New York Cap-and-Invest Pre-Proposal Outline

December 20, 2023

NEW YORK STATE | Department of Environmental Conservation | NYSERDA

Pre-Proposal Outline:
New York State Cap-and-Invest and Mandatory Greenhouse Gas Reporting Programs

The Department of Environmental Conservation (DEC) and the New York State Energy Research and Development Authority (NYSERDA) (collectively, Agencies) are engaging in pre-proposal stakeholder outreach for the New York State Cap-and-Invest (NYCI) and the Mandatory Greenhouse Gas Reporting Programs. The Agencies are seeking and appreciate any feedback provided on these pre-proposal program leanings to inform final decisions in the State's stakeholder-driven process to develop these programs. Feedback will be solicited through a variety of means, including a feedback comment portal at the bottom of the https://capandinvest.ny.gov/ homepage.

The Programs would include three main regulatory components: 1) the Mandatory Greenhouse Gas Reporting Program Rule; 2) the Cap-and-Invest Rule; and 3) the Auction Rule. For the purposes of this outline, the three components are presented in two parts:

1. The DEC **Mandatory Greenhouse Gas Reporting Program Rule** (forthcoming 6 NYCRR Part 253) would identify the types of greenhouse gas (GHG) emissions sources that would be required to report their GHG emissions to DEC, at which emissions or activity threshold a source would be required to comply with the regulations, and how the source would be required to report its emissions. This regulation would be promulgated, in part, pursuant to Environmental Conservation Law (ECL) Section 75-0105(4), which provides authority and direction to establish a mandatory registry and reporting system from individual sources to obtain data on greenhouse gas emissions. The promulgation of this regulation would also implement the Scoping Plan recommendation to establish a greenhouse gas registry and reporting system.[1]
2. The DEC **Cap-and-Invest Rule** (forthcoming 6 NYCRR Part 252) would identify the types of GHG emission sources that would have compliance obligations under NYCI and what GHG emissions are subject to regulatory requirements, establish compliance obligations, define how non-obligated GHG emissions would be addressed, explain how energy-intensive and trade-exposed (EITE) industries would be considered, describe measures to ensure program stability and cost containment while achieving GHG emissions reductions, and create GHG emission allowances (Allowances). This regulation would be promulgated, in part, pursuant to ECL Section 75-0109, which directs DEC to promulgate regulations to achieve the Statewide greenhouse gas emission limits. Among other items, ECL Section 75-0109 requires such regulations to reflect, in substantial part, the Scoping Plan. The Scoping Plan recommends establishing a cap-and-invest program.[2] The Governor further directed DEC and NYSERDA to advance an economy-wide cap-and-invest program in light of the Scoping Plan recommendation. The Department will design the NYCI program and regulations to substantially reflect the Scoping Plan and the key principles outlined in the Governor's 2023 State of the State, including affordability.

[1] Pages 268-69 of the Scoping Plan.
[2] Chapter 17 of the Scoping Plan.

The NYSERDA **Auction Rule** (forthcoming 21 NYCRR Part 510) would describe the operation of NYCI Allowance auctions and mechanisms to protect the overall integrity of the Allowance market, prevent market manipulation, and provide cost containment and program stability. This regulation would be promulgated, in part, pursuant to the Climate Act Section 8, which requires NYSERDA (and other State agencies) to promulgate regulations to "contribute to achieving" the statewide greenhouse gas emission limits described above. In accordance with the Climate Act and the Governor's direction, NYSERDA will continue to work closely with DEC to ensure the Auction Rule complements and supports the NYCI program.

Information is provided below under the two Program headings indicated above for preliminary, pre-proposal, organizational purposes only. The draft and final regulatory text may reflect certain items in a different regulation than indicated below, and certain items may appear in multiple regulations for clarity, consistency, or program function.

The information below represents the Agencies' preliminary program leanings only and not final program decisions. In addition, this document contains placeholders for various values (e.g., $/ton). Actual numbers will be provided in the draft regulations, as informed by preliminary analyses of projected program costs and benefits, and after collection of stakeholder feedback. Final decisions on program elements will be informed by stakeholder input and ongoing analyses and be reflected in final regulations following formal public notice and comment on draft regulations.

Contents

Selected Definitions

For the purposes of this fact sheet, the following definitions apply:

An **“Allowance”** provides limited authorization to emit up to one metric ton (carbon-dioxide-equivalent) of GHG emissions defined consistent with the Climate Leadership and Community Protection Act (Climate Act) GHG accounting methodology and 6 NYCRR Part 496. This definition includes applying the 20-year global warming potential to GHG emissions; GHG emissions include GHG emissions from all sources located within the state and certain sources that are located outside of the state that are associated with in-state energy consumption, specifically, GHGs produced outside of the state that are associated with the generation of electricity imported into the state and the extraction and transmission of fossil fuels imported into the state. For more information see Establishing Budgets.

The **“Allowance Budget”** is the number of Allowances made available every year to Obligated Entities and General Market Participants. The Allowance Budget would be lower than the GHG Emissions Cap as a result of adjustments for Non-Obligated Entities, interannual allocations of Allowances, and other reasons including those described herein. For more information see Establishing Allowance Budgets

“Disadvantaged Community” or “DAC” is a geographic community that bears a disproportionate burden of negative public health effects, environmental pollution, impacts of climate change, and possess certain socioeconomic criteria, or comprise high-concentrations of low and moderate-income households, as identified by the Climate Justice Working Group pursuant to section 75–0111 of the Environmental Conservation Law and reflected at https://climate.ny.gov/Resources/Disadvantaged-Communities-Criteria.

