

7.75: Clean Energy Standard

(1) Purpose, Authority and Scope. The purpose of 310 CMR 7.75, promulgated in conjunction with 310 CMR 7.74, 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 a clean energy standard (CES) that will increase the level of clean electricity that is purchased from the regional electric grid for consumption in Massachusetts. 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 hereby jointly promulgate 310 CMR 7.75 following consultation with the Department of Energy Resources (DOER) and based on the considerations specified in M.G.L. c. 21N, § 3(c). In exercising their broad authority and discretion under M.G.L. c. 21N, § 3(c), EEA and the Department have determined that establishing the CES, along with the Commonwealth's other climate programs and policies, will ensure achievement of the greenhouse gas emissions limits as established under M.G.L. c. 21N, and that the 310 CMR 7.75 levels are consistent with, and take account of, regional programs such as the Regional Greenhouse Gas Initiative (RGGI) and the Renewable Portfolio Standard (RPS). The Department is also consolidating in 310 CMR 7.75 a requirement previously codified at 310 CMR 7.71(9) for retail sellers of electricity to report statewide greenhouse gas emissions and to monitor and ensure compliance with the reporting provisions of M.G.L. c. 21N, § 2(a)(5). 310 CMR 7.75 is also promulgated pursuant to M.G.L. c. 21A, § 16 and M.G.L. c. 111, §§ 2C and 142A through 142E.

(2) Definitions. The terms used in 310 CMR 7.75 are defined in 310 CMR 7.75(2) and 310 CMR 7.00: *Definitions*. Where a term is defined in both 310 CMR 7.00: *Definitions* and 310 CMR 7.75, the definition in 310 CMR 7.75 shall apply.

Biogenic Greenhouse Gas Emissions. Emissions of carbon dioxide that result from the combustion of biogenic (plant or animal) material, excluding fossil fuels.

Business Day. Monday through Friday, exclusive of state and federal legal holidays.

Carbon Dioxide Equivalent. The amount of carbon dioxide by weight that would produce the same amount of global warming impact as a given weight of another greenhouse gas.

Certificates Obligation. A term defined in the NEPOOL GIS operating rules at Rule 4.1(b).

CES Alternative Compliance Credit. A credit obtained by a retail seller of electricity upon making a CES alternative compliance payment. Such credit is used to document compliance with 310 CMR 7.75(4)(a). One unit of credit shall be equivalent to one clean generation attribute.

CES-E Alternative Compliance Credit. A credit obtained by a retail seller of electricity upon making a CES-E alternative compliance payment. Such credit is used to document compliance with 310 CMR 7.75(4)(b). One unit of credit shall be equivalent to one clean existing generation attribute.

CES Alternative Compliance Payment (CES ACP). A payment of a certain dollar amount per

MWh, resulting in the issuance of CES alternative compliance credits, which a retail seller of electricity may submit to the Department in lieu of providing clean generation attributes required under 310 CMR 7.75(4)(a).

CES-E Alternative Compliance Payment (CES-E ACP). A payment of a certain dollar amount per MWh, resulting in the issuance of CES-E alternative compliance credits, which a retail seller of electricity may submit to the Department in *lieu* of providing clean existing generation attributes required under 310 CMR 7.75(4)(b).

CES Statement of Qualification. A written document from the Department that qualifies a generation unit as a clean generation unit, or that qualifies a portion of the annual electrical energy output of a generation unit as clean generation.

CES-E Statement of Qualification. A written document from the Department that qualifies a generation unit as a clean existing generation unit, or that qualifies a portion of the annual electrical energy output of a generation unit as clean existing generation.

Clean Existing Generation. The electrical energy output, or that portion of the electrical energy output, excluding any electrical energy utilized for parasitic load of a clean existing generation unit, that qualifies under:

- (a) the special provisions for a generation unit located in a control area adjacent to the ISO-NE control area, pursuant to 310 CMR 7.75(7)(b); or
- (b) the special provisions for clean existing generation units, pursuant to 310 CMR 7.75(7)(c); or
- (c) any other applicable provision of 310 CMR 7.75.

Clean Existing Generation Attribute. A generation attribute of the electrical energy output of a specific clean existing generation unit that derives from the unit's production of clean existing generation.

Clean Existing Generation Unit. A nuclear or hydroelectric generation unit that:

- (a) is located in Massachusetts, or in a jurisdiction that exported at least 4,000,000 MWh of electricity to Massachusetts in at least two years from 2001 through 2016, on a net annual basis, as reflected in the state greenhouse gas emissions inventories published annually by the Department;
- (b) has a nameplate capacity greater than 30 megawatts; and
- (c) commenced commercial operation before January 1, 2011.

Clean Generation. The electrical energy output, or that portion of the electrical energy output, excluding any electrical energy utilized for parasitic load of a clean generation unit, that qualifies under:

- (a) the special provisions for a generation unit located in a control area adjacent to the ISO-NE control area, pursuant to 310 CMR 7.75(7)(b); or
- (b) any other applicable provision of 310 CMR 7.75 or 225 CMR 14.00: *Renewable Energy Portfolio Standard - Class I*.

Clean Generation Attribute. The generation attribute that is either:

(a) a generation attribute of the electrical energy output of a specific clean generation unit that derives from the unit's production of clean generation; or

(b) any other generation attribute that is retained pursuant to St. 2008, c. 169, § 83D(h), as inserted by St. 2016, c. 188, § 12. All generation attributes retained pursuant to St. 2008, c. 169, § 83D(h), as inserted by St. 2016, c. 188, § 12, including such generation attributes that derive from generation units that do not satisfy all limitations in 310 CMR 7.75(7), are clean generation attributes.

Clean Generation Unit. A generation unit or aggregation that has received a CES statement of qualification from the Department, or that has received an RPS statement of qualification.

