



C.F.T.C.
OFFICE OF THE SECRETARIAT
2010 JAN 26 PM 4 25

January 21, 2010

VIA E-MAIL

Mr. David Stawick
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Rule Certification. New York Mercantile Exchange, Inc. Submission 10-020 #: Amendments to Regional Greenhouse Gas Initiative (RGGI) CO2 Allowance Futures Contract Relating to the Listing of Four (4) New Vintage Year-Specific Green Futures Products on CME ClearPort® and NYMEX Trading Floor

Dear Mr. Stawick:

The New York Mercantile Exchange, Inc. ("NYMEX" or "Exchange") is notifying the Commodity Futures Trading Commission ("CFTC" or "Commission") that it is self-certifying amendments to the Regional Greenhouse Gas Initiative (RGGI) CO2 Allowance Futures contract in order to accommodate for the delivery of contracts with four specific vintage years. The four new vintage year-specific Regional Greenhouse Gas Initiative (RGGI) CO2 Allowance Futures products are for vintage years 2009 through 2012. They will be listed on CME ClearPort clearing and NYMEX trading floor effective trade date Monday, January 25, 2010.

The Exchange is also notifying the Commission that effective March 8, 2010, the four vintage year-specific listings will also be available on CME Globex trading venue.

The four (4) new listings available for delivery in their respective specific vintage years, associated commodity codes, and listed months are listed below:

Contracts	NYMEX Floor and Clearing Code	Globex Code	Listed Months	Rule Chapter
Regional Greenhouse Gas Initiative (RGGI) CO2 Allowance Vintage 2009 Futures	98	98N	March 2010 through December 2010, December 2011, and December 2012	873
Regional Greenhouse Gas Initiative (RGGI) CO2 Allowance Vintage 2010 Futures	76	76X	March 2010 through December 2010, December 2011, and December 2012	873
Regional Greenhouse Gas Initiative (RGGI) CO2 Allowance Vintage 2011 Futures	86	76X	December 2011 and December 2012	873
Regional Greenhouse Gas Initiative (RGGI) CO2 Allowance Vintage 2012 Futures	96	96X	December 2010, December 2011, and December 2012	873

The Exchange is also notifying the Commission that the Exchange will be waiving fees for the four vintage year-specific Regional Greenhouse Gas Initiative (RGGI) CO2 Allowance Futures products until March 31, 2010.

In addition, the Exchange is notifying the Commission that it is self-certifying administrative amendments to the termination of trading (873.07) and force majeure (873.13) rules in order to harmonize the provisions of these rules within the Exchange rulebook.

Pursuant to Section 5c(c) of the Commodity Exchange Act ("Act") and CFTC Rule 40.6, the Exchange hereby certifies that the attached amendments and fee waiver comply with the Act, including regulations under the Act. The listing of these vintage-specific years and amendments to the Regional Greenhouse Gas Initiative (RGGI) CO2 Allowance Futures contract will become effective on trade date January 25, 2010.

Should you have any questions concerning the above, please contact Brad Leach at (212) 299-2609, or me at (312) 648-5422.

Sincerely,

/s/ Stephen M. Szarmack
Regulatory Counsel

Attachments: Contract Terms and Conditions
Supplemental Market Information

8047

Chapter 873
Regional Greenhouse Gas Initiative (RGGI) CO2 Allowance Futures

873.01 SCOPE

The provisions of these rules shall apply to all Regional Greenhouse Gas Initiative (RGGI) Carbon Dioxide (CO2) allowances bought or sold for future delivery on the Exchange with the delivery through the RGGI CO2 Allowance Tracking System. ~~RGGI CO2 allowances acceptable for delivery must have a vintage applicable to compliance in the RGGI control period related to the calendar year of the contract month.~~

873.01A DEFINITIONS

A. The terms "Seller" and "Buyer" shall mean the short Clearing Member and the long Clearing Member, respectively. ~~In Rule 873.12, the terms "Seller" and "Buyer" shall mean the seller and the buyer of the physical product or OTC swap.~~

B. The terms "Seller's Customer" and "Buyer's Customer" shall mean the seller and buyer of the physical product.

C. The term "Settlement Price" shall mean the final settlement price used as the price for delivery of the product, which shall be the settlement price for the last trading day of the expiring delivery month. The settlement price for the last trading day shall be determined in accordance with the procedures set forth in ~~NYMEX Exchange Rule 11G-11.813.~~

D. The Regional Greenhouse Gas Initiative (RGGI) is a regional cap-and-trade program by Northeast and Mid-Atlantic states to limit carbon dioxide, i.e., CO2 emissions from regional power plants.

