

This stakeholder discussion draft is being provided at this time for the sole purpose of soliciting stakeholder input prior to the development of regulations. Key policy and technical issues are identified within the document. If MassDEP proceeds with this proposed regulation, comments on this discussion draft will be considered in developing regulatory language prior to noticing this regulation for a formal public comment process required by Massachusetts General Law Chapter 30A.

310 CMR 7.77 Reducing Greenhouse Gas (GHG) Emissions From Electricity Generating Facilities Program

(1) Purpose and Scope. The purpose of 310 CMR 7.77 is to limit and reduce GHG emissions, pursuant to the Climate Protection and Green Economy Act, adopted at M.G.L. c. 21N, by establishing a cap on the amount of GHG emissions that may be emitted from the largest electricity generating facilities in Massachusetts. 310 CMR 7.77 accomplishes this by establishing GHG emissions caps for each facility subject to 310 CMR 7.77 and reducing the amount of the GHG emissions caps by 2.5% on an annual basis.

(2) Definitions. The terms used in 310 CMR 7.77: *Reducing GHG Emissions from Stationary Facilities* are defined in 310 CMR 7.77(2) and in 310 CMR 7.00: *Definitions*. Where a term is defined in 310 CMR 7.00: *Definitions* and in 310 CMR 7.77, the definition in 310 CMR 7.77 shall apply.

Actual GHG Emissions means GHG emissions reported to EPA's GHG reporting program. GHG emissions reported to EPA's GHG reporting program are adjusted for the different heat-trapping potential of different gases and expressed in metric tons.

Aggregate GHG Emissions Cap means the maximum aggregate allowable level of GHG that may be emitted from all facilities subject to 310 CMR 7.77, inclusive of new and existing facilities.

Calendar Year means January 1 through December 31.

Commence Commercial Operation means when a facility generates electricity for sale or use, including the sale of test generation.

Designated Representative means the person who has been authorized by the owner or operator of the facility to represent and legally bind the owner or operator in matters pertaining to the 310 CMR 7.77.

Electric Generating Facility, as defined in 40 CFR 98.40, means

(a) Electricity generating units that are subject to the requirements of the Acid Rain Program and any other electricity generating units that are required to monitor and report to EPA CO₂ mass emissions year-round according to 40 CFR part 75.

(b) This source category does not include portable equipment, emergency equipment, or emergency generators, as defined in 40 CFR 98.6.

EPA's GHG Reporting Program means the program the EPA adopted at 40 CFR 98 that requires reporting of annual GHG emissions from facilities greater than 25,000 tons per year of GHG.

Excess GHG Emissions means, for a particular year, the difference between the facility's actual GHG emissions and the facility's GHG emissions cap, provided this difference is greater than zero.

Existing Facility means a facility that is subject to EPA's GHG reporting program as an electricity generating facility, 40 CFR 98 subpart D, and is listed in 310 CMR 7.77(4)(b) Table A.

Facility means any physical property, plant, building, structure, source or stationary equipment located on contiguous or adjacent property that emits or may emit any GHG and is subject to GHG emissions reporting pursuant to 40 CFR Part 98.

GHG Emissions Cap means the maximum allowable amount of GHG emissions that a facility may emit in a calendar year without using over compliance credits.

Greenhouse Gas or GHG means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride.

New Facility Aggregate GHG Emissions Cap means the maximum allowable level of GHG that may be emitted from new facilities.

New Facility means a facility that is an electricity generating facility that emits greater than 25,000 tons of CO₂e, and is not listed in 310 CMR 7.77(4)(b) Table A.

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

Over-Compliance Credit or OCC means credits accrued on the amount of GHG emission reductions below the facility's annual GHG emissions cap or the amount of the new facility aggregate GHG emissions cap that is not assigned to new facilities.

Over-Compliance Credit Registry or OCC Registry means the database that keeps track of the OCCs created and retained by a facility, including serial numbers, and used for compliance. The Department may allow the use of the OCC Registry for other purposes, such as identifying OCCs that may be available for use by other facilities or tracking OCC transfers.

Owner means any of the following persons:

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

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

(3) Applicability. 310 CMR 7.77 applies to any owner or operator of a facility that is subject to EPA's GHG Reporting Program as an electricity generating facility, 40 CFR Part 98 Subpart D, for a particular calendar year.

(4) GHG Emissions Caps.

[NOTE: MASSDEP REQUESTS COMMENT ON ALL ASPECTS OF CAP-SETTING, INCLUDING HOW TO SET STATEWIDE CAPS AND INDIVIDUAL FACILITY CAPS. IN PARTICULAR, MASSDEP REQUESTS COMMENT ON WHETHER IT IS NECESSARY TO SET CAPS FOR NEW FACILITIES OR WHETHER OVER COMPLIANCE CREDITS FROM OTHER FACILITIES SHOULD BE REQUIRED FOR NEW FACILITIES .]

