

250-RICR-120-05-47

## **TITLE 250 – DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

### **CHAPTER 120 – OFFICE OF AIR RESOURCES**

#### **SUBCHAPTER 05 – AIR POLLUTION CONTROL**

##### **PART 47 – CO<sub>2</sub> Budget Trading Program Allowance Distribution**

### **47.1 Purpose and Authority**

#### **47.1.1 Purpose**

The purpose of this regulation is to establish rules for administration of the distribution of CO<sub>2</sub> allowances as part of Rhode Island's component of the CO<sub>2</sub> Budget Trading Program. The CO<sub>2</sub> Budget Trading Program is designed to reduce anthropogenic emissions of CO<sub>2</sub>, a greenhouse gas, from CO<sub>2</sub> budget sources. The distribution of allowances is to be managed in an economically efficient manner that maximizes Rhode Island's contribution to lowering carbon emissions while minimizing impacts on electric system reliability and costs to Rhode Island power consumers over the long term. This regulation complements the provisions of [Part 46](#) of this Subchapter (CO<sub>2</sub> Budget Trading Program).

#### **47.1.2 Authority**

These regulations are authorized pursuant to R.I. Gen. Laws § 42-17.1-2(19) and R.I. Gen. Laws Chapters 23-23, and 23-82 and have been promulgated pursuant to the procedures set forth in the Rhode Island Administrative Procedures Act, R.I. Gen. Laws Chapter 42-35.

### **47.2 Application**

The terms and provisions of this regulation shall be liberally construed to permit the Department to effectuate the purposes of state laws, goals and policies.

### **47.3 Severability**

If any provision of this regulation or the application thereof to any person or circumstance, is held invalid by a court of competent jurisdiction, the validity of the remainder of the regulation shall not be affected thereby.

## 47.4 Definitions

- A. Unless otherwise expressly defined in this section, the terms used in this regulation shall be defined by reference to [Part 0](#) of this Subchapter (General Definitions). As used in this regulation, the following terms shall, where the context permits, be construed as follows:
1. “Account” means the Rhode Island auction/sale account to be established by the Department into which Rhode Island CO<sub>2</sub> allowances shall be allocated.
  2. “Agent” means an independent contractor, United States Environmental Protection Agency (USEPA), consumer trustee, or other entity including a regional entity.
  3. “Applicant” means a party submitting a qualification application.
  4. “Application” means the application that a prospective bidder or buyer must complete to participate in an auction or sale.
  5. “Auction” means an auction in which the Department or its agent offers CO<sub>2</sub> allowances for sale.
  6. “Beneficial interest” means profit, benefit, or advantage resulting from the ownership of a CO<sub>2</sub> allowance.
  7. “Central auction website” means a website containing information regarding the CO<sub>2</sub> Budget Trading Program and auctions to be conducted pursuant to this regulation.
  8. “CO<sub>2</sub> budget trading program” means a multi-state CO<sub>2</sub> 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 CO<sub>2</sub> from CO<sub>2</sub> budget sources.
  9. “Compliance account” means a compliance account established under [Part 46](#) of this Subchapter (CO<sub>2</sub> Budget Trading Program).
  10. “Control period” means the control period established in [Part 46](#) of this Subchapter (CO<sub>2</sub> Budget Trading Program).
  11. “CO<sub>2</sub> cost containment reserve allowance” or “CO<sub>2</sub> CCR allowance” means a CO<sub>2</sub> allowance that is offered for sale at an auction by the Department or its agent for the purpose of containing the cost of CO<sub>2</sub> allowances. CO<sub>2</sub> CCR allowances offered for sale at an auction are

separate from and additional to CO<sub>2</sub> allowances allocated from the Rhode Island CO<sub>2</sub> Budget Trading Program base and adjusted budgets. CO<sub>2</sub> CCR allowances are subject to all applicable limitations contained in this Part.

