

Cap-and-Invest: Pre-Proposal Stakeholder Outreach New York Cap-and-Invest

Cap-and-Invest Rulemaking
GHG Reporting Rulemaking
Auction Rulemaking

June 13, 2023
EITE-Focused Webinar



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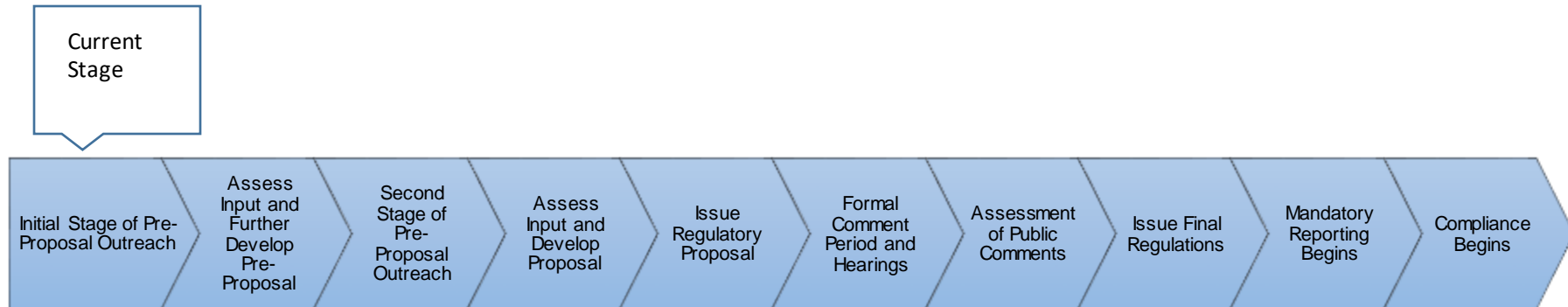
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Meeting Procedures

- Attendees will not be able to unmute or turn on video.
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- If you can't hear the presentation, you can configure your audio settings by clicking the arrow in the "audio" box.
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- This webinar will be recorded.



Cap-and-Invest Regulation Development Timeline

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Follow the Process

Join the mailing list to receive updates on program development: <https://climate.ny.gov/email-list/>

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or by mail:

Bureau of Air Quality Planning
NYS DEC, Division of Air Resources
625 Broadway, Albany, NY 12233-3251



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Agenda

- Climate Leadership and Community Protection Act (CLCPA)
- An Economywide Cap-and-Invest Program
- Special Considerations for New York's Program
- Discussion of Program Design Elements
 - Cap-and-Invest Rulemaking
 - Auction Rulemaking
 - GHG Reporting Rulemaking
- Next Steps



CLCPA – Overview

Carbon neutral economy, mandating at least an 85% reduction in emissions below 1990 levels by 2050

