

7.74: Reducing CO<sub>2</sub> Emissions from Electricity Generating Facilities

(1) Purpose, Authority and Scope. The purpose of 310 CMR 7.74, promulgated in conjunction with 310 CMR 7.75, is to assist the Commonwealth in achieving the greenhouse gas emissions reduction goals adopted pursuant to M.G.L. c. 21N, § 3(b), by establishing declining annual aggregate CO<sub>2</sub> emissions limits that will reduce CO<sub>2</sub> emissions from electricity generating facilities. To achieve those goals, the Executive Office of Energy and Environmental Affairs (EEA) and the Department pursuant to M.G.L. c. 21A, §§ 2 and 8 and M.G.L. c. 21N, §§ 3(c), 4 and 7 hereby jointly promulgate 310 CMR 7.74, following consultation with the Department of Energy Resources and based on the considerations specified in M.G.L. c. 21N, § 3(c). 310 CMR 7.74 is also promulgated pursuant to M.G.L. c. 21A, § 16, M.G.L. c. 21N, § 3(d) and M.G.L. c. 111, §§ 2C and 142A through 142E. In exercising their broad authority and discretion under M.G.L. c. 21N, §§ 3(c) and 3(d), EEA and MassDEP have determined that additional emissions limits on in-state electricity generating facilities' greenhouse gas emissions, along with other climate policies and programs, will ensure achievement of the greenhouse gas emissions limits as established under M.G.L. c. 21N, and that the 310 CMR 7.74 limits are consistent with, and take account of, regional programs such as the Regional Greenhouse Gas Initiative (RGGI) and the Renewable Portfolio Standard (RPS). The CO<sub>2</sub> emissions limits set forth in 310 CMR 7.74(5) are applicable for the years 2021 through 2050 beginning January 1, 2021.

(2) Definitions. The terms used in 310 CMR 7.74 are defined in 310 CMR 7.74(2) and 310 CMR 7.00: *Definitions*. Where a term is defined in 310 CMR 7.00: *Definitions* and 310 CMR 7.74, the definition in 310 CMR 7.74 shall apply.

Allowance means a limited authorization to emit one metric ton of CO<sub>2</sub> in compliance with 310 CMR 7.74.

Allowance Registry means the database that tracks allowances held by electricity generating facilities and used for compliance. The Department shall establish an account in the allowance registry for each electricity generating facility.

Annual CO<sub>2</sub> Emissions means the total amount of CO<sub>2</sub> emissions measurements recorded and reported for a calendar year in accordance with the Massachusetts CO<sub>2</sub> Budget Trading Program at 310 CMR 7.70(8)(e)4., converted from short tons to metric tons and adjusted, as applicable, for the production of useful net thermal energy pursuant to the Massachusetts CO<sub>2</sub> Budget Trading Program at 310 CMR 7.70(8)(i).

Bidder means a party qualified, pursuant to 310 CMR 7.74(6)(h)4.a., to participate in an auction.

Calendar Year or Year means January 1<sup>st</sup> through December 31<sup>st</sup>.

Deduct or Deduction means the permanent removal of allowances from an account in the allowance registry.

Designated Representative means the person who is authorized by the owner and operator of an electricity generating facility to represent and legally bind the owner and operator in matters pertaining to 310 CMR 7.74.

Electricity Generating Facility means a facility that includes one or more electricity generating units for which the owner or operator is required to report CO<sub>2</sub> emissions pursuant to the Massachusetts CO<sub>2</sub> Budget Trading Program at 310 CMR 7.70(8); provided, however, that the following facilities are not electricity generating facilities for purposes of 310 CMR 7.74: MWRA Deer Island and MBTA South Boston Power.

Emergency means a period during when the regional transmission organization has issued an alert that an abnormal condition affecting the reliability of the power system exists or is anticipated in Massachusetts.

Existing Electricity Generating Facility means an electricity generating facility listed in 310 CMR 7.74(5)(b): *Table B*.

Existing Facility Aggregate CO<sub>2</sub> Emissions Limit means, with respect to calendar year 2018, the sum of all existing facilities' CO<sub>2</sub> emissions limits, as listed in 310 CMR 7.74(5)(a): *Table A*.

Massachusetts CO<sub>2</sub> Budget Trading Program means the program the Department promulgated at 310 CMR 7.70 to reduce greenhouse gas emissions from CO<sub>2</sub> Budget Sources as defined in 310 CMR 7.70.

New Electricity Generating Facility means, with respect to calendar year 2018, 2019 and 2020, an electricity generating facility that is not an existing electricity generating facility

New Facility Aggregate CO<sub>2</sub> Emissions Limit means, with respect to calendar year 2018, the sum of all new electricity generating facility CO<sub>2</sub> emissions limits, as listed in 310 CMR 7.74(5)(a): *Table A*.

Offset means to use allowances to cover CO<sub>2</sub> emissions from an electricity generating facility pursuant 310 CMR 7.74.