E. RGGI CO2 Allowance shall mean a limited authorization under RGGI program to emit up to one ton of CO2.

F. RGGI CO2 Allowance Tracking System shall mean the system by which the RGGI CO2 allowances are allocated, deducted, or transferred.

873.02 TIME REFERENCES

For purposes of these Rules, unless otherwise specified, times referred to herein shall refer to and indicate the prevailing time in New York.

873.03 CONTRACT UNIT

The contract unit shall be one thousand (1,000) RGGI CO2 allowances for a delivery made by transfer through the RGGI CO2 Allowance Tracking System.

873.04 DELIVERY

RGGI CO2 allowances delivery shall comply with all requirements for the electronic transfer of CO2 allowances on the RGGI CO2 Allowance Tracking System. All deliveries made under these rules shall be final and there shall be no appeal.

873.05 DELIVERY MONTHS AND CONTRACT VINTAGES

Trading shall be conducted in contract months with and without specific vintage years providing for delivery in such periods as shall be determined by the Exchange.

873.06 MINIMUM PRICE FLUCTUATIONS

Prices shall be quoted in dollars and cents per allowance. The minimum price fluctuation shall be \$0.01 per allowance (\$10.00 per contract). There shall be no maximum price fluctuations.

873.07 TERMINATION OF TRADING

~~Trading in the current delivery month shall cease at termination of the last business day of the contract month.~~ No trades in Regional Greenhouse Gas Initiative (RGGI) CO2 Allowance Futures

deliverable in the current month shall be made after the termination of the last business day of the contract month. Any contracts remaining open after the last day of trading must be either:

- (a) Settled by delivery no later than on the third business day after the final day of trading.
- (b) Liquidated by means of a bona fide Exchange of Futures for Related Position (EFRP), no later than two hours after trading terminates on the last day of trading of the expiring futures contract.

873.08

RESERVED DELIVERABLE ALLOWANCES

(1) Contracts without a specific vintage year: RGGI CO2 allowances acceptable for delivery must have a vintage applicable to compliance in the RGGI control period related to the calendar year of the contract month.

(2) Contracts with a specific vintage year: RGGI CO2 allowances acceptable for delivery are allowances with a vintage corresponding to the specific vintage year of the terminating contract period.

873.09

DELIVERY PROCEDURES

(A) RESPONSIBILITIES OF CLEARING MEMBERS HAVING OPEN LONG POSITIONS

(1) NOTICE OF INTENTION TO ACCEPT

By 4:30 p.m. on the first business day after the final day of trading, a Buyer having an open position shall file with the Exchange a properly completed and signed Notice of Intention to Accept.

The Notice of Intention to Accept shall be in the form prescribed by the Exchange and shall include: name of the Buyer's Customer, number of contracts to be accepted, RGGI CO2 Allowance Tracking System account number; Name, phone number and e-mail address of the authorized account representative for that RGGI CO2 Allowance Tracking System account, and any additional information as may be required by the Exchange;

(B) RESPONSIBILITIES OF CLEARING MEMBERS HAVING OPEN SHORT POSITIONS

(1) Notice of Intention to Deliver

By 4:30 p.m. on the first business day after the final day of trading, a Seller having an open short position shall file with the Exchange a properly completed and signed Notice of Intention to Deliver.

The Notice of Intention to Deliver shall be in the form prescribed by the Exchange and shall include: name of the Seller's Customer, number of contracts to be delivered, RGGI CO2 Allowance Tracking System Account Number, name, phone number and e-mail address of the authorized account representative for that RGGI CO2 Allowance Tracking System account, Any additional information as may be required by the Exchange.

(C) USE OF SETTLEMENT PRICE: The final settlement price used for the delivery shall be the settlement price from the final day of trading.

(D) NOTICE DAY

(1) The Clearing House shall allocate Notices of Intention to Deliver and Notices of Intention to Accept by matching size of positions, to the extent possible.

(2) The Clearing House shall provide Tender Allocation Notices to the respective Clearing Members on the second business day after the final day of trading.

(3) The day the Tender Allocation Notices are provided to the Clearing Members shall be referred to as "Notice Day". Tender Allocation Notices are not transferable.

(E) PAYMENT AND DELIVERY MARGINS

(1) Definitions

(a) The Buyer and Seller shall deposit with the Exchange margins in such amounts and in such form as required by the Exchange. Such margins which shall not be greater than the margins charged to the Buyer's Customer and Seller's Customer shall be returned on the business day following notification to the Exchange that delivery and payment have been completed.

(b) "Payment" shall include the settlement price times the number of contracts times 1000.