Commercial Operation Date. The date that a generation unit first produces electrical energy for sale within the ISO-NE control area or within an adjacent control area. In the case of transmission capacity that is used to transmit clean energy, the date on which the transmission capacity first transmitted energy into the ISO-NE control area or an adjacent control area.

Compliance Filing. A document filed annually by a retail seller of electricity in a format determined by the Department documenting compliance with 310 CMR 7.75(4), submitted no later than July 1st, or the first business day thereafter, of the subsequent compliance year.

Compliance Year. A calendar year beginning January 1st and ending December 31st, for which a retail seller of electricity that is not a Municipal Electric Department or Municipal Light Board must demonstrate that it has met the requirements of 310 CMR 7.75(4) and (5).

Control Area. A geographic region in which a common generation control system is used to maintain scheduled interchange of electrical energy within and without the region.

Dedicated Transmission Line. A transmission line with a commercial operation date after December 31, 2017 that is not electrically connected to any generation unit that is not a clean generation unit.

Emitting Electricity Generators. Electricity generators that are powered by any fossil or biogenic fuels.

Emitting Megawatt Hours. Megawatt hours that are generated by emitting electricity generators.

End-use Customer. A person or entity in Massachusetts that purchases electrical energy at retail from a retail seller of electricity, except that a generation unit taking station service at wholesale from ISO-NE or self-supplying from its owner's other generating stations, shall not be considered an end-use customer.

Generation Attribute. A non-price characteristic of the electrical energy output of a generation unit including, but not limited to, the generation unit's fuel type, emissions, vintage and eligibility for renewable or clean energy programs.

Generation Unit. A facility that converts a fuel or an energy resource into electrical energy.

GIS Certificate An electronic record produced by the NEPOOL GIS that identifies generation attributes of each MWh accounted for in the NEPOOL GIS.

Greenhouse Gas. Any chemical or physical substance that is emitted into the air and that the Department may reasonably anticipate will cause or contribute to climate change including, but not limited to, carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride.

ISO-NE. ISO New England Inc., the independent system operator for New England, the regional transmission organization for most of New England, which is authorized by the Federal Energy Regulatory Commission (FERC) to exercise for the New England Control Area the functions required pursuant to the FERC's Order No. 2000 and the FERC's corresponding regulations.

ISO-NE Settlement Market System. The ISO-NE's electronic database system into which all real-time load and generation data are entered and from which such data are provided to the NEPOOL GIS.

Lifecycle Greenhouse Gas Emissions. The aggregate quantity of greenhouse gas emissions including, but not limited to, direct emissions and significant emissions from land use changes, and temporal changes in forest carbon sequestration and emissions resulting from biomass harvests, regrowth, and avoided decomposition as determined by the department, related to the full fuel lifecycle, including all stages of fuel and feedstock production and distribution, from feedstock generation or extraction through the distribution and delivery of the finished fuel to the ultimate consumer, where the mass values for all greenhouse gases are adjusted to account for their relative global warming potential.

Massachusetts Department of Energy Resources or DOER. The Massachusetts agency established pursuant to M.G.L. c. 25A, §§ 1 through 13.

Megawatt-hour (MWh) A unit of electrical energy or work equivalent to one million watts of power operating for one hour

Municipal Electric Department (MED) A municipal electric department as defined in M.G.L. c. 164A, § 1.

Municipal Light Board (MLB) A municipal light board as defined in M.G.L. c. 164A, § 1.

NEPOOL GIS. The NEPOOL Generation Information System, which includes a generation information database and certificate system, operated by the New England Power Pool (NEPOOL), its designee or successor entity, that accounts for generation attributes of electrical energy consumed and generated within, imported into, or exported from the ISO-NE control area.

NERC Tag. A document that identifies an electrical energy interchange transaction and its

associated participants, assigned in accordance with rules set forth by the North American Electric Reliability Corporation (NERC), a nonprofit corporation granted by the FERC the legal authority to enforce mandatory reliability standards for the U.S. bulk power system, subject to FERC oversight.

Non-emitting Electricity Generators. Electricity generators powered by hydro, nuclear, ocean, solar or wind power.

Non-emitting Megawatt Hours. Megawatt hours that are generated by non-emitting electricity generators.

Operator. Any person or entity that has charge or control of a generation unit subject to 310 CMR 7.75(7) through (9) including, without limitation, a duly authorized agent or lessee of the owner, or a duly authorized independent contractor.

Owner. Any person or entity that, alone or in conjunction with others, has legal ownership, a leasehold interest, or effective control over the real property or property interest upon which a generation unit is located, or the airspace above said real property including, without limitation, a duly authorized agent of the owner. For the purposes of 310 CMR 7.75, owner does not mean a person or entity holding legal title or security interest solely for the purpose of providing financing.

Retail Electricity Product. Electrical energy offering that is distinguished by its generation attributes and that is offered for sale by a retail seller of electricity to end-use customers.

Retail Seller of Electricity or Retail Seller. A competitive supplier licensed by the Department of Public Utilities or, as each is defined in M.G.L. c. 164A, § 1, an electric utility, municipal electric department or municipal light board that is connected to the regional electric grid.

RPS Alternative Compliance Credit. A credit obtained by a retail seller of electricity upon making a payment pursuant to 225 CMR 14.08(3): *Alternative Compliance*, and used to comply with 225 CMR 14.07: *Renewable Energy Portfolio Standard - Class I*.

RPS Class I Renewable Generation Unit. A generation unit or aggregation that has received a statement of qualification as an RPS Class I renewable generation unit from DOER pursuant to 225 CMR 14.00: *Renewable Energy Portfolio Standard - Class I*.

RPS Statement of Qualification. A written document issued by DOER pursuant to 225 CMR 14.06: *Qualification Process for RPS Class I, Solar Carve-out Renewable Generation Units, and Solar Carve-out II Renewable Generation Units* that qualifies a generation unit or aggregation as an RPS Class I qualified generation unit, or that qualifies a portion of the annual electrical energy output of a generation unit.