Operator means any person or group of persons who operates, controls, or supervises an electricity generating facility including, but not limited to, any holding company, utility system, plant manager, or operations manager of the electricity generating facility.

Owner means any of the following persons or group of persons:

- (a) Any holder(s) of any portion of the legal or equitable title in an electricity generating facility; or
- (b) Any holder(s) of a leasehold interest in an electricity generating facility.

Reserve Price means the minimum acceptable price for each allowance in a specific

auction.

Sealed Bid, Uniform Price Auction means a single or multiple round sealed-bid auction in which bidders may submit multiple bids at different prices; the price paid by all awarded bidders will be uniform.

Serial Number means, when referring to allowances, the unique identification number assigned by the Department to each allowance.

Total Aggregate CO<sub>2</sub> Emissions Limit means, with respect to a particular calendar year, the maximum allowable aggregate limit on CO<sub>2</sub> emissions from all electricity generating facilities subject to 310 CMR 7.74, as listed in 310 CMR 7.74(5)(a): *Table A*.

(3) Applicability. 310 CMR 7.74 applies to all owners and operators of an electricity generating facility.

(4) Compliance with CO<sub>2</sub> Emissions Limits. The owner or operator of an electricity generating facility shall offset annual CO<sub>2</sub> emissions using allowances in its allowance registry account pursuant to 310 CMR 7.74(6) and (7).

(5) CO<sub>2</sub> Emissions Limits.

(a) Total Aggregate CO<sub>2</sub> Emissions Limits. The total aggregate CO<sub>2</sub> emissions limit for 2018 is 9,149,979 metric tons of CO<sub>2</sub>. The total aggregate CO<sub>2</sub> emissions limit for 2019 is 8,731,175. The total aggregate CO<sub>2</sub> emissions limit declines by 223,876 metric tons each year thereafter until it reaches 8,507,299 metric tons of CO<sub>2</sub> in 2020 and 1,791,019 metric tons of CO<sub>2</sub> in 2050. For 2018, the existing facility aggregate CO<sub>2</sub> emissions limit and the new facility aggregate CO<sub>2</sub> emissions limit were calculated from the total aggregate CO<sub>2</sub> emissions limit, such that their sum equals the total aggregate CO<sub>2</sub> emissions limit. The existing facility aggregate CO<sub>2</sub> emissions limit, and new facility aggregate CO<sub>2</sub> emissions limit for calendar year 2018 are shown in 310 CMR 7.74(5)(a): *Table A*.

2018	7,649,979	1,500,000
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(b) Existing Individual Electricity Generating Facility CO<sub>2</sub> Emissions Limits for 2018. The CO<sub>2</sub> emissions limits for existing electricity generating facilities are shown in 310 CMR 7.74(5)(b): *Table B*.

310 CMR 7.74(5)(b): *Table B*

Existing Individual Electricity Generating Facility CO<sub>2</sub> Emissions Limits in Metric Tons

Facility	Limit
ANP Bellingham	860,250
ANP Blackstone	787,429

Bellingham	233,789
Berkshire Power	437,049
Braintree Electric	24,425
Canal Station	101,922
Cleary Flood	50,453
Dartmouth Power	48,348
Dighton	330,396
Fore River Energy	1,433,568
Kendall Square	502,191
MASSPOWER	304,108
Medway Station	1,603
Milford Power, LLC	148,912
Millennium Power	667,082
Mystic	1,516,066
Pittsfield Generating	79,959
Stony Brook	68,844
Tanner Street	36,655
Waters River	1,587
West Springfield	15,343

(c) Apportionment of New Facility Aggregate CO<sub>2</sub> Emissions Limit for 2018. By February 15, 2019, the Department shall apportion the 2018 new facility aggregate CO<sub>2</sub> emissions limit among electricity generating facilities. The apportionment shall be based on CO<sub>2</sub> emissions reported by new electricity generating facilities pursuant to 310 CMR 7.74(7) by February 1, 2019, and shall be completed pursuant to 310 CMR 7.74(5)(c)1. through 3.

1. New Electricity Generating Facilities' CO<sub>2</sub> Emissions Limits for 2018. The Department shall determine whether the sum of CO<sub>2</sub> emissions from new electricity generating facilities reported pursuant to 310 CMR 7.74(7) is less than, equal to, or greater than the new facility aggregate CO<sub>2</sub> emissions limit for 2018.a. If the sum of new electricity generating facility CO<sub>2</sub> emissions is less than or equal to the new facility aggregate CO<sub>2</sub> emissions limit for 2018, then the Department shall set each new electricity generating facility's 2018 emissions limit equal to its CO<sub>2</sub>

emissions for 2018.

b. If the sum of new electricity generating facility CO<sub>2</sub> emissions is greater than the new facility aggregate CO<sub>2</sub> emissions limit for 2018, the Department shall ensure that the sum of all new facility CO<sub>2</sub> emissions limits equals the new facility aggregate CO<sub>2</sub> emissions limit for the year by completing the following calculations:

i. Calculate a discount factor by dividing the new facility aggregate CO<sub>2</sub> emissions limit by the total amount of CO<sub>2</sub> emitted by all new electricity generating facilities in 2018; and

ii. Calculate each new electricity generating facility's 2018 limit as the product of the facility's CO<sub>2</sub> emissions and the discount factor.