(c) "Payment Date" shall mean the business day after the Buyer's Customer's receipt of proper notification from the RGGI CO2 Allowance Tracking System that allowances have been transferred from the Seller's Customer's account to the Buyer's Customer's account, provided documentation is supplied to the Buyer's Customer by no later than 2:00 P.M. Documentation supplied to Buyer after 2:00 p.m. on any Exchange business day shall be considered received on the following Exchange business day.

(d) On the last business day following the last day of trading, the Buyer shall obtain from the Buyer's Customer, if any, margin equal to the full value of the product to be delivered. Such margin shall consist of cash, securities issued by the United States Treasury Department maturing within ten (10) years from the date of deposit and guaranteed as to principal and interest by the United States Government or a letter of credit. Any Treasury securities so deposited shall be valued at ninety percent (90%) of the par value of such instruments. Any letter of credit so deposited shall be in a form approved by the Exchange, shall be issued or confirmed by an Exchange approved original margin depository, and shall be drawn in favor of the Exchange.

(e) The Buyer shall pay the Seller at the office of the Seller by a certified check or electronic funds transfer, or any other method acceptable to both parties by 12:00 P.M. on the payment date.

(f) On the Payment Date, the Seller shall deliver a Notice of Payment to the Buyer with a copy to the Exchange by 4:30 PM. Upon receipt of such notice, the delivery shall be complete.

(g) Any payment made on Payment Date shall be based on RGGI CO2 allowances actually delivered.

(F) DELIVERY DAY

The day the Buyer receives the allowances shall be referred to as the Delivery Day.

873.10

DELIVERY PERIOD

Delivery shall take place on the third business day after the final day of trading.

873.11

VALIDITY OF DOCUMENTS

The Exchange makes no representation respecting the authenticity, validity or accuracy of any of Tender Allocation Notice, Notice of Intention to Accept, Notice of Intention to Deliver, check or of any document or instrument delivered pursuant to these rules.

~~873.12~~

~~EXCHANGE OF FUTURES FOR, OR IN CONNECTION WITH PRODUCT AND EXCHANGE OF FUTURES FOR SWAPS (EFS)~~

~~(A) An exchange of futures for, or in connection with, the product (EFP) consists of two discrete, but related, transactions; a cash transaction and a futures transaction. At the time such transaction is effected, the Buyer's Customer and the Seller's Customer of the futures must be respectively the Seller's Customer and the Buyer's Customer of a quantity of the physical product covered by this Section (or any derivative, by-product or related product.) The quantity of physical product must be approximately equivalent to the quantity covered by the futures contracts.~~

~~(B) An exchange of futures for, or in connection with, a swap (EFS) consists of two discrete, but related, transactions; a swap transaction and a futures transaction. At the time such transaction is effected, the buyer and seller of the futures must be, respectively, the seller and the buyer of the swap. The swap component shall involve the commodity underlying the futures contract (or a derivative, by-product or related product of such commodity). The quantity covered by the swap must be approximately equivalent to the quantity covered by the futures contracts. The swap component of an EFS transaction must comply with the applicable CFTC swap regulatory requirements.~~

~~(C) Except as provided below, an EFP or EFS must take place during the hours of futures trading for the RGGI CO2 Allowance futures contract. An EFP or EFS is permitted in any time before 2:00 P.M. on the first business day after the final day of the trading provided, however, that an EFP or EFS transactions that established a futures position for both the Buyer's Customer and the Seller's Customer shall not be permitted on the first business day after the last day of trading.~~

~~(D) Any EFP or EFS shall be governed by the provisions of this Rule and by the provisions of Exchange Rules 583 and 583A, respectively.~~

~~(E) Each Buyer's Customer and Seller's Customer must satisfy the Exchange, at its request, that the transaction is a legitimate EFP or EFS transaction. All documentary evidence relating to EFP or EFS transactions, including, without limitation, evidence as to change of ownership of the physical commodity shall be obtained by the Clearing Members from their customers or made available by the Clearing Members for examination by the Exchange upon request.~~

~~(F) A report of each EFP and EFS transaction shall be entered on the day that the transaction thereto was made, or if such agreement was made after the close of trading, then on the next business day. EFP or EFS transactions shall be cleared through the Exchange in accordance with normal procedures, shall be clearly identified as EFP or EFS transactions, and shall be recorded as such by the Exchange and by the Clearing Members involved.~~

~~873.43-12~~

ALTERNATIVE DELIVERY PROCEDURE

A Seller's Customer or Buyer's Customer may agree with the Buyer's Customer or the Seller's Customer with which it has been matched by the Exchange under Rule 873.09(D) to make and take delivery under terms or conditions which differ from the terms and conditions prescribed by this Chapter. In such a case, Clearing Members shall execute an Alternative Notice of Intention to Deliver on the form prescribed by the Exchange and shall deliver a completed executed copy of such Notice to the Exchange. The delivery of an executed Alternative Notice of Intention to Deliver to the Exchange shall release the Clearing Members and the Exchange from their respective obligations under the Exchange contracts.

