



COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF
ENERGY AND ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENERGY RESOURCES
100 CAMBRIDGE ST., SUITE 1020
BOSTON, MA 02114
Telephone: 617-626-7300
Facsimile: 617-727-0030

Deval L. Patrick
Governor

Richard K. Sullivan, Jr.
Secretary

Mark D. Sylvia
Commissioner

August 19, 2013

VIA HAND DELIVERY

Steven T. James
Clerk of the House of Representatives
24 Beacon Street, Room 145
State House
Boston, MA 02133

RE: Proposed Amendments to 225 CMR 13.00

Dear Clerk James:

In accordance with M.G.L. c.25A, §12, the Department of Energy Resources (“DOER”) submits the attached amendments to 225 CMR 13, *DOER CO₂ Budget Trading Program Auction Regulation*. These proposed amendments implement the changes announced by Governor Patrick on February 7th to revise the Regional Greenhouse Gas Initiative (RGGI), a cap and trade program designed to reduce emissions of carbon dioxide from large fossil fuel fired electric generating units in the Northeast. Massachusetts’ participation in RGGI and the DOER’s CO₂ Budget Trading Program were originally authorized by legislature through the Green Communities Act of 2008.

These proposed revisions to 225 CMR 13.00 are being submitted to your office for referral to the Joint Committee on Telecommunications, Utilities and Energy, after complying with all applicable provisions of G.L. c. 30A. Also enclosed herewith is a document summarizing the proposed changes to the regulations, as required by M.G.L. c.25A, §12.

Very truly yours,

Mark D. Sylvia
Commissioner

Enclosures

225 CMR 13.00, *DOER CO₂ Budget Trading Program Auction Regulation*

The Department of Energy Resources (DOER) is proposing to amend 225 CMR 13.00, DOER CO₂ Budget Trading Program Auction Regulation.¹ The Department of Environmental Protection is concurrently proposing to amend regulation 310 CMR 7.70, the Massachusetts CO₂ Budget Trading Program. These proposed amendments implement the changes announced by Governor Patrick on February 7th to revise the Regional Greenhouse Gas Initiative (RGGI) program by reducing the regional cap to 91 million tons per year, and implementing programmatic changes, including the auction process, consistent with a model rule² developed by the nine RGGI states.³ RGGI is a cap and trade program designed to reduce emissions of carbon dioxide (CO₂) from large fossil fuel fired electric generating units in the region, including 28 large, fossil-fueled power plants in Massachusetts. The proposed amendments to both sets of regulations include:

- Lowering the MA base budget by 40% for the years 2014-2020
- Further adjustments to MA base budget for 2014-2020 to account for allowances already held by regulated facilities and private entities
- A Cost Containment Reserve to mitigate price spikes by providing a limited quantity of allowances in addition to the cap if certain price thresholds are exceeded
- Updates to the RGGI offsets program, including a new forestry protocol
- An Interim Compliance Periods to require partial compliance in the first two years of each three year control period
- Administrative updates including documents incorporated by reference

The overall changes to the RGGI program will cause real reductions in greenhouse gas emissions and, in accordance with the Green Communities Act, the economic proceeds will be invested in programs to promote energy efficiency, conservation and demand response. These proposed changes were developed through a regional stakeholder process. The RGGI program review was a rigorous and comprehensive evaluation, supported by an extensive stakeholder process that engaged the regulated community, environmental, consumer and industry advocates, and other interested stakeholders.

Specific changes to the DOER regulations include administrative changes to the auction format, including the creation of a Cost Containment Reserve and the specification of a reserve price. Similar regulatory changes are being made in each of the RGGI states to realign the RGGI regional emission cap with current emission levels and to simplify, strengthen, and improve the effectiveness of the RGGI program. Each of the RGGI states must adopt the proposed amendments so that the state programs are consistent. The completion of this regulation is time sensitive and must be final by January 1, 2014, in order for Massachusetts to join the first RGGI quarterly auction for 2014.

¹ MassDEP and DOER's CO₂ Budget Trading Program regulations were authorized by the Green Communities Act of 2008, through a new Section 22 of G.L. Chapter 21A.

² See, http://rggi.org/docs/ProgramReview/FinalProgramReviewMaterials/Model_Rule_FINAL.pdf

³ There are nine states currently participating in RGGI: CT, DE, ME, MD, MA, NH, NY, RI, and VT.