2. Distribution of Excess New Facility CO<sub>2</sub> Emissions Limit. If the Department determines pursuant to 310 CMR 7.74(5)(c)1. that the sum of CO<sub>2</sub> emissions from new electricity generating facilities is less than the new facility aggregate CO<sub>2</sub> emissions limit for 2018, then the Department shall:

a. Calculate the difference between the new facility aggregate CO<sub>2</sub> emissions limit and the sum of CO<sub>2</sub> emissions from new electricity generating facilities;

b. Calculate the product of such difference and each existing electricity generating facility's fraction of the existing facility aggregate CO<sub>2</sub> emissions limit for 2018; and

c. Deposit allowances equal to the product, minus any allowances distributed pursuant to 310 CMR 7.74(5)(c)3., in the allowance registry account of each existing electricity generating facility.

3. Early Distribution of Excess New Facility CO<sub>2</sub> Emissions Limit. By November 15, 2018, the Department may determine that the sum of CO<sub>2</sub> emissions from new electricity generating facilities will be less than the new facility aggregate CO<sub>2</sub> emissions limit for the year. In making this determination, the Department shall consider CO<sub>2</sub> emissions reported pursuant to the Massachusetts CO<sub>2</sub> Budget Trading Program at 310 CMR 7.70(8)(e)4. for the months of January through September 2018, and any physical or permitted limits on the potential for the facility to emit (*e.g.*, on hourly fuel combustion) during the months of October through December 2018. If the Department determines that the sum of CO<sub>2</sub> emissions from new electricity generating facilities will be less than the new facility aggregate CO<sub>2</sub> emissions limit for 2018, then by December 1, 2018 the Department shall:

a. Calculate the minimum possible difference between the new facility aggregate CO<sub>2</sub> emissions limit and the sum of CO<sub>2</sub> emissions from new electricity generating facilities for 2018;

b. Calculate the product of such minimum possible difference and each existing electricity generating facility's fraction of the existing facility aggregate CO<sub>2</sub> emissions limit for 2018; and

c. Deposit allowances equal to the product in the allowance registry account of each existing electricity generating facility.

(6) Allocation, Transfer, and Use of Allowances.

(a) Allocation of Allowances.

1. Allocation of Allowances for 2018. For 2018, the Department shall allocate allowances to new and existing electricity generating facilities in accordance with the quantities, processes, and schedule for establishing individual facility CO<sub>2</sub> emissions limits specified in 310 CMR 7.74(5)(b) through (c), and deposit them in the allowance registry accounts of the electricity generating facilities.

2. Allocation of Allowances for 2019 and 2020.

Auction	2,182,794	4,253,650
New Facilities	1,125,000	750,000
ANP Bellingham	609,866	393,990
ANP Blackstone	558,240	360,638
Bellingham	165,743	107,074
Berkshire Power	309,842	200,166
Braintree Electric	17,316	11,187
Canal Station	72,257	46,680
Cleary Flood	35,768	23,107
Dartmouth Power	34,276	22,143
Dighton	234,231	151,320
Fore River Energy	1,016,315	656,566
Kendall Square	356,024	230,001
MASSPOWER	215,595	139,280
Medway Station	1,136	734
Milford Power, LLC	105,570	68,201
Millennium Power	472,922	305,520
Mystic	1,074,800	694,349
Pittsfield Generating	56,686	36,621
Stony Brook	48,806	31,530
Tanner Street	25,986	16,788
Waters River	1,125	727
West Springfield	10,877	7,027

(Total)	8,731,175	8,507,299
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3. Allocation of Allowances for 2021 and All Future Years. For 2021 and all future years, the Department shall allocate allowances equal to the total aggregate CO<sub>2</sub> emissions limit for the year, subject to adjustment pursuant to 310 CMR 7.74(6)(f) and (i), using an auction in accordance with 310 CMR 7.74(6)(h).
4. Once allocated, allowances may be used or transferred pursuant to 310 CMR 7.74(6)(b) or (c), regardless of the year or method of allocation.
- (b) Use of Allowances.
1. The owner or operator of an electricity generating facility may use allowances to offset CO<sub>2</sub> emissions for a particular year pursuant to 310 CMR 7.74(6)(e), provided that the allowances used are in the electricity generating facility's allowance registry account on March 1<sup>st</sup> of the year following the year in which the CO<sub>2</sub> emissions occurred.
  2. Allowances may be used exclusively by the owners or operators of electricity generating facilities to comply with 310 CMR 7.74 and are not property rights.
- (c) Transfer of Allowances.
1. The owner or operator of an electricity generating facility may transfer allowances to the owner or operator of another electricity generating facility by submitting a notice of transfer to the Department at any time except during the month of March.
  2. The notice of transfer shall include the name of the electricity generating facility, the number of allowances to be transferred, the serial numbers of the allowances to be transferred, the name and account number of the electricity generating facility to which the allowances will be transferred, and the certification statement required by 310 CMR 7.74(7)(b) that has been signed by the designated representative of the transferring electricity generating facility, or his or her designee, allowing the transfer of allowances.
  3. The Department may require reporting of a price for transfers of allowances between electricity generating facilities that have different owners or operators through submission of a form as specified by the Department.
  4. If requested by the Department, a notice of transfer may also be used to initiate a deduction pursuant to 310 CMR 7.74(6)(g).
- (d) Emergency Deferred Compliance. If an electricity generating facility emits CO<sub>2</sub> during an emergency that occurs on or after January 1, 2018, the electricity generating facility owner or operator may choose to defer for one year a portion or the entirety of the electricity generating facility's compliance obligation with respect to CO<sub>2</sub> emissions emitted during such emergency, provided that such CO<sub>2</sub> emissions shall be offset in the following year on a two-for-one basis pursuant to 310 CMR 7.74(6)(e)2.
1. If an electricity generating facility owner or operator chooses to defer the electricity generating facility's compliance obligation with respect to any CO<sub>2</sub> emissions emitted during an emergency pursuant to 310 CMR 7.74(6)(e), then the owner or operator shall complete the following steps:

- a. Identify the quantity of such CO<sub>2</sub> emissions emitted during the emergency, and the hours and dates during which the emergency occurred, in its compliance certification report submitted pursuant to 310 CMR 7.74(7)(a) for the calendar year during which the CO<sub>2</sub> emissions occurred; and
  - b. Offset such CO<sub>2</sub> emissions on a two-for-one basis pursuant to 310 CMR 7.74(6)(e)2. by identifying the necessary number of allowances in its compliance certification report submitted pursuant to 310 CMR 7.74(7)(a) for the following calendar year.
2. In order to ensure that the use of emergency deferred compliance does not reduce the total number of allowances available for use by facilities to comply with 310 CMR 7.74, the Department shall, during the month of March of any year, determine the total amount of emissions for which compliance has been deferred from the prior year pursuant to 310 CMR 7.74(6)(d), and adjust the number of allowances available for sale by auction for the year upward by that amount.
- (e) Compliance with CO<sub>2</sub> Emissions Limits. On March 1 of each year, each electricity generating facility's allowance registry account shall hold a number of allowances that is equal to or greater than the sum of:
1. The amount of annual CO<sub>2</sub> emissions that the electricity generating facility emitted during the prior calendar year, minus any emissions for which compliance is being deferred pursuant to 310 CMR 7.74(6)(d); and
  2. Twice the amount of CO<sub>2</sub> emissions that the electricity generating facility emitted during the year before the prior calendar year (e.g., on March 1, 2020 for 2018 emissions), but was not offset because compliance was deferred pursuant to 310 CMR 7.74(6)(d).
- (f) Banking of Allowances. Allowances may be retained for use in future years, provided that the total amount of CO<sub>2</sub> emitted by all electricity generating facilities in any year is less than the total aggregate CO<sub>2</sub> emissions limit for the prior year, before accounting for any emergency deferred compliance. In order to enforce this limitation on banking, the Department shall complete the following steps during the month of March of each year:
1. Determine the total quantity of allowances remaining in all allowance registry accounts after deducting allowances pursuant to 310 CMR 7.74(6)(g).
  2. Subtract 223,875 from the quantity determined pursuant to 310 CMR 7.74(6)(f)1. to determine the adjustment required to enforce the limitation on banking.
  3. Adjust the number of allowances available for sale by auction for the year pursuant to 310 CMR 7.74(6)(h) by the amount calculated pursuant to 310 CMR 7.74(6)(f)2.
- (g) Deduction of Allowances for Compliance. During the month of March of each year, the Department shall deduct allowances from each electricity generating facility's allowance registry account in the following order:
1. To address any emergency deferred compliance obligation accrued during the year before the prior calendar year pursuant to 310 CMR 7.74(6)(e); and
  2. To offset annual CO<sub>2</sub> emissions that occurred during the prior calendar



year.

(h) Allowance Auctions. For the years 2019 through 2050, the Department shall conduct a series of auctions pursuant to 310 CMR 7.74(6)(h) to sell allowances to be used by owners or operators of electricity generating facilities to offset annual CO<sub>2</sub> emissions.