In executing such Notice, Clearing Members shall indemnify the Exchange against any liability, cost or expense it may incur for any reason as a result of the execution, delivery, or performance of such contracts or such agreement, or any breach thereof or default there under. Upon receipt of an executed Alternative Notice of Intention to Deliver, the Exchange will return to the Clearing Members all margin monies held for the account of each with respect to the contracts involved.

~~873.4413.~~

FORCE MAJEURE, LATE PERFORMANCE AND FAILURE TO PERFORM

(A) DEFINITION. As used in this Rule 873.44-13 the following terms, as well as variations thereof, shall have the meaning described below.

(1) "Late Performance" shall mean the failure of a Buyer or a Seller to complete a material act with respect to a delivery obligation imposed by, and within the time period established in, the Rules. No Late Performance shall exceed the lesser of two continuous business days or three consecutive calendar days.

(2) "Failure to Perform" shall mean the failure of a Buyer or a Seller to complete a material act with respect to a delivery obligation prior to the expiration of the period allowed for the late performance of such act.

(3) "Contract Value" shall mean the amount equal to the settlement price on the last day of trading in a futures contract times 1000 (the number of allowances per contract) times the number of contracts to be delivered.

(4)(a) "Party" shall mean a Buyer or Seller and such Buyer and Seller are each responsible to the Exchange for their obligations under these Rules and further responsible to the Exchange for the obligations of their respective customers under the Rules of this Chapter.

(b) "Other Party" shall mean the corresponding Buyer when the Seller is late in performance or has failed to perform and the corresponding Seller when the Buyer is late in performance or has failed to perform.

(5) "Day of Late Performance" shall mean the twenty-four hour period after a Buyer or a Seller was to have performed, provided however, with respect to the obligations of Buyers and Sellers to submit documents to the Exchange pursuant to the Rules in this chapter, "Day of Late Performance" means that twenty four hour period commencing immediately after the time specified in the Rules in this chapter for the submission of a document. Each subsequent Day of Late Performance shall commence twenty-four hours after the beginning of the prior Day of Late Performance.

(6) "Force Majeure" means any circumstance (including but not limited to a strike, lockout, national emergency, governmental action, or act of God) which is beyond the control of such Buyer or Seller, and which prevents the Buyer or Seller from making or taking delivery of product when and as provided for in these Rules.

(B) RESPONSIBILITIES OF PARTIES TO THE DELIVERY

1) The Parties to a delivery shall make commercially reasonable efforts to perform their respective delivery obligations at all times until a Party has failed to perform.

(2) A Party that has failed to perform its obligations may no longer perform such obligations; provided, however, that a Buyer that has failed to make a payment shall still be required to make such payment.

(C) EMISSIONS ALLOWANCE DELIVERY COMMITTEE

(1) Force Majeure, Late Performance and Failure to Perform shall be determined by a Panel of the Emissions Allowance Delivery Committee as set forth below. The Chairman of the Emissions Allowance Delivery Committee shall appoint a Panel, which shall consist of three (3) members of the Committee, to review a delivery:

(a) When the Chairman of the Emissions Allowance Delivery Committee is advised by the President of the Exchange or any person designated by the President of the Exchange that it appears that ~~the performance of a Party to the delivery is late~~ has failed or may fail to perform;

(b) Upon ~~the written request of both the Buyer and the Seller~~;

(c) When the President of the Exchange or any person designated by the President of the Exchange requests such appointment; or

(d) ~~When either Party to the delivery notifies the Exchange that circumstances exist constituting a that appear to constitute Force Majeure prevent the performance of delivery obligations.~~

(2) The Chairman of the Emissions Allowance Delivery Committee shall not appoint to any Panel any person who has a direct or indirect interest in the delivery in question. Each Panel Member shall disclose to the Chairman of the Emissions Allowance Delivery Committee any such interest which might preclude such Panel Member from rendering a fair and impartial determination. Any Panel so appointed shall retain jurisdiction over the delivery in question until the delivery has been completed or a Party has been found to have failed to perform such delivery. Exchange Counsel shall serve as legal advisor to the Panel.

(3) The Panel shall meet within one business day of notification as provided in these Rules. Unless good cause for delay exists, within one business day the Panel shall determine whether Force Majeure exists or, whether a Buyer or Seller ~~is late in performing or~~ has failed to perform its obligations as provided in the Rules, and advise the ~~Compliance Department~~ Market Regulation Department of such determination, and its findings in support thereof immediately. The Panel shall cause its determination to be communicated to the parties to the delivery as expeditiously as possible. Nothing in this Subsection shall preclude a Party or the Exchange from seeking the remedies set forth in Sections (D) and (E) of this Rule.