A **“Fuel Supplier”** is the supplier of natural gas, petroleum fuel, other fossil fuels, or other fuels sold to end users in New York. For natural gas and other gaseous fuels, the supplier is likely to be the utility at the point of sale to the end user. For liquid fuels the supplier is likely to be a fuel distributor that owns the fuel as it first passes through a terminal rack in New York or owns the fuel as it is imported for final sale to an end user in New York. For more information, see Obligated Sectors and Entities.

“General Market Participants” are any person or entity purchasing Allowances voluntarily (i.e., without a compliance obligation). For more information, see The Auction Rule.

The **“GHG Emissions Cap”** is the Statewide GHG emissions limit in a given year. Initially, DEC would issue Allowances equal to the GHG Emissions Cap every year. For more information see Establishing a GHG Emissions Cap and Allowance Budget.

“Non-Obligated Sectors” and “**Non-Obligated Entities**” are the sectors of New York’s economy and GHG Emission Sources, respectively, that are responsible for GHG emissions but do not have a compliance obligation. DEC would retire Allowances corresponding to the GHG emissions associated with these sectors and entities, except for those entities in Obligated Sectors whose GHG emissions are otherwise obligated elsewhere in the supply chain. Some Non-Obligated Entities would be Reporting Entities under the Mandatory Greenhouse Gas Reporting Rule. For more information, see Obligated Sectors and Entities.

“Obligated Sectors” are those sectors of the New York economy where Obligated Entities would have a compliance obligation. “**Obligated Entities**” are those GHG Emissions Sources within the Obligated Sectors that have met the designated threshold based on their GHG emissions and thus have a compliance obligation under the Cap-and-Invest Rule. For more information, see Obligated Sectors and Entities.

“Reporting Entities” are those entities with a requirement to report emissions under the Mandatory Greenhouse Gas Reporting Rule. Not all Reporting Entities would have compliance obligations under NYCI and the Cap-and-Invest Rule. For more information, see The Mandatory Greenhouse Gas Reporting Program (6 NYCRR Part 253).

A “**Stationary GHG Emissions Source”** is any building, structure, installation, or facility in New York State where GHG emissions occur or may occur, including due to fuel utilization or industrial processes. For more information, see Obligated Sectors and Entities.

The Mandatory Greenhouse Gas Reporting Program (forthcoming 6 NYCRR Part 253)

DEC anticipates establishing GHG emissions reporting requirements that use and leverage new and existing reporting requirements and platforms to (1) determine compliance obligations under NYCI and the Cap-and-Invest Rule, (2) support other elements of the NYCI Program, (3) improve New York State’s understanding of the sources of GHG emissions in support of the annual GHG inventory, and (4) implement the Scoping Plan[3] recommendations. DEC anticipates promulgating the Mandatory Greenhouse Gas Reporting Program through the adoption of a new regulation, 6 NYCRR Part 253.

Entities that would be required to comply with the Mandatory GHG Reporting Rule – referred to as “Reporting Entities” – would be broader than the universe of entities required to comply with the Cap-and-Invest Rule (forthcoming 6 NYCRR Part 252) – referred to as “Obligated Entities.” This difference in applicability is to ensure comprehensiveness of information, properly establish compliance obligations for entities, ensure the accuracy of GHG emissions from Non-Obligated Sectors, inform the retirement of Allowances, address the needs for additional complementary regulatory actions or programs, and more. Similarly, not all the GHG emissions reported under this rule would necessarily be obligated GHG emissions – meaning a requirement for Obligated Entities to provide Allowances to cover such emissions – under NYCI and the Cap-and-Invest Rule.

Summary Points

- Reporting Entities would need to register with the reporting system and certify their GHG emissions.
- Reporting Entities are anticipated to report GHG emissions leveraging their activity and published emission factors and methods.
- Where necessary, information that is duplicative to other reporting (e.g., from fuel suppliers) would need to be reported to the DEC when it is not accessible from those other reporting programs or systems to ensure data is reported uniformly and comprehensively.

[3] For more information on the Climate Act Scoping Plan, please visit https://climate.ny.gov/.

Types of GHG Emission Sources

Categories of GHG Emission Sources covered by the Mandatory GHG Reporting Rule would reflect the sources of GHG emissions used to establish the Statewide GHG emission limits under the Climate Act and 6 NYCRR Part 496 as well as the annual Statewide Emissions Report or inventory under the Climate Act. The Mandatory GHG Reporting Rule express terms would conform with New York State-specific needs and cover New York State-specific GHG emission sources.

DEC anticipates proposing express terms that conform with New York State rulemaking requirements and are based on DEC's ongoing evaluation of the existing United States Environmental Protection Agency (US EPA) GHG Reporting Program (GHGRP) and other jurisdictional GHG reporting programs, including the California GHG reporting program (numbered references below). References to the US EPA GHGRP and other jurisdictional GHG reporting programs are provided as examples of the types of information utilized for GHG reporting from key GHG emission sources; they are not intended to be exhaustive and may be altered or augmented to better reflect New York State GHG emission sources.

