

DOER CO₂ Budget Trading Program Auction Regulation

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13.01: Purpose

The purpose of 225 CMR 13.00 is to establish rules for the conduct of auctions of CO₂ allowances to be administered by the Department of Energy Resources or its agent as part of the Massachusetts component of the CO₂ Budget Trading Program, which is designed to stabilize and then reduce anthropogenic emissions of CO₂, a greenhouse gas, from CO₂ budget sources in an economically efficient manner that minimizes costs to electricity consumers. 225 CMR 13.00 complements the provisions of the Department of Environmental Protection regulation, 310 CMR 7.70.

13.02: Authority

225 CMR 13.00 is promulgated pursuant to the authority of M.G.L. c.25A § 6, and c. 21A § 22.

13.03: Definitions

This regulation incorporates by reference the definitions established in the Department of Environmental Protection Regulations, 310 CMR 7.70. In addition, the following definitions shall apply:

Bidder. A party qualified, pursuant to 225 CMR 13.09, to participate in a CO₂ Allowance Auction.

Clearing Price. The specified monetary value assigned to a CO₂ allowance as determined by the bids of buyers, given the rules and specific format of the auction.

CO₂ Allowance Auction Website. The website containing information regarding the auctions to be conducted pursuant to 225 CMR 13.00. The website shall be available through a link from DOER's main web page at: <http://www.mass.gov/doer/>.

Cost Containment Reserve (CCR). An allocation of CO₂ allowances, separate from and additional to the base annual budget, for the purpose of containing the cost of CO₂ allowances.

Cost Containment Reserve Trigger Price. The minimum price at which CCR allowances are offered for sale in an auction. The CCR trigger price shall be \$4.00 per CCR Allowance for calendar year 2014, \$6.00 per CCR Allowance in calendar year 2015, \$8.00 per CCR Allowance in calendar year 2016 and \$10.00 per CCR Allowance beginning January 1, 2017. Each calendar year thereafter, the CCR trigger price shall be 1.025 multiplied by the CCR trigger price from the previous calendar year, rounded to the nearest whole cent.

Department. The Massachusetts Department of Environmental Protection, established pursuant to M.G.L. c. 21A, § 7.

DOER. Massachusetts Department of Energy Resources, established pursuant to M.G.L. c. 25A, § 1, or its designated agent, pursuant to 225 CMR 13.06(1).

DOER Contact Person. An employee of DOER designated to communicate with the public regarding CO₂ Allowance Auctions as identified in the Guidelines to 225 CMR 13.00.

Guidelines. A set of procedures, including forms, as developed by the DOER to assist in compliance with the requirements of 225 CMR 13.00. The Guidelines may take the form of the Auction Notice, as set forth in 225 CMR 13.07.

Participating State. A state that has established a regulation corresponding to 225 CMR 13.00, or is authorized by law to participate in the CO₂ Budget Trading Program.

RGGI. The Regional Greenhouse Gas Initiative which is a cooperative effort to reduce carbon dioxide emissions by Northeastern and Mid-Atlantic states, as well as other states and jurisdictions should such parties elect to participate. RGGI is supported by the Regional Greenhouse Gas Initiative, Inc., a not for profit corporation formed to provide technical and scientific advisory services to participating states in the development and implementation of the CO₂ Budget Trading Program.

Reserve Price. The minimum acceptable price for each CO₂ allowance in a specific auction. The minimum reserve price in calendar year 2014 shall be \$2.00. Each calendar year thereafter, the minimum reserve price shall be 1.025 multiplied by the minimum reserve price from the previous calendar year, rounded to the nearest whole cent. At an auction in which CCR allowances are sold, the reserve price for the auction shall be the CCR Trigger Price.

Sealed Bid, Uniform Price Auction. 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.

