparable access to retail competition refers to obligations on retail sellers in other regions, and does not bear upon the eligibility of generation units located in those regions for the Massachusetts RPS. The Division does not believe a comparable GIS is necessary so long as the integrity of renewable energy attributes can be verified from an out-of-region generator.

**2.G COMMENT:** The Commenters recommend that the Division clarify the conditions that imported power must meet to qualify under RPS so that it is clear that renewable attributes from Generation Units located outside the ISO-NE Control Area can not be applied to compliance for RPS in more than one state. [5, 39]

**RESPONSE:** The Division agrees and the Final Proposed Regulation includes in several instances the following restriction on all Attributes claimed for compliance:

The Retail Electricity Supplier shall demonstrate to the satisfaction of the Division that [New Renewable] Generation Attributes have not otherwise been, nor will be, sold, retired, claimed or represented as part of electricity output or sales, or used to satisfy obligations in jurisdictions other than Massachusetts.

**2.H COMMENT:** The Commenter suggests that a supplier purchasing system power from outside of ISO-NE should be able to purchase attributes from that region as well. [20]

**RESPONSE:** The Division does not believe that it is sufficient or consistent with the Act to buy attributes from another region without demonstrating delivery of power from a qualifying New Renewable Generation Unit to the New England region. Please refer also to the Response to Comment 2.A.

**2.I COMMENT:** The Commenter urges the Division to specify in the Regulation that RPS compliance is based on the production of electricity over the course of a calendar year, to address scheduling uncertainty inherent in intermittent generators. [41]

**RESPONSE:** The Final Proposed Regulation identifies the data required for a Retail Electricity Supplier to demonstrate compliance. Consistent with the NE-GIS, the Division is requesting that the Retail Electricity Supplier identify the month in which electricity was generated. We believe this length of time addresses the Commenter's concern about scheduling.

### **3. COMPLIANCE DOCUMENTATION**

**3.A COMMENT:** The Commenters believe that the NE-GIS should be the sole or primary means of compliance verification, and should be specifically referenced in the Regulation. Several recommended limiting the option of using contracts as a method of compliance determination to only those transactions involving energy not tracked by the GIS. Commenters suggest that allowing compliance mechanisms other than GIS would impose significant burdens on the Division and the market and could lead to double counting. [5, 11, 13, 14, 16, 17, 24, 39, 46, 50, 53]

**RESPONSE:** The Division generally agrees with the Commenters. The Final Proposed Regulation utilizes the data produced by the NE-GIS to verify New Renewable Generation Attributes produced inside and outside of the New England Control Area. The Division believes this allows for verification of compliance at the lowest cost to consumers. The NE-GIS will provide a rigorous accounting of Generation Attributes based on financial settlement data for electricity transactions within New England, as well as for transactions involving imports to or exports from the New England Control Area. Please see Response to Comment 2.B.

**3.B COMMENT:** The Commenters recommend that the Division prepare a standard reporting format for Retail Electricity Suppliers. [17, 20]

**RESPONSE:** The Division agrees and will develop reporting formats in its Guidelines.

**3.C COMMENT:** The Commenters support the ability of several methods to document compliance. [15, 20, 30]

**RESPONSE:** The Division believes that the NE-GIS accounting system will provide a verification mechanism for the vast majority of relevant transactions. However, for transactions using Attributes that are RPS-eligible but are not tracked by the NE-GIS, the Division will accept alternative documentation.

**3.D COMMENT:** The Commenters recommend that the Division coordinate the definition of Generation Attribute with that used in the NEPOOL contract for the NE-GIS. [17]

**RESPONSE:** The Final Proposed Regulation is consistent with rules adopted by NEPOOL for implementation of the NE-GIS.

**3.E COMMENT:** The Commenters urge the Division to provide clear Guidelines as soon as possible to allow companies enough planning time. [17, 20, 30]

**RESPONSE:** The Division agrees and is committed to completing the Guidelines in a timely manner.

**3.F COMMENT:** The Commenter urges the Division to clarify what “proper assurance(s)” are required to enable small generating sources to be counted toward RPS compliance. The development of an accounting system for small generating units will be critical to the advancement of the market for small generation sources. [25, 31]

**RESPONSE:** The Final Proposed Regulation clarifies the “assurances” required. See the discussion in the Response to Comment 2.G. Furthermore, participation by a small generation unit is addressed in the Final Proposed Regulation by the section entitled Special Provisions for a Small Generation Unit, 225 CMR 14.06 (4).

**3.G COMMENT:** The Commenter asks that the proposed Regulation “acknowledge that some of the documentation submitted by a Retail Electricity Supplier may be deemed confidential or to contain sensitive proprietary information.” The Commenter asks that compliance filings be “afforded confidential treatment pursuant to M.G.L. c. 25 section 5D.” Disclosure of information considered confidential or proprietary can have adverse competitive effects on a Retail Electricity Supplier’s ability to procure new renewable generation, which could lead to unnecessary financial harm to Massachusetts consumers. [20, 30]

**RESPONSE:** The Divisions shares the concern and includes the following provision at 225 CMR 14.10 (1)(b): “The Division shall keep product information confidential to the extent permitted by law.”