1. Allowance Auction Procedures.

a. Auctions shall be conducted quarterly, but the Department may adjust the frequency of such auctions as it deems necessary to effectuate the objectives 310 CMR 7.74, provided at least one auction is conducted annually.

b. The implementation of any auction conducted pursuant to 310 CMR 7.74 may be transferred by the Department to an agent deemed qualified by the Department to conduct such auction, provided that such agent shall perform all such duties under the direction and oversight of the Department.

c. The auction format shall be a Sealed Bid, Uniform Price Auction.

d. Prior to the end of each calendar year, allowances in a quantity equal to the number specified in 310 CMR 7.74(6)(a)2. and 3., subject to adjustment pursuant to 310 CMR 7.74(6)(f) **and (i)**, will be available for sale by auction. Such allowances will be available for sale by auction for each calendar year. The Department may require that allowances are sold in minimum lot sizes. In such event, such lot sizes shall be published in the auction notice pursuant to 310 CMR 7.74(6)(h)2. No more than 50% of the allowances from a calendar year may be available for sale in advance of the respective calendar year, up to four years in advance of such calendar year.

e. The Department shall post a calendar of proposed auction dates on its web site. The calendar shall include the auction format and the number and years of allowances to be auctioned at each auction. The Department may periodically modify the contents of the calendar, provided that the information relevant to the next scheduled auction shall be fixed in the auction notice no later than 45 calendar days prior to such auction, consistent with 310 CMR 7.74(6)(h)2.a.

f. Auctions of allowances may be held with a reserve price. The Department is not obligated to sell allowances if the reserve price is not met.

g. No bidder, including any affiliate or agent of such bidder, shall purchase more than 50% of the allowances offered for sale in any one auction. Such limitation shall be published in the auction notice pursuant to 310 CMR 7.74(6)(h)2., and may be reduced or set equal to zero by the Department for one or more bidders after consultation with a qualified agent or market monitor employed pursuant to 310 CMR 7.74(6)(h)1.b. or 5.a.

h. The Department may periodically evaluate the auction program performance and may retire any allowances that were offered for sale by auction but were not sold.

- i. Proceeds of such auctions shall be paid to the Department and deposited in a segregated account and administered by a Trustee appointed by EEA and the Department. The funds shall be expended to further the goals of M.G.L. c. 21N by supporting programs or projects to reduce greenhouse gas emissions in order to mitigate the impacts of climate change including, but not limited to, clean energy and vehicle electrification projects; programs and projects to support adaptation to the impacts of climate change; mitigation or adaptation programs or projects involving communities that are already adversely impacted by air pollution including, but not limited to, environmental justice communities; and for the administration of any such programs or projects. Auction proceeds may also be used for the administration of 310 CMR 7.74. Auction proceeds shall be expended at the direction of the Trustee, in consultation with EEA and the Department. The Trustee, EEA and the Department may consult with and enter into agreements with other agencies within the EEA Secretariat to assist in the administration and expenditure of auction proceeds.
2. Auction Notice.
    - a. Notice of each auction shall be published no later than 45 calendar days prior to such auction, and may be transmitted electronically to parties requesting such notification.
    - b. Each notice shall include, but not be limited to, the following information:
      - i. Date, time and location of the auction, including the internet address or electronic address for auction location, as applicable;
      - ii. Auction format;
      - iii. Categories of bidders who will be eligible to bid;
      - iv. Quantity and years of allowances to be auctioned;
      - v. Reserve Price;
      - vii. Instructions for submitting the qualification application;
      - viii. Instructions for submitting acceptable financial surety;
      - ix. Procedures for the conduct of the auction;
      - x. Participation limitations; and
      - xi. Other pertinent rules or procedures of the auction as may be required to ensure a transparent, fair and competitive auction.
  3. Participant Eligibility. Only owners and operators of electricity generating facilities are eligible to participate in auctions.
  4. Bid Submittal Requirements.
    - a. Qualification Application.
      - i. Only qualified bidders will be permitted to submit bid(s) or otherwise participate in any auction.
      - ii. Only parties with accounts in the allowance registry may participate in the auction.
      - iii. Potential bidders shall submit a qualification application to the Department at least 30 calendar days prior to the bid submittal date of such auction or by such deadline as the Department shall stipulate in

the auction notice. Qualification applications shall contain the information set forth in 310 CMR 7.74(6)(h)4.a. and the auction notice.

iv. The applicant shall provide information and documentation relating to its corporate structure, financial ability to participate in the auction and authority to execute bids and honor contractual obligations. Such information may include, but is not limited to the following:

(i) Documentation regarding the corporate identity, ownership, and capital structure of the applicant; identification of any agency relationship between the applicant and any third party related to the auction;

(ii) Audited annual reports and credit reports of the applicant and/or the entity represented by the applicant;

(iii) Corporate background and recent adverse conditions, which may include:

-1. Identification of any indictment or felony conviction of the applicant, or any member, director, principle, partner or officer of the applicant or any affiliate or related entity;

-2. A statement by the applicant as to prior findings of non-responsibility with regard to any state procurement including findings under state law or regulation;

-3. A statement by the applicant as to certification under any state tax registration requirement;

-4. Identification of any previous or pending investigation with respect to any alleged violation any rule, regulation, or law associated with any commodity market or exchange;

-5. Evidence demonstrating that such applicant has an allowance registry account;

-6. Identification of relationships with any other account holder.