(a) Aggregate GHG Emissions Cap. The annual aggregate GHG emissions cap shall be the sum of the GHG emissions caps listed in 310 CMR 7.77(4)(b) Table A and the new facility aggregate GHG emissions cap, and shall be equal to the following:

1. For calendar year 2018, the aggregate GHG emissions cap shall be 9,119,126 tons of GHG emissions.
2. For each subsequent calendar year, the aggregate GHG emissions cap shall decline by 2.5 % of the 2018 aggregate GHG emissions cap each year until 2050.

(b) GHG Emissions Caps for Existing Facilities for 2018. For calendar year 2018, the owner or operator of an existing facility subject to 310 CMR 7.77 shall not cause the facility to emit GHG in excess of the facility's GHG emissions cap listed in 310 CMR 7.77(4)(b) Table A.

310 CMR 7.77(4)(b) Table A
Facilities and GHG Emissions Caps in Metric Tons

Facility Name	2018
ANP Bellingham Energy Company, LLC	868,974
ANP Blackstone Energy Company, LLC	758,723
Bellingham	265,478
Berkshire Power	434,503
Brayton Point	0
Canal Station	200,157
Cleary Flood	79,907
Dartmouth Power	58,086
Deer Island Treatment	5,821
Dighton	343,757
Fore River Energy Center	1,436,122
Kendall Square	609,597
MASSPOWER	336,828
Medway Station	7,624
Milford Power, LLC	163,849
Millennium Power Partners	654,771
Mystic	1,582,110
Pittsfield Generating	101,134
Potter	34,261
Stony Brook	98,092
Tanner Street Generation	44,426

Waters River	6,959
West Springfield	27,945

(c) GHG Emission Caps for Existing Facilities for 2019 and Subsequent Years. Starting in 2019, and for each subsequent calendar year thereafter until 2050, each GHG emissions cap listed in 310 CMR 7.77(4)(b) Table A shall decline by 2.5% of its 2018 value.

(d) New Facility Aggregate GHG Emissions Cap.

1. The new facility aggregate GHG emissions cap for 2018 shall be 1 million metric tons and shall decline by 2.5 % of 1 million metric tons each subsequent calendar year until 2050.
2. The Department shall assign GHG emissions caps to new facilities in accordance with the process specified in 310 CMR 7.77 (4)(e).
3. The new facility aggregate GHG emissions cap shall be reduced each year by the amount of the GHG emission caps assigned to new facilities, provided that the sum of GHG emissions caps assigned pursuant to 310 CMR 7.77(4)(e) for any year may not exceed the new facility aggregate GHG emission cap for that year.
4. If the process specified in 310 CMR 7.77(4)(e) would otherwise lead to the assignment of GHG emissions caps to new facilities that exceeds the new facility aggregate GHG emissions cap for a particular year, the Department shall proportionally adjust each new facility's GHG emissions cap downward pursuant to the adjustment process specified in 310 CMR 7.77(4)(e)4.a. to ensure compliance with 310 CMR 7.77(4)(a).

(e) New Facilities GHG Emission Caps. After a new facility commences commercial operation and emits greater than 25,000 tons of CO₂e, it shall submit a GHG emissions report pursuant to 310 CMR 7.77(6). Based on the information in the GHG emissions report, the Department shall assign a GHG emissions cap to the newly subject facility in accordance with the following process:

1. For the first, second, and third years after the new facility commences commercial operation, the new facility's cap for each year shall be equal to its actual GHG emissions reported for that year under 310 CMR 7.77(6), except as provided in 310 CMR 7.77(4)(e)4.a.
2. Prior to January 1 of the fourth year after the new facility commences commercial operation, the Department shall assign the new facility a GHG emissions cap that is equal to 0.925 times the facility's average emissions over the first two years that the facility is subject to 310 CMR 7.77.
3. Once the Department assigns a new facility's GHG emissions cap pursuant to 310 CMR 7.77(4)(e)2., the GHG emissions cap shall then decline annually until 2050 by 2.5% of the assigned GHG emissions cap times the ratio of the 2018 new facility aggregate GHG emissions cap to the new facility aggregate GHG emissions cap for the year for which the GHG emissions cap was assigned pursuant to 310 CMR 7.77(e)2. On a case-by-case basis, the Department may use the process specified in 310 CMR 7.77(4)(e) to

address GHG emissions from new emission units at existing facilities by revising the existing facility's GHG emissions cap.