**3.H COMMENT:** The Commenter expressed concerns that Massachusetts consumers may shoulder a disproportionate share of the costs if the Division requires the NE-GIS as the only method for documentation. [30]

**RESPONSE:** The Division believes the NE-GIS will provide the lowest cost method for compliance with RPS. Allocation of the costs for the development and operation of the NE-GIS is a matter that has been resolved by the NEPOOL Participants Committee.

**3.I COMMENT:** The Commenter requests that the Division mandate that all Retail Electricity Suppliers submit plans on how they expect to comply. [1, 23, 36]

**RESPONSE:** The Division feels that requiring compliance plans would be burdensome to Retail Electricity Suppliers, would increase the cost of the RPS to customers and would not substantially improve compliance.

#### **4. RENEWABLE ENERGY CREDITS**

**4.A COMMENT:** The Commenters support the Division's decision not to create a Massachusetts-only renewable energy credit system. [5, 11, 13, 17, 20, 29, 30, 33, 39, 40, 43, 44, 50, 52, 53]

**RESPONSE:** The Division thanks the Commenters for their support for our policy decision.

#### **5. PRODUCT COMPLIANCE**

**5.A COMMENT:** The majority of Commenters support requiring compliance on the basis of each Retail Electricity Product sold by a Retail Electricity Supplier. [2, 4, 5, 10, 11, 15, 17, 20, 24, 29, 30, 31, 33, 39, 40, 42, 49, 50, 52, 53]

**RESPONSE:** The Division thanks these Commenters for their support of our policy decision.

**5.B COMMENT:** The Commenter asks that the definition of Retail Electricity Product be clarified to specifically apply to products sold by distribution companies, including default and standard offer services. [4]

**RESPONSE:** The definition of Retail Electricity Supplier in 225 CMR 14.03 includes distribution companies supplying default and standard offer service.

## **6. EARLY COMPLIANCE**

**6.A COMMENT:** The Commenters support the concept of Early Compliance and urge the Division to finalize the Regulation quickly in order to allow Early Compliance to take place. [2, 5, 10, 11, 17, 20, 25, 30, 31, 33, 42, 50, 52, 53, 56]

**RESPONSE:** The Division appreciates the support on this policy decision. It is committed to promulgating the Regulation before the date when the NE-GIS will begin to allow trading for renewable attribute certificates.

**6.B COMMENT:** The Commenter suggests that, since the Regulation is unlikely to be finalized by January 2002, instead of allowing 30% banking toward 2003, allow 100% of the amount of available green power created in 2002 to be banked. It would give incentive in the near term and could elicit extra efforts to get capacity on line. [41]

**RESPONSE:** The Division notes that both the Public Comment Draft and Final Proposed Regulation allow 100% of 2002 qualifying generation to be applied toward 2003 compliance.

**6.C COMMENT:** The Commenters suggest that the Division consider mechanisms which would allow new renewable generators to accumulate attributes that are created in calendar year 2002 and hold them for sale in subsequent years. [30, 43]

**RESPONSE:** The NE-GIS requires all Attributes produced by generators be settled on a quarterly basis in order to provide verification that there is no double counting of Attributes quarter-to-quarter or year-to-year. Allowing generators to retain ownership of Attributes would be contrary to the NE-GIS accounting principles. Please also refer to Response to Comment 6.B.

**6.D COMMENT:** The Commenters recommend that attributes from 2002 generation be eligible indefinitely, rather than restricted to 2003 compliance. [30, 44]

**RESPONSE:** Early Compliance is intended to address the lead-time needed for the development of New Renewable Generation Units. Since 100% of the Attributes created in 2002 can be used for compliance in 2003, the one-year limit on the use of those Attributes avoids undercutting the value of attributes created in years 2004 and after. Note that the Banked Compliance provision allows a limited amount of the Attributes produced in 2003 to be used for compliance in 2004 and/or 2005. When taken together, these provisions provide sufficient flexibility for Retail Electricity Suppliers to respond to increasing demand for renewable attributes as the RPS minimum percentage increases each year.



**6.E COMMENT:** The Commenter opposes the provision that makes Early Compliance non-transferable. [49]

**RESPONSE:** The Division respectfully disagrees. Early Compliance is a specific regulatory mechanism designed to facilitate RPS compliance by a Retail Electricity Supplier. In order for Attributes to qualify for RPS Early Compliance, the Retail Electricity Supplier must first demonstrate ownership of NE-GIS Attribute Certificates from New Renewable Generation Units produced in 2002. Once Early Compliance has been demonstrated to the Division, the Retail Electricity Supplier's compliance obligation in 2003 will be reduced accordingly. Early Compliance is a demonstration of compliance and, therefore, is not a tradable commodity.