v. The Department shall review each qualification application and make determinations as to whether the applicant is qualified to submit bids in the auction. Applicants may be denied eligibility based on the information provided or upon information obtained independent of the application process. Failure to provide the required information may result in the qualification application being declared incomplete or otherwise deficient. The Department shall notify applicants in writing or by electronic mail if the qualification application is complete and meets the requirements for participation in the auction. If the qualification application does not meet such requirements, notification shall include the reasons therefore, and applicants will be given a reasonable opportunity to provide additional information to cure such deficiencies.

vi. Once an application has been approved, that bidder shall be eligible to participate in all subsequent auctions, provided there has been no material change to the information provided in the qualification application, and provided that the applicant meets the

eligibility criteria of 310 CMR 7.74(6)(h)3. If there is any material change to the information submitted in the bidder's qualification application, the qualification expires and a new qualification application is required to be submitted.

vii. The Department may suspend or revoke its approval of a qualification application if the bidder fails to comply with 310 CMR 7.74(6)(h)4.

viii. In order to reduce the administrative burden for the Department and electricity generating facilities, the Department may, on a case-by-case basis, consider applicants that have been approved as bidders by DOER pursuant to 225 CMR 13.09(e) to be qualified bidders pursuant to 310 CMR 7.74(6)(h)4.a.v.

b. Surety Requirement.

i. Bidders shall be required to provide financial surety in the form of a bond, cash, certified funds, or an irrevocable stand-by letter of credit, in a form acceptable to the Department. A bidder's eligibility to bid in any auction shall be limited to the level of financial security provided. Financial surety may be forfeited to and retained by the Department in the event the bidder's offer is accepted in an auction and the bidder fails to tender payment of the full amount when due.

ii. Bidders may request return of their surety at any time prior to or following any auction, and the Department shall return said surety provided that the Commonwealth has no current or pending claim to such surety as a result of a failure of the bidder to comply with 310 CMR 7.74(6)(h)4.b. or to pay the full amount of its accepted bid when due. Return of such surety to the bidder voids the bidder's ability to participate in subsequent auctions unless a new surety is submitted to the Department pursuant to the provisions of 310 CMR 7.74(6)(h)4.

iii. The surety requirements of 310 CMR 7.74(6)(h)4. may be modified by the Department at any time prior to the applicable auction date, and shall be published no later than 45 calendar days prior to such auction.

iv. In the event that the Department modifies the surety requirements, bidders shall meet the new surety requirements before the next auction.

c. Bid Submittal.

i. Once an application has been approved, and provided there has been no material change to the information provided in the application, bidders seeking to bid in any subsequent auction shall complete and submit an intent to bid on or before the deadline specified in the Auction Notice.

ii. All bids shall be on a form prescribed by the Department, which shall be made available electronically.

iii. All bids submitted shall be considered binding offers for the purchase of allowances under the rules of the auction.

iv. All qualified maximum bids shall be limited to the amount of financial surety provided by the qualified bidder pursuant to 310 CMR 7.74(6)(h)4.b.

- v. Bids shall be submitted on-line and shall conform to the format and protocol of bid submission as set forth in the auction notice pursuant to 310 CMR 7.74(6)(h)2.
  - vi. If the Department determines that a bidder has provided false or misleading information, fails to honor an accepted bid, or has withheld pertinent information in its qualification documentation, or has otherwise failed to comply with any material provision of 310 CMR 7.74(6)(h)4., the surety amount may be forfeited to the Commonwealth, and the bidder may be prohibited from participating in any future auctions.
5. Bid Selection.
- a. The Department may employ a market monitor to observe the conduct and outcome of each auction. As a condition to participation in any auction, bidders shall agree to provide, and shall provide on request, any data to the Department that the Department deems necessary to support this function and the proper monitoring of such auctions.
  - b. The Department will rank all bids. Allowances will be sold in the quantities specified in the accepted bids until there are no remaining allowances available for the specified auction. In the event that there is more than one winning bidder submitting the same price and the total number of allowances requested in all such winning bids exceeds the number of allowances remaining, the Department may award the remaining allowances randomly, or based on the *pro rata* share of the number of allowances bid on by each winning bidder.
  - c. The Department shall approve or disapprove the outcome of the auction following the completion of the auction event.
6. Transfer of Allowances. Following approval of the outcome of the auction and upon payment in full of the amount owed by the successful bidders, the Department shall transfer allowances into the corresponding bidders' allowance registry account, provided that transfers resulting from auctions that occur before March 1<sup>st</sup> of a calendar year shall occur during the month of March.
7. Return of Unsuccessful Bids. Subject to 310 CMR 7.74(6)(h)4.b.ii. and 310 CMR 7.74 (6)(h)4.c.vi., following each auction the Department will return upon written request all financial securities or payments to unsuccessful bidders and to bidders unwilling to purchase fewer allowances than requested in its bid.
8. Announcement of Results. The Department reserves the right to publish the names of qualified bidders, the closing price, and the total quantity of allowances sold at each auction.

