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## Massachusetts Moves to Reduce Greenhouse Gases

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On August 11, 2017, the Massachusetts Department of Environmental Protection (MassDEP) adopted a landmark bundle of regulations for reducing greenhouse gases (GHG). The regulations primarily target carbon dioxide (CO<sub>2</sub>) emissions associated with electricity generation and supply through a new cap-and-trade program for generators and a “Clean Energy Standard” for retail electricity sellers. The regulations also create new restrictions on methane emissions from natural gas distribution and expand existing restrictions on sulfur hexafluoride (SF<sub>6</sub>) emissions from electrical system switchgear. Beyond stationary sources, the regulations also address CO<sub>2</sub> emissions from state vehicles and set CO<sub>2</sub> reduction targets through 2020 for the state’s transportation system.

The regulations were prompted by the state’s 2008 Global Warming Solutions Act (Act) and Clean Energy and Climate Plan for 2020 (CECP 2020) and, most pointedly, by a 2016 Massachusetts Supreme Judicial Court decision that MassDEP had failed to meet its rulemaking duties under the Act. Under these authorities, statewide GHG emissions must be reduced 25 percent below 1990 levels by 2020 and 80 percent by 2050.

The following are select highlights of the final regulations, with a focus on electricity generation and sales and natural gas distribution.

### **LARGE ELECTRICITY GENERATING FACILITIES: CO<sub>2</sub> CAP-AND-TRADE (310 CMR 7.74)**

The new regulations will require 21 large power plants specified in the regulation to comply with an annually declining aggregate limit (that is, a cap) on CO<sub>2</sub> emissions. The aggregate emissions limit includes a limit applicable to existing facilities and a limit for the aggregate addition of new facilities. The cap takes effect in 2018 and will decrease by 2.5 percent each year thereafter until 2050. Covered facilities must acquire sufficient allowances (each allowance representing authorization to limit one metric ton of CO<sub>2</sub>) to offset their emissions.

To launch the cap, MassDEP will apportion out specific emissions limits and provide corresponding allowances for each existing facility for 2018. After that, existing facilities will need to purchase allowances in quarterly auctions held by MassDEP. For new facilities, by February 15 of 2019 and each year thereafter, MassDEP will apportion emissions limits based on the facilities reported emissions for the prior year and subject to an overall cap for new emissions that year.

Unlike the proposed regulations, the final regulations include an allowance trading program and the design of the auction system for 2019. Allowances may be sold or otherwise transferred or traded in secondary markets, with notice to MassDEP. In another change from the proposed regulation, the

final regulations limit the banking of allowances for use in future years.

The program's relation to the existing regional cap-and-trade program under the Regional Greenhouse Gas Initiative (RGGI) was a point of contention in the rulemaking process. Several targeted facilities claimed that adding a new state-only cap-and-trade program on top of the existing RGGI program was ill advised and would create confusion and compliance difficulties. MassDEP rejected these claims, casting 310 CMR 7.74 as compatible with RGGI.

#### **RETAIL ELECTRICITY: CLEAN ENERGY STANDARD (310 CMR 7.75)**

The Clean Energy Standard (CES) regulation will require retail electricity sellers to annually demonstrate the use of clean energy to supply an annually increasing percentage of their electricity sales. The CES program is intended to increase the amount of non-GHG energy supplied to the regional electricity system and available for consumption in Massachusetts. While the CO<sub>2</sub> reduction program in 310 CMR 7.74 applies only to generating facilities in Massachusetts, the CES program is designed to reduce emissions from electricity generated both within and outside the state.

Beginning in 2018, the minimum "clean energy" standard for nonmunicipal retail sellers will be 16 percent. The minimum percentage will ramp up 2 percent each year to reach 80 percent in 2050. Provided certain conditions are met, clean energy attributes may be banked for future use but subject to a "shelf life" of two years and a bar on usage before 2021. The final CES regulation also adds limited "grandfathering" for electricity sold under contracts in effect prior to the August 11, 2017, adoption of the CES program.

The CES regulation at numerous points interfaces with the existing Renewable Portfolio Standard (RPS) program, administered by the Massachusetts Department of Energy Resources (DOER). Points of intersection include recognizing RPS-qualified Class I units as CES "clean energy" units and allowing the use of RPS alternative compliance credits for CES compliance as well.

The eligibility criteria for qualifying a project for "clean generation" credits drew much comment during the rulemaking process. According to MassDEP, the final criteria (at 310 CMR 7.75(7)) are intended to reflect a technology-neutral approach. The criteria require eligible clean energy generators to be RPS-eligible or to (1) demonstrate net lifecycle GHG emissions of at least 50 percent below those from the most efficient natural gas generator (for example, hydro, nuclear, etc.); (2) be located in the ISO-NE control area or be located in an adjacent control area and use new transmission capacity; and (3) have commenced commercial operation after December 31, 2010. The regulation details the procedures and conditions for applying for granting, maintaining, and suspending or revoking "clean generation" status.

The CES regulation also tees itself up for potential future revisions. By the end of 2017, MassDEP is to complete a review and public comment period regarding options for including certain generators currently not eligible for "clean energy" status, as well as options to include municipal electric departments and municipal light boards in the CES program. The regulation also calls for MassDEP to complete a review of the entire CES program and potential amendments by the end of 2021.

#### **NATURAL GAS DISTRIBUTION: METHANE EMISSION REDUCTIONS (310 CME 7.73)**

This regulation applies to each gas operator with a Gas System Enhancement Plan approved by the Massachusetts Department of Public Utilities as of August 11, 2017, to specify a schedule for replacement of older distribution system pipes. For each such operator, the regulation establishes annual methane emission limits (expressed in metric tons of carbon dioxide equivalent (CO<sub>2</sub>e)) for the operator's natural gas mains and services, as well as an aggregate yearly limit for all operators. Responding to public comments, the final regulation also creates a pool of "set-aside" methane emissions for potential allocation by MassDEP to operators who demonstrate eligibility for an

increased emissions limit under certain conditions. The emission limits and set-aside emission levels will be reduced each year through 2020.

The regulations also provide an emissions factor table for various types of lines and mains for use in calculating and reporting yearly emissions from the operator's lines and mains. This program likewise tees up potential future revisions. By the end of 2020, MassDEP must complete a program review with a public comment period to consider extending or amending the program.

Other components of the regulation package restrict SF<sub>6</sub> emissions from electrical switchgear beyond existing federal standards (310 CMR 7.72), create CO<sub>2</sub> reduction targets for the state's transportation system and state-owned transportation facilities (310 CMR 60.05), and set CO<sub>2</sub> emissions reduction requirements for various state passenger vehicles (310 CMR 60.06).

The final regulation package, along with fact sheets and responses to public comments, is available on the [MassDEP website](#).

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For further information regarding these developments and their potential impacts, please contact one of the lawyers listed below or another member of Robinson+Cole's Environmental, Energy + Telecommunications Group:

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