13.04: Multi-State Auction Option

(1) DOER shall participate in a multi-state CO₂ allowance auction or auctions in coordination with other RGGI Participating States, if it determines that (a) a multi-state auction capability and process is in place for the Participating States, (b) the multi-state auction can provide benefits to the Commonwealth that meet or exceed the benefits conferred on the Commonwealth through its own state-run auction process, and (c) the multi-state auction process would be consistent with the process described in 225 CMR 13.00.

(2) Upon making such determination, DOER shall designate an agent, pursuant to 225 CMR 13.06(1), to administer the multi-state auction in a manner consistent with the auction rules and procedures set forth in 225 CMR 13.00.

(3) Such determination to participate in the multi-state auction shall be published no later than 45 days prior to such multi-state auction on the CO₂ Allowance Auction Website.

(4) DOER shall retain control over the proceeds associated with the sale of all of Massachusetts' CO₂ allowances sold in a multi-state CO₂ allowance auction, and will administer the proceeds in accordance with 225 CMR 13.06(9). DOER shall retain its authority to enforce compliance with all sections of 225 CMR 13.00.

13.05: Commencement and Timing of CO₂ Allowance Auctions

(1) Upon notification from the Department that it has transferred CO₂ allowances into the Massachusetts Auction Account as established by the Department under 310 CMR 7.70(5)(c)1.c. ("Auction Account"), DOER shall conduct a series of auctions to sell such CO₂ allowances ("CO₂ Allowance Auctions" or "Auctions") pursuant to 225 CMR 13.00.

(2) Auctions shall be conducted quarterly, but DOER in consultation with the Department, may adjust the frequency of such auctions as it deems necessary to effectuate the objectives of the CO₂ Budget Trading Program, provided at least one auction is conducted annually.

13.06: CO₂ Allowance Auction Procedures

(1) The implementation of any auction conducted pursuant to these regulations may be transferred by DOER to an agent deemed qualified by DOER to conduct such auction, provided that such agent shall perform all such duties under the direction and oversight of DOER.

- (2) The auction format shall be a Sealed Bid, Uniform Price Auction.
- (3) Prior to the end of each Control Period or Interim Control Period, CO₂ allowances in a quantity equal to the number of CO₂ Allowances allocated to the Auction Account for such Control Period will be available for sale. Such CO₂ allowances will be available for sale by allocation year. DOER 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 225 CMR 13.07(1). No more than 50% of the allowances from an allocation year may be available for sale in advance of the respective allocation year, up to four years in advance of such allocation year.
- (4) DOER shall post a calendar of proposed auction dates on the CO₂ Allowance Auction Website. The calendar shall include the auction format and the number of allowances and allocation years of allowances to be auctioned at each auction. DOER may periodically modify the contents of the calendar, provided that the information relevant to the next scheduled auction shall be fixed no later than 45 calendar days prior to such auction, consistent with 225 CMR 13.07(1).
- (5) Auctions of CO₂ allowances shall be held with a reserve price. DOER is not obligated to sell CO₂ allowances if the reserve price is not met.
- (6) Auctions of CO₂ Allowances shall include a Cost Containment Reserve and a CCR Trigger price. CO₂ CCR allowances shall only be sold at an auction in which total demand for allowances, above the CCR trigger price, exceeds the number of CO₂ allowances available for purchase at the auction, not including any CCR allowances.
- (7) No bidder, including any affiliate or agent of such bidder, shall purchase more than 25% of the allowances offered for sale in any one auction. Such limitation shall not be increased by CCR allowances, and shall be published in the Auction Notice pursuant to 225 CMR 13.07.
- (8) DOER may periodically evaluate the auction program performance and may retire any previous allocation year allowances that were offered for sale by auction but were not sold and still remain in the Massachusetts Auction Account.
- (9) Proceeds of such auctions shall be deposited into a special revenue account established on the books of the Commonwealth for such purpose, and shall thereafter be available for expenditure by DOER subject to the approval of the Secretary of the Executive Office of Energy and Environmental Affairs. The proceeds of the auctions shall be used
 - (a) to reimburse a municipality in which the property tax receipts from an electric generating station are reduced, as set forth in M.G.L. c. 21A, § 22(c)(1)(i);
 - (b) to fund the green communities program established in M.G.L. c. 25A, § 10;

- (c) to provide zero interest loans to municipalities, which are not green communities under M.G.L. 25A, § 10, for energy efficiency projects;
- (d) to promote energy efficiency, conservation and demand response; and
- (e) to reimburse the commonwealth for costs associated with the administration of the cap and trade program.