Short Ton. 2000 pounds or 0.9072 metric tons.

(3) Applicability. Retail sellers are required to comply with 310 CMR 7.75.

(4) Clean Energy Standard and CES-E Standard. The total annual sales of each retail electricity product sold to Massachusetts end-use customers by a retail seller that is not an MED or MLB shall include a minimum percentage of electrical energy sales with clean generation attributes and clean existing generation attributes.

(a) For calendar years 2018 through 2050, percentage requirements for clean generation attributes are listed in 310 CMR 7.75(4): *Table A*.

Table A

Year	Retail Sellers, except Municipal Electric Departments and Municipal Light Boards
2018	16%
2019	18%
2020	20%
2021	22%
2022	24%
2023	26%
2024	28%
2025	30%
2026	36%
2027	42%
2028	48%
2029	54%
2030	60%
2031	61%
2032	62%
2033	63%
2034	64%
2035	65%
2036	66%
2037	67%
2038	68%
2039	69%
2040	70%
2041	71%
2042	72%
2043	73%
2044	74%
2045	75%
2046	76%
2047	77%
2048	78%
2049	79%
2050, and each year thereafter	80%

(b) Clean Energy Standard for Clean Existing Generation Units (CES-E). For calendar year 2021 and 2022, the percentage requirement for clean existing generation attributes shall be 20%. For calendar years 2023 through 2050, percentage requirements for clean existing generation attributes shall be determined by dividing 25% by the percentage provided by the Department pursuant to 310 CMR 7.75(9)(b)4. for the year four years before the calendar year for which the percentage requirement applies, rounded to the nearest percent (i.e., if the percentage provided pursuant to 310 CMR 7.75(9)(b)4. for 2026 is 105%, then the percentage requirement for clean existing generation attributes in 2030 would be $25\% \div 105\% = 24\%$).

(5) Compliance Procedures for Retail Sellers That Are Not MEDs or MLBs.

(a) Standard Compliance. Each retail seller subject to 310 CMR 7.75(4) shall be deemed to be in compliance with 310 CMR 7.75 if the information provided in the compliance filing submitted pursuant to 310 CMR 7.75(5) is true and accurate and demonstrates compliance with 310 CMR 7.75(4). Such retail seller shall demonstrate, using a form provided by the Department or DOER, that clean generation attributes and clean existing generation attributes used for compliance have not otherwise been, nor will be, sold, retired, claimed, used or represented as part of electrical energy output or sales, or used to satisfy obligations in jurisdictions other than Massachusetts.

(b) Banked Compliance.

1. Beginning in 2021, a retail seller subject to 310 CMR 7.75(4)(a) may use clean generation attributes produced in either or both of the two prior compliance years, subject to the limitations in 310 CMR 7.75(5)(b) and provided that the retail seller is in compliance with 310 CMR 7.75 for all previous compliance years. In addition, the retail seller shall demonstrate, using a form provided by the Department or DOER, that such attributes:

- a. Were in excess of the clean generation attributes needed for compliance in the compliance year in which they were generated, and that such excess attributes have not previously been used for compliance with 310 CMR 7.75 or 225 CMR 14.00;
- b. Do not exceed 30% of the clean generation attributes needed by the retail seller for compliance with 310 CMR 7.75(4)(a) in the year they were generated, in excess of the clean generation attributes needed for compliance with 225 CMR 14.07(1), subject to 310 CMR 7.75(5)(b)1.d.;
- c. Were produced during the compliance year in which they are claimed as excess by the generation of electrical energy sold to end-use customers in the ISO-NE control area; and
- d. Have not otherwise been, nor will be, sold, retired, claimed or represented as part of electrical energy output or sales, or used to satisfy obligations in jurisdictions other than Massachusetts.

2. Any RPS-eligible renewable generation attributes claimed for compliance with RPS pursuant to 225 CMR 14.08(2): *Banked Compliance* and used to comply with 225 CMR 14.07: *Renewable Energy Portfolio Standard - Class I* in a particular year shall be counted toward compliance with 310 CMR 7.75 in that year.

3. A retail seller subject to 310 CMR 7.75(4)(b) may not use clean existing

generation attributes produced in prior compliance years to comply with said provision.

(c) Alternative Compliance. Any RPS alternative compliance credits claimed pursuant to 225 CMR 14.08(3)(a) and used to comply with 225 CMR 14.07: *Renewable Energy Portfolio Standard - Class I* shall be counted toward compliance with 310 CMR 7.75(4)(a). A retail seller subject to 310 CMR 7.75(4) may discharge its obligations under 310 CMR 7.75(4)(a), in whole or in part, by making a CES ACP to the Department. A retail seller subject to 310 CMR 7.75(4) may discharge its obligations under 310 CMR 7.75(4)(b), in whole or in part, by making a CES-E ACP to the Department. Such funds shall be deposited in a segregated account, which may be the same account established to receive auction proceeds under 310 CMR 7.74(6)(h)1.a.i., administered by a Trustee appointed by EEA and the Department, and used for the purposes set forth in 310 CMR 7.75(5)(c)2.