HOUSE No. 3633

Communication from the Division of Energy Resources of the Executive Office of Energy and Environmental Affairs (under the provisions of section 12 of Chapter 25A of the General Laws) submitting amendments to 225 CMR 13, DOER CO2 Budget Trading Program Auction Regulation. Telecommunications, Utilities and Energy.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

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. This regulation

22 complements the provisions of the Department of Environmental Protection regulation, 310
23 CMR 7.70.

24 13.02: Authority

25 225 CMR 13.00 is promulgated pursuant to the authority of M.G.L. c.25A § 6 and § 13,
26 and c. 21A § 22.

27 13.03: Definitions

28 This regulation incorporates by reference the definitions established in the

29 Department of Environmental Protection Regulations, 310 CMR 7.70. In addition, the
30 following definitions shall apply:

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

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

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

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

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

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

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

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

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

55 Participating State. A state that has established a regulation corresponding to 225 CMR
56 13.00, or is authorized by law to participate in the CO2 Budget Trading Program.

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

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

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

71 13.04: Multi-State Auction Option

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

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

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

83 (4) DOER shall retain control over the proceeds associated with the sale of all of
84 Massachusetts' CO2 allowances sold in a multi-state CO2 allowance auction, and will administer
85 the proceeds in accordance with 225 CMR 13.06(10). DOER shall retain its authority to enforce
86 compliance with all sections of 225 CMR 13.00.

87 13.05: Commencement and Timing of CO2 Allowance Auctions

88 (1) Upon notification from the Department that it has transferred CO2 allowances into
89 the Massachusetts Auction Account as established by the Department under 310 CMR
90 7.70(5)(c)1.c. (“Auction Account”), DOER shall conduct a series of auctions to sell such CO2
91 allowances (“CO2 Allowance Auctions” or “Auctions”) pursuant to 225 CMR 13.00.

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

96 13.06: CO2 Allowance Auction Procedures

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

101 (2) The auction format shall be a Sealed Bid, Uniform Price Auction.

102 (3) Prior to the end of each Control Period or Interim Control Period, CO2 allowances in
103 a quantity equal to the number of CO2 Allowances allocated to the Auction Account for such
104 Control Period will be available for sale. Such CO2 allowances will be available for sale by
105 allocation year. DOER may require that allowances are sold in minimum lot sizes. In such
106 event, such lot sizes shall be published in the Auction Notice pursuant to 225 CMR 13.07(1). No
107 more than 50% of the allowances from an allocation year may be available for sale in advance of
108 the respective allocation year, up to four years in advance of such allocation year.

109 (4) DOER shall post a calendar of proposed auction dates on the CO2 Allowance Auction
110 Website. The calendar shall include the auction format and the number of allowances and
111 allocation years of allowances to be auctioned at each auction. DOER may periodically modify
112 the contents of the calendar, provided that the information relevant to the next scheduled auction
113 shall be fixed no later than 45 calendar days prior to such auction, consistent with 225 CMR
114 13.07(1).

115

116 (5) Auctions of CO2 allowances shall be held with a reserve price. DOER is not
117 obligated to sell CO2 allowances if the reserve price is not met.

118 (6) Auctions of CO2 Allowances shall include a Cost Containment Reserve and a CCR
119 Trigger price. CO2 CCR allowances shall only be sold at an auction in which total demand for

120 allowances, above the CCR trigger price, exceeds the number of CO2 allowances available for
121 purchase at the auction, not including any CCR allowances.

122 (7) No bidder, including any affiliate or agent of such bidder, shall purchase more than
123 25% of the allowances offered for sale in any one auction. Such limitation shall not be increased
124 by CCR allowances, and shall be published in the Auction Notice pursuant to 225 CMR 13.07.

125 (8) DOER may periodically evaluate the auction program performance and may retire
126 any previous allocation year allowances that were offered for sale by auction but were not sold
127 and still remain in the Massachusetts Auction Account.

128 (9) Proceeds of such auctions shall be deposited into a special revenue account
129 established on the books of the Commonwealth for such purpose, and shall thereafter be
130 available for expenditure by DOER subject to the approval of the Secretary of the Executive
131 Office of Energy and Environmental Affairs. The proceeds of the auctions shall be used

132 (a) to reimburse a municipality in which the property tax receipts are reduced as a result
133 of the mandates of RGGI or the regulation of carbon dioxide emissions from electric generating
134 stations;

135 (b) to promote energy efficiency, conservation, and demand response;

136 (c) to directly mitigate electricity ratepayer impacts; and

137 (d) to promote renewable non-carbon emitting technologies. Costs to the Commonwealth
138 associated with participation in the CO2 Budget Trading Program including all costs for
139 administration of the CO2 Allowance Auctions and maintenance of necessary database
140 platforms, technical support, or market monitoring, shall be reimbursed from the special revenue
141 account.