12. "CO<sub>2</sub> cost containment reserve trigger price" or "CCR trigger price" means the minimum price at which CO<sub>2</sub> CCR allowances are offered for sale by the Department or its agent at an auction. The CCR trigger price shall be \$10.00 per CO<sub>2</sub> 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. 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 cent, as shown in § 47.4(A)(12)(a) of this Part (Table 1):

a. Table 1

| CO <sub>2</sub> 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 |

13. "CO<sub>2</sub> emissions containment reserve allowance" or "CO<sub>2</sub> ECR allowance" means a CO<sub>2</sub> allowance that is withheld from sale at an auction by the Department or its agent for the purpose of additional emission reduction in the event of lower than anticipated emission reduction costs.
14. "CO<sub>2</sub> emissions containment reserve trigger price" or "ECR trigger price" means the price below which CO<sub>2</sub> allowances will be withheld from sale by the Department or its agent at an auction. The ECR trigger price in calendar year 2021 shall be \$6.00. Each calendar year thereafter, the ECR trigger price shall be 1.07 multiplied by the ECR trigger price from the previous calendar year, rounded to the nearest whole cent, as shown in § 47.4(A)(14)(a) of this Part (Table 2):

a. Table 2

| CO <sub>2</sub> ECR Trigger Price |        |        |        |        |        |        |        |        |         |
|-----------------------------------|--------|--------|--------|--------|--------|--------|--------|--------|---------|
| 2021                              | 2022   | 2023   | 2024   | 2025   | 2026   | 2027   | 2028   | 2029   | 2030    |
| \$6.00                            | \$6.42 | \$6.87 | \$7.35 | \$7.86 | \$8.41 | \$9.00 | \$9.63 | \$0.30 | \$11.02 |

15. "Current market price" means the volume-weighted average of:
  - a. Transaction prices reported to the Department or its agent,
  - b. Prices as reported publicly through reputable sources,
  - c. CO<sub>2</sub> allowance award price(s) from preceding CO<sub>2</sub> allowance auction(s), or
  - d. Any combination of these options.
16. "General account" means a general account established under [Part 46](#) of this Subchapter (CO<sub>2</sub> Budget Trading Program).
17. "Minimum reserve price," means the minimum reserve price in calendar year 2014 shall be two dollars (\$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.
18. "Notice" means an official notification of an auction or sale to be held at a predetermined date in the future.

19. "Participating state" means a state that has established a corresponding regulation as part of the CO<sub>2</sub> Budget Trading Program.
20. "Reserve price" means the minimum acceptable price for each CO<sub>2</sub> allowance in a specific auction. The reserve price at an auction is either the minimum reserve price or the CCR trigger price.
21. "Sale" means a CO<sub>2</sub> Budget Allowance sale.
22. "Unsold allowance" means a CO<sub>2</sub> allowance that has been made available for sale in an auction or sale conducted by the Department or its agent, but not sold.

#### **47.5 Method of Allowance Distribution**

- A. The Department or its agent shall determine whether to participate in any of the following or combination thereof:
  1. A multi-state CO<sub>2</sub> allowance auction in coordination with other participating states;
  2. A CO<sub>2</sub> allowance auction separate from other participating states; or
  3. A sale of CO<sub>2</sub> allowances.
- B. In making such a determination to participate in one of the methods of distribution in §§ 47.5(A)(1) through (3) of this Part, the Department or its agent shall consider whether the following applies:
  1. The auction or sale will provide benefits that meet or exceed the purposes of the CO<sub>2</sub> Budget Trading Program;
  2. A multi-state auction capability and process is in place for the participating states;
  3. The timing of a multi-state auction advances the purposes of the CO<sub>2</sub> Budget Trading Program;
  4. The multi-state auction can provide benefits that meet or exceed the purposes of the CO<sub>2</sub> Budget Trading Program; and
  5. The multi-state auction process would be consistent with the process described in this regulation.
- C. Prior to the end of each control period, CO<sub>2</sub> allowances in a quantity equal to the number of CO<sub>2</sub> allowances allocated to the Account for a given control period will

be made available for auction or sale. The Department may make CO<sub>2</sub> allowances for future control periods available for auction or sale.