Through its ongoing evaluation of existing GHG reporting programs, DEC has identified several areas where the Mandatory GHG Reporting Rule would likely diverge from existing GHG reporting programs. The magnitude of the difference generally falls into two groups:

- Minor changes/ modifications
- Major changes/ modifications and New Emissions Categories

Minor Modifications

DEC is considering minor adjustments to the applicability thresholds and data requirements from the US EPA GHGRP. DEC may require more GHG emission sources to report and supply additional data than is required by the US EPA GHGRP.

Modifications may include consideration of the full scope of Climate Act[2] GHG emissions, such as biogenic combustion GHG emissions and upstream/out-of-State fossil fuel GHG emissions for the following GHG emission sources:

- Stationary Combustion (40 CFR Part 98 subpart C)
- Electricity Generation (D) – *in-State generation*
- Industrial sources may include and are not limited to:
    - Iron and Steel (Q), Aluminum (F), Lead (R), Cement (H), Electronics (I), Pulp/Paper (AA)
- Fuel Suppliers and Producers – update would align with NYS distribution systems and upstream out-of-State emissions.
    - Petroleum Products (MM), Natural Gas (NN)
- Other
    - Hydrogen (P)

Major Modifications

DEC is considering including in the Mandatory GHG Reporting Rule certain adjustments to existing US EPA GHGRP requirements to enable more accurate State-level reporting and to fill known inventory and other information gaps. These modifications would align with New York's boundaries for GHG emissions sources, which are typically tracked as national imports or regional systems under the US EPA GHGRP. More GHG emission sources may be required to report under the Mandatory GHG Reporting Rule, and additional data may be collected than in the US EPA GHGRP.

DEC is considering the following:

1) Changes to Existing EPA Source Categories to enable more accurate state-level reporting and help identify GHG emission reduction progress are anticipated, in the lettered subparts below:
   - Petroleum and Natural Gas Systems (W)
   - GHG and Fluorinated gas (F-Gas) Suppliers
     - Suppliers of GHGs (OO), CO_2 (PP), Pre-charged Equipment and Foams (QQ)
   - Waste
     - Municipal Solid Waste (MSW) Landfills (HH), Industrial Wastewater Treatment (II), Industrial Waste Landfills (TT)
   - Carbonates (modification to align GHG emission categories with uses in NY, GHG emissions may not need to be reported as separate categories if already reported by industrial sources)
     - Miscellaneous Use of Carbonates (U), Soda Ash (CC), Glass (N), Ceramics (Newly proposed ZZ)
2) New GHG Emission Source Categories related to known information gaps and not implemented in EPA or California Reporting systems:
   - EPA subparts never implemented
     - Suppliers of Coal (KK), Ethanol Production (J), Manure Management (JJ)
   - Other GHG emission source Facilities
     - Electricity Importers (Cal. Code Regs. Tit. 17, § 95111)
     - Suppliers of Fertilizer (i.e., soil management)
     - Harvested Wood Products (i.e., carbon storage in durable wood products)
     - Biological Treatment of Solid Waste (i.e., anaerobic digestion and composting)
     - Centralized Wastewater treatment
   - Other GHG emission sources
     - Solid Waste Transporters (i.e., exported MSW)

Threshold Categories

DEC anticipates establishing three categories of thresholds, described below. If an entity meets the threshold in its applicable threshold category, then the entity would have a mandatory reporting requirement under the Mandatory GHG Reporting Rule.

DEC is considering the following general applicability: GHG emission sources owned or operated in New York State that meet the threshold requirements after an effective date would report GHG emissions in accordance with the regulatory requirements.

DEC is considering the following reporting threshold categories. Only one threshold category would apply to each GHG emissions source type. Examples are included below.

A. GHG emission source type is in a specific source category.
   Examples: Facilities with Regional Greenhouse Gas Initiative (RGGI) Sources, Electricity Importers, Fuel Suppliers

B. GHG emission source responsible for more than 10,000 metric tons carbon dioxide equivalent (CO_2e) of GHG emissions[4] in a year.
   Examples: Stationary GHG Emissions Sources or facilities, including industrial sources that emit at or above the threshold and are not automatically covered under categories A or C.

C. GHG emission source type is in a specific source category and has a specific operational activity.
   Examples: Landfills, Centralized Wastewater Treatment, Manure Storage, Solid Waste Transporters with thresholds of tons or volume.

Table 1: Illustrative Distribution of GHG Emissions Reporting Types and Threshold Category Applicability

Note: This is not a comprehensive list of all reporting types under consideration and does not represent a final evaluation of which GHG emission source type would be under a specific threshold. The reporting types may change to best reflect clarity and ambition.

Reporting Entity Type	**Potential Reporting Threshold Categories**		
	A. Reports GHG Emissions if Entity Exists in NY	B. Reports Emissions if Entity Exists in NY and Emits at least 10,000 metric tons CO_2e of GHG emissions	C. Reports GHG Emissions if Entity Exists in NY and has Annual Activity above Specified Amount
RGGI Sources	X		
Electricity Importers	X		

[4] GHG emissions would be calculated based on the methods established under the Climate Act and utilized in establishing the Statewide GHG emission limits (6 NYCRR Part 496).

