

State of Rhode Island  
Department of Environmental Management  
Office of Air Resources

**In re: Proposed revisions to Air Pollution Control Regulation No. 46 “CO<sub>2</sub> Budget Trading Program” and Air Pollution Control Regulation No. 47 “CO<sub>2</sub> Budget Trading Program Allowance Distribution”**

DECISION

**Introduction**

On 25 October 2013 a notice was posted on the websites of the Rhode Island Department of Environmental Management (RI DEM) and the Rhode Island Office of Secretary of State and was emailed and or mailed to interested parties announcing a public comment period to accept comments on the adoption of proposed revisions to Air Pollution Control Regulation No. 46 “CO<sub>2</sub> Budget Trading Program” and Air Pollution Control Regulation No. 47 “CO<sub>2</sub> Budget Trading Program Allowance Distribution” through November 27. The notice stated that a public hearing would be held on November 22, 2013.

**Overview**

The Regional Greenhouse Gas Initiative (RGGI) is composed of individual CO<sub>2</sub> Budget Trading Programs in each RGGI participating state. Each participating state’s CO<sub>2</sub> Budget Trading Program is based on the 2008 RGGI Model Rule, which was developed to provide guidance to states as they implemented the RGGI program. RGGI participating states have completed a 2012 Program Review, which is a comprehensive evaluation of program successes, program impacts, the potential for additional reductions, imports and emissions leakage, and offsets.

Amendments to the Model Rule were developed by the RGGI state staff as part of the Program Review. This effort was supported by an extensive regional stakeholder process that engaged the regulated community, environmental non-profits, and other organizations with technical expertise in the design of cap-and-trade programs.

As a result of the program review process described above, The Department of Environmental Management proposes to amend the Rhode Island CO<sub>2</sub> Budget Trading Program Regulations to incorporate the changes made in the RGGI Model Rule.

## Description of Amendments

Summary of the proposed RGGI Regulations Amendments:

### 1. Size and Structure of Cap and Allowance Apportionment

The Regional Emissions Cap in 2014 will be equal to 91 million tons. The Model Rule language maintains the original 2.5% per year reduction to the regional RGGI cap for the years 2015 through 2020.

### 2. Budget Adjustments

The Model Rule contains language to address the private bank of allowances through two distinct budget adjustments.

The First Control Period Interim Adjustment for Banked Allowances (first adjustment), adjusts the budget for 100 percent of the first control period private bank of allowances (vintages 2009, 2010, & 2011) held by market participants as of the end of the first control period, that are in addition to the total quantity of first control period emissions. The first adjustment timing and algorithm is spelled out in the Model Rule and is made over the 7 year period 2014-2020.

The Second Control Period Interim Adjustment for Banked Allowances (second adjustment), adjusts the budget for 100 percent of the 2012 and 2013 vintage allowances held by market participants as of the end of 2013, that are in addition to the total quantity of 2012 and 2013 emissions. The second adjustment timing and algorithm is spelled out in the Model Rule and is made over the 6 year period 2015-2020 after the actual size of the 2012 and 2013 vintage private bank is determined.

### 3. Interim Control Periods

The Model Rule creates interim control periods that include the following components:

- The addition of new defined terms, including:

“Interim Control Period,” defined as each of the first two calendar years of each three-year control period.

“Excess Interim Emissions,” defined as any emissions (multiplied by 0.50) over the amount of allowances held at the end of each Interim Control Period.

- A new general requirement for sources to hold allowances to cover 50% of emissions for each Interim Control Period, subject to the existing true-up process and a March 1 deadline.

- The final compliance true-up at the end of the three-year control period will continue to require sources to hold allowances to cover 100% of the emissions for the three years.
- The allowances already deducted to meet each of the two annual Interim Control Period obligations will be subtracted from the three-year compliance true-up obligation.
- Each ton of Excess Interim Emissions will be considered a violation, subject to the ordinary existing enforcement provisions of the relevant agency on an annual basis.
- There will *not* be a “treble damages” provision for Excess Interim Emissions.
- The existing “treble damages” provision, for any excess emissions at the end of the three-year control period, will remain unchanged.
- The deletion of existing triggers, “market settling period”, and other regulatory terms related to the potential to extend the control period to four years.

#### 4. Cost Containment Reserve

The Model Rule contains language for the creation and use of a cost containment reserve (CCR) that will provide flexibility and cost containment for the program. The CCR would consist of a fixed quantity of allowances, in addition to the cap, that would be held in reserve, and are only to be made available for sale if allowance prices were to exceed predefined price levels.

