Chapter 158: CO2 BUDGET TRADING PROGRAM AUCTION PROVISIONS

SUMMARY: This regulation provides for the administration and implementation by the Department of CO2 allowance auctions and programs to promote the purposes of the Consumer Benefit Account as provided by CO2 Budget Trading Program, 06-096 CMR 156. This regulation complements the provisions of the CO2 Budget Trading Program, which was established by the Department to reduce anthropogenic emissions of CO2, a greenhouse gas, from CO2 budget sources.

1. **Applicability.** This regulation applies to any person who participates in RGGI CO2 allowance auctions.
2. **Definitions**
	1. **Applicant.** “Applicant” means a party submitting an application.
	2. **Ascending price, multiple round auction.** “Ascending price, multiple round auction” means a multiple-round auction starting with an opening price which increases each round by predetermined increments. In each round, bidders offer the quantity they are willing to purchase at the posted price. Rounds continue so long as demand exceeds the quantity offered for sale. At the completion of the final round, the Department or its agent may allocate allowances:
		1. at the final price to remaining bidders and withhold unsold allowances for a future auction;
		2. at the penultimate price, first to final round bidders and then to bidders in the penultimate round in chronological order of bid during the penultimate round for all remaining allowances; or
		3. according to an alternative mechanism designed to effectuate the objectives of this Chapter.
	3. **Beneficial interest.** “Beneficial interest” means profit, benefit, or advantage resulting from the ownership of a CO2 allowance.
	4. **Bidder.** “Bidder” means a party that has met the requirements of subsection 3(C) of this Chapter to participate in an auction.
	5. **CO2allowance auction or auction.** “CO2 allowance auction or auction” means an auction in which the Department or its agent offers CO2 allowances for sale.
	6. **CO2allowance auction website.** “CO2 allowance auction website” means a website established by the Department or its agent that will contain information regarding the CO2 Budget Trading Program and auctions to be conducted pursuant to this Chapter.
	7. **CO2 budget source.** “CO2 budget source” means a source that includes one or more CO2 budget units.
	8. **CO2****budget source compliance account or compliance account.** “CO2 budget source compliance account” or “compliance account” means the account established by the Department or its agent for a CO2 budget source wherein CO2 allowances are held and available for compliance purposes under CO2 Budget Trading Program, 06-096 CMR 156.
	9. **CO2 Budget Trading Program.** “CO2 Budget Trading Program” means a multi-state CO2 air pollution control and emissions reduction program established pursuant to this regulation and corresponding regulations in other states as a means of reducing emissions of CO2 from CO2 budget sources.
	10. **CO2 budget unit**. “CO2 budget unit” means a fossil fuel-fired unit that serves a generator with a nameplate capacity equal to or greater than 25 MW electrical output.
	11. **CO2 cost containment reserve allowance or CO2 CCR allowance.** “CO2 cost containment reserve allowance or CO2 CCR allowance” means a CO2 allowance that is offered for sale at an auction by the Department for the purpose of containing the cost of CO2 allowances. CO2 CCR allowances offered for sale at an auction are separate from and additional to CO2 allowances allocated from the CO2 Budget Trading Program base and adjusted budgets. CO2 CCR allowances are subject to all applicable limitations contained in this Chapter.
	12. **Consumer Benefit Account.** “Consumer Benefit Account” means a general account established by the Department or its agent from which CO2 allowances will be sold or distributed in order to provide funds to encourage and foster the following: promotion of energy efficiency measures, direct mitigation of electricity ratepayer impacts attributable to the implementation of the CO2 Budget Trading Program, promotion of renewable or non-carbon-emitting energy technologies, stimulation or reward of investment in the development of innovative carbon emissions abatement technologies with significant carbon reduction potential, promotion and reward for combined heat and power projects, and/or the administration of Maine’s component of the CO2 Budget Trading Program.
	13. **Control period**. “Control period” means a three-calendar-year time period. The first control period is from January 1, 2009 to December 31, 2011, inclusive. Each subsequent sequential three-calendar-year period is a separate control period. Beginning on January 1, 2015, the first two calendar years of each control period are each defined as an interim control period.
	14. **Cost containment reserve trigger price or CCR trigger price.** “Cost containment reserve trigger price or CCR trigger price” means the minimum price at which CO2 CCR allowances are offered for sale by the Department or its agent at an auction. The CCR trigger price shall be $4.00 per CO2 allowance for calendar year 2014, $6.00 per CO2 allowance in calendar year 2015, $8.00 per CO2 allowance in calendar year 2016, and $10.00 per CO2 allowance in calendar year 2017. Each calendar year thereafter through 2020, 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, as shown in Table 1. The CCR trigger price in calendar year 2021 shall be $13.00. Each calendar year thereafter, the CCR trigger price shall be 1.07 multiplied by the CCR trigger price from the previous calendar year, rounded to the nearest whole cent, as shown in Table 1.