Reporting Entity Type	Potential Reporting Threshold Categories		
Fuel Suppliers	X		
Industrial Facilities		X	
Other Stationary GHG Emissions Sources		X	
Landfills			X (e.g., Tons of waste disposed)
Wastewater Treatment			X (e.g., Population served)
Manure Management Systems Storage			X (e.g., Manure from a number of animals managed)
Waste Transporters			X (e.g., Tons of waste transported)

DEC is considering how to best encompass reporting requirements for those GHG emission sources potentially in threshold category 'C' based on activity data. In other words, category 'C' would be based on a threshold such as volume of activity (e.g., volume of manure managed), rather than GHG emissions. *For these listed Reporting Entities, DEC would appreciate feedback regarding whether a GHG emission threshold is appropriate or provides more clarity for establishing GHG emissions reporting requirements, as compared to an activity or volume data threshold for such entities. In addition, to the extent an activity data threshold is appropriate, DEC would also appreciate feedback on appropriately sizing these activity data thresholds to properly balance the need for comprehensive GHG emissions reporting and the ability of GHG Emissions Sources to report.*

<u>Data Collection</u>

DEC anticipates that, in addition to collecting GHG emissions data, supporting data would be required to inform the calculations of reported GHG emissions. The list below is illustrative of the type of emissions data and supporting information that would be required.

DEC anticipates that GHG emissions data to be collected would include but may not be limited to:

- Fuel
    - GHG emissions calculated by applying emission factors[5] to fuel type(s) and amount(s) sold or transferred to an end user in New York (includes reporting of sales/transfers to Obligated and Non-Obligated Entities)
    - Fuel type and amount imported and exported or sold or transferred to another Fuel Supplier within New York State
- Combustion Sources

[5] Emission Factors represent the GHG emissions from a specific amount of fuel or component or equipment. Examples of emission factors currently used for the annual NYS GHG emission Report can be reviewed here https://www.dec.ny.gov/docs/administration_pdf/ghgappxclcpaemissfctrs22.pdf.

    - GHG emissions calculated by applying emission factors to fuel type(s) and amount(s) utilized by facility
    - GHG emissions from components or equipment using emissions factors for on-site GHG emissions
    - GHG emissions from planned or unplanned venting
    - GHG emissions identified by Continuous Emission Monitors
- Fugitive/Leaking Sources (e.g., fuel transportation and distribution systems)
    - GHG emissions from components and equipment using emission factors
    - GHG emissions calculated from fuel utilization
    - GHG emissions from planned or unplanned venting
- Supplied industrial GHGs
    - GHG emissions from gases or charged equipment sold/transferred to an end user in New York
- Process Emissions
    - GHG emissions from types of industrial processes with emissions factors
    - Other types of activity data, such as production or output information for such facilities
- Waste Management
    - GHG emissions calculated from reported disposal or managing of waste
    - GHG emissions calculated from specific management types (digesters, treatment facilities, composting facilities)
- Electricity Imports
    - GHG emissions calculated from specified and unspecified megawatt hours at the first receiver of power in New York State

Verification

Third party verification is anticipated for the most significant GHG emission sources and to ensure high integrity for those entities that have an obligation to comply with the Cap-and-Invest Rule. DEC anticipates requiring third party verification for any GHG emission data reports where the GHG emission source is also an Obligated Entity (i.e., an entity with a compliance obligation pursuant to the anticipated Cap-and-Invest Rule) and/or when the GHG emissions from a reporting source exceed 25,000 tons CO_2e.[6]

The Cap-and-Invest Program

The Cap-and-Invest Program would be effectuated via a DEC Cap-and-Invest rule (forthcoming 6 NYCRR Part 252) and a NYSERDA Auction rule (forthcoming 21 NYCRR Part 510).

The Cap-and-Invest Rule would establish the annual enforceable GHG Emissions Cap, which would decline over time consistent with the 2030 and 2050 Statewide GHG emission limits established by the Climate Act and

[6] GHG emissions would be calculated based on the methods established under the Climate Act and utilized in establishing the Statewide GHG emission limits (6 NYCRR Part 496).

consistent with 6 NYCRR Part 496. Furthermore, the Cap-and-Invest Rule would establish which GHG Emissions Sources are Obligated Entities and would set the annual GHG Emissions Cap, Allowance Budgets, and compliance requirements. Also, this rule would establish a mechanism to address GHG emissions from Non-Obligated Entities. In addition, it would, in conjunction with the Auction Rule, contain a variety of mechanisms to provide market integrity protections, cost controls, and program stability.

Auctions would be the primary way that Allowances are made available to Obligated Entities and parties that wish to participate in the market voluntarily (referred to as General Market Participants). NYSERDA would promulgate the Auction Rule, which would be designed to provide for transparency among auction participants and limits the ability of individual entities to exercise market power, ensuring a high-integrity market that would provide Allowances to all Obligated Entities, allows an appropriate price to be placed on GHG emissions, and builds confidence in the Program among all stakeholders. The concepts set forth below would support a competitive, transparent, and predictable auction system.

A number of policy components described below would have complementary sections in each of these two rules.