1. Alternative Compliance Procedures.

a. Procedures for CES ACP. A retail seller subject to 310 CMR 7.75(4) shall receive CES alternative compliance credits from the Department, subject to the following:

- i. The quantity of credits, specified in MWh, that can be applied to its obligations under 310 CMR 7.75(4)(a) shall be determined by calculating the ratio of the total of CES ACPs paid for the compliance year to the CES ACP rate for that compliance year.
- ii. The CES ACP rate in dollars shall be 0.75 times the rate calculated annually by DOER pursuant to 225 CMR 14.08(3)(a)2 for years 2018 through 2020, 0.50 times the rate calculated annually by DOER pursuant to 225 CMR 14.08(3)(a)2. for year 2021, and \$35/MWh for years 2022 through 2050.

b. Procedures for CES-E ACP. A retail seller subject to 310 CMR 7.75(4) shall receive CES-E alternative compliance credits from the Department subject to the following:

- i. The quantity of credits, specified in MWh, that can be applied to its obligations under 310 CMR 7.75(4)(b) shall be determined by calculating the ratio of the total of CES-E ACPs paid for the compliance year to the CES-E ACP rate for that compliance year.
- ii. The CES-E ACP rate in dollars shall be 0.10 times the rate specified by DOER pursuant to 225 CMR 14.08(3)(a)2. for year 2021, and \$10/MWh for years 2022 through 2050.

2. Use of Funds. Funds deposited pursuant to 310 CMR 7.75(5)(c) shall be expended to further the goals of M.G.L. c. 21N by supporting:

- a. ~~(1)~~ programs and projects to reduce greenhouse gas emissions to mitigate the impacts of climate change including, but not limited to, clean energy and vehicle electrification projects;
- b. ~~(2)~~ programs or projects to support adaptation to the impacts of climate change;
- c. ~~(3)~~ 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

d. for ~~(4)~~ the administration of any such programs or projects. Such funds may also be used for the administration of 310 CMR 7.75.

Such funds 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 Energy and Environmental Affairs Secretariat to assist in the administration and expenditure of such funds.

(d) Treatment of Existing Contracts Executed as of August 11, 2017. Notwithstanding 310 CMR 7.75(4), in determining the total CES-qualified MWh applied to each retail seller subject to 310 CMR 7.75(4) in 2018 and 2019, the Department shall not include that portion of electrical energy sales that were subject to a contract executed or extended prior to August 11, 2017, provided that the electricity was sold at a price specified in the contract and the retail seller provides the Department with satisfactory documentation of the terms of such contracts. Contracted electrical energy delivered after December 31, 2019 shall be included in the CES, regardless of the contract's date of execution or extension.

1. In order to demonstrate eligibility of contracts for exemption under 310 CMR 7.75(5)(d), retail sellers shall provide the relevant documentation by December 31, 2017 in accordance with a form prescribed by the Department including, but not limited to, the execution and expiration dates of the contracts and the projected annual volume of electric energy supplied at a contract-specified price.

2. In order to demonstrate eligibility of electrical energy sales for exemption under 310 CMR 7.75(5)(d), retail sellers shall provide the relevant documentation by July 1st of the year after the sales occurred, along with information required in accordance with a form prescribed by the Department including, but not limited to, the execution and expiration dates of the contracts and the actual annual volume of electric energy supplied at a contract-specified price.

(e) Treatment of Existing Contracts Executed as of October 4, 2019. Notwithstanding 310 CMR 7.75(4), in determining the amount of CES E-qualified MWh applied to each retail seller subject to 310 CMR 7.75(4)(b) in 2021 and 2022, the Department shall not include that portion of electrical energy sales that were subject to a contract executed or extended prior to October 4, 2019, provided that the electricity was sold at a price specified in the contract and the retail seller provides the Department with satisfactory documentation of the terms of such contracts.

1. The adjustment to the retail electricity seller's compliance obligation pursuant to 310 CMR 7.75(4)(b) shall be equal to 20% of the amount of contracted electricity energy sales and shall apply to sales that occur in 2021 and 2022 only.

2. In order to demonstrate eligibility of electrical energy sales for exemption under 310 CMR 7.75(5)(e), retail sellers shall provide the relevant documentation by July 1st of the year after the year for which the retail seller has exempt electrical energy sales, along with information required in accordance with a form prescribed by the Department including, but not limited to, the execution and expiration dates of the contracts and the actual annual volume of electric energy supplied at a contract-specified price.

(6) Annual Compliance Filings for Retail Sellers That Are Not MEDs or MLBs.

(a) Date of Annual Compliance Filing. For each compliance year, each retail seller subject to 310 CMR 7.75(4) shall file an annual compliance filing with the Department no later than the first day of July, or the first business day thereafter, of the subsequent compliance year. Such retail sellers shall complete an annual compliance report for compliance years 2018 through 2050.

(b) Contents of Annual Compliance Filing. For each retail electricity product, the filing shall document compliance with the provisions of 310 CMR 7.75(4) and (5) using a form provided by the Department and shall include, but not be limited to, the following:

1. Total Electrical Energy Sales to End-use Customers. Documentation of the total MWh of electrical energy allocated by the retail seller to end-use customers in the compliance year. Such allocation is defined as the total quantity of such seller's certificates obligation that the seller correctly allocated or should have allocated to all of the seller's Massachusetts retail subaccounts in the NEPOOL GIS, in compliance with all relevant provisions of Part 4 of the NEPOOL GIS Operating Rules, as specified in the Guideline on the Determination of Sales to End-use Customers.

2. Electrical Energy Sales to End-use Customers by Product. Documentation of the total MWh of each retail electricity product allocated by the retail seller to end-use Massachusetts customers in the compliance year, verified by an independent third-party satisfactory to the Department. Such allocation is defined as the quantity of the seller's certificates obligation that the seller correctly allocated or should have allocated to each of the seller's Massachusetts retail subaccounts at the NEPOOL GIS, in compliance with all relevant provisions of Part 4 of the NEPOOL GIS Operating Rules, as specified in the Guideline on the Determination of Sales to End-use Customers.