4. By May 1, 2019, and each calendar year thereafter, the Department shall determine the sum of the GHG emissions caps assigned to new facilities pursuant to 310 CMR 7.77(e), including new facilities GHG emissions caps assigned in that year and prior years under 310 CMR 7.77(4)(e), and if the total of the GHG emissions caps does not equal the aggregate new facility GHG emission cap, the Department shall make one of the following adjustments:

a. If the sum of the GHG emissions caps exceeds the new facility aggregate cap in any year, the Department shall adjust all GHG emissions caps assigned pursuant to 310 CMR 7.77(4)(e) downward by the same percentage, as necessary, to avoid exceeding the new facility aggregate GHG emissions cap, and such new facilities may comply with their GHG emissions caps using OCCs created in accordance with 310 CMR 7.77(5).

b. If the sum of the GHG emissions caps is less than the new facility aggregate cap in any year, the Department shall create OCCs in an amount equal to the difference between the sum of the GHG emissions caps and the aggregate new facility emissions cap, and shall deposit the OCCs in the OCC registry accounts of the existing facilities listed in 310 CMR 7.77(4)(b) Table A in proportion to their GHG emissions caps.

[MASSDEP SEEKS COMMENT ON THE PROCESS FOR FINALIZING NEW FACILITY CAPS, INCLUDING THE SCHEDULE AND CRITERIA FOR IDENTIFYING NEW FACILITIES AND ESTABLISHING LEGALLY BINDING CAPS.]

(f) Facilities that are No Longer Subject to 40 CFR Part 98. After a facility that has been subject to 310 CMR 7.77 is no longer subject to 40 CFR Part 98 for a particular calendar year, the Department shall create an amount of over compliance credits equal to that facility's GHG emissions cap and deposit them in the remaining facilities' OCC registry accounts in the following priority order:

1. First, to new facilities to increase any GHG emissions caps that were adjusted downward pursuant to 310 CMR 7.77(4)(e)4.a. to avoid exceeding the new facility aggregate GHG emissions cap.
2. Second, to existing facilities listed in 310 CMR 7.77(4)(b) Table A in proportion to their GHG emissions caps.

(g) Compliance Using Over Compliance Credits (OCCs). The owner or operator of a facility shall not emit GHG emissions in excess of its assigned GHG emissions cap for each year unless the owner or operator offsets the excess GHG emissions with OCCs created under 310 CMR 7.77(5).

(5) Over Compliance Credits (OCCs).

[NOTE: MASSDEP REQUESTS COMMENT ON WHETHER OVER COMPLIANCE CREDITS WILL PROVIDE FOR SUFFICIENT OPERATIONAL FLEXIBILITY, AND WHETHER THE MECHANISM DESCRIBED IN THIS DRAFT REGULATION WILL BE WORKABLE FOR FACILITIES AND MASSDEP.]

(a) Creating Over Compliance Credits.

1. The owner or operator of a facility may create OCCs if the facility's actual GHG emissions are less than its GHG emission cap. The OCCs shall equal the difference between the facility's actual GHG emissions and the facility's GHG emissions cap for that calendar year.
2. In order to use the OCCs for compliance with 310 CMR 7.77(7) or transfer the OCCs to another facility, by May 1, 2019, and each year thereafter, the owner or operator of the facility shall submit a certification to the Department verifying the number of OCCs the facility created in the previous calendar year.
3. The certification shall contain the facility's GHG emission cap for the previous calendar year, the facility's actual GHG emissions from the previous year as reported in EPA's GHG reporting program, a request to establish an account in the OCC registry and the certification statement in 310 CMR 7.77(9)(c) signed by the facility's designated representative.
4. Upon receipt of the certification, the Department shall create an account in the OCC registry for the facility and deposit into the facility's OCC account the number of OCCs created in the previous year. The Department shall assign each OCC an individual serial number.

(b) Use of Over Compliance Credits.

1. The owner or operator of a facility may use OCCs to offset any excess GHG emissions, including OCCs acquired from another facility, as long as those OCCs are transferred into the facility's OCC Registry account pursuant to 310 CMR 7.77(5)(d) prior to the compliance deadline.
2. OCCs may only be used by facilities and may not be used by a facility for any purpose other than satisfying the compliance requirements of 310 CMR 7.77(7).
3. The owner or operator of a facility may retain OCCs in an OCC registry account for use or transfer in future years.

(c) Recording of Over Compliance Credits in the GHG OCC Registry.

1. OCCs exist solely as an accounting mechanism and are not property rights.
2. The owner or operator of each facility must keep records for 5 years for any OCCs created by the facility.
3. The owner or operator of the facility that creates OCCs shall establish an account in the OCC registry.

(d) Transfer of Over Compliance Credits.

1. Any owner or operator of a facility that creates OCCs in accordance with the 310 CMR 7.77(5)(a), may transfer OCCs to another facility by submitting a Notice of Transfer to the Department.