40% reduction in emissions by 2030

100% zero-emissions electricity by 2040

70% renewable electricity by 2030

9,000 MW of offshore wind by 2035

6,000 MW of distributed solar by 2025

3,000 MW of energy storage by 2030

185 TBtu on-site energy savings by 2025

Commitments to climate justice and just transition

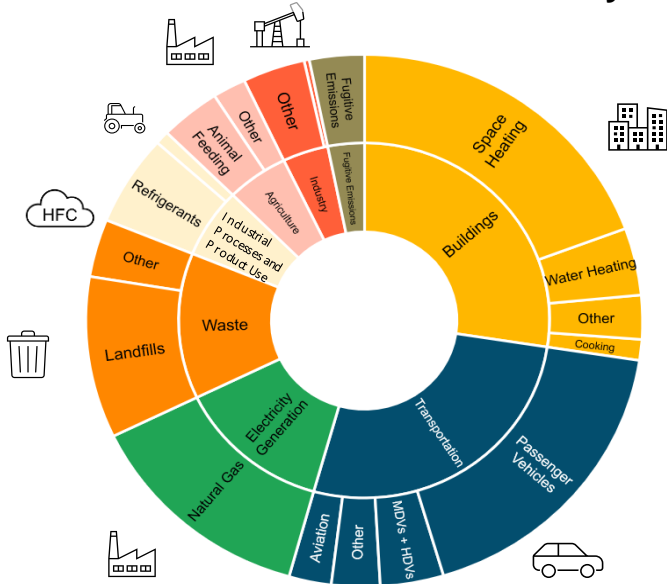


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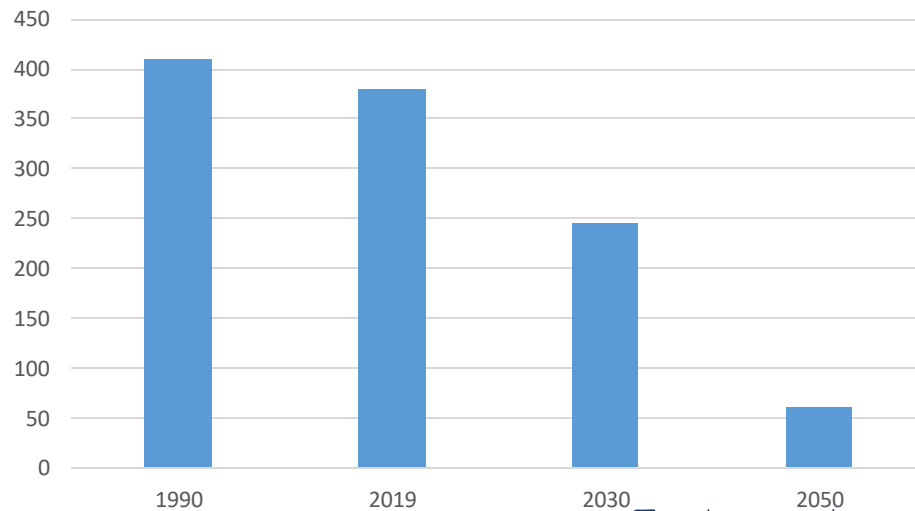
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GHG Emissions Reduction Requirements

Current Estimated GHG Emissions by Sector



New York State GHG Emissions (MMtCO₂e)



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New York State Cap-and-Invest

The Cap-and-Invest Program was recommended by the Climate Action Council's final Scoping Plan and proposed in Governor Kathy Hochul's 2023 State of the State Address and Executive Budget.

DEC and NYSERDA are developing the program to meet the greenhouse gas emission reduction and equity requirements under the 2019 CLCPA.



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Economywide Cap-and-Invest Program

> At Governor Hochul's direction, the program will incorporate these guiding principles:

- *Affordability*: Craft a program to deliver money back to New Yorkers to ensure energy affordability
- *Climate Leadership*: Catalyze other states to join New York, and allows linkage to other jurisdictions
- *Creating Jobs and Preserving Competitiveness*: Protect existing jobs and support new and existing industries
- *Investing in Disadvantaged Communities*: Ensure 35%+ of investments benefit DACs
- *Funding a Sustainable Future*: Support ambitious clean energy investment



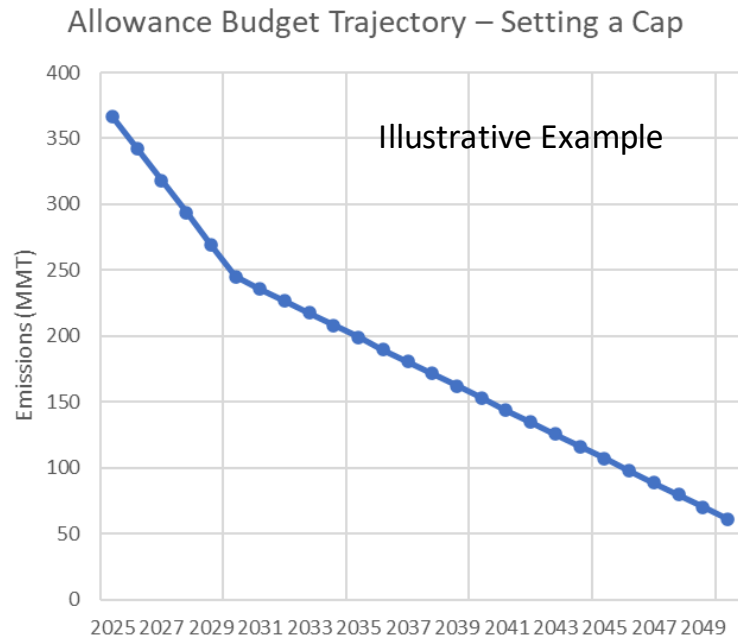
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Cap-and-Invest Program: Achieving Emission Limits

Over the coming year, DEC and NYSERDA will design a program that sets an annual cap on the amount of greenhouse gas pollution permitted to be emitted in New York.

The declining cap ensures annual emissions are reduced, setting the state on a trajectory to meet our GHG emissions reduction requirements of 40% by 2030, and at least 85% from 1990 levels by 2050, as mandated by the Climate Act.



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New York's Cap-and-Invest Program – How it Works

Cap-and-Invest sets an annual limit on the amount of greenhouse gas emissions emitted in New York. Every year, the cap will be set lower to reduce greenhouse gas emissions.



Large-scale greenhouse gas emissions sources and distributors of heating and transportation fuels will be required to purchase or obtain allowances for emissions associated with their activities.



The Program will prioritize frontline disadvantaged communities that have suffered from pollution as a result of environmental injustice and will ensure emissions reductions.



Proceeds will minimize potential consumer costs while supporting critical investments in focus areas such as climate mitigation, energy efficiency, and clean transportation.



Cap-and-Invest Guiding Principles:

- Affordability
- Climate leadership
- Creating jobs and preserving competitiveness
- Investing in disadvantaged communities
- Funding a sustainable future



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Greenhouse Gas Emissions Reporting

Cap-and-Invest programs require emissions reporting from emissions sources.