3. Attributes Allocated from the Compliance Year. Documentation of the total MWh of each retail electricity product allocated by the retail seller to end-use Massachusetts customers that had clean generation attributes and clean existing generation attributes during the compliance year, as follows:

a. For electrical energy transactions included in the ISO-NE Settlement Market System, the compliance filings shall include documentation from the NEPOOL GIS administrator of the retail seller's ownership of GIS certificates representing clean generation attributes and clean existing generation attributes during the compliance year.

b. For electrical energy transactions not included in the ISO-NE Settlement Market System, but for which the retail seller has secured GIS certificates from the NEPOOL GIS, the compliance filings shall include documentation from the NEPOOL GIS of the retail seller's ownership of GIS Certificates representing clean generation attributes and clean existing generation attributes during the compliance year.

4. Attributes Allocated from Banked Compliance. Allocation by each retail seller, itemized by retail electricity product, of any quantity of clean generation attributes banked from one or both of the two previous years pursuant to 310 CMR 7.75(5)(b) that are used to demonstrate compliance with the clean energy standard in the current compliance year.

5. Alternative Compliance Credits. Allocation by each retail seller, itemized by

retail electricity product, of any CES alternative compliance credits claimed pursuant to 310 CMR 7.75(5)(c)1.a., CES-E alternative compliance credits claimed pursuant to 310 CMR 7.75(5)(c)1.b., or RPS alternative compliance credits claimed pursuant to 225 CMR 14.08(3)(a): *RPS Class I Procedures*, along with a copy of any alternative compliance payment receipt(s).

6. Attributes Banked for Future Compliance. Identification of any quantity of clean generation attributes, that the retail seller anticipates claiming for purposes of banked compliance in subsequent years under the banked compliance provisions of 310 CMR 7.75(5)(b).

7. Attributes Retained Pursuant to St. 2008, c. 169, § 83D(h), as Inserted by St. 2016, c. 188, § 12. For the purpose of determining compliance with 310 CMR 7.75(4)(a), clean generation attributes that are retained by an electric utility pursuant to St. 2008, c. 169, § 83D(h), as inserted by St. 2016, c. 188, § 12, and that are not attributed to RPS Class I eligible resources, shall be assigned to all end use customers served by all retail sellers subject to 310 CMR 7.75(4)(a). The number of attributes assigned to each such retail seller's customers shall be based on the retail seller's proportion of the total retail electricity product sold statewide by all such retail sellers.

(7) Eligibility Criteria for Clean Generation Units and Clean Existing Generation Units.

(a) Eligibility Criteria for Clean Generation Units. A generation unit may qualify as a clean generation unit subject to the limitations in 310 CMR 7.75(7). The Department shall consider all limitations in 310 CMR 7.75(7), including the emissions criteria in 310 CMR 7.75(7)(a)1.a.ii., when considering whether to provide the owner or operator of such generation unit with a CES statement of qualification pursuant to 310 CMR 7.75(8)(c).

1. Fuels, Energy Resources and Technologies. In order to be considered by the Department for qualification, a generation unit must satisfy at least one of the two eligibility criteria in 310 CMR 7.75(7)(a)1.a. and not be excluded by 310 CMR 7.75(7)(a)1.b.

a. A generation unit must satisfy at least one of the following two eligibility criteria:

i. The generation unit has been issued an RPS statement of qualification as an RPS Class I renewable generation unit pursuant to 225 CMR 14.06(3): *Issuance or Non-issuance of a Statement of Qualification*;

ii. The generation unit has net lifecycle GHG emissions, over a 20-year life cycle, that yield at least a 50% reduction of greenhouse gas emissions per unit of useful energy relative to the lifecycle greenhouse gas emissions from the aggregate use of the operation of a new combined cycle natural gas electric generating facility using the most efficient commercially available technology as of the date of the statement of qualification application for the portion of electricity delivered by the generation unit.

b. A generation unit that does not satisfy applicable fuel, energy resource, or technology-specific provisions or limitations in 225 CMR 14.05(1)(a)5.

through 7. shall not qualify under 310 CMR 7.75(7); provided, however, that any generation unit that is a hydroelectric generator that has a nameplate capacity greater than 30 megawatts may qualify under 310 CMR 7.75(7) if it satisfies the emissions criteria in 310 CMR 7.75(7)(a)1.a.ii.

2. Commercial Operation Date. For a generation unit that qualifies as a clean generation unit pursuant to 310 CMR 7.75(7)(a)1.a.ii., the commercial operation date shall be after December 31, 2010.

3. Metering. For a generation unit that qualifies as a clean generation unit pursuant to 310 CMR 7.75(7)(a)1., the electrical energy output from the generation unit shall be verified by the ISO-NE or by an independent verification system or person participating in the NEPOOL GIS accounting system as an independent Third Party Meter Reader, as defined in Rule 2.5(j) of the NEPOOL GIS Operating Rules, and approved by the Department.

(b) Special Provisions for a Generation Unit Located in a Control Area Adjacent to the ISO-NE Control Area. The portion of the total electrical energy output of a clean generation unit or clean existing generation unit located in a control area adjacent to the ISO-NE control area that qualifies as clean generation or clean existing generation shall meet the relevant requirements in Rule 2.7(c) and all other relevant sections of the NEPOOL GIS Operating Rules, and the requirements in 310 CMR 7.75(7)(b).

1. The generation unit owner or operator shall provide documentation, using a form provided by the Department or DOER, of a contract or other legally enforceable obligation, that is executed between the generation unit owner or operator and an electrical energy purchaser located in the ISO-NE control area for delivery of the generation unit's electrical energy to the ISO-NE control area. For a clean generation unit, such documentation shall include provisions for obtaining associated transmission rights for delivery of the generation unit's electrical energy from the generation unit to the ISO-NE control area using transmission capacity with a commercial operation date after December 31, 2016. For a clean existing generation unit, such documentation shall include provisions for obtaining associated transmission rights for delivery of the generation unit's electrical energy from the generation unit to the ISO-NE control area using transmission capacity that had a commercial operation date before January 1, 2017, and that directly connects the ISO-NE control area with a jurisdiction that exported at least 4,000,000 MWh of electricity to Massachusetts in at least two years from 2001 through 2016, on a net annual basis, as reflected in the state greenhouse gas emissions inventories published annually by the Department. If requested by the Department, the generation unit owner or operator shall pay for evaluation and verification of the provisions of such documentation by an independent party that is engaged or approved by the Department. The Department may rely on information in the NEPOOL GIS to address the requirements of 310 CMR 7.75(7)(b)1. instead of requiring separate documentation.