Obligated Sectors and Entities

The anticipated design of the Cap-and-Invest Rule would encompass economy wide GHG emissions and incorporate both Obligated and Non-Obligated GHG emission sources. The following compliance obligation thresholds (i.e., GHG emissions levels that if exceeded trigger compliance obligations under the Cap-and-Invest Rule) are under consideration:

- Stationary GHG Emission Sources, including non-RGGI electricity generation sources, would have an obligation threshold of 25,000 metric tons (CO_2e) of GHG emissions.[6]
  - For Stationary GHG Emissions Sources whose total GHG emissions are less than the compliance threshold, GHG emissions associated with fuel utilization may still be obligated at the Fuel Supplier level if that Fuel Supplier meets the compliance threshold.
- Fuel Suppliers would have an obligation threshold of 100,000 gallons of liquid fuel or 15,000,000 standard cubic feet of gaseous fuel sold to an end user in New York State.
  - Fuel Suppliers would not include GHG emissions associated with fuels sold to other Obligated Entities (e.g., Stationary GHG Emissions Sources) for the purpose of identifying whether they are obligated, and they would not have an Allowance compliance obligation for these fuels.
- Electricity sector obligations have not yet been determined. *The Agencies are seeking comments on whether and how to obligate electricity generation and electricity import emissions.*
- Obligation thresholds would be compared to GHG emissions data reported through the Mandatory GHG Reporting Rule and compared to each GHG Emissions Source's GHG emissions sum, including: GHG emissions associated with fuel utilization (either combustion or other use) and the out-of-state emissions associated with the fuel used; industrial processes; venting; and in-state fugitive releases. For those entities that have GHG emissions in multiple subsectors in the below list, for example, industrial entities with fuel combustion and process GHG emissions, the Allowance obligation threshold would apply collectively.

Table 2: Obligation requirements by sector and subsector (as described in the DEC Statewide GHG Emissions Report).

IPCC Sector	Subsector	Subsector Description	Obligated under Part 252	Obligated Entity
Energy	Fuel combustion - Electricity		TBD	
Energy	Out-of-State Electricity		TBD	
Energy	Out-of-State Fossil Fuels - Electricity		TBD	
Energy	Fuel Combustion - Residential	Emissions from the in-State burning of fossil and biogenic fuels in the residential sector	Yes	Stationary GHG Emissions Source if above threshold; or else Fuel Supplier that is above threshold; or else non-obligated
Energy	Fuel Combustion - Residential Wood Burning	Emissions from wood burning in residential homes	No	
Energy	Fuel Combustion - Commercial	Emissions from the in-State burning of fossil and biogenic fuels in the commercial sector	Yes	Stationary GHG Emissions Source if above threshold; or else Fuel Supplier that is above threshold; or else non-obligated
Energy	Fuel Combustion - Industrial	Emissions from the in-State burning of fossil and biogenic fuels in the industrial sector	Yes	Stationary GHG Emissions Source if above threshold; or else Fuel Supplier that is above threshold; or else non-obligated
Energy	Fuel Combustion - Transportation	Emissions from the in-State burning of fossil and biogenic fuels for transportation	Yes	Fuel Supplier
Energy	Fuel Combustion - Aviation	Emissions from the combustion of aviation fuels	No	
Energy	Out-of-State Fossil Fuels - Aviation	Emissions from the extraction, production, and transmission of aviation fuels for use in NYS	No	
Energy	Out-of-State Fossil Fuels (associated with obligated energy sector fuel use)	Emissions from the extraction and transmission of fuels imported for use in New York State	Yes	Stationary GHG Emissions Source or Fuel Supplier that has combustion obligation
Energy	Fugitive Emissions	Emissions from instate oil and natural gas infrastructure	Yes	Stationary GHG Emissions Source, infrastructure owners

IPCC Sector	Subsector	Subsector Description	Obligated under Part 252	Obligated Entity
Energy	Fugitive Emissions – Upstream Segment	Emissions from instate upstream oil and natural gas infrastructure (e.g., wells)	No	
Energy	Other Use of Fuels	Emissions from non-energy uses of fossil fuels such as the manufacturing of plastics, asphalt, or lubricants	Yes	Stationary GHG Emissions Source if above threshold; or else fuel supplier that is above threshold; or else non-obligated
IPPU	Metals	Emissions from the production of aluminum, iron and steel, ferroalloy, and secondary lead	Yes	Stationary GHG Emissions Source
IPPU	Minerals	Emission from the production of cement and the uses of carbonates and soda ash	Yes	Stationary GHG Emissions Source
IPPU	Electronics	Emissions from electronics manufacturing	Yes	Stationary GHG Emissions Source
IPPU	Product Use	Emissions from the use of refrigeration, foams, and propellants	No	
IPPU	Product Use - Commercial Refrig.	Emissions from the use of refrigerants in commercial refrigeration systems	TBD	
Waste	Solid Waste	Emissions from decomposition of organic wastes deposited in landfills	Yes	Stationary GHG Emissions Source Operator of landfill
Waste	Waste Combustion	Emissions from the combustion of municipal wastes sent to regulated combustion facilities	Yes	Stationary GHG Emissions Source Operator of facility
Waste	Wastewater - Centralized	Emissions from decomposition of organic matter in wastewater	Yes	Stationary GHG Emissions Source Operator of facility
Waste	Wastewater - Septic	Emissions from decomposition of organic matter in wastewater	No	
Waste	Exported Waste	Emissions from decomposition of organic wastes produced in NYS deposited in landfills outside of NYS	New Only	Transfer station Operator or last jurisdictional possessor

IPCC Sector	Subsector	Subsector Description	Obligated under Part 252	Obligated Entity
AFOLU	Livestock	Emissions from manure management and animal feeding (enteric fermentation)	No	
AFOLU	Soil Management	Emissions from liming, urea application, and soil nitrogen management	No	
Energy	Electricity T&D	Emissions of sulfur hexafluoride from electricity systems	No	

Demonstrating Compliance

Compliance Periods

A compliance period pursuant to the Cap-and-Invest Rule would be the amount of time over which Obligated Entities are required to surrender Allowances to DEC to cover their GHG emissions. The first compliance period would be 2025 and 2026. The second compliance period would begin in 2027. Subsequent compliance periods would be either two or three years in length and would seek to align as necessary with appropriate program stability measures, cost containment, and the Statewide GHG emission limits in 2030 and 2050. An interim compliance period would be the first year of a two-year compliance period, and each of the first two years of a three-year compliance period.