Entities with reporting requirements will likely be more numerous than entities with allowance compliance obligations

- Supports integrity of emissions allowance determinations
- Supports integrated reporting platform for multiple programs
- Helps to identify future actions



Regulatory Framework

- > DEC and NYSERDA plan to develop three regulations to implement an economywide Cap-and-Invest program (NYCI)
 - DEC Mandatory Greenhouse Gas Reporting Rulemaking (Part 253)
 - DEC Economywide NYCI Rulemaking (Part 252)
 - NYSERDA Auction Rulemaking (Part 510)

- > DEC is drafting and will promulgate enforceable regulations to ensure the State meets the Climate Act's statewide GHG emission limits as outlined in the Scoping Plan.



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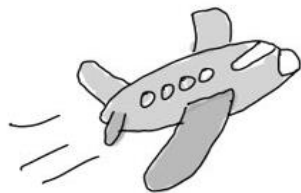
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Distinguishing Elements in NYCI Program Development

- All GHG emissions would be accounted for under the program and the cap must reduce at a rate to achieve the statewide GHG emission limits.
- DEC is considering the concept of obligated and non-obligated sources.
 - Obligated sources identified by regulation and required to provide allowances equal to its GHG emissions.
 - Non-obligated sources contribute to GHG emissions and must be accounted for in the overall cap, but allowances to cover GHG emissions from non-obligated sources will be retired by DEC.



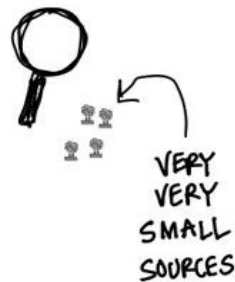
What about hard-to-cover emissions?



AVIATION



AGRICULTURE



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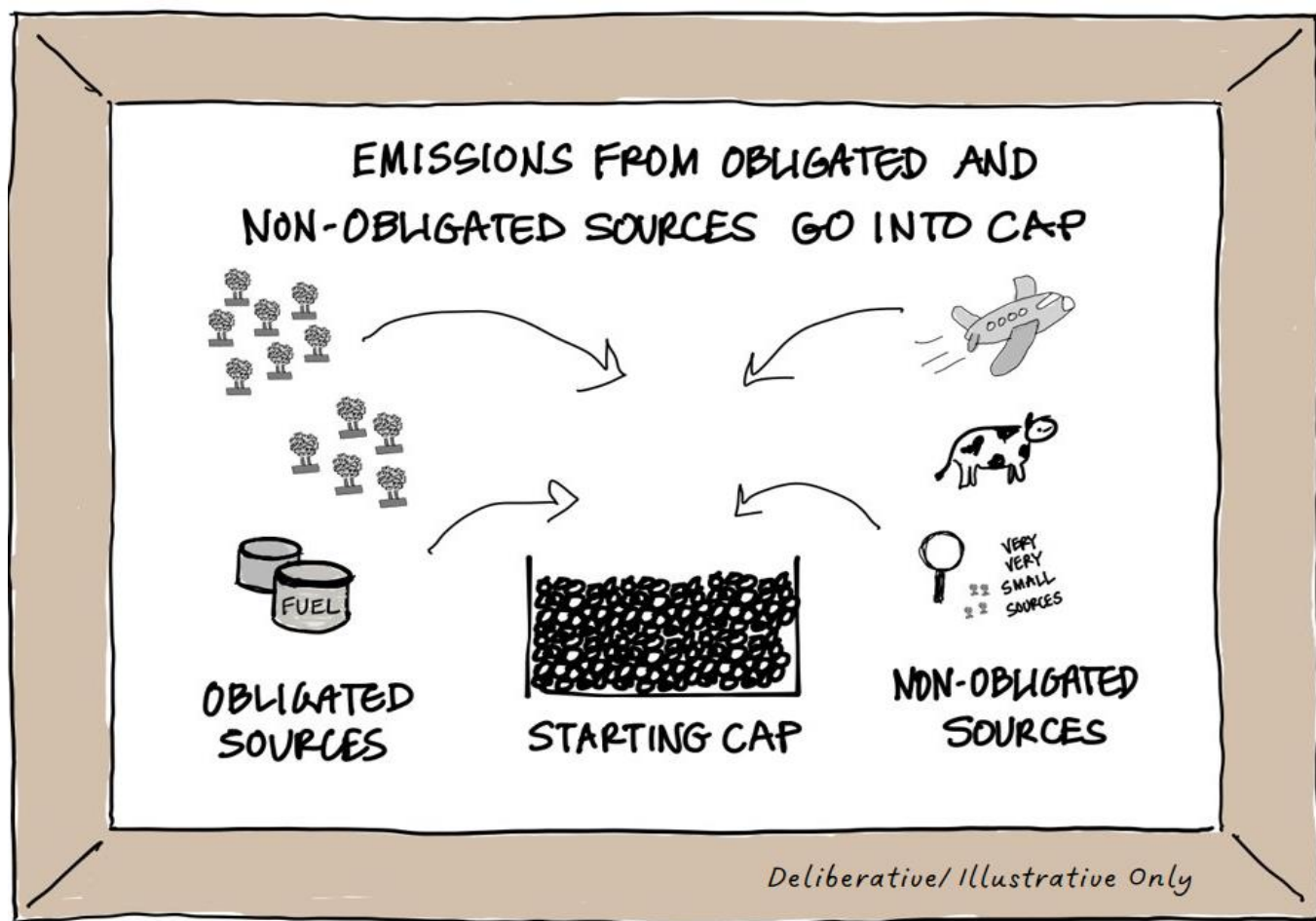
NON-OBLIGATED SOURCES OR CATEGORIES