Table 1. CO2 CCR Trigger Price

|  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 | 2026 | 2027 | 2028 | 2029 | 2030 |
| $10.25 | $10.51 | $10.77 | $13.00 | $13.91 | $14.88 | $15.92 | $17.03 | $18.22 | $19.50 | $20.87 | $22.33 | $23.89 |

* 1. **Current Market Price**. “Current Market Price” means the volume-weighted average of (1) transaction prices reported to the Department or its agent, (2) prices as reported publicly through reputable sources, (3) CO2 allowance award price(s) from preceding CO2 Allowance Auctions, or (4) any combination of these options.
	2. **Efficiency Maine Trust.** “Efficiency Maine Trust” means the trust established by the *Efficiency Maine Trust Act*, 35-A M.R.S. §10103 that is authorized to receive revenue resulting from the sale of CO2 allowances, deposit those allowances in the Regional Greenhouse Gas Initiative Trust Fund and expend that revenue in accordance with 35-A M.R.S. §10109.
	3. **General account.** “General account” means a CO2 allowance tracking system account, established under 06-096 CMR 156 (7), that is not a compliance account.
	4. **Minimum Reserve Price or MRP.** The “Minimum Reserve Price” or “MRP” 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.
	5. **Notice of CO2 allowance auction or Auction Notice.** “Notice of CO2 allowance auction” or “Auction Notice” means the notification prior to each CO2 allowance auction that will inform potential bidders of the date, time and location of the auction.
	6. **Participating state.** “Participating state” means a state that has established a corresponding regulation as part of the CO2 Budget Trading Program.
	7. **Reserve price.** “Reserve Price” means the minimum acceptable price for each CO2 allowance in a specific auction. The reserve price at an auction is either the minimum reserve price or the CCR trigger price, as specified in CO2 Budget Trading Program, 06-096 CMR 156(2)(G).
	8. **Regional Greenhouse Gas Initiative or RGGI.** “Regional Greenhouse Gas Initiative” or “RGGI” means the ongoing cooperative effort by the states of Maine, New Hampshire, Vermont, Connecticut, New Jersey, New York, Massachusetts, Rhode Island, Maryland and Delaware and such other states as may in the future become a part of the program to design and implement, using each state’s individual sovereign authority, a regional CO2 cap-and-trade program covering CO2 emissions from CO2 budget units in the signatory states.
	9. **Regional Greenhouse Gas Initiative Trust Fund.** “Regional Greenhouse Gas Initiative Trust Fund” means the non-lapsing fund established by the *Efficiency Maine Trust Act,* 35-A M.R.S. §10109(2) and administered by the Efficiency Maine Trust to support the goals and implementation of the CO2 Budget Trading Program, into which revenue resulting from the sale of CO2 allowances shall be deposited.
	10. **Uniform-price, sealed-bid auction.** “Uniform-price, sealed-bid auction” means a single round sealed-bid auction in which bidders may submit multiple bids at different prices; the price paid by all awarded bidders with the highest bid for the available allowances is equal to the highest rejected bid.
1. **CO2 Allowance Auction Provisions**
	1. **The Consumer Benefit Account**
		1. The Department will establish and administer the Consumer Benefit Account in accordance with CO2 Budget Trading Program 06-096 CMR 156 (2)(F).
		2. CO2 allowances allocated to the State will be held in the Consumer Benefit Account and made available for sale in CO2 allowance auctions as described in this Chapter.
		3. The proceeds from the auctions of Maine’s CO2 allowances will be received by the Efficiency Maine Trust and deposited into the Regional Greenhouse Gas Initiative Trust Fund, in accordance with 35-A M.R.S. §10109(2).
	2. **Implementation and administration of CO2 Allowance Auctions**
		1. The Department or its agent will conduct auctions to sell CO2 allowances allocated into the Consumer Benefit Account, pursuant to this Chapter.
		2. The Department will design, implement and administer CO2 Allowance Auctions, or contract for these services, in accordance with the objectives identified in CO2 Budget Trading Program, 06-096 CMR 156, this Chapter, and as provided by law.