Allowance Retirement Obligations

After each year of an interim compliance period, Obligated Entities would be required to surrender to DEC for retirement at least 50% of their annual Allowance obligation. In the final year of the compliance period, Obligated Entities would be required to submit Allowances sufficient to cover the remainder of their GHG emissions from the interim compliance period(s) and for the full amount of the last year of the compliance period.

Compliance deadlines for each year would be June 30 of the subsequent year. *DEC is seeking comments on whether the proposed deadline allows enough time between verification and compliance to participate in the potential price ceiling unit (PCU) sales.* See Price Ceiling for more information.

Establishing a GHG Emissions Cap and Allowance Budget

Setting the 2025 GHG Emissions Cap

The GHG Emissions Cap in Year 1 would approximate the Statewide GHG emissions to the best extent practicable at the outset of the NYCI program. *To identify this starting point, DEC is seeking comment on the methodology which would best determine GHG emissions at the outset of the program*. Methodologies under consideration include:

- Historical Method: DEC would use the most recent Statewide Greenhouse Gas Emissions Report (to be published in December 2023 reflecting an inventory of GHG emissions from 1990 through 2021), and other data sources on historic fuel consumption from federal and state sources. Under this approach, data evaluated in setting the 2025 GHG Emissions Cap could include the forthcoming Statewide Greenhouse Gas Emissions Report published in December 2023 (covering 1990 to 2021), RGGI CO_2 emissions through 2022, US DOE EIA natural gas supply data through 2022, US DOT State specific reports on motor fuel and special fuel sales through 2022, and the NYISO Load & Capacity Data Reports through 2022.

- Projection Method: DEC would use the most recent data as described in the above 'Historic Method' along with adjustments reflecting the projected impact of adopted regulations and programs in effect at the time of rule finalization.

GHG Emissions Cap Trajectory

The GHG Emissions Cap in 2030 and 2050 would be equal to the total limit on Statewide GHG emissions as established in the Climate Act and reflected in 6 NYCRR Part 496. This amount is 245.87 MMT (CO_2e) of GHG emissions in 2030 and 61.47 MMT (CO_2e) in 2050. 6 NYCRR § 496.4.

DEC anticipates a nonlinear GHG Emissions Cap reduction trajectory between 2025 and 2030 and between 2030 and 2050. In each of these phases of the program, the GHG Emissions Cap would initially reduce more gradually and then accelerate in the years leading up to the Statewide GHG emission limits in 2030 and 2050.

The GHG Emissions Cap would be based on the following approach:

- In the first phase of the program (2025 to 2030), the slower reduction period would be in 2026 and 2027.
- In the second phase of the program (2031 to 2050), the slower reduction period would be 2031 through 2040, inclusive.

Establishing Annual Allowance Budgets

The annual Allowance Budget would be the amount of Allowances issued to Obligated Entities and General Market Participants, reflecting the GHG Emissions Cap less adjustments for Non-Obligated Entities and for any applicable Banking Adjustments:

$$\begin{aligned}\boldsymbol{Allowance\ Budget} = \boldsymbol{GHG\ Emissions\ Cap} - {} \\ \boldsymbol{Non\text{–}Obligated\ Entities\ Adjustment} - {} \\ \boldsymbol{Banking\ Adjustment\ (if\ applicable)}\end{aligned}$$

Annually, DEC would allocate the majority of Allowances from the Allowance Budget to NYSERDA for the purpose of auctions, which NYSERDA would auction pursuant to the terms of the Auction Rule. A minority of Allowances from the Allowance Budget would be allocated by DEC to EITE Emission Sources consistent with methods described below in the *Emissions-Intensive and Trade-Exposed Industries* section and auctioned by NYSERDA.

Implementation of Non-Obligated Adjustment

DEC would establish the initial Non-Obligated Entities adjustment and Allowance Budget for the first compliance period in the Cap-and-Invest Rule. DEC's determination would be based on current GHG emissions and other data on trends of GHG emissions from these sectors as well as information from Obligated Sectors.

The Allowance Budget for subsequent compliance periods would be established pursuant to the above-referenced equation. The current GHG emissions and other data trends utilized to determine the Obligated and Non-Obligated GHG emissions would also include information from the Mandatory GHG Reporting Program pursuant to the Mandatory GHG Reporting Rule. The proportion of the GHG Emissions Cap allocated for Non-Obligated Entities GHG emissions would likely be broadly similar throughout the early years of the program.

The process to establish the Allowance Budget and Non-Obligated Allowances for subsequent compliance periods would be as follows:

Before the beginning of compliance period 2 and each subsequent compliance period, DEC and NYSERDA would issue a projection of GHG emissions from Non-Obligated Sectors for at least the next two compliance periods. This represents the Non-Obligated Entities adjustment for the next compliance period and estimate of the adjustment for the subsequent period. This process would not result in adjustments to the GHG Emissions Cap.