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NON-OBLIGATED
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HAVE NO
COMPLIANCE
OBLIGATION



VERY
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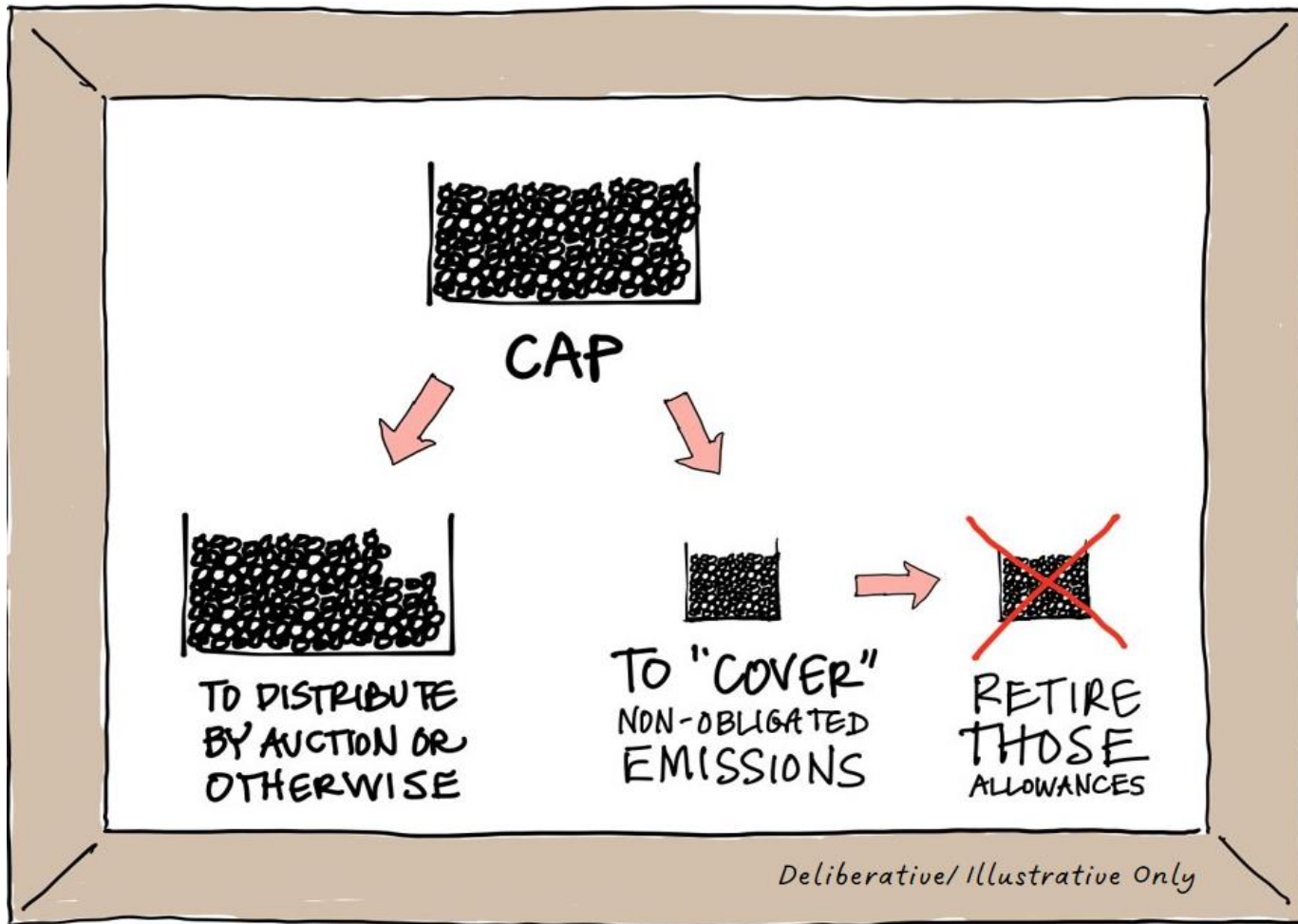
INSTEAD, EACH YEAR
STATE SETS ASIDE
ALLOWANCES TO "COVER"
THEIR EMISSIONS

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NON-OBLIGATED
SOURCES
HAVE NO
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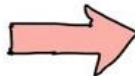
VERY
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CAP



TAKE ALLOWANCES
OUT TO "COVER"
NON-OBLIGATED
EMISSIONS



RETIRE
THOSE
ALLOWANCES

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Equity Consideration for Disadvantaged Communities

- CLCPA directs that a minimum of 35% of proceeds -- with a goal of 40%-- be invested to benefit Disadvantaged Communities (DACs).
- In addition to investments to reduce emissions, DEC is soliciting feedback about any additional regulatory mechanisms in the Cap-and-Invest regulation that should be considered to ensure emission reductions in DACs.