(i) Useful Net Thermal Energy Retirement. When a facility's annual CO<sub>2</sub> emissions, as reported pursuant to 310 CMR 7.74(7)(a)3 for a calendar year, are adjusted for the production of useful net thermal energy, the Department shall retire a corresponding number of allowances from the next calendar year's total aggregate CO<sub>2</sub> emissions limit for the year instead of allocating them using an auction. The downward adjustment to the next calendar year's total number of allowances allocated using an auction pursuant to 310 CMR 7.74(6)(a)1. shall be

equal to the number of allowances retired pursuant to 310 CMR 7.70(5)(b)6.b converted from short tons to metric tons.

(7) Reporting Requirements.

(a) Compliance Certification Reporting. By March 1, 2019, and March 1st of each year thereafter, the owner or operator of an electricity generating facility subject to 310 CMR 7.74 shall demonstrate compliance with the electricity generating facility's CO<sub>2</sub> emission limit by submitting a compliance certification report covering the CO<sub>2</sub> emissions from the prior calendar year. The compliance certification report shall include, among other information as requested by the Department, the following:

1. The name, address, contact person, and phone number of the electricity generating facility;
2. The electricity generating facility's assigned CO<sub>2</sub> emissions limit for 2018;
3. The electricity generating facility's annual CO<sub>2</sub> emissions for the prior calendar year as reported pursuant to 310 CMR 7.70(8), in short tons and metric tons;
4. The amount, if any, of CO<sub>2</sub> emissions for the prior calendar year for which compliance will be deferred pursuant to 310 CMR 7.74(6)(d), in short and metric tons, and the hours during which such CO<sub>2</sub> emissions occurred during the emergency.
5. The total number of allowances in the electricity generating facility's allowance registry account on March 1<sup>st</sup>;
6. The number of allowances in the electricity generating facility's allowance registry account that the owner or operator of the facility is using to offset CO<sub>2</sub> emissions that occurred during the prior calendar year;
7. The number of allowances in the electricity generating facility's allowance registry account that the owner or operator of the electricity generating facility is using to offset CO<sub>2</sub> emissions that occurred during an emergency in the year before the prior calendar year, on a two-for-one basis pursuant to 310 CMR 7.74(6)(d);
8. The total number of allowances remaining in the electricity generating facility's allowance registry account after offsetting CO<sub>2</sub> emissions pursuant to 310 CMR 7.74(7)(a)6. and 7.; and
9. The electronic signature of the designated representative submitting the form and certification by the designated representative in accordance with 310 CMR 7.74(7)(b).

(b) Certification of Reports, Documents, and Information. All reports, documents, and information submitted to the Department under 310 CMR 7.74 must be signed and attested to by the designated representative and shall include the following statement: "I certify that I have personally examined the information that I am submitting and I am familiar with the information submitted and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including possible fines and imprisonment."

(c) Submission Format and Process. The Department may specify the format and process for any submission required pursuant to 310 CMR 7.74, including

electronic submission requirements.

(d) Compliance Verification. The Department may verify compliance with 310 CMR 7.74 by conducting inspections, requesting information and records, and requiring the collection of information. 310 CMR 7.74(7)(d) does not limit the authority of the Department as otherwise provided by law or in an authorization, determination, modification, permit, or other approval, or by the terms of any order or other enforcement document.

1. Access to Information. Where necessary to ascertain compliance with 310 CMR 7.74, including actual or potential CO<sub>2</sub> emissions, the Department may request information or records from any owner or operator of an electricity generating facility. The owner or operator shall, within a reasonable time, furnish the requested information or records and shall permit Department personnel or authorized representatives to have access to and to take images of such records.

2. Requirement to Collect Information. When the Department determines that any electricity generating facility has failed to offset its CO<sub>2</sub> emissions limit or violated any other condition in 310 CMR 7.74, the Department may require the owner or operator of said electricity generating facility to submit the necessary information or records. In doing so, the Department may require the electricity generating facility owner or operator to:

- a. Establish and maintain records;
- b. Perform audits on CO<sub>2</sub> emissions records or monitoring equipment using standard procedures and methods;
- c. Quantify CO<sub>2</sub> emissions in accordance with any procedures and methods that the Department may prescribe;
- d. Keep records on control equipment parameters, production variables, and other indirect data when direct monitoring of CO<sub>2</sub> emissions is not practical;
- e. Perform additional CO<sub>2</sub> emissions monitoring, including conducting stack tests in accordance with 310 CMR 7.13 when continuous CO<sub>2</sub> emissions monitoring equipment information is unavailable;
- f. Make periodic reports to the Department, as necessary, to assure continuous compliance with 310 CMR 7.74; and
- g. Maintain other records and provide any other information the Department requires.

(8) Recordkeeping Requirements. The owner or operator of an electricity generating facility shall keep on-site at the electricity generating facility all records, data, reports and other information required by 310 CMR 7.74 for a period of three years from the date the record is created. The Department may extend this period for cause, in writing, at any time before the end of the three years.

(9) Authorized Designated Representative.

(a) Assigning an Authorized Designated Representative. The owner and operator of an electricity generating facility shall authorize one designated representative to act on behalf of the owner and operator with regard to all matters under 310 CMR 7.74.