(4) Upon a finding of Force Majeure, the Panel may take any one or combination of the following actions as it deems suitable: order an extension of time not to exceed five days from the date of the scheduled delivery; or, refer the delivery to the Exchange, represented by the Market Regulation Department, for emergency action as provided in Exchange Rules ~~refer the delivery to the Board of Directors for emergency action as provided by Exchange rule.~~

(D) EXCHANGE ACTION

(1) Whenever a Buyer or a Seller is found by the Panel to be late in the performance of or to have failed to perform a delivery, the Exchange, represented by the ~~Compliance Department~~ Market Regulation Department, shall issue a Notice of Assessment in accordance with subsection (2) of this Section, specifying the findings of the Panel with respect to the late or failed delivery.

(2) ~~(a)~~ Each day of Late Performance shall result an assessment against the party for 3% of the contract value, but not less than \$500 per contract.

~~(b)~~ When a Party has failed to perform, the ~~Compliance Department~~ Market Regulation Department shall issue a Notice of Assessment assessing penalties of twenty percent (20 %) of the contract value, but not less than \$2000 a contract, in addition to any penalties assessed pursuant to subparagraph (2) hereof, to be paid to the Exchange.

(3)(a) A Party may appeal a Notice of Assessment by filing a Notice of Appeal with the Exchange's ~~Compliance~~ Market Regulation Counsel, within two business days of receipt of the Notice of Assessment from the ~~Compliance Department~~ Market Regulation Department. The Party filing the appeal ("Appellant") shall file, within twenty (20) days after filing the Notice of Appeal, a Memorandum of Appeal setting forth the factual and legal basis for the appeal. The Memorandum of Appeal must be filed with the ~~Compliance Department~~ Market Regulation Department and a copy of the same served upon the Exchange's ~~Compliance~~ Market Regulation Counsel.

(b) The ~~Compliance Department~~Market Regulation Department may file with the Appellant an Answering Memorandum to the Memorandum of Appeal within ten (10) days of receipt of that memorandum.

(c) Failure by the Party to file a Notice of Appeal or a Memorandum of Appeal within the time specified in subsection (D)(4)(a) of this Rule shall constitute a waiver, and the penalties set forth in the Notice of Assessment shall be paid within five days to the Exchange. Failure to pay such penalties in accordance with this Rule shall subject the party to the sanctions set forth in Exchange rules. In the event a Party fails to ~~a~~Appeal, or waives the opportunity to appeal, a Notice of Assessment, the Assessment and ~~F~~findings of the Emissions Allowance Delivery Committee shall constitute a final disciplinary action of the Exchange.

(4) Within ten (10) days after receipt of the ~~Compliance Department~~Market Regulation Department's reply, the Appellant shall be entitled to examine all books, documents and other tangible evidence in possession or under the control of the Exchange that are to be relied upon by the ~~Compliance Department~~Market Regulation Department or are otherwise relevant to the matter.

(5) In the event of an appeal by a Party, the Market Regulation Department~~Chairman of the Exchange, or its~~ designee, shall appoint an Assessment a Performance Appeal Panel to hear and decide the appeal. ~~The Panel shall be composed of three members of the Exchange. No member of the Performance Appeal Panel may have a direct or indirect interest in the matter under the appeal. Each Panel Member shall disclose to the Market Regulation Department, or its designee, Chairman any such interest which might preclude such Panel Member from rendering a fair and impartial determination. The formal Rules of Evidence shall not apply to such appeal, and the Performance Appeal Panel shall be the sole judge with respect to the evidence presented to it. Exchange outside counsel shall advise the Performance Appeal Panel.~~

(6) The procedures for the hearing of the appeal before the Assessment-Performance Appeal Panel shall be as follows:

(a) At a date to be set by order of the Panel, and prior to such hearing, the Appellant and the ~~Compliance Department~~Market Regulation Department shall furnish each other with a list of witnesses expected to be called at the hearing, and a list of documents and copies thereof expected to be introduced at the hearing.

(b) At such hearing, ~~t~~The Appellant may appear personally and may be represented by counsel or other representative of its choice at the appeal.

(c) The ~~Compliance Department~~Market Regulation Department shall be entitled to offer evidence relating to the delivery and shall be entitled to call witnesses and introduce documents in support thereof. It shall be the burden of the ~~Compliance Department~~Market Regulation Department to demonstrate, by the weight of the evidence, the appropriateness of the sanction set forth in the Notice of Assessment.