## **7. BANKED COMPLIANCE**

**7.A COMMENT:** The Commenters support the Banked Compliance provision. [2, 10, 11, 18, 25, 30, 31, 33, 52, 53]

**RESPONSE:** The Division thanks the Commenters for their support of this compliance mechanism.

**7.B COMMENT:** The Commenter expressed concern that Banked Compliance will complicate implementation of the DEP's Emissions Performance Standards. [29]

**RESPONSE:** At the conclusion of each NE-GIS settlement period, all Attribute Certificates created in a given year of generation will be settled and may not be resold. A regulatory agency may choose to allow the use of settled those Attribute Certificates by a Retail Electricity Supplier for compliance purposes in that year or in another year without interfering with the compliance requirements of other regulatory agencies.

Banked Compliance is a specific regulatory mechanism designed to facilitate RPS compliance by a Retail Electricity Supplier. In order for Attributes to qualify for RPS Banked Compliance, the Retail Electricity Supplier must first demonstrate ownership of NE-GIS Attribute Certificates from New Renewable Generation Units produced in the Compliance Year and that are in excess of their compliance obligation for that year. Once Banked Compliance has been demonstrated to the Division, the Retail Electricity Supplier can apply Banked Compliance toward its RPS compliance obligation in one or both of the subsequent two years

Since DEP does not expect that banking of attributes will be allowed under the Emissions Performance Standards, a Retail Electricity Suppliers compliance with that regulation will be based exclusively on the Retail Electricity Supplier's portfolio of NE-GIS Attribute Certificates that were created during a given compliance year. Therefore, the Division believes that RPS Banked Compliance will not have an impact on the portfolio of Certificates used for compliance with Emissions Performance Standards.

Since receiving this comment, the Division has worked closely with the DEP and members of the NEPOOL's Advisory Committee on NE-GIS (which includes other regulators and stakeholders) to identify and resolve potential implementation challenges. Specifically, NE-GIS Attribute Certificates will be created, traded and settled in a manner that accommodates the simultaneous administration of all attribute laws in the New England states.

**7.C COMMENT:** The Commenter notes that Banked Compliance does not address the need for 15 or 20-year power purchase commitments to finance projects. To finance new renewable energy projects, investors and lenders will evaluate the long-term viability of the revenue source. [18]

**RESPONSE:** The RPS creates incentives and a legal and economic framework conducive to long-term contracts for new renewable generation. The law has no sunset: the renewable standard rises to at least 4 percent by 2009 and continues indefinitely thereafter. Nevertheless, the Final Proposed clarifies that the minimum standard may not be reduced but, at the Division's discretion, may increase.

**7.D COMMENT:** The Commenter believes that a 30% cap or a 2-year shelf life on Banked Compliance will unnecessarily constrain the contracts that suppliers and generators may develop. [20, 44]

**RESPONSE:** The Division understands the concerns expressed and appreciates the Commenters' expression of support for the balance struck in the Final Proposed Regulation. The Division will be monitoring implementation very carefully, and reserves the right to revisit any portion of the Regulation.

**7.E COMMENT:** The Commenter urges that banking should also apply to an Owner or Operator of a Renewable Generation Unit. [43]

**RESPONSE:** Strictly speaking, Banked Compliance applies only to Retail Electricity Suppliers who must comply with the proposed Regulation. However, in effect, the Banked Compliance option creates a potential market for renewable attributes in excess of the minimum needed to meet the standard in the year they were generated.

**7.F COMMENT:** The Commenter supports the three conditions limiting the use of Banked Compliance as good protections against market strategies such as hoarding. [30]

**RESPONSE:** The Division appreciates the Commenter's support for these policy choices.

**7.G COMMENT:** The Commenter opposes the provision that makes Banked Compliance attributes non-transferable once they have been claimed by a Retail

Electricity Supplier. The Commenter urges the Division to maximize the flexibility that Retail Electricity Suppliers have to comply with the RPS. [49]

**RESPONSE:** The Division respectfully disagrees. Banked Compliance is a specific regulatory mechanism designed to facilitate RPS compliance by a RES. In order for Attributes to qualify for RPS Banked Compliance, the Retail Electricity Supplier must first demonstrate ownership of NE-GIS Attribute Certificates from New Renewable Generation Units produced in the Compliance Year and that are in excess of their compliance obligation for that year. Once Banked Compliance has been Demonstrated to the Division, the Retail Electricity Supplier can apply Banked Compliance toward its RPS compliance obligation in one or both of the subsequent two years. Banked Compliance is a demonstration of compliance and therefore is not a tradable commodity.

## **8. ALTERNATIVE COMPLIANCE**

**8.A COMMENT:** The Commenters support inclusion of the Alternative Compliance mechanism in the program design. [3, 5, 15, 17, 25, 30, 32]

**RESPONSE:** The Division appreciates the Commenters' support for this compliance mechanism.

**8.B COMMENT:** The Commenter suggests the Division set the Alternative Compliance Rate at a percentage (e.g. 20%) above the market price for New Renewable Attributes. This Rate would then float with the market price. In any event, the Division should reserve the right to modify the flat \$50 fee if the market price should approach or fall dramatically below the Alternative Compliance Rate. [17]

**RESPONSE:** The Division believes that a variable rate for the Alternative Compliance Payment (ACP) would be both administratively difficult and would create uncertainty as to the ACP Rate from year to year. The Division believes that New Renewable Attribute prices at or near \$50 are not proof that the Alternative Compliance mechanism is not needed. It may indicate the opposite. The Division reserves the right to revisit any portion of the Regulation that interferes with the effectiveness of the Renewable Portfolio Standard.