1. Six months before the beginning of each compliance period beginning with the second compliance period, DEC/NYSERDA would establish:
    a) Actual Non-Obligated GHG emissions to date and a comparison to the projection used in the establishment of past Allowance Budgets. The total discrepancy would be summed.
    b) Projection of Non-Obligated Sector GHG emissions by year for at least the next two compliance periods.
2. The Non-Obligated Entities adjustment for each year of the second compliance period and all subsequent compliance periods is the sum of:
    a) The total discrepancy for past Non-Obligated GHG emissions divided by number of years in the next compliance period(s).
    b) Projection of non-obligated GHG emissions by year.

$$\begin{aligned}\boldsymbol{Non\text{–}\ Obligated\ Entities\ Adjustment}\\ &= \boldsymbol{Projected\ Non\text{–}\ Obligated\ GHG\ Emissions}\\ &+ (\boldsymbol{Past\ GHG\ Emissions\ Discrepancy/Years\ in\ next\ compliance\ period})\end{aligned}$$

Banking Adjustments

As part of regular program reviews, DEC and NYSERDA would estimate whether likely future Allowance Budgets in combination with unretired Allowances held in private accounts would yield GHG emissions in excess of the Statewide GHG emission limits. If so, DEC would establish a Banking Adjustment sufficient to reduce future

Allowance Budgets to realign likely GHG emissions outcomes consistent with statutory obligations in the Climate Act and Part 496.

Emissions-Intensive and Trade-Exposed Industries

To mitigate risk of leakage, certain GHG Emission Sources would be allocated a limited amount of Allowances; Allowances allocated to GHG Emission Sources designated as emissions-intensive and trade-exposed (EITE) would then be consigned to auctions. Such EITE Emissions Sources would remain under the overall GHG Emissions Cap and continue to be subject to compliance obligations pursuant to the Cap-and-Invest Rule but would receive Allowances at no cost.

In order to receive EITE designation, an industry or sector would need to be identified as both "Emissions Intensive" and "Trade Exposed". Each GHG Emissions Source that is in that industry or sector would receive EITE treatment.

Identification of EITEs

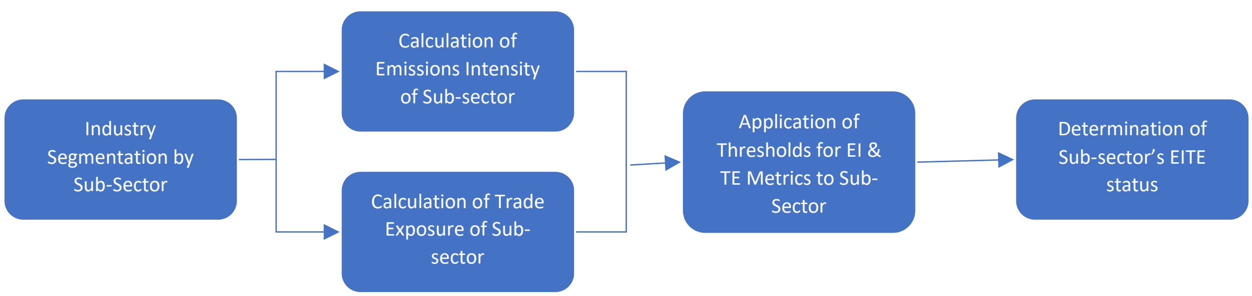


Figure 1: Process by which EITEs are identified.

Identification of EITE subsectors would be done using the North American Industrial Classification System (NAICS) codes and would employ 6-digit codes that classifies industrial activity.

Emissions Intensity

GHG Emission Intensity (EI) would represent the ratio of GHG emissions obligated pursuant to the Cap-and-Invest Rule to the value of the economic good produced in each NAICS coded subsector.

- GHG emissions data would be derived from the Mandatory GHG Reporting Program. If that data is not available, GHG emissions would be approximated at the sectoral level using the Manufacturing Energy Consumption Survey data and other federal data sets. GHG emissions data would only be selected for sectors that are obligated under NYCI.
- GHG emissions related to electricity and/or heat generated on-site but sold to third parties would be removed from calculation, provided those GHG emissions would be obligated for those third parties. Mandatory reported data pursuant to the Mandatory GHG Reporting Rule would capture these effects.

- Emissions intensity would be calculated using the formula below. The clause pertaining to Indirect Electric Sector Emissions would be adjusted or removed depending on final obligation decision for that sector.

$$\boldsymbol{EI} = \frac{(\boldsymbol{Direct\ Emissions\ tCO_2e} + \boldsymbol{Indirect\ Electric\ Emissions\ tCO_2e})}{\$\ \boldsymbol{Value\ Added}}$$

Trade Exposure

Trade Exposure (TE) would be represented by a calculation of trade share in a NAICS coded subsector consistent with the formula below.

$$\boldsymbol{TE} = \frac{\$\ \boldsymbol{Imports} + \$\ \boldsymbol{Exports}}{\$\ \boldsymbol{Value\ of\ Shipments},\ \boldsymbol{Sales},\ \boldsymbol{Revenue} + \$\ \boldsymbol{Imports}}$$

Threshold for EITE Designation

DEC and NYSERDA are seeking comment on the appropriate EI and TE threshold levels at which a sector would be deemed Energy Intensive and Trade Exposed. To receive EITE treatment, a sector must meet or exceed the determined thresholds for both metrics.