		3. The Department or its agent intends to conduct or participate in any of the following, or a combination thereof:
			1. a multi-state CO2 allowance auction or auctions;
			2. an auction or auctions coordinated with one or more participating states; or
			3. a Maine state auction.
		4. The Department or its agent intends to hold auctions at least annually; auctions may be held as often as practical and necessary to effectuate the objectives of the CO2 Budget Trading Program, at the Department or its agent’s discretion.
		5. Prior to the end of each control period, CO2 allowances in a quantity equal to the number of CO2 allowances allocated to the Consumer Benefit Account for such control period will be made available for sale.
		6. Prior to any auction, the Department or its agent may set a binding reserve price to be accepted for CO2 allowances in such auction. The reserve price will be disclosed to prospective bidders prior to the auction.
		7. Any CO2 allowances left unsold in any auction may be made available for sale in a subsequent auction or auctions, in quantities and in a manner determined by the Department or its agent.
		8. In conducting CO2 allowance auctions, the Department or its agent may employ any of the following auction formats, or an auction format consisting of any or all of the components thereof:
			1. Uniform-price sealed-bid; or
			2. Ascending price, multiple-round.
		9. Notice of Auctions
			1. A notice of CO2 allowance auction (“notice”) will be published on the CO2 Allowance Auction Website or the Department website at least 45 days prior to the date upon which each auction will be conducted. Such notices may be transmitted electronically to parties requesting such notification.
			2. Each notice will provide a specific description of the auction format for each auction, including all auction participation requirements, and will include but not be limited to the following information:
				1. date and time of the auction;
				2. location and/or electronic address of auction;
				3. number and vintage of CO2 allowances to be auctioned;
				4. bid format;
				5. pre-qualification instructions and application form or electronic address of on-line application form;
				6. the terms and conditions that will govern auction transactions;
				7. other pertinent rules of the auction; and
				8. identification of a Department Contact Person.
	3. **Participation Eligibility and Requirements**
		1. The auction or auctions will be open to participation by all individuals or entities that meet the financial requirements of this subsection.
		2. Any party wishing to participate in a CO2 Allowance Auction shall first:
			1. open and maintain a compliance or general account in Maine or any other participating state pursuant to the provisions in CO2 Budget Trading Program 06-096 CMR 156 or comparable regulations in another participating state;
			2. submit a completed application to the Department or its agent in the format and manner provided in the notice on or before the application deadline specified in the notice of CO2 allowance auction; and
				1. Application information and forms will be made available electronically on the CO2 allowance auction website or the Department website. As part of the application, an applicant shall provide information and documentation, as specified in the application, relating to the applicant’s ability and authority to execute bids and honor contractual obligations. Information and documentation sought in the application may include but may not necessarily be limited to:

 information and documentation regarding the corporate identity, ownership, and capital structure of the bidder;

declaration of any beneficial interest of any allowance that may be acquired through the auction;

the identification of any indictment or felony conviction of the bidder, corporate officers, directors, principals or partners of the applicant; or

the identification of any previous or pending investigation with respect to any alleged violation of any rule, regulation or law associated with any commodity market or exchange.