2. The Notice of Transfer shall include the facility's OCC registry account number, the amount of OCCs to be transferred, the serial number of the OCCs to be transferred, the name and account number of the facility acquiring the OCCs, and the certification statement at 310 CMR 7.77(9)(c) signed by the Designated Representative allowing the transfer of OCCs.

(6) GHG Emissions Reporting. By April 15, 2019, and each year thereafter, the owner or operator of a facility shall electronically report to the Department on a form provided by the Department the facility's actual GHG emissions that it reported to EPA in accordance with EPA's GHG Reporting Program. The report shall include:

- (a) The name, address, contact person, and phone number of the facility;
- (b) The name, address, email address and phone number of the owner and operator of the facility;
- (c) The facility's actual GHG emissions for the previous calendar year as reported to EPA's GHG Reporting Program;
- (d) A statement from the Designated Representative stating the following: "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.";
- (e) The name and title of the designated representative; and
- (f) The electronic signature of the designated representative submitting the form.

[NOTE: MASSDEP REQUESTS COMMENT ON WHETHER IT IS APPROPRIATE TO BASE COMPLIANCE ON REPORTS SUBMITTED TO US EPA, OR WHETHER IT MAY BE APPROPRIATE TO EXEMPT CERTAIN EMISSIONS, SUCH AS METHANE EMISSIONS OR EMISSIONS OF BIOGENIC CARBON DIOXIDE.]

(7) Compliance.

(a) Compliance Deadline. By June 15, 2019 and each year thereafter, the owner or operator of a facility subject to 310 CMR 7.77 shall demonstrate compliance with the facility's emission cap by submitting a compliance certification report covering the prior calendar year in accordance with the requirements in 310 CMR 7.77(7)(b).

(b) Compliance Certification Reports. The compliance certification report shall be submitted electronically on form provided by the Department and shall include, but not be limited to the following:

- 1. The name, address, contact person, and phone number of the facility;
- 2. The name, address, email address and phone number of the owner and operator of the facility;
- 3. The facility's GHG emissions cap for the previous calendar year;
- 4. The facility's actual GHG emissions for the previous calendar year as reported to EPA's GHG Reporting Program;

5. The facility's excess GHG emissions;
6. The number of OCCs the facility certified in the previous calendar year;
7. The total number and serial numbers of OCCs in the facility's OCC Registry account that the owner or operator of the facility needs to use to offset its excess GHG emissions, if any;
8. The total number of OCCs remaining in the facility's registry account;
9. A statement from the Designated Representative stating the following: "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.";
10. The name and title of the designated representative; and
11. The electronic signature of the designated representative submitting the form.

(c) Compliance Verification. The Department may verify compliance by whatever means necessary, including but not limited to:

1. Inspection of the facility's operating records;
2. Obtaining information about the creation or transfer of OCCs;
3. Obtaining information about the facility's GHG emissions from EPA's GHG reporting program and the Department's GHG reporting program under 310 CMR 7.71;
4. Testing emission monitoring devices; and
5. Requiring the person who owns or operates the facility to conduct emissions testing under the supervision of the Department.

(8) Recordkeeping. The owner or operator of a facility shall keep all records, data, reports and other information required by 310 CMR 7.77 on site for five years.

(9) Authorized Designated Representative.

(a) Each owner or operator of a facility shall authorize one Designated Representative to act on behalf of the owner or operator with regard to all matters under 310 CMR 7.77.

(b) The designated representative shall submit electronically a Certification of OCCs, a Notice of Transfer of OCCs, a GHG Emissions report, and the Compliance Certification Report in a format prescribed by the Department.

(c) When submitting documents to the Department the designated representative 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."

(10) Penalties and Enforcement.

(a) If the owner or operator of the facility fails to offset any excess emissions by the compliance deadline, then the owner or operator shall be responsible for transferring to the Department three OCCs for every one ton of excess GHG emissions.

(b) The penalty provisions in 310 CMR 7.77(10)(a) are in addition to any applicable enforcement provisions.

(c) The Department shall enforce the requirements of 310 CMR 7.77 in accordance with applicable federal and Massachusetts law, including but not limited to M.G.L. c. 21A, sec.16; M.G.L. c. 111, sec. 2C; M.G.L. c. 111 secs. 142A through 142M; M.G.L. c. 21N sec. 7(d), and 310 CMR 5.00.

(11) Program Review. Not later than December 31, 2021, the Department shall complete a review, including an opportunity for public comment on the program review, of the requirements of 310 CMR 7.77 to determine whether the program should be amended. This review shall evaluate actual GHG Emissions, the emission caps assigned to existing and new facilities, the process for creating OCCs, the number of OCCs created and banked for future use in the OCC registry, costs of OCCs, and any other information relevant to review of the program.