(d) The Appellant shall be entitled to rebut the ~~Compliance Department~~Market Regulation Department's evidence and shall be entitled to call witnesses and introduce documents in support thereof.

(e) The ~~Compliance Department~~Market Regulation Department and the Appellant shall be entitled to cross-examine any witness called by the opposing Party at the hearing.

(f) The Notice of Assessment, the Notice of Appeal, the Memorandum of Appeal, any Answering Memorandum, the transcript of the appeal, any documentary evidence or other material presented to and accepted by the Performance Appeal Panel ~~by either party~~ shall collectively constitute the record of the hearing. The decision of the Performance Appeal Panel shall be based upon the record of the hearing.

(g) The Performance Appeal Panel shall have the power to impose a penalty against any person who is within the jurisdiction of the Exchange and whose actions impede the progress of a hearing.

(h) The Assessment-Performance Appeal Panel shall issue a written decision in which it may affirm, reduce, or waive the charges assessed against the Appellant and shall state the reasons therefore.

(i) The decision of the Assessment-Performance Appeal Panel shall be a final decision of the Exchange and shall constitute a final disciplinary action of the Exchange. The fine is payable on the effective ~~date~~ of the decision or as specified. The effective ~~date~~ shall be fifteen (15) days after a copy of the written decision has been delivered to the Appellant and to the Commission.

(78) The Assessment-Performance Appeal Panel shall consider, and make recommendations to the Exchange Board concerning acceptance or rejection of, any offer of settlement submitted by

Appellant. In the case of an offer of settlement, acceptance by the Exchange Board shall constitute the final disciplinary action of the Exchange.

(E) ARBITRATION PROCEDURE

(1) Any claim for damages arising between a Buyer and a Seller as a result of a delivery pursuant to this contract shall be settled by arbitration in accordance with these Rules.

(2) Notice of Intent to Arbitrate must be submitted to the Secretary of the Exchange Market Regulation Department within three business days of the occurrence upon which the claim is based or the decision of the Emissions Allowance Delivery Committee with respect to a late or failed performance. Failure to submit a Notice of Intent to Arbitrate within the prescribed period will be deemed a waiver of a Party's rights to arbitrate such a delivery dispute under the special or Regular Arbitration Rules.

(3) The Arbitration will be governed by Chapter 6 of the Rules with the following exceptions:

(a) The Market Regulation Department or its designee shall appoint an Arbitration Panel.

(b) The Arbitration Panel shall render its award, if any, in writing, which award shall be based on the damages proven by the injured party which may include such other relief which the Panel deems just and equitable.

(c) The award of the Arbitration Panel shall be final and binding upon each of the parties to the arbitration.

(d) Failure to comply with the terms of the award may subject the party that fails to comply with such terms to disciplinary proceedings pursuant to Chapter 6 Rule 618.

SUPPLEMENTAL INFORMATION

Overview of RGGI CO₂ Budget Trading Program

The Regional Greenhouse Gas Initiative (RGGI) is an inter-state carbon dioxide CO₂ cap and trade program involving ten Northeast and Mid-Atlantic States. This program only covers the power generation sector and is limited to CO₂ emissions.

The CO₂ Budget Trading Program is based on the RGGI Model Rule, which was developed to provide guidance and consistency to States that signed the RGGI Memorandum of Understanding (MOU) as they implement the program detailed in the MOU. The MOU states that "Each of the Signatory States commits to propose the Program substantially as reflected in the Model Rule". The Model Rule provides States with flexibility in adopting provisions regarding applicability and source exemptions, allowance allocations and reserves, and permit requirements. With the exception of these portions of the Model Rule where States are provided with discretion, the applicable regulatory agencies in the region intend to propose rules that are materially consistent with the Model Rule. This consistency is required to provide for participation in a regional allowance trading program.

The initial template for the Model Rule was based on EPA's Part 96 rule which was used as the starting point for provisions addressing the basic administrative functioning of the cap and trade program (e.g., process for establishing authorized account representatives, compliance certification, allowance tracking system, and allowance transfers). The Model Rule was developed by the RGGI Staff Working Group, comprised of staff members from the environmental and energy regulatory agencies in each signatory state. 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. The major components of the CO₂ Budget Trading Program, as outlined in the Memorandum of Understanding and the Model Rule, are discussed below.

Applicability

The applicability criteria established by the Model Rule require fossil fuel fired electric generating units serving a generator of 25 MW or larger to comply with the CO₂ Budget Trading Program. Once a unit triggers applicability under the CO₂ Budget Trading Program (a CO₂ budget unit), that unit will remain subject to the program, regardless of changes to the unit. Regionally, units of this size are responsible for approximately 95% of CO₂ emissions from the electric generation sector.