**8.C COMMENT:** The Commenters argue that the ACP should be set at a higher amount. One Commenter recommends \$80. They argue that if the rate is set too low, then the RPS will simply serve as a tax, not enough renewable generation will be built, and the true intent of the legislation will not be achieved. [4, 15]

**RESPONSE:** The Division believes that there is sufficient opportunity for the developers of potential qualifying new renewable resources to be profitable at or below \$50/mWh. The Division will monitor the output of qualified new renewable generators and will adjust the Regulation if the supply of RPS attributes is too low.

**8.D COMMENT:** The Commenters believe the ACP should be set at a lower level. [44, 48, 52]

**RESPONSE:** The Division has set the level for the ACP Rate on the basis that the Alternative Compliance option reflects a premium over estimated normal compliance costs. The Division believes that, in most instances, Retail Electricity Suppliers will be able to comply with their RPS obligation by purchasing Attributes at costs below the ACP Rate. A premium is justified because the ACP mechanism does not result in the production of New Renewable Attributes during the Compliance Year. This delays the realization of the public benefits intended by the Act.

**8.E COMMENT:** The Commenters urge that any funds collected should be used to promote development of additional renewable energy resources. [3, 5,12,16, 30, 41, 48]

**RESPONSE:** The Division agrees. The Final Proposed Regulation specifies in section 14.09(4)(b) that any funds collected will be used to support development of qualified new renewable generation.

**8.F COMMENT:** The Commenters are concerned that suppliers may decide to make the ACP instead of actively seeking renewable sources. Retail Electricity Suppliers should be allowed to employ the alternative only after showing a good faith effort to contract for renewables. [12, 16, 41, 42]

**RESPONSE:** The Division believes that Retail Electricity Suppliers will be able to generally find lower cost compliance options than the ACP at \$50. This will deter excessive use of the ACP. The Division believes that "showings of good faith" would be administratively burdensome for a Retail Electricity Supplier and would not improve compliance.

**8.G COMMENT:** The Commenter does not believe that the Division is authorized by the Restructuring Act to implement the Alternative Compliance payment. [12, 41, 42]

**RESPONSE:** Consistent with the Act, the Division has administrative authority to promulgate the RPS Regulation in a way that encourages the development of New Renewable Generation while protecting Massachusetts consumers from unreasonable increases in the cost of compliance. The Division believes this is particularly important during the initial implementation of the NE-GIS, when unanticipated market factors may cause volatility in the cost of compliance.

**8.H COMMENT:** The Commenter recommends that the Alternative Compliance provision be removed in order to avoid adverse market effects and provide incentives to delay new renewable development. [2]

**RESPONSE:** The Division believes that any potential for adverse market impact of the ACP is more than offset by its benefits. The ACP will set a limit on the cost of compliance for consumers and suppliers.

**8.I COMMENT:** The Commenters expressed concerns that the existence of the Alternative Compliance option would create an incentive for new renewable generator to withhold attributes from the market in the expectation of claiming \$50 per MWh from the MTPC. [20, 30, 49]

**RESPONSE:** The Division expects to execute an agreement with the MTPC that will require the purchase of attributes through a competitive bidding process and limit such purchases to prices that do not exceed the ACP rate.

**8.J COMMENT:** The Commenter disagrees with the proposal to have the ACP Rate increase with the consumer price index. [30]

**RESPONSE:** The Division believes that, to be effective, the ACP Rate must maintain its value relative to changes in the overall economy. Adjusting the ACP Rate annually by the consumer price index is the most appropriate way to achieve this goal.

**8.K COMMENT:** The Commenters strongly urge the Division to include language regarding spending of any funds collected under this option in the Final Proposed Regulation. [25,40]

**RESPONSE:** The Final Proposed Regulation provides in 225 CMR 14.09(4)(b) that the Division will oversee the use of ACP funds by the MTPC to maximize the commercial development of New Renewable Generation Units.

**8.L COMMENT:** The Commenter recommends that the MTPC not be able to influence the market for RPS attributes. Therefore the Commenter recommends that MPTC use any funds collected to directly support new unit construction not to procure RPS attributes through the NE-GIS system. [44]

**RESPONSE:** The Division believes that Retail Electricity Suppliers will be able to generally find lower cost compliance options than the ACP Rate. This will deter excessive use of the ACP and, as a consequence, purchases by the MTPC are not likely to have a material effect on the market price of Attributes. See also the Response to Comment 8.K.

**8.M COMMENT:** The Commenter recommends that RPS specify that Alternative Compliance payments be directed to the Massachusetts Renewable Energy Trust Fund, rather than the MTPC. [11]

**RESPONSE:** The Massachusetts Renewable Energy Trust Fund is not authorized by statute to accept such payments. However, the MTPC does have the authority to accept and administer such payments. See Response to Comment 8.K.