13.07: Auction Notice

- (1) Notice of each auction shall be published no later than 45 calendar days prior to such auction on the CO₂ Allowance Auction Website, and may be transmitted electronically to parties requesting such notification provided they have submitted an e-mail address to the DOER Contact Person.
- (2) Each notice shall include but not be limited to, the following information:
 - (a) Date, time and location of the auction, including the internet address or electronic address for auction location, as applicable,
 - (b) Auction format,
 - (c) Categories of bidders who will be eligible to bid,
 - (d) Quantity and allocation years of Massachusetts CO₂ Allowances to be auctioned,
 - (e) Reserve Price,
 - (f) Quantity and trigger price of Cost Containment Reserve,
 - (g) Required bid format,
 - (h) Instructions for submitting the qualification application,
 - (i) Instructions for submitting acceptable financial surety,
 - (j) Procedures for the conduct of the auction,
 - (k) Participation limitations,
 - (l) Other pertinent rules or procedures of the auction as may be required to ensure a transparent, fair and competitive auction, and
 - (m) Identification of a DOER Contact Person for further information.

13.08: Participant Eligibility

- (1) DOER, in consultation with the Department, shall select from List A below the categories of bidders eligible to participate in each auction, provided, however, that owners of CO₂ budget units located in Massachusetts (“MA CO₂ budget units”) shall be eligible to participate in all auctions.

List A: Categories of bidders:

Category No. 1: Owners of CO₂ budget units located in Massachusetts.

Category No. 2: Owners of CO₂ budget units located outside of the Commonwealth but within those states that have final CO₂ budget

trading rules in place at the time of the auction and are RGGI Participating States.

Category No. 3: Other market participants including but not limited to:

- a. owners of fossil-fuel-fired generation units located outside the participating states;
- b. brokers;
- c. environmental groups;
- d. financial and investment institutions;
- e. generators that do not emit CO₂ or do emit CO₂ but are not subject to the CO₂ Budget trading program in Massachusetts or a Participating State.

(2) DOER may modify the categories of participants as it deems necessary.

13.09: Bid Submittal Requirements

(1) Qualification Application

- (a) Only qualified bidders will be permitted to submit bid(s) or otherwise participate in any auction.
- (b) Any party wishing to participate in a CO₂ Allowance Auction shall open and maintain a compliance or general account and designate a CO₂ authorized account representative pursuant to the provisions in 310 C.M.R. 7.70(6).
- (c) Potential bidders shall submit a qualification application to DOER at least 30 calendar days prior to the bid submittal date of such auction or by such deadline as DOER shall stipulate in the Auction Notice. Qualification applications shall contain the information set forth in 225 CMR 13.09(1) and the Auction Notice, and such applications shall be made available electronically on the CO₂ Allowance Auction Website.
- (d) 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 not be limited to the following:
 1. 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;
 2. Audited annual reports and credit reports of the applicant and/or the entity represented by the applicant;
 3. Corporate Background and Recent Adverse Conditions, which may include:
 - a. 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;
 - b. A statement by applicant as to prior findings of non-responsibility with regard to any State procurement including findings under State law or regulation;

- c. A statement by applicant as to certification under any State Tax registration requirement.
 - d. 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.
 - e. Evidence demonstrating that such applicant has opened a general or compliance account as provided for in the provisions of the CO₂ Program and identification of relationships with any other account holder.
- (e) DOER 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. DOER 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.
- (f) Once an application has been approved, that bidder shall be eligible to participate in all subsequent CO₂ Allowance 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 225 CMR 13.08. If there is any material change to the information submitted in the bidder's qualification application, the qualification expires and a new qualification application must be submitted.
- (h) DOER may suspend or revoke its approval of a qualification application if the bidder fails to comply with 225 CMR 13.09.