2. The generation unit owner or operator for a clean generation unit or clean existing generation unit shall provide documentation using a form provided by the Department or DOER, that:

- a. The electrical energy delivered pursuant to the legal obligation was settled in the ISO-NE Settlement Market System;
 - b. The generation unit produced, during each hour of the applicable month, the amount of MWh claimed, as verified by the NEPOOL GIS administrator; if the originating control area employs a generation information system that is comparable to the NEPOOL GIS, information from that system may be used to support such documentation;
 - c. The electrical energy delivered under the legal obligation received a NERC tag confirming transmission from the adjacent control area to the ISO-NE control area using transmission capacity that meets the commercial obligation date and transmission path requirements specified in 310 CMR 7.75(7)(b)1.; and
 - d. The clean generation attributes or clean existing generation attributes have not otherwise been, nor will be, sold, retired, claimed, used or represented as part of electrical energy output or sales, or used to satisfy obligations in jurisdictions other than Massachusetts.
3. The generation unit owner or operator must provide an attestation in a form approved by the Department that it will not itself or through any affiliate or other contracted party, knowingly engage in the process of importing clean generation or clean existing generation into the ISO-NE control area for the creation of clean GIS certificates, and then exporting that energy or a similar quantity of other energy out of the ISO-NE control area during the same hour.
 4. The quantity of electrical energy output from a clean generation unit or clean existing generation unit outside the ISO-NE control area that can qualify as clean generation or clean existing generation at the NEPOOL GIS during each hour is limited to the lesser of the clean generation or clean existing generation actually produced by the generation unit or the clean generation or clean existing generation actually scheduled and delivered into the ISO-NE control area.
 5. For the purpose of determining compliance with 310 CMR 7.75(7)(b) and all other provisions of 310 CMR 7.75, a clean generation unit that delivers clean energy into the ISO-NE control area or an adjacent control area through a dedicated transmission line shall be considered to be located in the control area to which the clean energy is delivered.
- (c) Special Provisions for Clean Existing Generation Units.
1. For any clean existing generation unit, the amount of electrical energy output that is clean existing generation in a given calendar year shall not exceed 2,500,000 MWh.
 2. The amount of electrical output of a clean existing generation unit that qualifies as clean existing generation shall be the second lowest annual total amount of MWh that did not have attributes retired, claimed, used or represented, as part of electrical energy output or sales, or used to satisfy obligations in any jurisdiction other than Massachusetts in the years 2016 through 2018, as reflected in the NEPOOL-GIS.
 3. Clean existing generation units must satisfy the requirements of 310 CMR 7.75(7)(a)3. ~~and 4.~~
 4. A generation unit that is not located in a jurisdiction that exported at least

4,000,000 MWh of electricity to Massachusetts in at least two years from 2001 through 2016 may qualify as a clean existing generation unit if it is located in a control area that is only electrically interconnected to control areas that are adjacent to the ISO-NE control area and satisfies all other requirements of 310 CMR 7.75.

5. For the purpose of determining compliance with 310 CMR 7.75 a clean existing generation unit located in a control area that is only electrically interconnected to control areas that are adjacent to the ISO-NE control area shall be considered to be located in an adjacent control area.

(8) Qualification Process for Clean Generation Units and Clean Existing Generation Units.

(a) Statement of Qualification Application. For clean generation units that have not received an RPS statement of qualification, a CES statement of qualification application shall be submitted to the Department by the owner or operator of the generation unit. For clean existing generation units, a CES-E statement of qualification application shall be submitted to the Department by the owner or operator of the generation unit. The applicant must use the most current forms and associated instructions provided by the Department, and must include all information, documentation, and assurances required by such forms and instructions.

(b) Review Procedures.

1. The Department shall notify the applicant when the CES statement of qualification application or CES-E statement of qualification application is administratively complete or if additional information is required pursuant to 310 CMR 7.75(8)(a).

2. The Department may, in its sole discretion, provide an opportunity for public comment on any CES statement of qualification application or CES-E statement of qualification application.

(c) Issuance or Non-issuance of a Statement of Qualification.

1. If the Department finds that all or a portion of the electrical energy output of a generation unit meets the requirements for eligibility as clean generation pursuant to 310 CMR 7.75(7)(a), and the generation unit is not eligible to receive an RPS statement of qualification from DOER, the Department shall provide the owner or operator of such generation unit with a CES statement of qualification.

2. If the Department finds that all or a portion of the electrical energy output of a generation unit is clean existing generation, the Department shall provide the owner or operator of such generation unit with a CES-E statement of qualification.

3. The CES statement of qualification or CES-E statement of qualifications shall include any applicable restrictions and conditions that the Department deems necessary to ensure compliance by a generation unit with the provisions of 310 CMR 7.75.

4. If the generation unit does not meet the requirements for eligibility as a clean generation unit or clean existing generation unit, the Department shall provide written notice to the Owner or Operator, including the Department's reasons for such finding.

(d) Notification Requirements for Change in Eligibility Status. The owner or operator of

a clean generation unit or clean existing generation unit shall notify the Department of any changes in the technology, operation, emissions, fuel sources, energy resources, capacity commitment, or other characteristics of the generation unit that may affect the eligibility of the unit as a clean generation unit or clean existing generation unit. The owner or operator shall submit the notification to the Department no later than five days following the end of the month during which such changes were implemented. The notice shall state the date the changes were made to the generation unit and describe the changes in sufficient detail to enable the Department to determine if a change in eligibility is warranted.