## **9. EXISTING RENEWABLE REQUIREMENT**

**9.A COMMENT:** The Commenters agree with the Division's decision not to require Retail Electricity Suppliers to meet minimum purchase requirements for existing renewables. Most Commenters support the Division's decision to require each Retail Electricity Supplier to report on the percentage of renewable generation in annual sales. [4, 17, 20, 25, 30, 33, 52, 56]

**RESPONSE:** The Division appreciates the Commenters' support for these policy decisions.

**9.B COMMENT:** The Commenters ask the Division to include minimum purchase requirements for existing renewables in the Regulation. They argue the Restructuring Act creates a two-tier approach to utilize a standard for existing renewables and a standard for new renewables. While disagreeing with the Division's decision on a minimum standard, many Commenters expressed support for the Renewable Generation Reporting requirement and urge the Division to monitor trends closely [12, 24, 26, 29, 39, 41, 43, 45, 51, 53]

**RESPONSE:** The Division appreciates the concerns expressed by the Commenters and has considered them carefully. However, the Commenters did not submit any data or analysis challenging the Division's supply/demand analysis for existing renewables sources in New England, which received extensive stakeholder review and input. The Division's analysis demonstrates that existing renewables in New England (about 13 percent of annual supply) will far exceed the amount needed to maintain 1997 levels of renewable generation in electricity sales in Massachusetts through at least 2015. The Division believes that extending mandatory purchase obligations to existing renewables would result in significant administrative burdens on Retail Electricity Suppliers and substantial implementation costs. Given these findings, the Final Proposed Regulation does not include a minimum purchase requirement for existing renewables. The Division will monitor trends and report annually.

**9.C COMMENT:** The Commenter agrees with the proposal not to include minimum standards for existing renewables with a caveat. If an existing renewable generator is not able to find a competitive market for its power and, therefore, faces a reduction or cessation of its generation, then that generator should be able to participate in the RPS. [20]

**RESPONSE:** The Division does not have the authority under the statute to consider this type of waiver. Further, the Division does not feel that such a strategy would be workable.

**9.D COMMENT:** The Commenters support the monitoring of resource types used to serve electricity needs. However, monitoring the use of existing renewable resources can

be accomplished using existing reporting obligations, and the proposed Regulation is not warranted and would be burdensome. [17, 30, 48, 52]

**RESPONSE:** With existing data sources, the Division is only able to obtain New England-wide data on renewable energy use. Massachusetts-specific data is essential to fulfill our commitment to monitor and report the use of existing renewable sources by Retail Electricity Suppliers to serve Massachusetts End-Use Customers. Therefore, the Final Proposed Regulation retains the requirement for Retail Electricity Suppliers to submit an annual Renewable Generation Report. In addition, the NE-GIS system will minimize the cost to Retail Electricity Suppliers of complying with this reporting requirement.

**9.E COMMENT:** The Commenter urges the Division to allow existing renewable generation to be used for compliance with the new renewable standard, until there is adequate supply of new renewables available. [44]

**RESPONSE:** The Act does not permit the use of existing renewable generation for the purpose of RPS compliance.

**9.F COMMENT:** The Commenter recommends that the Division establish a baseline percentage of existing renewables. If existing renewables falls below this baseline, the Division should mandate that Retail Electricity Suppliers acquire sufficient existing and new renewables resources to maintain the baseline plus new renewables to meet the RPS. [49]

**RESPONSE:** As directed by the Act, the Division published a study on the baseline use of existing renewable generation for calendar year 1997, which can be found on the Division's website: [www.mass.gov/doer](http://www.mass.gov/doer). The Division's analysis demonstrates that existing renewables in New England (about 13 percent of annual supply) will not fall below the amount needed to maintain 1997 levels of renewable generation in electricity sales in Massachusetts through at least 2015. The Division will monitor the trends for renewable resource use in both Massachusetts and New England. With the availability of significantly better data from the NE-GIS, the Division will have more precise and state-specific information on trends in the use of existing renewable generation. This data can be used to make appropriate policy determinations in the future on the need, if any, to set minimum purchase requirement for existing renewable generation.

**9.G COMMENT:** The Commenter recommends that reporting be done on a quarterly basis. [4]

**RESPONSE:** The Division believes such a requirement would be unduly burdensome on Retail Electricity Suppliers and result in higher costs to consumers without improving compliance by Retail Electricity Suppliers.

## **10. DEFINITION OF RETAIL ELECTRICITY SUPPLIER**

**10.A COMMENT:** The Commenters support including electric utility distribution companies supplying standard offer and default service in the definition of Retail Electricity Supplier. [2, 5, 10, 15, 20, 31]

**RESPONSE:** The Division appreciates the Commenters' support on this issue.

**10.B COMMENT:** The Commenters do not support excluding Municipal Light Plants from RPS compliance. [48]

**RESPONSE:** The Final Proposed Regulation conditionally exempts Municipal Light Plants from the obligations of a Retail Electricity Supplier under RPS in a manner consistent with the provisions of the Act that conditionally exempt Municipal Light Plants from the requirement to allow retail competition.