142 13.07: Auction Notice

143 (1) Notice of each auction shall be published no later than 45 calendar days prior to such
144 auction on the CO2 Allowance Auction Website, and may be transmitted electronically to parties
145 requesting such notification provided they have submitted an e-mail address to the DOER
146 Contact Person.

147 (2) Each notice shall include but not be limited to, the following information:

148 (a) Date, time and location of the auction, including the internet address or electronic
149 address for auction location, as applicable,

150 (b) Auction format,

151 (c) Categories of bidders who will be eligible to bid,

- 152 (d) Quantity and allocation years of Massachusetts CO2 Allowances to be auctioned,
153 (e) Reserve Price,
154 (f) Quantity and trigger price of Cost Containment Reserve,
155 (g) Required bid format,
156 (h) Instructions for submitting the qualification application,
157 (i) Instructions for submitting acceptable financial surety,
158 (j) Procedures for the conduct of the auction,
159 (k) Participation limitations,
160 (l) Other pertinent rules or procedures of the auction as may be required to ensure a
161 transparent, fair and competitive auction, and
162 (m) Identification of a DOER Contact Person for further information.

163 13.08: Participant Eligibility

164

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

169 List A: Categories of bidders:

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

171 Category No. 2: Owners of CO2 budget units located outside of the Commonwealth but
172 within those states that have final CO2 budget trading rules in place at the time of the auction
173 and are RGGI Participating States.

174 Category No. 3: Other market participants including but not limited to: a. owners of
175 fossil-fuel-fired generation units located outside the participating states;

176 b. brokers;

177 c. environmental groups;

178 d. financial and investment institutions;

179 e. generators that do not emit CO₂ or do emit CO₂ but are not subject to the CO₂ Budget
180 trading program in Massachusetts or a Participating State.

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

182 13.09: Bid Submittal Requirements

183 (1) Qualification Application

184 (a) Only qualified bidders will be permitted to submit bid(s) or otherwise participate in
185 any auction.

186 (b) Any party wishing to participate in a CO₂ Allowance Auction shall open and
187 maintain a compliance or general account and designate a CO₂ authorized account representative
188 pursuant to the provisions in 310 C.M.R. 7.70(6).

189 (c) Potential bidders shall submit a qualification application to DOER at least 30
190 calendar days prior to the bid submittal date of such auction or by such deadline as DOER shall
191 stipulate in the Auction Notice. Qualification applications shall contain the information set forth
192 in 225 CMR 13.09(1) and the Auction Notice, and such applications shall be made available
193 electronically on the CO₂ Allowance Auction Website.

194 (d) The applicant shall provide information and documentation relating to its corporate
195 structure, financial ability to participate in the auction and authority to execute bids and honor
196 contractual obligations. Such information may include, but not be limited to the following:

197 1. Documentation regarding the corporate identity, ownership, and capital structure of the
198 applicant; identification of any agency relationship between the applicant and any third party
199 related to the auction;

200 2. Audited annual reports and credit reports of the applicant and/or the entity represented
201 by the applicant;

202 3. Corporate Background and Recent Adverse Conditions, which may include:

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

205 b. A statement by applicant as to prior findings of non-responsibility with regard to any
206 State procurement including findings under State law or regulation;

207 c. A statement by applicant as to certification under any State Tax registration
208 requirement.

209 d. Identification of any previous or pending investigation with respect to any alleged
210 violation any rule, regulation, or law associated with any commodity market or exchange.

211 e. Evidence demonstrating that such applicant has opened a general or compliance
212 account as provided for in the provisions of the CO2 Program and identification of relationships
213 with any other account holder.

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

223 (f) Once an application has been approved, that bidder shall be eligible to participate in
224 all subsequent CO2 Allowance Auctions, provided there has been no material change to the
225 information provided in the qualification application, and provided that the applicant meets the
226 eligibility criteria of 225 CMR 13.08. If there is any material change to the information
227 submitted in the bidder's qualification application, the qualification expires and a new
228 qualification application must be submitted.