(e) Notification Requirements for Change in Ownership, Generation Capacity, or Contact Information. The owner or operator of a clean generation unit or clean existing generation unit shall notify the Department of any changes in the ownership, operating entity, generation capacity, NEPOOL GIS account, independent verification system for the generation unit's electrical energy output, or contact information for the generation unit. The owner or operator shall submit the notification to the Department no later than five days following the end of the month during which such changes were implemented.

(f) Time Limit for Project Implementation. Any CES statement of qualification shall expire 48 months after the issuance date of the CES statement of qualification (the expiration date) unless the commercial operation date of the generation unit is on or before the expiration date. The Department may, at its discretion, grant an extension of the expiration date of the CES statement of qualification upon petition by the owner or operator of the generation unit. If the owner or operator of such generation unit desires an extension, such owner or operator must submit a new CES statement of qualification application, and the decision of the Department on such new application may be made in accordance with the regulations and criteria that are applicable on the date that the Department receives that application.

(g) Suspension or Revocation of Statement of Qualification. The Department may suspend or revoke a CES statement of qualification or CES-E statement of qualification if the owner or operator of a clean generation unit fails to comply with 310 CMR 7.75.

(h) Identification of Clean Generation Units and Clean Existing Generation Units. The Department shall inform the NEPOOL GIS administrator which generation units should be designated clean generation units and clean existing generation units pursuant to 310 CMR 7.75.

(9) Reporting Requirements.

(a) Certification. Any person required by 310 CMR 7.75 to submit documentation to the Department shall provide:

1. The person's name, title and business address;
2. The person's authority to certify and submit the documentation to the Department; and
3. The following certification: "I hereby certify, under the pains and penalties of perjury, that I have personally examined and am familiar with the information submitted herein and, based upon 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, both civil and criminal, for submitting false information, including possible fines and

imprisonment."

(b) Annual Clean Energy Resource Report. The Department shall produce and make available to the public an annual report that summarizes information submitted to the Department by retail sellers subject to 310 CMR 7.75(4) in the annual compliance filings submitted to the Department pursuant to 310 CMR 7.75(6)(b). Such report shall include non-confidential data that provides the following:

1. The extent to which the retail sellers complied with the minimum clean energy standard, both separately and combined;
2. The extent to which the retail sellers used standard compliance, banked compliance, and alternative compliance, in meeting the minimum standards; and
3. The names, locations, and types of clean generation and clean existing generation from which the retail sellers, as an aggregate, obtained the clean energy attributes used in meeting the minimum standards.
4. The total amount of electrical energy sales to end-use customers reported or should have reported pursuant to 310 CMR 7.75(6)(b)1., expressed in MWh and, beginning with the report for 2019, as a percentage of the total electrical energy sales to end use customers provided in the report for 2018.

(c) Greenhouse Gas Emissions Reporting.

1. Each retail seller shall report annually to the Department its MWh sold and associated greenhouse gas emissions. The first required reporting year for retail sellers which are new competitive suppliers is the first year after 2017 in which they sell electricity in Massachusetts. Biogenic and non-biogenic greenhouse gas emissions shall be reported separately. This report shall be on a form provided by the Department.

2. Deadlines.

a. Beginning with 2018 calendar year generation, retail sellers subject to 310 CMR 7.75(4) shall report the MWh required in 310 CMR 7.75(9)(c)4.a. through c. on a form provided by the Department no later than the first day of July after the calendar year in which the MWh were generated.

b. Beginning with 2018 calendar year emissions, the annual GHG emissions report shall be submitted no later than the 15th day of the second September following each calendar year. The report shall be submitted using the final annual emission factors provided by the Department for the purpose of calculating greenhouse gas emissions pursuant to 310 CMR 7.75(9)(c)3.

c. In order to finalize the annual biogenic and non-biogenic emission factors, the Department shall:

- i. post draft annual emission factors, including methodologies and data sources, on its website for public comment for 30 days and notify retail sellers of the posting and the deadline for submittal of public comment; and
- ii. post final annual emission factors, including methodologies and data sources, on its website.

d. Beginning with 2018 calendar year generation, MEDs and MLBs choosing to report under 310 CMR 7.75(9)(c)5.b. and c. shall submit those

reports on a form provided by the Department no later than the first day of July after the calendar year in which the MWh were generated.

3. For the report required in 310 CMR 7.75(9)(c)2.b., all retail sellers shall use the following formula to calculate greenhouse gas emissions: $GHG = (EF * MWh / 2000 \text{ pounds per short ton}) + \text{emissions reported in 310 CMR 7.75(9)(c)6.}$

Where:

GHG = Short tons of greenhouse gases (in carbon dioxide equivalents) associated with electricity sold in MA in a particular calendar year.

EF = Emission factors supplied by the Department each year for biogenic and nonbiogenic greenhouse gas emissions (pounds carbon dioxide equivalents per MWh).

MWh = Annual electricity consumed by customers in a particular calendar year, increased to account for the portion of electricity lost during transmission and distribution (line losses), as reported pursuant to 310 CMR 7.75(6)(b)1. or 310 CMR 7.75(9)(c)5.a., less the sum of certificates reported pursuant to 310 CMR 7.75(9)(c)4.b. and c. or MWh reported pursuant to 310 CMR 7.75(9)(c)5.b. and c.