(2) Surety Requirement

- (a) 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 DOER. 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 DOER in the event the bidder's offer is accepted in a CO₂ Allowance Auction and the bidder fails to tender payment of the full amount when due.
- (b) Bidders may request return of their surety at any time prior to or following any auction, and the DOER 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 225 CMR 13.09(2) 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 DOER pursuant to the provisions of 225 CMR 13.09.

- (c) The surety requirements of 225 CMR 13.09 may be modified by DOER at any time prior to the applicable auction date, and shall be published no later than 45 calendar days prior to such auction on the CO₂ Allowance Auction Website.
- (d) In the event that DOER modifies the surety requirements, bidders shall meet the new surety requirements before the next auction.

(3) Bid Submittal

- (a) 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.
- (b) All bids shall be in a form prescribed by DOER, which shall be made available electronically on the CO₂ Allowance Auction Website.
- (c) All bids submitted shall be considered binding offers for the purchase of allowances under the rules of the auction.
- (d) All qualified maximum bids shall be limited to the amount of financial surety provided by the qualified bidder pursuant to 225 CMR 13.09(2).
- (e) 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 225 CMR 13.07.
- (f) If DOER 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 225 CMR 13.09, the surety amount may be forfeited to the Commonwealth, and the bidder may be prohibited from participating in any future CO₂ Allowance Auctions.

13.10: Bid Selection

- (1) DOER, in consultation with 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 must agree to provide any data to DOER that DOER deems necessary to support this function and the proper monitoring of such auctions.
- (2) DOER Will Rank All Bids. CO₂ allowances will be sold in the quantities specified in the accepted bids until there are no remaining CO₂ 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 CO₂ allowances requested in all such winning bids exceeds the number of CO₂ allowances remaining, the DOER may award the remaining CO₂ allowances randomly, or based on the pro rata share of the number of CO₂ allowances bid on by each winning bidder.
- (3) The DOER, in consultation with the Department, shall approve or disapprove the outcome of the auction following the completion of the auction event.

13.11: Transfer of CO₂ Allowances

Following approval of the outcome of the auction and upon payment in full of the amount owed by the successful bidders, the DOER shall notify the Department, or its agent, to transfer and record CO₂ allowances into the corresponding bidders' CO₂ Allowance Tracking Account.

13.12: Return of Unsuccessful Bids

Subject to 225 CMR 13.09(2)(b) and 225 CMR 13.09(3)(f), following each auction the DOER will return upon written request all financial securities or payments to unsuccessful bidders and to bidders unwilling to purchase fewer CO₂ allowances than requested in its bid.

13.13: Announcement of Results

The DOER reserves the right to publish the names of qualified bidders, the closing price, and the total quantity of allowances sold at each auction, on the CO₂ Allowance Auction Website.

13.14: Voluntary Renewable Energy (VRE) Accounting

Beginning in 2010 and annually thereafter, DOER shall submit to the Department a report documenting the following:

- (a) The number of Massachusetts RPS-eligible Renewable Energy Certificates purchased voluntarily by retail customers in Massachusetts in the preceding year, in MWh;
- (b) The annual average CO₂ emission rate for all hours of electricity generation in lbs. CO₂/MWh as provided in the most recently available version of the ISO New England Electric Generator Air Emissions Report;
- (c) The total number of CO₂ allowances attributable to such voluntary purchases in Massachusetts of said Massachusetts RPS-eligible Renewable Energy Certificates; and,
- (d) All calculations used to determine the amount referenced in 225 CMR 13.14(c).