Reminder

Presentations can be viewed, and comments submitted, online at: www.capandinvest.ny.gov

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Cap-and-Invest Starting Points

As DEC and NYSERDA begin to develop NYCI rules, we are soliciting comments from stakeholders about existing cap-and-invest/cap-and-trade programs and if DEC and NYSERDA should consider incorporating any of those regulatory provisions into New York's proposed regulations.

- California Air Resources Board (CARB) regulations
 - California's [cap and trade regulation](#) covers the details of the state's economywide system.
 - California's [mandatory GHG reporting rule](#) covers the mandatory emissions reporting and verification system, which is a separate regulation from the emissions trading program.
- DEC and NYSERDA also seek comments based on provisions of the Washington and Quebec cap-and-invest programs.



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Cap-and-Invest Program Design Decisions

- Applicability and thresholds
- Allowance allocation and auction
- Cap and allowance budget
- Program stability mechanisms
- Compliance and Enforcement
- Reporting and verification



Cap-and-Invest Design Elements

Applicability: Describes which sources must obtain and surrender allowances and/or which sources must report emissions. Generally, a list of specific operations conducted by a source (e.g., combusts fuel at a facility, operates infrastructure in NYS).

Thresholds: Describes emissions or operations limit for program applicability. This may be different for each type of source.



Cap-and-Invest Applicability - Energy Intensive and Trade Exposed (EITE) Concept

What is Energy Intensive and Trade Exposed?

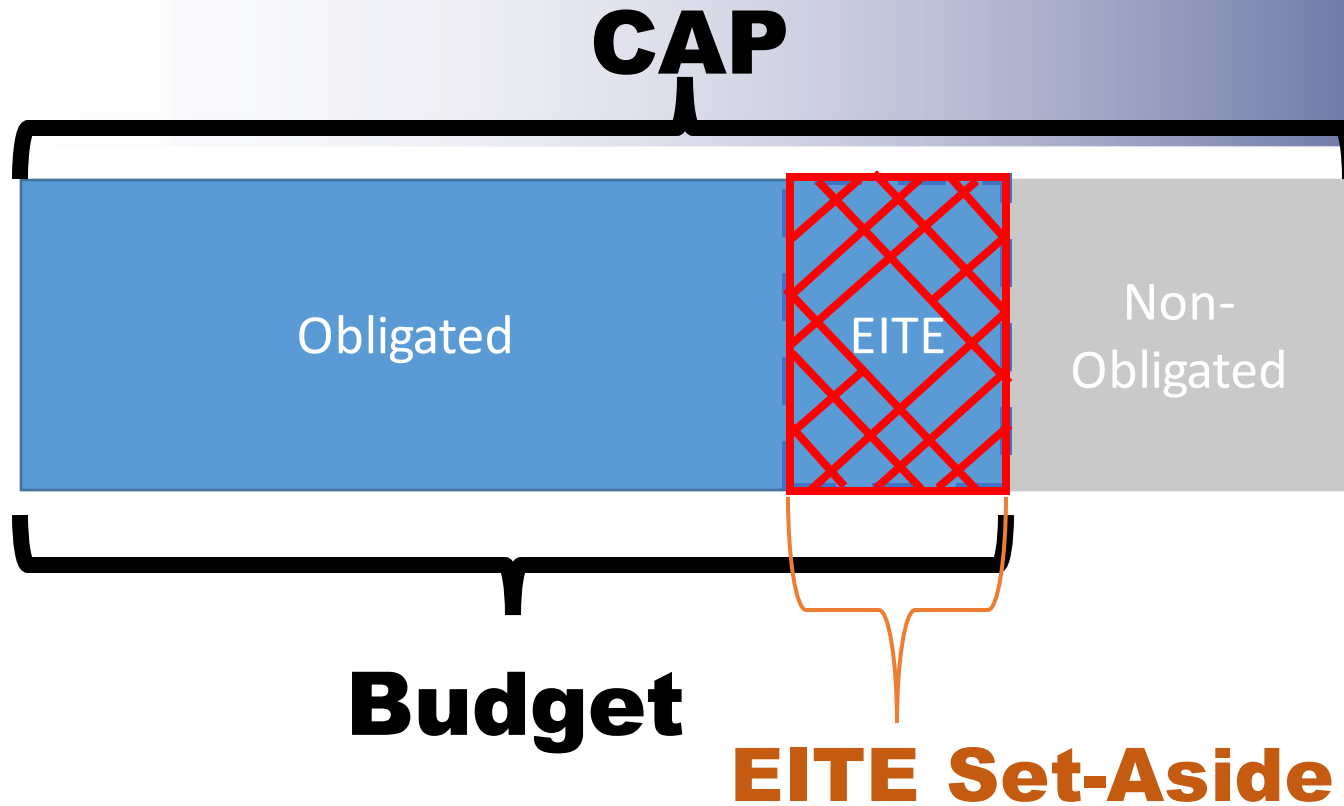
- Concepts Identified in Scoping Plan Chapter 14 and 17 and Appendix C
- How should EITE sources be identified?
 - What roles should NAICS codes play in identifying facilities?