**10.C COMMENT:** The Commenters suggest that the definition of Retail Electricity Supplier is unclear. One Commenter asserts that the Regulation is not sufficiently clear with respect to the responsibilities of electric distribution companies when they have contracted with a power marketer to provide electricity supply for Standard Offer and Default Service Customers. [43, 44]

**RESPONSE:** The Division does not believe its definition of Retail Electricity Supplier raises any ambiguity with respect to the obligation of distribution companies to comply with the RPS. In the case where a distribution company contracts with a power marketer for electricity supply, the distribution company continues to be the Retail Electricity Supplier for End-Use Customers receiving Standard Offer and Default Service and therefore retains the obligation to comply with the RPS.

**10.D COMMENT:** The Commenter states that the Division should clarify that a supplier may not advertise, or include on a disclosure label, any renewable generation purchased to satisfy the RPS requirement for either a current, or future, calendar year. The Commenter argues that Retail Electricity Suppliers should simply include a statement indicating that "this product complies with the Renewable Portfolio Standard." [20]

**RESPONSE:** The Division does not have jurisdiction over labeling of electricity products or monitoring of marketing claims. This comment raises a labeling concern that would need to be addressed by other regulatory agencies.

## **11. GENERAL ELIGIBILITY**



**11.A COMMENT:** One Commenter did not see the need for two methods for measuring capacity expansions when applying for a vintage waiver and recommends the Division adopt only the capacity basis option because it is more easily measured. Another Commenter asserts that, as written, the capacity basis does not specify what portion of the energy would qualify as new, and therefore, cannot be interpreted or applied. [5, 50]

**RESPONSE:** The Division believes that the Public Hearing Draft proposal to utilize a "capacity basis" to measure expansions did not recognize that the use of capacity is inconsistent with the measurement of New Renewable Generation, which must be measured on an "energy basis" (i.e. in MWhs). The "energy basis" method of measurement assures that only actual MWhs of electricity produced by a New Renewable Generation Unit above its Historical Generation Rate will be eligible for the RPS.

**11.B COMMENT:** The Commenter requests that the Division clarify whether a new generation unit moved to a site of previous generation would qualify as a new renewable generator. [50]

**RESPONSE:** The Final Proposed Regulation addresses this issue in 225 CMR 14:06 (1) (d) (3) and 14:06 (2).

**11.C COMMENT:** The Commenter points out that, for vintage waivers, a clarification is required to direct the GIS administrator to generate RPS-eligible certificates in each year only when the Historical Generation has been exceeded. [50]

**RESPONSE:** The Division agrees that the clarification is necessary. The Final Proposed Regulation 225 CMR 14.07(1)(a) provides that a Generation Unit's Statement of Qualification issued pursuant to a Vintage Waiver shall include applicable restrictions. Under such a Statement of Qualification, the GIS Administrator will issue, in each Calendar Year, certificates that qualify as New Renewable Generation under the RPS only after the Unit's Historical Generation Rate has been achieved.

**11.D COMMENT:** The Commenters question whether annual re-certification of a New Renewable Generation Unit is necessary. One Commenter recommends a waiver for small generation units. [5, 49]

**RESPONSE:** The Division agrees with the Commenters on this issue and has eliminated annual re-certification for New Renewable Generation Units.

**11.E COMMENT:** The Commenters recommend that "run-of-river" hydro, low impact hydro, and/or environmental friendly hydro be eligible as a new renewable resource. [4, 10, 12].

**RESPONSE:** The Act categorically excludes from eligibility all hydroelectric technologies as New Renewable Generation Units.

**11.F COMMENT:** The Commenter states that the Regulation allows no hydro and very limited biomass, and, therefore, that there will be an insufficient supply of New Renewable Generation to meet the RPS demand. Basic economics dictates that high demand with inadequate supply means high prices and dissatisfied customers. [9]

**RESPONSE:** The Division notes that the Act categorically excludes hydroelectric facilities from consideration as New Renewable Generation Units. In addition, the Final Proposed Regulation expands the eligibility of biomass units, consistent with the requirements of Act (see Responses to Comments on Biomass Eligibility, Topic 1). Finally, the Division projects that there will be sufficient capacity to meet the RPS demand in Massachusetts ( see Response to Comment 9.F).

**11.G COMMENT:** The Commenter suggests changing the Public Hearing Regulation to make it clear that all units constructed prior to 1998, including those that co-fire, must meet the vintage requirements. [44]

**RESPONSE:** The Final Proposed Regulation, in CMR 225 14.06 (2), makes clear that all units constructed prior to 1998, including those that co-fire, must meet the vintage requirements.

**11.H COMMENT:** The Commenter urges the Division to define "naturally flowing water and hydroelectric" by using the NEPOOL definition of "daily cycle hydro." [43]

**RESPONSE:** The Act defines "renewable energy generating sources" to include those that use "naturally flowing water and hydroelectric." It does not state or imply the restrictions in the NEPOOL definition of "daily cycle hydro."

## **12. SMALL GENERATION**

**12.A COMMENT:** The Commenter urges the Division to be proactive in encouraging small-scale generation of renewables by facilitating their participation in RPS. [10, 40]

**RESPONSE:** The Division notes that the NE-GIS rules will facilitate full participation by small-scale renewable generation in the RPS.