4. Source of Megawatt Hour and Emissions Data for Retail Sellers Subject to 310 CMR 7.75(4).

a. In calculating biogenic and non-biogenic greenhouse gas emissions, retail sellers shall report the same number of MWh used to calculate any CES certificates obligation under 310 CMR 7.75(6)(b)1., inclusive of line losses.

b. Retail sellers shall report, by fuel and by state or province, the number of emitting and non-emitting MWh of electricity generated by emitting and non-emitting electricity generators represented by GIS renewable energy certificates or clean energy certificates retired in such seller's NEPOOL GIS Massachusetts Retail Subaccount, as defined in the NEPOOL GIS Operating Rules.

c. If the number of GIS certificates retired in a retail seller's NEPOOL GIS Massachusetts Retail Subaccount and reported pursuant to 310 CMR 7.75(9)(c)4.b. are greater than the MWh reported pursuant to 310 CMR 7.75(9)(c)4.a., the retail seller shall indicate, on the 310 CMR 7.75(9)(c)4.b. report, which certificates will be excluded from GHG reporting so that the number of certificates does not exceed the MWh reported.

5. Source of Megawatt Hour and Emissions Data for Retail Sellers That Are MEDs or MLBs.

a. In calculating biogenic and non-biogenic greenhouse gas emissions, MEDs and MLBs shall use the same number of MWh reported in the annual return to the Department of Public Utilities, inclusive of line losses.

b. Optional MED and MLB Reporting of Non-emitting Electricity. MEDs and MLBs may choose to subtract any MWh of electricity generated by non-emitting electricity generators from the amount of MWh reported in 310 CMR 7.75(9)(c)5.a., if such non-emitting MWh are reported in the annual report due under 310 CMR 7.75(9)(c)1., and provided the

following criteria are met:

- i. the MED or MLB reports MWh by fuel and by state or province;
- ii. the MED or MLB provides information from the NEPOOL GIS showing that the certificates associated with the non-emitting MWh of electricity were unsettled certificates whose attributes were aggregated in residual mix certificates, both as defined in the NEPOOL GIS Operating Rules; and
- iii. for non-emitting electricity generators not owned by the MED or MLB, the MED or MLB provides a copy of the contract or contracts establishing that it has purchased electricity from such non-emitting electricity generators and reports such MWh.

c. Optional MED and MLB Reporting of Emitting Electricity. MEDs and MLBs may choose to report calculations of biogenic and non-biogenic greenhouse gas emissions, based on the methodology provided in 310 CMR 7.75(9)(c)6., if such emitting MWh are reported in the annual report due under 310 CMR 7.75(9)(c)1., and provided the following criteria are met:

- i. the MED or MLB reports MWh by fuel and by state or province;
- ii. the MED or MLB provides information from the NEPOOL GIS showing that the certificates associated with the emitting MWh of electricity were unsettled certificates whose attributes were aggregated in residual mix certificates, both as defined in the NEPOOL GIS Operating Rules; and
- iii. for emitting electricity generators not owned by the MED or MLB, the MED or MLB provides a copy of the contract or contracts establishing that the MED or MLB has purchased electricity from such emitting electricity generators.

d. The total of all optional non-emitting and emitting MWh reported under 310 CMR 7.75(9)(c)5.b. and c. shall not be greater than the MWh reported in 310 CMR 7.75(9)(c)5.a.

6. Carbon dioxide, methane and nitrous oxide emissions from any emitting electricity generator shall be reported as follows:

$$\text{GHGi} = (\text{EFi} * \text{MWhi} / 2000 \text{ pounds per short ton})$$

Where:

GHGi = Short tons of greenhouse gases for each emitting fuel type i (in carbon dioxide equivalents) associated with electricity sold in MA in a particular calendar year.

EFi = Emission factors supplied by the Department each year for biogenic and non-biogenic greenhouse gas emissions for each emitting fuel type i (pounds carbon dioxide equivalents per MWh).

MWhi = as reported for fuel type i pursuant to 310 CMR 7.75(9)(c)4.b.

(d) The Department may specify the format and process by which any submission required pursuant to 310 CMR 7.75 shall occur, including electronic submission requirements.

(10) Not later than December 31, 2017, the Department shall complete a review, including an

opportunity for public comment, of options for including generators that meet all requirements of 310 CMR 7.75, except for the commercial operation date requirements in 310 CMR 7.75(7)(a)2. and (b)1., in the clean energy standard. This review shall also examine options for including annual standards for MEDs and MLBs in the clean energy standard.

(11) Not later than December 31, 2021, and every ten years thereafter, the Department shall complete a review, including an opportunity for public comment on the program review, of the requirements of 310 CMR 7.75 to determine whether the program should be amended. This review shall evaluate projected clean energy credit supply and costs, and any other information relevant to review of the program.

(12) Inspection and Record Retention.

(a) Document Inspection. The Department may audit the accuracy of all information submitted pursuant to 310 CMR 7.75. The Department may request and obtain from any owner, operator or authorized agent of a clean generation unit or clean existing generation unit, and from any retail seller, information that the Department determines necessary to monitor compliance with and enforcement of 310 CMR 7.75.

(b) Audit and Site Inspection. Upon reasonable notice to a retail seller or to a clean generation unit owner, operator or authorized agent, the Department may conduct audits, which may include inspection and copying of records and/or site visits to a clean energy generation unit or clean existing generation unit, or a retail seller's facilities including, but not limited to, all files and documents that the Department determines are related to compliance with 310 CMR 7.75.

(c) Record Retention. All documentation used to comply with any provision of 310 CMR 7.75 shall be retained for five years and provided to the Department electronically or in hard copy as requested by the Department.

(13) Enforcement.

(a) If a retail seller that is not an MED or MLB does not comply with the requirements of 310 CMR 7.75(4) and (5), then such retail seller shall be deemed to have caused air pollutant emissions releases to the environment without the approval or authorization of the department.

(b) The requirements of 310 CMR 7.75 shall be enforced in accordance with applicable federal and Massachusetts law including, but not limited to, the issuance of an administrative order or civil administrative penalties pursuant to M.G.L. c. 21A, § 16, 310 CMR 5.00: *Administrative Penalty*, M.G.L. c. 111, §§ 2C, 142A through 142E, and M.G.L. c. 21N, § 7(d).