229 (h) DOER may suspend or revoke its approval of a qualification application if the bidder
230 fails to comply with 225 CMR 13.09.

231 (2) Surety Requirement

232 (a) Bidders shall be required to provide financial surety in the form of a bond, cash,
233 certified funds, or an irrevocable stand-by letter of credit, in a form acceptable to the DOER. A
234 bidder's eligibility to bid in any auction shall be limited to the level of financial security
235 provided. Financial surety may be forfeited to and retained by the DOER in the event the
236 bidder's offer is accepted in a CO2 Allowance Auction and the bidder fails to tender payment of
237 the full amount when due.

238 (b) Bidders may request return of their surety at any time prior to or following any
239 auction, and the DOER shall return said surety provided that the Commonwealth has no current
240 or pending claim to such surety as a result of a failure of the bidder to comply with 225 CMR
241 13.09(2) or to pay the full amount of its accepted bid when due. Return of such surety to the
242 bidder voids the bidder's ability to participate in subsequent auctions unless a new surety is
243 submitted to the DOER pursuant to the provisions of 225 CMR 13.09.

244 (c) The surety requirements of 225 CMR 13.09 may be modified by DOER at any time
245 prior to the applicable auction date, and shall be published no later than 45 calendar days prior to
246 such auction on the CO2 Allowance Auction Website.

247 (d) In the event that DOER modifies the surety requirements, bidders shall meet the new
248 surety requirements before the next auction.

249

250 (3) Bid Submittal

251 (a) Once an application has been approved, and provided there has been no material
252 change to the information provided in the application, bidders seeking to bid in any subsequent
253 auction shall complete and submit an Intent to Bid on or before the deadline specified in the
254 Auction Notice.

255 (b) All bids shall be in a form prescribed by DOER, which shall be made available
256 electronically on the CO2 Allowance Auction Website.

257 (c) All bids submitted shall be considered binding offers for the purchase of allowances
258 under the rules of the auction.

259 (d) All qualified maximum bids shall be limited to the amount of financial surety
260 provided by the qualified bidder pursuant to 225 CMR 13.09(2).

261 (e) Bids shall be submitted on-line and shall conform to the format and protocol of bid
262 submission as set forth in the Auction Notice pursuant to 225 CMR 13.07.

263 (f) If DOER determines that a bidder has provided false or misleading information, fails
264 to honor an accepted bid, or has withheld pertinent information in its qualification
265 documentation, or has otherwise failed to comply with any material provision of 225 CMR
266 13.09, the surety amount may be forfeited to the Commonwealth, and the bidder may be
267 prohibited from participating in any future CO2 Allowance Auctions.

268

269 13.10: Bid Selection

270 (1) DOER, in consultation with the Department, may employ a market monitor to
271 observe the conduct and outcome of each auction. As a condition to participation in any auction,
272 bidders must agree to provide any data to DOER that DOER deems necessary to support this
273 function and the proper monitoring of such auctions.

274 (2) DOER

275 Will Rank All Bids. CO2 allowances will be sold in the quantities specified in the
276 accepted bids until there are no remaining CO2 allowances available for the specified auction. In
277 the event that there is more than one winning bidder submitting the same price and the total
278 number of CO2 allowances requested in all such winning bids exceeds the number of CO2

279 allowances remaining, the DOER may award the remaining CO2 allowances randomly, or based
280 on the pro rata share of the number of CO2 allowances bid on by each winning bidder.

281 (3) The DOER, in consultation with the Department, shall approve or disapprove the
282 outcome of the auction following the completion of the auction event.

283 13.11: Transfer of CO2 Allowances

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

287 13.12: Return of Unsuccessful Bids

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

291 13.13: Announcement of Results

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

295 13.14: Voluntary Renewable Energy (VRE) Accounting

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

298 (a) The number of Massachusetts RPS-eligible Renewable Energy Certificates
299 purchased voluntarily by retail customers in Massachusetts in the preceding year, in MWh;

300 (b) The annual average CO2 emission rate for all hours of electricity generation in lbs.
301 CO2/MWh as provided in the most recently available version of the ISO New England Electric
302 Generator Air Emissions Report;

303 (c) The total number of CO2 allowances attributable to such voluntary purchases in
304 Massachusetts of said Massachusetts RPS-eligible Renewable Energy Certificates; and,

305 (d) All calculations used to determine the amount referenced in 225 CMR 13.14(c).