**12.B COMMENT:** The Commenter recommends that the Division's Guidelines provide a streamlined qualification process appropriate for small generators. [40]

**RESPONSE:** The Division agrees and will address these details in the Guidelines.

**12.C COMMENT:** The Commenter strongly supports regulations that enable small and behind-the-meter generation units to qualify for RPS. [49]

**RESPONSE:** The Final Proposed Regulation, 225 CMR 14.06 (1) (d) and (4) (c), enables off-grid and behind-the-meter generation units to qualify as New Renewable Generation Units.

**12.D COMMENT:** The Commenter urges that a definition of "small generation unit" should be added to the definition section. Also, the definition that appears in Section 14.06(4) should be modified to include the following language: "A Generation Unit whose output is not recorded in the ISO New England Multi-Settlement System." [40, 49]

**RESPONSE:** The Final Proposed Regulation includes a definition for Small Generation Unit. Further, 225 CMR 14.10 (1) (c) provides guidance on data requirements for making compliance filings by units whose output is not recorded in the ISO-NE Multi-Settlement System.

### **13. POST 2009 ISSUES**

**13.A COMMENT:** The Commenters recommend that the Division make it clear that RPS will stay in effect after 2009. [4, 15, 31]

**RESPONSE:** The Final Proposed Regulation, 225 CMR 14.08 (2), clarifies that after 2009 the Minimum Standard shall increase by one percent per year until the Division suspends the annual increase. Further, it clarifies that the Minimum Standard will never decrease.

**13.B COMMENT:** The Commenters expressed concern that conducting the review for the 2010-2014 timeframe in 2007 would not allow sufficient time for the market to react. [17]

**RESPONSE:** The Division appreciates this concern, but feels that a minimum of three years of experience with implementation is needed to conduct a meaningful review.

**13.C COMMENT:** The Commenter recommends that the Division include the following provision in the Regulation: "Continuity of RPS Market. In the event that the RPS is terminated for any reason, the Division will endeavor to assure that both the Mandatory RPS requirements and any Discretionary RPS Increases remain in effect for a minimum of ten years." [49]

**RESPONSE:** The Division feels that the recommended language is not necessary. The RPS creates incentives and a legal and economic framework conducive to long-term contracts for new renewable generation. The law has no sunset: the RPS rises to at least 4 percent by 2009 and continues indefinitely thereafter. Nevertheless, the Final Proposed Regulation clarifies that the minimum standard may not be reduced but, at the Division's discretion, may continue to increase in one percent increments after 2009.

## **14. CO-FIRING WITH INELIGIBLE FUELS**

**14.A COMMENT:** The Commenter asks the Division to clarify what eligibility requirements apply to co-firing. [53]

**RESPONSE:** In response to these concerns, the Final Proposed Regulation, 225 CMR 14.06 (3), establishes a waiver process for a unit that co-fires an eligible renewable fuel with an ineligible fuel to qualify as a New Renewable Generation Unit. The Final Proposed Regulation specifies what portion of the electricity generated in such facilities may be used by an Retail Electricity Supplier for compliance, and requires that facilities co-firing with eligible biomass fuels must use “low emissions, advanced power conversion technology” (see Response to Comments 1.F and 1.H).

**14.B COMMENT:** The Commenter recommends clarification of the regulatory language to make it clear that to qualify as a New Renewable Generation Unit, a co-firing facility must burn the non-renewable fuel as efficiently as the Eligible Renewable Fuel. The Commenter offers assistance to DOER in calculating the ratio of electricity that should be credited to each fuel type in a co-fired unit. [29]

**RESPONSE:** The Division is committed to working with the DEP on the review of all applications from co-firing units. The Division will defer to the DEP on the details of methodology for calculating the portion of electricity from a co-fired generation unit that may be identified as eligible for RPS compliance.

**14.C COMMENT:** The Commenter argues it is overly restrictive to require that the entire generation unit which co-fires with various eligible biomass fuels to qualify as “low emissions advanced biomass conversion technology”. [9]

**RESPONSE:** A generation unit that uses several Eligible Biomass Fuels will not require a Co-firing with Ineligible Fuels Waiver. The Final Proposed Regulation, 225 CMR 14.06 (1) (a) 6, clarifies that, to qualify as using “low emissions advanced biomass conversion technology,” a generation unit with a Commercial Operation Date after December 31, 1997 must possess a valid air permit from the relevant jurisdiction. However, a generation unit with a Commercial Operation Date prior to January 1, 1998, that will burn biomass fuel under a Vintage Waiver, pursuant to 225 CMR 14.06 (2), must achieve air emission rates that are consistent with emission rates for comparable biomass units as prescribed by the DEP during the period 1990 through 1997.

**14.D COMMENT:** The Commenter believes that cogeneration should be included statutorily as an existing renewable source. [12]

**RESPONSE:** The Act does not define co-generation as a renewable energy generating source.

## **15. DEFINITIONS**

**15.A COMMENT:** The Commenter does not think the definition of Generation Attribute should include “labor status” unless it is carefully defined. [25]

**RESPONSE:** The definition in the Final Proposed Regulation no longer makes reference to labor status.

**15.B COMMENT:** The Commenter suggests that the following definitions require clarification: Owner, Operator, and RPS Attribute. [43]

**RESPONSE:** The definition of these terms in the Final Proposed Regulation are now consistent with the NE-GIS and NEPOOL rules.