*NOTE: All information and data submitted in an application will be governed by the provisions of the Freedom of Access Act, Title 1 M.R.S. Section 400 et seq., as amended.  If an applicant believes its application contains information exempt from the definition of “public records,” 1 M.R.S. §402(3), it should put the Department on notice as to that claim by conspicuously marking such documents as “claimed confidential.”  The Department will handle such documents in accordance with its standard operating procedures governing potentially confidential records under the Freedom of Access Act.*

* + - * 1. Failure to provide any information required by the application form may result in its being returned as incomplete. Any prospective bidder whose application is determined to be incomplete will be given a reasonable opportunity, in no event less than 10 business days, to provide additional information to cure any deficiencies.
				2. Prospective bidders that qualify for participation under this subsection will be qualified for all subsequent CO2 allowance auctions and may bid in such auctions, provided that such party has complied with the financial security requirements of this subsection. The Department or its agent may require applicants previously found qualified to update and re-file applications on an annual basis, or other timeframe as deemed appropriate by the Department.
				3. In order to participate in any CO2 allowance auction, prior to that auction, a prospective bidder that has qualified under this subsection must notify the Department or its agent of its intent to participate in the upcoming auction. This notification shall include either a signed statement that there has been no change to the information provided in the bidder’s application, or a revised application if changes have occurred.
				4. The Department or its agent may suspend or revoke its approval of an application if the bidder fails to comply with this Chapter and/or the provisions of CO2 Budget Trading Program, 06-096 CMR 156. A decision under this subsection is final agency action.
			1. provide financial security in the form of a bond, cash in the form of a wire transfer or certified funds, or an irrevocable letter of credit.
				1. Bids in any auction may be limited to the level of financial security provided by the bidder.
				2. Financial security may be forfeited to and retained by the Department or its agent 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.
				3. Bidders may request return of their financial security at any time prior to or following any CO2 allowance auction, and the Department or its agent shall return said financial security provided that the Department or its agent has no current or pending claim to such security as a result of a failure of the bidder to comply with these regulations or to pay the full amount of its accepted bid when due.
			2. If the Department or its agent determines that a bidder has provided false or misleading information, or has withheld pertinent information in its application, or has otherwise failed to comply with any material provision of this Chapter, the bidder may be prohibited from participating in any future CO2 allowance auctions. A decision under this subsection is a final agency action.
			3. Any applicant or bidder that has been found to have violated any rule, regulation, or law associated with any commodity market or exchange may be precluded from participation in CO2 allowance auctions. A decision under this subsection is a final agency action.
	1. **Auction Bids and Transfer of Allowances**
		1. All bids shall be in a form prescribed by the Department or its agent, which shall be made available electronically on the CO2 Allowance Auction Website, as appropriate. All bids submitted will be considered binding offers for the purchase of allowances under the rules of the auction.
		2. No bidder or combination of bidders that have related beneficial interests may bid on more than 25% of the allowances available for sale in any given auction.
		3. Successful bidders must submit payment in full to the Department or its agent in accordance with the deadline specified in each Auction Notice.
		4. Upon receipt of payment the Department or its agent shall transfer or have transferred the corresponding CO2 allowances to the successful bidder’s compliance or general account in accordance with CO2 Budget Trading Program, 06-096 CMR 156 (8)(B) and (C).
		5. Within 10 days of the auction certification the Department or its agent shall publish the auction clearing price and the total number of allowances sold in such auction on the CO2 Allowance Auction Website.

STATUTORY AUTHORITY:

 38 M.R.S. §§ 585-A, 580, 580-A, 580-B, and 580-C

EFFECTIVE DATE:

July 22, 2008 – filing 2008-318

AMENDED:

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