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Cap-and-Invest Applicability - Energy Intensive and Trade Exposed (EITE) Emissions

What emissions should EITE entities be responsible for?

- *Combustion, upstream out of state, and process emissions or only process emissions?*

What should be considered when establishing fuel supplier obligations for fuels utilized at EITE facilities?

How might these considerations inform establishing thresholds for EITE facilities?



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Cap-and-Invest Applicability - Other Stationary Sources

- What should be considered when evaluating whether a non-industrial facility could be eligible for EITE allowance allocation? How should the program account for large stationary sources that only combust fuel for space and water heating?
- What should be considered when assigning responsibility for emissions between a potential EITE stationary source and the fuel supplier?



Cap-and-Invest Applicability - Fuel Suppliers

- Fuel suppliers are anticipated to have obligations for all non-aviation fuels utilized in NYS.
- Some fuel consumption may be covered by other programs or obligations like RGGI or EITE facilities.
- How should fuel suppliers identify fuel for which they have no allowance obligation?



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Allocation of Allowances

- Describes the distribution of allowances to auction, including containment reserves, and set asides.
- Set asides are anticipated to include Energy Intensive and Trade Exposed (EITE) sources and allowances retired by the State to cover non-obligated sources and emissions.



California Cap Rule Allowance Allocation

Subarticles 8-9:

Disposition of Allowances; Direct Allocations of California GHG Allowances (pages 150-233)

The CARB program:

- Establishes how allowances are distributed from the annual budget to various set aside accounts including for Industrial Assistance (95870(e), 95890 & 95891).
- Describes the assistance factor for direct allocation (Table 8-1) and the cap adjustment factor (Table 9-2). There are also provisions for product based efficiency calculations (Table 9-1) used for benchmarking considerations.



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Allowance Cap

Allowance Cap

- Designed to align with CLCPA statewide 2030 and 2050 GHG emission limits (i.e., 40x30 and 85x50).
- How should we set the starting point for the Cap?
 - *Based on current emissions, or surrogate?*
- How should the cap decline?
 - *As illustrated in the earlier slide or other trajectories?*



Non-Obligated Sources

- Emissions from non-obligated sources anticipated to be covered by retiring allowances from the non-obligated set aside.
- Emissions from non-obligated sources anticipated to be estimated with the same methods used in the GHG Inventory, unless those sources are able to report emissions.
- What data and other resources are available to evaluate potential future emissions from non-obligated sources?



Allowance Budget

- Obligated sources will be identified by regulation and required to provide allowances equal to its GHG emissions.
- Non-Obligated sources GHG emissions would be accounted for in setting the allowance budget. The Allowance budget plus the non-obligated emissions would equal the statewide GHG emission cap.



Program Stability Mechanisms

- We are seeking feedback on use of Cost Containment Reserve (CCR) and Emission Containment Reserve (ECR), including thresholds, amounts, and other factors.
- How should the CCR be designed to respond to higher than anticipated prices? Should allowances be pulled from future budget years?
- What information should be considered when evaluating banking provisions? What should be considered when evaluating potential banking adjustments?



Compliance Process

- How many years should a compliance period cover?
- How often should sources surrender allowances?
 - *If multi-year compliance periods are used, what percentage of allowances should be surrendered in an interim year?*
- What amount of time should be given between reporting of emissions and surrender of allowances?



Enforcement and Compliance Mechanisms

Enforcement and Compliance Mechanisms

- What approaches to compliance should be considered?
- How could the assignment of multiple types of compliance mechanisms (e.g., surrender additional allowances and monetary penalties) be structured?



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Auction Rules

- What auction format should be used (e.g., single-round or multiple round auctions; a uniform price applicable to all awarded allowances or allowance pricing based on as-bid prices; frequency of auctions)?
- Should participation in the allowance auctions be limited to obligated entities or be open to market participants without program obligations?
- What requirements should entities fulfill to be able to register for participation in auctions?
- Should the auction mechanics contemplate the inclusion of allowances from linked jurisdictions?
- What measures should be considered (e.g., disclosure requirements) to uphold market integrity and protect against collusion or other market manipulation?



Market Rules

- Should any constraints be adopted regarding trading of allowances?
- Should any allowance purchase or holding limits or minimum allowance holding periods be applied, and if so, should these apply only to market participants other than obligated entities?



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Emissions Reporting Design Elements

Applicability

- Which sources must report emissions or operational data. Generally, this is a list of specific operations conducted by a source (e.g., combusts fuel at a facility, removes transportation fuel at a rack for sale in NYS, transfers ownership of fuel in NYS).