The definition of "fossil fuel fired" varies depending on when a unit commences operation. A unit that commences operation on or after January 1, 2005 is considered fossil fuel fired provided that fossil fuel comprises more than 5% of its total annual heat input. A unit that commenced operation prior to January 1, 2005 is considered to be fossil fuel fired if fossil fuel comprises more than 50% of its total annual heat input. CO₂ emissions attributable to the combustion of eligible biomass at a CO₂ budget unit can be deducted from that unit's CO₂ compliance obligation.

Eligible biomass includes sustainably harvested woody and herbaceous fuel sources that are available on a renewable or recurring basis (excluding old growth timber), including dedicated energy crops and trees, agricultural food and feed crop residues, aquatic plants, unadulterated wood and wood residues, animal wastes, other clean organic wastes not mixed with other solid wastes, biogas, and other neat liquid biofuels derived from such fuel sources. Determinations as to what constitutes sustainably harvested biomass shall be made by the applicable regulatory agencies in each participating state.

Size and Structure of Cap

The RGGI MOU calls for signatory States to stabilize power sector CO₂ emissions over the first six years of program implementation (2009-2014) at a level roughly equal to current emissions, before initiating an emissions decline of 2.5% per year for the four years 2015 through 2018. This approach will result in a 2018 annual emissions budget that is 10% smaller than the initial 2009 annual emissions budget. The first three-year compliance period began January 1, 2009.

This phased approach with initially modest emissions reductions is intended to provide market signals and regulatory certainty so that electricity generators begin planning for, and investing in, lower carbon

alternatives throughout the region, but without creating dramatic wholesale electricity price impacts and attendant retail electricity rate impacts. The RGGI MOU apportions CO₂ allowances among signatory States through a process that was based on historical emissions and negotiation among the signatory States. Together, the emissions budgets of each signatory State comprise the regional emissions budget, or RGGI "cap." Below are the levels of the Regional Annual CO₂ Emissions budget:

Year	Regional Annual CO ₂ Emissions Budget (short tons)
2009-2014	188,076,976
2015	183,375,052
2016	178,673,127
2017	173,971,203
2018	169,269,278

Market Participants

As stated earlier, RGGI CO₂ compliance covers State electricity generating units of 25 MW or larger. According to RGGI, There are around 1,000 generation units owned by 278 entities. The following OTC brokers are quoting RGGI markets: Evolution Markets, ICAP, and TFS.

Allowance Allocation

Auction of Allowances

States participating in RGGI have signed a Memorandum of Understanding (MOU) that establishes a regional emissions budget (the cap), and divides the emissions budget among participating States. Each State will allocate allowances up to the amount of its emissions budget, with each allowance allowing a regulated source to emit one ton of CO₂. RGGI takes an innovative approach to how States allocate allowances to regulated sources. Historically, cap and trade programs have allocated allowances directly to regulated emissions sources. Under RGGI, instead of giving allowances directly to electric generators for free, States would sell a significant portion or all allowances through a regional auction or otherwise. RGGI takes this approach because in a competitive wholesale market electric generators pass through the market value of free allowances to the price they bid into the market.

The RGGI program proposes to use this allowance value to provide incentives for energy efficiency and other measures, thus lowering the impact of the program on electricity consumers. In the RGGI MOU, participating States have agreed to allocate a 25% minimum of allowances to support consumer benefit programs.

Individual participating States may choose how to allocate the remaining 75% of their allowances, but the clear trend among the RGGI States is to auction nearly all of their allowances and dedicate the proceeds to support consumer benefits. NY, MA, VT, RI, CT, and ME have all publicly stated their commitment to auction 100%, or nearly 100%, of their allowances to support consumer benefit programs (CT, ME, RI, and VT have statutory requirements to this effect). Allocating allowances to support consumer benefits leads to lowering of electricity demand, reducing the overall compliance costs of the RGGI program and its impact on electricity ratepayers.

It is expected that the regulations promulgated by many States will include provisions outlining the process for auctioning allowances that will align with the design of a regional allowance auction platform established jointly by the RGGI signatory States. States participating in RGGI are currently discussing the design of a regional auction platform and the components of regulatory provisions necessary for implementing a regional auction.

RGGI CO₂ Allowance Tracking System

The RGGI CO₂ Allowance Tracking System is the transfer mechanism of the RGGI cap and trade program. This registry was developed and will be operated by Perrin and Quarles Associates of Charlottesville, VA. The registry began its operation with the first scheduled auction on September 25, 2008.