(b) Responsibilities of Designated Representative. The designated representative shall be responsible for submitting and updating electronically all of the following:

1. The name, address, email address, and telephone number of the designated representative;
2. A list of the owner(s) and operator(s) of the electricity generating facility;
3. A notice of transfer of allowances;
4. A CO<sub>2</sub> emissions report;
5. The Compliance Certification Report;
6. The name, address, email address, and telephone number of any persons authorized to submit notices of transfer of allowances pursuant to 310 CMR 7.74(9)(c); and
7. Any other reports, documents, or information requested by the Department.

(c) Delegation by Designated Representative. A designated representative may delegate his or her authority to submit a notice of transfer of allowances by submitting the information specified in 310 CMR 7.74(9)(b)6. and signing the following certification statement: "I certify any notice of transfer of allowances submitted by any person identified by me as authorized to submit a notice of transfer of allowances under 310 CMR 7.74 shall be deemed a notice of transfer of allowances submitted by me."

(d) Certification of Representation. The owner or operator of an electricity generating facility shall submit to the Department a complete certificate of representation that identifies the designated representative acting on behalf of the owner and operator for the electricity generating facility. The submission shall be on a form prescribed by the Department, and shall include the following information:

1. Identification of the electricity generating facility;
2. The name of the designated representative;
3. The address, email address, and telephone number of the designated representative at the time of submission of the Certificate of Representation;
4. A list of the owner(s) and operator(s) of the electricity generating facility at the time of submission of the Certificate of Representation;
5. The following certification statements by the designated representative.
  - a. "I certify I was selected as the designated representative, by an agreement binding on the owner and operator of the facility."
  - b. "I certify that I have all the necessary authority to carry out my duties and responsibilities under 310 CMR 7.74 on behalf of the owner and operator of the facility and that the owner and operator shall be fully bound by my representations, action, inactions, or submissions";
6. The signature of the designated representative and the date signed; and
7. If applicable, a list of persons authorized to submit Notices of Transfer of allowances pursuant to 310 CMR 7.74(9)(c) at the time of submission of the Certificate of Representation, and the following:
  - a. The name, address, email address, and telephone number of such persons.
  - b. The following certification statement by the designated representative.



"I certify any notice of transfer of allowances submitted by any person identified by me as authorized to submit a notice of transfer of allowances under 310 CMR 7.74 shall be deemed a notice of transfer of allowances submitted by me."

(10) Penalties and Enforcement.

(a) The failure of an owner or operator to offset its CO<sub>2</sub> emissions limit in compliance with 310 CMR 7.74(6)(e) shall be deemed a release of air pollutants into the environment without the approval or authorization of the Department and shall be presumed to constitute a significant impact to public health, welfare, safety, or the environment.

(b) If the owner or operator of an electricity generating facility is not holding sufficient allowances in its allowance registry account by March 1<sup>st</sup> of each year to offset its CO<sub>2</sub> emissions as calculated in accordance with the requirements of 310 CMR 7.74(6)(e), then within 14 calendar days of receipt of notice by the Department, the owner or operator shall transfer into the electricity generating facility's allowance registry account, three additional allowances for every one ton of CO<sub>2</sub> emissions not offset, and then the Department will deduct the allowances from the allowance registry account.

(c) In addition to the requirements of 310 CMR 7.74(10)(a) and (b), the Department may enforce the requirements of 310 CMR 7.74 in accordance with applicable federal and Massachusetts law including, but not limited to, M.G.L. c. 21A, § 16, and 310 CMR 5.00: *Administrative Penalty*; M.G.L. c. 111, § 2C; M.G.L. c. 111, §§ 142A through 142E and M.G.L. c. 21N, § 7(d).

(11) Program Review. Not later than December 31, 2021 and every ten years thereafter, the Department shall complete a review, including an opportunity for public comment, of the requirements of 310 CMR 7.74 to determine whether the program should be amended. This review shall evaluate CO<sub>2</sub> emissions, costs, consistency with statewide CO<sub>2</sub> emissions limits established pursuant to M.G.L. c. 21N, and any other information relevant to review of the program.

(12) Declining CO<sub>2</sub> Emissions Limits in Existing Plan Approvals. The requirements in 310 CMR 7.74 supersede the declining annual GHG or CO<sub>2</sub> emissions limits in an electricity generating facility's plan approval issued pursuant to 310 CMR 7.02. All other terms and conditions of such plan approval remain in effect unless a modification of such plan approval is issued by the Department in accordance with 310 CMR 7.02.

(13) Compliance with All Applicable Requirements. An owner or operator of an electricity generating facility subject to 310 CMR 7.74 shall comply with all other state and federal applicable statutes and regulations.

(14) Owner and Operator Responsible for Compliance. Whenever any provision in 310 CMR 7.74 requires an action to be taken by an owner or operator, any owner or operator of an electricity generating facility may take the action; provided that all owners and operators of the electricity generating facility are responsible for ensuring

that the proper action is taken, and all owners and operators are jointly and severally liable for compliance with 310 CMR 7.74.