## **47.6 General Requirements**

- A. The Department shall establish and administer the Account.
- B. The Department shall convey the allowances from the Account to an agent that shall receive, hold, auction and/or sell allowances in accordance with this regulation and under the oversight of the Department or its agent.

## **47.7 Implementation of CO<sub>2</sub> Allowance Auctions or Sales**

- A. Implementation and administrative support functions for any auction or sale conducted pursuant to this regulation may be delegated, by the Department or its agent, to an agent qualified to conduct auctions or sales, including a regional entity.
- B. The auctions or sales will be administered in accordance with the purposes of this regulation and [Part 46](#) of this Subchapter (CO<sub>2</sub> Budget Trading Program).

## **47.8 Frequency and Quantity of CO<sub>2</sub> Allowances Offered for Auction**

- A. The initial auction shall be conducted at such time and manner as determined by the Department or its agent.
- B. Auctions will be held at least annually and may be held as often as necessary to effectuate the purposes of the CO<sub>2</sub> Budget Trading Program.
- C. Prior to the auction, the Department or its agent shall set a binding reserve price to be accepted for CO<sub>2</sub> allowances in any auction. Such reserve price shall be disclosed to the public or prospective bidders.
- D. All unsold allowances of an allocation year may be made available in the succeeding auction of that allowance's allocation year, or control period if its allocation year has ended.
- E. No bidder or combination of bidders that have related beneficial interest may bid on more than twenty-five percent (25%) of the allowances available in any given auction.
- F. The Department or its agent shall make CO<sub>2</sub> allowances available for auction in lot sizes of one thousand (1,000) allowances, except where available supply requires a smaller lot size.

## **47.9 Auction of CO<sub>2</sub> CCR Allowances**

- A. CO<sub>2</sub> CCR allowances shall only be sold at an auction in which total demand for allowances, above the CCR trigger price, exceeds the number of CO<sub>2</sub> allowances available for purchase at the auction, not including any CO<sub>2</sub> CCR allowances.
- B. If the condition of § 47.9(A) of this Part is met at an auction, then the number of CO<sub>2</sub> CCR allowances offered for sale by the Department or its agent at the auction shall be equal to the number of CO<sub>2</sub> CCR allowances in the Rhode Island Auction Account at the time of the auction.
- C. After all of the CO<sub>2</sub> CCR allowances in the Rhode Island Auction Account have been sold in a given calendar year, no additional CO<sub>2</sub> CCR allowances will be sold at any auction for the remainder of that calendar year, even if the condition of § 47.9(A) of this Part is met at an auction.
- D. At an auction in which CO<sub>2</sub> CCR allowances are sold, the reserve price for the auction shall be the CCR trigger price.
- E. If the condition of § 47.9(A) of this Part, is not satisfied, no CO<sub>2</sub> CCR allowances shall be offered for sale at the auction, and the reserve price for the auction shall be equal to the minimum reserve prices.

## **47.10 ECR Allowances**

- A. CO<sub>2</sub> ECR allowances shall only be withheld from an auction if the demand for allowances would result in an auction clearing price that is less than the ECR trigger price prior to the withholding from the auction of any ECR allowances.
- B. If the condition in § 47.10(A) of this Part is met at an auction, then the maximum number of CO<sub>2</sub> ECR allowances that may be withheld from that auction will be equal to the quantity specified in [§ 46.8.3\(D\)\(1\)](#) of this Subchapter (CO<sub>2</sub> Budget Trading Program) minus the total quantity of CO<sub>2</sub> ECR allowances that have been withheld from any prior auction in that calendar year. Any CO<sub>2</sub> ECR allowances withheld from an auction will be transferred into the Rhode Island ECR account.
- C. ECR allowances that have been transferred into the Rhode Island ECR account shall not be withdrawn.

## **47.11 Frequency and Quantity of CO<sub>2</sub> Allowances Offered for Sale**

- A. The initial sale shall be conducted at such time and manner as determined by the Department or its agent.