Thresholds

- Describes the emissions or operations limit for program coverage. This may be different for each type of source. This will likely be a lower volume than Cap-and-Invest applicability thresholds.



Reporting and Verification

- How can existing reporting systems be leveraged for various sources? Should the regulation call out specific existing programs or utilize plain language as much as possible?
- When should reporting begin, should past years be incorporated if there are benchmarking provisions?
- How often should reporting be required?
- How should verification requirements be established for different sources?
- How should emission verifiers be accredited?



Emissions Reporting - Energy Intensive and Trade Exposed (EITE)

- It is anticipated that EITE sources would report their process, combustion, upstream out of state, and other emissions.
 - *What other operational data could be reported to establish methods to allocate allowances?*
 - *What consideration should be given to having reporting requirements based on benchmarks or NAICS code EITE facilities?*



Emissions Reporting – Fuels Suppliers

- Fuel suppliers may have reporting requirements that support EITE emissions reporting
- What considerations should be given to having fuel suppliers report all emissions associated with the use of their fuel at stationary sources (EITE, Electricity, large commercial or residential buildings, or hospitals)?
- What fuel ownership identification systems can be leveraged to support reporting requirements?
- What, if any, special considerations should be given for fuels directly delivered by interstate pipeline or barge ?



California Reporting Rule

Subarticle 1:

General Requirements for Greenhouse Gas Reporting (pages 1-94)

The CARB program:

- Establishes applicability, reporting thresholds, most definitions, general reporting requirements, the reporting mechanism, and record keeping requirements.
- These requirements establish the emissions covered by the CARB Cap and Invest regulation.



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California Reporting Rule

Subarticle 2:

Requirements for the Mandatory Reporting of Greenhouse Gas Emissions from Specific Types of Facilities, Suppliers, and Entities (Pages 95-164)

The CARB program:

- The reporting requirements of emission sources groups are identified, includes stationary combustion, transportation fuel suppliers, natural gas suppliers, and specific industrial sources.
- References significant portions of 40 CFR Part 98.



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California Reporting Rule

Subarticle 3:

Additional Requirements for Reported Data (Page 165-175)

The CARB program:

- Establishes missing data provisions for specific emission sources and fuels.
- References 40 CFR part 75 and 98.



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California Reporting Rule

Subarticle 4:

Requirements for Verification of Greenhouse Gas Emissions Data Reports and Requirements Applicable to Emissions Data Verifiers; Requirements for Accreditation of Emissions Data and Offset Project Data Report Verifiers.

The CARB program:

- Describes verification requirements on emission sources specified in Subarticle 1 reporting requirements
- Establishes verifier accreditation and verifier emissions and data evaluation requirements along with limits on relationships between emission sources and verifiers



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Substantive Questions

Comments can be submitted online
at: www.capandinvest.ny.gov

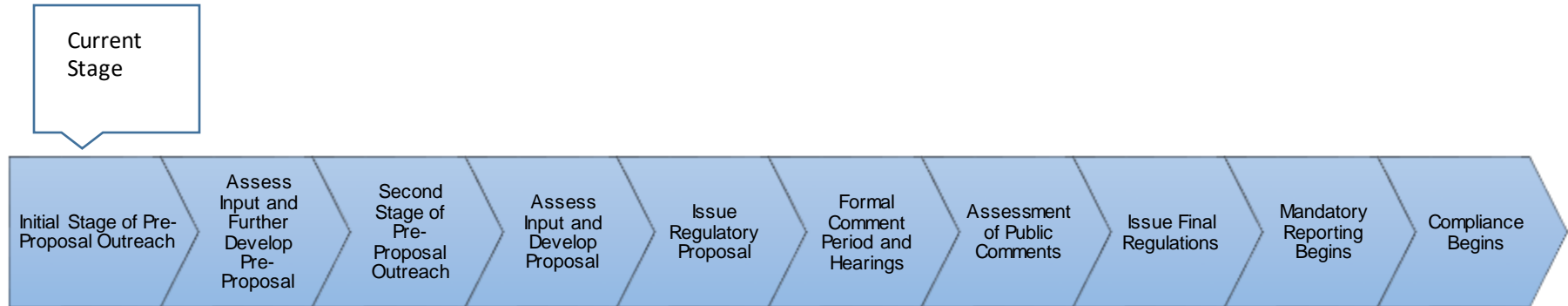
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Cap-and-Invest Regulation Development Timeline

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Spring Webinars Series

June 1: 1 to 3 p.m. – Cap-and-Invest Overview (Slides and Recording Available)

June 6: 11 a.m. to 1 p.m. – Natural Gas focus (Slides and Recording Available)

June 8: 1 to 3 p.m. – Liquid Fuels focus (Slides and Recording Available)

June 13: 11 a.m. to 1 p.m. – Energy Intensive and Trade Exposed Industries focus

June 15: 1 to 3 p.m. – Waste focus

June 20: 11 a.m. to 1 p.m. – Cap-and-Invest Analysis Inputs and Methods

June 22: 1 to 3 p.m. – Electricity focus

Details for future webinars and recordings of past webinars are at

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Provide Online Feedback

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Submitting Comments

Cap and Invest Feedback

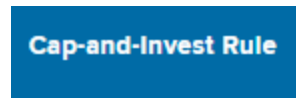
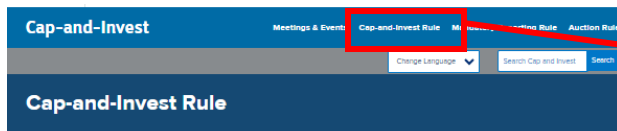
* Please use the space below to share your comments

The comment field is for basic text comments only. HTML is not allowed.