- a. The Model Rule contains language for an annual CCR withdrawal limit of 5 million allowances in 2014, and an annual CCR withdrawal limit of 10 million allowances thereafter. The CCR would initially be populated in 2014, and in subsequent years would be replenished only as needed to maintain the withdrawal limit.
- b. Allowances from the CCR would be fully fungible.
- c. The CCR allowances would be made available immediately in any auction in which demand for allowances at prices above the CCR trigger price exceeds the supply of allowances offered for sale in that auction prior to the addition of any CCR allowances.
- d. If the CCR is triggered, the CCR allowances will only be sold at or above the CCR trigger price.

- e. CCR Triggers Prices: \$4 in 2014, \$6 in 2015, \$8 in 2016, and \$10 in 2017. Each year after 2017, the CCR trigger price will increase by 2.5%.

## 5. Offset Trigger Mechanisms

The Model Rule deletes the existing offset price triggers, that raise the allowable percentage of offsets and that allow the use of international CO<sub>2</sub> emission credit retirements.

The allowable offset percentage would remain at 3.3%, and only those offset credits that satisfy all Model Rule requirements for a specific project category (including any new categories added) may be used for compliance. These changes are consistent with the decision to add a CCR mechanism and address the need for cost control in a much more transparent and predictable way.

## 6. Control Period Extension

The Model Rule deletes the potential extension of the control period to four years and is replaced by the CCR.

## 7. Offsets

The Model Rule contains language that provides a new offset category known as “Sequestration of carbon due to reforestation, improved forest management or avoided conversion” that States may adopt in lieu of the existing Afforestation category.

A RGGI U.S. Forests Offset Protocol has been developed, based mainly on the California Air Resources Board (CARB) U.S. Forests Offset Protocol, to include:

- Improved Forest Management;
- Avoided Conversion; and
- Reforestation (which would replace the existing RGGI Afforestation category type).

## SF6 Offset Category

The Model Rule deletes the language referring to consistency applications associated with reductions in emissions of sulfur hexafluoride that were filed prior to 2009 in accordance with Section 10.5(b)(3), as those requirements are no longer applicable.

## End-Use Energy Efficiency Offsets Category

The Model Rule deletes language for offset projects commenced prior to January 1, 2009.

## Incorporation by Reference

The Model Rule contains updates for all documents incorporated by reference.

## 8. Miscellaneous

### a. Reserve Price

The Model Rule contains language to simplify the reserve price. The Model Rule increases the minimum reserve price by 2.5 percent each year and eliminates the text for current market reserve price.

### b. Early Reduction Allowances

The Model Rule deletes the ERA provisions as they are no longer applicable to the program.

### c. Undistributed and Unsold CO<sub>2</sub> Allowances

The Model Rule contains language to provide the ability to retire undistributed and unsold allowances at the end of each control period, subject to each state's statutory and/or administrative process.

## **Public Hearing**

A public hearing on the proposed amendments was held on November 22, 2013. Two individuals presented oral testimony at the hearing supporting the changes proposed in the regulations. No comments were provided suggesting any changes be made to the proposed regulations. Written comments were received from six organizations as listed below.

## **Response to Comments**

### **Environment Rhode Island, letter dated November 22, 2013**

Comments support the program revisions and recommend that the design of the emissions cap be reconsidered during the next program review. No comments were provided suggesting any changes be made to the proposed regulations.

**New England Clean Energy Council, letter dated November 27, 2013**

Comments support the program revisions. No comments were provided suggesting any changes be made to the proposed regulations.

**Conservation Law Foundation, letter dated November 26, 2013**

Comments support the program revisions and recommend that the design of the emissions cap be reconsidered during the next program review. Additionally editorial comments were made to correct errors in subsection 46.1.63 of APC Regulation No. 46 and to reformat subsection 47.9.1 of APC Regulation No. 47. These corrections were made to the regulations.

**North East Energy Partnership, letter dated November 27, 2013**

Comments support the program revisions. No comments were provided suggesting any changes be made to the proposed regulations.

**American Lung Association, letter dated November 26, 2013**

Comments support the program revisions and recommend that the design of the emissions cap be reconsidered during the next program review. No comments were provided suggesting any changes be made to the proposed regulations.

**ENE, letter dated November 27, 2013**

Comments support the program revisions and recommend that the design of the emissions cap be reconsidered during the next program review. Additionally, editorial comments were made to correct errors in subsection 46.4.1 of APC Regulation No. 46 and subsection 46.8.5(b)(1)a of APC Regulation No. 47. These corrections were made to the regulations.

**Decision**

It is the decision of the Office of Air Resources to amend Air Pollution Control Regulation No. 46 “CO<sub>2</sub> Budget Trading Program” and Air Pollution Control Regulation No. 47 “CO<sub>2</sub> Budget Trading Program Allowance Distribution” as indicated in the response to comments above.

The final amended regulations are appended to this Decision.

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Date

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Douglas McVay, Chief  
Office of Air Resources

Approved:

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Date

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