- B. Sales will be held, at least, annually and may be held as often as necessary to effectuate the purposes of the CO<sub>2</sub> Budget Trading Program.
- C. Prior to each sale, the Department or its agent shall set a price for allowances to be sold in the sale. The set price shall be no lower than the reserve price at the prior multi-state auction.
- D. Any CO<sub>2</sub> allowances left unsold in any sale may be made available, in quantities and in a manner determined by the Department or its agent, for distribution in a subsequent sale. At the end of each control period, the Department or its agent may retire any unsold allowances from the concluding control period.
- E. No buyer or combination of buyers that have related beneficial interest may buy more than twenty-five percent (25%) of the allowances available for sale in any given sale.
- F. The Department or its agent shall make CO<sub>2</sub> allowances available for sale in lot sizes of one thousand (1,000) allowances, except where available supply requires a smaller lot size.

#### **47.12 Participant Eligibility**

Any auction or sale shall be open to all who wish to participate so long as they meet the requirements of § 47.14 of this Part. However, any applicant that has been found to have violated any rule, regulation, or law associated with any commodity market or exchange may be denied eligibility or precluded from participation in CO<sub>2</sub> Allowance Auctions/Sales.

#### **47.13 Notice of Auction and Sale**

##### **47.13.1 Notice of Auction**

- A. Notice of auctions shall be published on the central auction website or the Department's website, whichever is appropriate, no later than forty-five (45) days prior to the date upon which each auction may be conducted. Such Notices may be transmitted electronically to parties requesting such notification.
- B. Each Notice shall provide a specific description of the auction format, including all auction participation requirements, and shall include, but not be limited to, the following information: the date, time and location and/or electronic address of the auction; the quantity of CO<sub>2</sub> allowances to be auctioned (by allocation year); the number of CO<sub>2</sub> CCR allowances that will be offered for sale at the auction if the condition of § 47.9(A) of this Part, is met; the CCR trigger price for the auction; the maximum number of CO<sub>2</sub> ECR allowances that may be withheld from sale at the auction if the condition of § 47.10(A) of this Part, is met; the ECR trigger price

for the auction; the minimum reserve price for the auction; the amount and type of security required; any limits on the amount of CO<sub>2</sub> allowances any one bidder or group of bidders may purchase; the required bid format; information regarding settling and clearing of allowance payments; application instructions; other pertinent rules of the auction; and identification of a contact person for further information.

#### **47.13.2 Notice of Sale**

- A. Notice of sales shall be published on the Department's website no later than forty-five (45) days prior to the date upon which each sale may be conducted. Such Notices may be transmitted electronically to parties requesting such notification.
- B. Each Notice will provide a specific description of the sale format, including all sale participation requirements, and shall include but not be limited to the following information: the date, time and location and/or electronic address of the sale; the quantity of CO<sub>2</sub> allowances to be offered for sale (by allocation year); amount and type of security required; the price of the CO<sub>2</sub> allowances; any limits on the amount of CO<sub>2</sub> allowances any one buyer or group of buyers may purchase; application instructions; other pertinent rules of the sale; and identification of a contact person for further information.

#### **47.14 Participation Requirements**

- A. In order to participate in an auction or sale, any prospective bidder or buyer must provide financial security in the form of a bond, cash, certified funds, or an irrevocable stand-by letter of credit, in a form acceptable to the Department or its agent. Financial security shall be provided in a form and manner as described in the Notice. A prospective bidder's eligibility to bid in any auction or a buyer's eligibility to buy allowances shall be limited to the level of financial security provided. 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 CO<sub>2</sub> allowance auction and the bidder fails to tender payment of the full amount when due.
- B. Bidders or buyers may request return of their financial security at any time prior to or following any CO<sub>2</sub> allowance auction or sale, and the Department or its agent shall return said financial security provided that the Department or its agent have no current or pending claim to such security as a result of a successful bid or sale, or failure of a bidder or buyer to pay the full amount of its accepted bid when due.
- C. Any party wishing to participate in an auction or sale shall be required to:

1. Open and maintain a compliance account or a general account, and
  2. Complete an application. Prospective bidders and buyers must provide information and documentation relating to their ability and authority to execute bids and sales and honor contractual obligations. Such documentation may include, but may not be limited to, information and documentation regarding the corporate identity, ownership and capital structure of the applicant.
- D. Applicants wishing to participate in an auction or sale shall submit an application in the form provided in the Notice to the Department or its agent on or before the deadline specified in the Notice. Such deadline shall be no sooner than fifteen (15) days following the date of publication of the Notice. Application information and forms shall be made available electronically on the central website or the Department's website, whichever is appropriate.
- E. The Department or its agent will review each application and make a determination as to whether an applicant is deemed qualified. Failure to provide any information required by the Notice or this regulation may result in the application being denied.
- F. Prospective bidders and buyers that qualify for participation under § 47.14 of this Part will be qualified for all subsequent CO<sub>2</sub> allowance auctions and sales, and will be eligible to bid in such auctions or buy in a sale provided that such party has complied with the financial security requirements pursuant to § 47.14 of this Part.
- G. Prior to each CO<sub>2</sub> allowance auction or sale, a prospective bidder or buyer that has qualified under § 47.14 of this Part must notify the Department or its agent of its intent to participate in the upcoming auction or sale. This notification shall include either a statement that there has been no material change to the information provided in the application, or a revised application if material changes have occurred. A material change is a substantial change of decisional significance.
- H. The Department or its agent may suspend or revoke its approval of an application if the bidder or buyer fails to comply with requirements of this regulation and [Part 46](#) of this Subchapter (CO<sub>2</sub> Budget Trading Program).
- I. All bids shall be submitted in a form prescribed by the Department or its agent, and shall be submitted in the manner prescribed by the Department or its agent. Such forms shall be made available electronically on the central auction website or the Department's website, whichever is appropriate based on the Department's or its agent's determination under § 47.5 of this Part. All bids

submitted shall be considered binding offers for the purchase of allowances under the rules of the auction.

- J. All sales shall be submitted in a form prescribed by the Department or its agent, and shall be submitted in the manner prescribed by the Department or its agent. Such forms shall be made available electronically on the Department's website. All sales shall be considered binding for the purchase of allowances under the rules of the sale.
- K. If the Department or its agent determines that a bidder or buyer has provided false or misleading information, or has withheld pertinent information in its application, or has otherwise failed to comply with this regulation, the bidder or buyer may be prohibited from participating in any future auctions or sales.

#### **47.15 Auction or Sale Format**

- A. The auction or sale format shall be announced in the Notice prior to the auction or sale.
- B. Sale Criteria
  - 1. If the quantity of allowances available for purchase in a particular sale is less than the quantity of allowances sale participants want to buy, then the quantity of allowances made available to each prospective buyer shall be determined by a random process.
- C. No allowances shall be sold at any auction for a price below the reserve price for that auction; and
- D. If the total demand for allowances at an auction is less than or equal to the total number of allowances made available for sale in that auction, then the auction clearing price for the auction shall be the reserve price.

#### **47.16 Transfer of CO<sub>2</sub> Allowances**

After the Department's approval of the results of an auction or sale and upon receipt by the Department or its agent of payments from successful bidders or buyers, the Department or its agent shall transfer CO<sub>2</sub> allowances to the purchaser's compliance account or general account.

#### **47.17 Publication of Results**

The Department or its agent will publish on the central auction website or the Department's website, whichever is appropriate, the auction clearing price and the number of allowances sold in the auction.

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**CHAPTER 120 - AIR RESOURCES**

**SUBCHAPTER 05 - AIR POLLUTION CONTROL**

PART 47 - AIR POLLUTION CONTROL REGULATION NO. 47, 'CO2 BUDGET TRADING PROGRAM ALLOWANCE DISTRIBUTION'

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