You may also [attach](#) a document.

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Submit



Developing New York State's Economywide Cap-and-Invest Regulations

Cap-and-Invest Rulemaking (6 NYCRR Part 252)

Public input will inform development of the regulations to implement New York's Cap-and-Invest Program, including the mandatory reporting of emissions under that program. As a starting point, DEC and NYSERDA invite the public to review the regulation governing California's economywide program [PDF] as well as those operating in Quebec and Washington State [PDF]. DEC and NYSERDA are interested in hearing what elements of those regulations would work well and what improvements or changes may best serve New York.

Meeting the Climate Act Limit on Greenhouse Gas Emissions (GHG) with a Cap-and-Invest Solution

- All GHG emissions would be accounted for under the program and the cap must reduce at a rate to achieve the statewide GHG emission limits set in law.
- Obligated sources (e.g., large-scale GHG emitters and distributors of heating and transportation fuels) would be required to report emissions and obtain allowances equal to the GHG emissions associated with their activities. All obligated sources will have a reporting requirement.
- Non-obligated sources would not be required to obtain allowances, but their GHG emissions would be accounted for in setting the allowance budget. The allowance budget plus the non-obligated emissions would equal the statewide GHG emission cap. Some non-obligated sources may have an emissions reporting obligation.

Invitation to Provide Comments on the development of the regulations. The major design elements that New York is seeking feedback on at this time are listed below. Expand on each heading for further information on what is being considered for New York State.

DEC and NYSERDA have developed a template document [PDF] to assist commenters in providing feedback on these topics.

Developing New York State's Economywide Cap-and-Invest Regulations



Public input will inform development of the regulations to implement New York's Cap-and-Invest program. Invitation to Provide Comments on the development of the regulations. The major design elements that New York is seeking feedback on at this time are listed below. Please enter your feedback in the form fields below each heading.

Submit Comments

DEC and NYSERDA will review comments and further develop pre-proposal materials to define New York's program. Notices will be sent to the distribution list when the second round of pre-proposal materials are posted. To inform the development of the pre-proposal, DEC and NYSERDA request first round feedback no later than July 1, 2023.

Applicability and Thresholds - Defines which sources and at what emissions thresholds sources are covered by the regulations, and must report emissions, and who must obtain and surrender allowances equal to their GHG emissions. Establishes obligated and non-obligated sources.

Allowance Allocation - Defines how allowances are made available: auctions, set asides and free allocations.



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SUBMIT COMMENTS

SUBMIT COMMENTS

Viewing Expanded List of Questions

Applicability and Thresholds - Defines which sources and at what emissions thresholds sources are covered by the regulations; who must report emissions; defines what entities must obtain and surrender allowances equal to their GHG emissions; establishes obligated and non-obligated sources.



Allowance Allocation - Defines how allowances are made available: auctions, set asides, and free allocations.



Program Ambition - Defines the cap and the allowance budget for how many allowances will be available year-by-year to reach the Climate Act GHG limits.



Program Stability Mechanisms - Defines the automatic and planned program adjustments to moderate costs and sustain program ambition if emissions are higher or lower than anticipated.



Compliance, Enforcement and Penalties - Defines compliance periods and types of enforcement mechanisms.



Applicability and Thresholds - Defines which sources and at what emissions thresholds sources are covered by the regulations; who must report emissions; defines what entities must obtain and surrender allowances equal to their GHG emissions; establishes obligated and non-obligated sources.



Allowance Allocation - Defines how allowances are made available: auctions, set asides, and free allocations.



Program Ambition - Defines the cap and the allowance budget for how many allowances will be available year-by-year to reach the Climate Act GHG limits.



- Cap includes economywide GHG emissions from obligated sources and non-obligated sources. The cap must set a starting point and downward trajectory to reach the GHG emission limits established in the Climate Act
 - How should the starting point for the cap be set? For example, based on current emissions, or surrogate?
 - How should the cap decline? Should the cap decline at a fixed rate or take steps?
- Allowance budget - The budget is allowances available for obligated sources. A set-aside account will hold allowances to be retired to account for GHG emissions from non-obligated sources.
 - What should be considered when designing the set-aside account and budget so that the program is consistent with the NYS GHG annual inventory?



Provide Written Feedback

Via US Postal Service to:
Bureau of Air Quality Planning
NYS DEC, Division of Air Resources
625 Broadway, Albany, NY 12233-3251



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Thank You

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