Temporal Flexibility Mechanisms of the RGGI Model Rule

Overview

The Model Rule includes a number of temporal flexibility mechanisms (i.e., banking, extended compliance period, and early reduction allowances). Allowance borrowing is not included in the Model Rule.

Banking

The Model Rule provides for the banking of allowances with no restrictions. Banking provides facilities with the ability to carry over unused allowances from a current compliance period into future compliance periods. Therefore, banking should provide allowance price stability while providing an incentive to hedge future year emissions uncertainty.

Extended Compliance Period

The Model Rule provides for a three-year compliance period. This compliance period can be extended to four years in the event of a stage two trigger event (see "Price Triggers" below). Multiyear compliance periods were employed to provide regulated facilities more flexibility to adjust to variations in electricity demand (driven by meteorology and load growth), fuel price spikes, clean unit outages, etc. A longer compliance period may also lead to resource (administrative) savings for the regulated facilities and the States implementing the program. This design component was included in lieu of allowance borrowing, as it allows for *de facto* borrowing within three-year compliance.

Price Triggers

The MOU and Model Rule include allowance price triggers, which provide additional compliance flexibility and price dampening in the event of higher allowance prices in two distinct stages.

A stage one trigger event occurs if the twelve month rolling average CO₂ allowance price is equal to or greater than the stage one trigger price. The stage one trigger price is set at \$7 in 2005 dollars, and will be adjusted up or down each year according to the consumer price index. In the event that a stage one trigger event occurs, CO₂ budget units will be able to expand their use of CO₂ offset allowances from 3.3% of their compliance obligation to 5% of their compliance obligation (see "Offsets" below).

A stage two trigger event occurs if the twelve month rolling average CO₂ allowance price is equal to or greater than the stage two trigger price. The stage two trigger price is set at \$10 in 2005 dollars, and will be adjusted up or down each year according to the consumer price index plus two percent. If a stage two trigger event occurs:

- CO₂ budget units will be able to use CO₂ offset allowances to satisfy 10% of their compliance obligation;
- The compliance period will be extended to four years; and,
- CO₂ offset allowances may be awarded for the permanent retirement of greenhouse gas allowances or credits that have been issued pursuant to any mandatory carbon constraining program outside the United States that places a specific tonnage limit on greenhouse gas emissions, or greenhouse gas emissions reduction credits certified pursuant to the United Nations Framework Convention on Climate Change (UNFCCC) or protocols adopted through the UNFCCC process.

The price trigger provisions include a 14-month market settling period, which commences at the start of each new compliance period. The twelve-month rolling averages used to calculate the stage one and stage two trigger events cannot include the 14-month market settling period. Therefore, the earliest that either trigger event can occur is 26 months after the commencement of a compliance period. Calculations of trigger prices, and determinations as to whether or not a stage one or stage two trigger event has occurred, will be performed by the applicable regulatory agency, in consultation with the applicable regulatory agencies in other signatory states

Position Limits

The chart below displays clearing prices, allowances sold and proceeds yielded across all ten States in each RGGI CO₂ Allowance Auction held to date:

Auction Results

Auction Number	Allocation Year	Quantity Offered	Quantity Sold	Clearing Price	Total Proceeds
Auction 1** 9/25/2008	2009	12,565,387	12,565,387	\$3.07	\$38,575,738.09
Auction 2 12/17/2008	2009	31,505,898	31,505,898	\$3.38	\$106,489,935.24
Auction 3 3/18/2009	2009	31,513,765	31,505,898	\$3.51	\$117,248,629.80
	2012	2,175,513	2,175,513	\$3.05	
Auction 4 6/17/2009	2009	30,887,620	30,887,620	\$3.23	\$104,242,445.00
	2012	2,172,540	2,172,540	\$2.06	
Auction 5 9/9/2009	2009	28,408,945	28,408,945	\$2.19	\$66,278,239.35
	2012	2,172,540	2,172,540	\$1.87	
Auction 6 12/2/2009	2009	28,591,698	28,591,698	\$2.05	\$61,587,120.90
	2012	2,172,540	1,599,000	\$1.86	

	Supply	Contract Equivalent	25%
Auctioned Vintage 2009	163,465,446	163,465	40,866
Projected Vintage 2010	162,169,882	162,170	40,542
Estimated Vintage 2011	162,169,882	162,170	40,542
Auctioned Vintage 2012	8,693,133	8,693	2,173

Projected Vintage 2010 is based on the estimated levels published at http://www.rggi.org/co2-auctions/upcoming_auctions

Contracts	Recommended Limits
Vintage 2009	2,000
Vintage 2010	2,000
Vintage 2011	2,000
Vintage 2012	100

Reference

<http://www.rggi.org>