**15.C COMMENT:** The Commenter believes that the definition for retail electricity product is not clear. “Specifying an electricity offering as distinguished by its Generation Attributes might imply that a Retail Supplier that makes no effort to differentiate its electricity supply, i.e. simply accepts the residual mix as determined by ISO-NE, would not need to comply with the RPS.” [49]

**RESPONSE:** Certificates issued by NE-GIS for "residual" generation mix will not qualify as evidence of New Renewable Generation. The Final Proposed Regulation, 225 CMR 14.10 (1) (c), clarifies that NE-GIS certificates used for compliance must represent New Renewable Generation produced by a New Renewable Generation Unit.

## **16. MISCELLANEOUS**

**16.A COMMENT:** The Commenters, including interested citizens, submitted statements of support for RPS implementation. [7, 11, 13, 14, 15, 19, 22, 29, 31, 32, 33, 34, 53, 58, 59, 60, 61]

**RESPONSE:** The Division appreciates the support of these Commenters.

**16.B COMMENT:** The Commenter requests that the Division clarify the treatment of the "residual mix" certificates. [50]

**RESPONSE:** The NE- GIS will have two types certificates that do not identify a specific generation unit, “system power” certificates for imported power and “residual mix” certificates created for final quarterly settlement. Because they do not identify a New Renewable Generation Unit, a Retail Electricity Supplier will not be able to use either of these types of certificates to document compliance with the RPS.

**16.C COMMENT:** One Commenter notes that the language of the Non-Compliance section appears to be inconsistent. The Commenter suggests that a shortfall plan be submitted before RPS attributes are purchased to make up the shortfall, without delaying the compliance beyond the first quarter of the subsequent year. Another Commenter

recommends that the Division modify the make-up requirements by adding to the end of the first sentence "above and beyond the percent of the following year's requirements." [25, 50]

**RESPONSE:** The Final Proposed Regulation does not include the make-up requirement. The Division believes that administration of a make-up provision would have been complex and burdensome. The Alternative Compliance Mechanism provides a Retail Electricity Supplier with an efficient and more timely compliance option. Payments made to the MTPC under the Alternative Compliance Mechanism will be directed to the development of New Renewable Generation and therefore would have the same effect as requiring a Retail Electricity Supplier to purchase make-up Attributes.

**16.D COMMENT:** The Commenter states that the Regulation should contain stronger enforcement measures. [15]

**RESPONSE:** The Act does not give the Division authority to assess monetary penalties. The Division believes that the combination of the Non-Compliance provisions and Alternative Compliance mechanism will be sufficient to motivate Retail Electricity Supplier compliance. The Division will approach the General Court for authority to assess monetary penalties if significant non-compliance occurs.

**16.E COMMENT:** The Commenter requests that the Division acknowledge that the process which local distribution companies (LDCs) use to procure RPS attributes will be different than the process used by competitive suppliers. The Commenter asks that the Division be sensitive to that difference and implement its Regulation in a way that allows the LDCs' renewable procurement process to work fairly and efficiently. The Commenter notes that the Division should implement the Regulation to ensure that a LDC acting in good faith to implement the Regulation is not subjected to penalties, monetary or otherwise. [57]

**RESPONSE:** The Division recognizes that certain Retail Electricity Suppliers, particularly regulated distribution companies, must procure RPS Attributes through a competitive bidding process subject to regulatory review. Nevertheless, there are several aspects to the Final Proposed Regulation that should address the Commenter's concerns. First, like all Retail Electricity Suppliers, these companies will be free to choose the time during the Compliance Year when they procure RPS Attributes. Second, like all Retail Electricity Suppliers, these companies will be free to choose to require suppliers of electricity to provide Attributes as part of their supply contracts or to procure Attributes directly. Third, the Early, Banked and Alternative Compliance mechanisms, taken together, provide any Retail Electricity Supplier, acting in good faith, with ample options to craft a compliance strategy that meets its needs.

**16.F COMMENT:** The Commenter urges that any future analysis of the costs of RPS should be supplemented to reference the consumer savings of lower energy clearing prices that would offset projected program expenses. [16]

**RESPONSE:** The Division agrees with the recommendation.

**16.G COMMENT:** The Commenters encourage the Division to expedite the process for issuing a Statement of Qualification as much as possible. Two suggestions to accomplish this aim were proposed: a) coordinating the information needed with the NE-GIS administrator; and b) shortening the maximum review period from 90 days to 60 or 30 days. [17, 43]

**RESPONSE:** The Division will issue a Statement of Qualification to the Owner/Operator as expeditiously as possible, but the 90 day time frame allows the Division sufficient time to address complex applications. It will, however, be the responsibility of the Owner/Operator to register its Statement of Qualification with the NE-GIS Administrator in order to be eligible to earn New Renewable Generation Certificates. The Division will work with the NE-GIS Administrator to assure that this process is as efficient and accurate as possible.