EITE Emissions Allowances

No-cost Allowances would be provided to eligible EITE GHG Emissions Sources to help mitigate the risks of leakage and negative competitive outcomes. Allowances could partially or wholly cover an EITE Emissions Source's obligations under the Cap-and-Invest Rule and would provide EITE industries with an incentive for reducing GHG emissions despite not being required to purchase Allowances. The Allowance calculation would be a function of both the GHG Emissions Cap and each EITE Emissions Source's actual production levels in a given year, thus ensuring that the facility allocation gradually declines with the GHG Emissions Cap while adjusting for production changes. The Allowance calculation would be done in a way that reflects the regular adjustment of the GHG Emissions Cap, encourages eligible EITE Emissions Sources receiving no-cost Allowances to pursue emission-efficient production, and reflects the recipient's risk of leakage.

The calculation would incorporate actual production output as reported in the Mandatory GHG Reporting Rule, ensuring that an eligible GHG Emissions Source is not penalized for increasing production and would not benefit from cutting production.

$$A = B \times CA \times O$$

A – Allowance ($MtCO_2e$)

B – Benchmark, a GHG emissions intensity of production figure ($MtCO_2e$/production unit)

CA – Cap Adjustment Factor, a coefficient that accounts for annual decreases in the overall cap

O – Production Output

The initial allocation of Allowances for a compliance period would be based on production output submitted in the GHG emission source's application for EITE designation and will be adjusted positively or negatively once actual production data is reported. *The Agencies are requesting comment on Allowance allocation timing including a mechanism to true up differences in historic production and reported annual production.*

In instances where gathering information on production flows is not feasible or a product-based benchmark has not been developed, Allowances can be calculated using an energy-based calculation methodology, shown below.

$$A = (B_f \times F + E_p - eh_{sold} \times B_{eh}) \times CA$$

A – Allowance ($MtCO_2e$)

B_f – Benchmark representing the emissions intensity of the fuel

F – Fuel consumed

E_p – GHG emissions related to chemical or physical manufacturing processes

Eh_{sold} – Electricity or heat sold to a non-obligated third party

B_{eh} – Benchmark representing the GHG emissions intensity of the electricity or heat generation

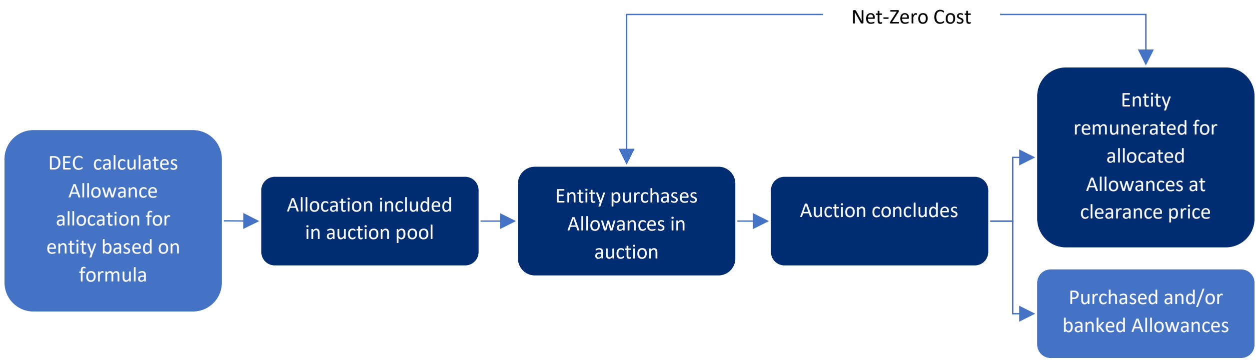
CA – GHG Emissions Cap Adjustment factor

The initial allocation of Allowances for a compliance period would be based on energy consumption submitted in the GHG emission source's application for EITE designation and would be adjusted positively or negatively once actual consumption is reported. *The Agencies are requesting comment on Allowance allocation timing including a mechanism to true up differences in historic consumption and reported annual consumption.*

Application and Annual Reporting

In order to be designated as EITE, a GHG Emission Source would be required to file an application with DEC establishing its membership in a designated subsector and provide historic production data in order to establish initial emissions intensity/energy consumption benchmarks (*B*) consistent with the formulas above. In subsequent years, an eligible EITE Emission Source would be required to provide information on its production levels in order to support the production-based allocation described above (*O*). An EITE Emissions Source may, at the time of submission, request that DEC exempt such information from disclosure under the Freedom of Information Law on the basis such information contains trade secrets, confidential commercial information, or critical infrastructure information pursuant to 6 NYCRR Section 616.7.

Consignment of EITE Allowances



The Cap-and-Invest Rule would require the use of a consignment approach for allocating EITE Allowances to eligible GHG Emission Sources. Allowances allocated to an EITE Emission Sources cannot be used for compliance prior to being consigned to auction with proceeds from sale accruing to the original Allowance holder. EITE Emission Sources would be allocated a volume of Allowances by DEC according to specifications described in above sections. These Allowances would then be automatically consigned to auctions administered by NYSERDA along with State-owned Allowances. Proceeds from sale of consigned Allowances would accrue to eligible GHG Emissions Sources owning these Allowances.

EITE Emission Sources would be able to simultaneously submit bids like other entities for the volume of Allowances they seek to purchase.

- If this amount is less than the volume of consigned Allowances, the EITE Emission Source would generate net proceeds—rewarding such facilities for reducing GHG emissions faster than allocation decline.
- If this amount is greater than the volume of consigned Allowances, the EITE Emission Source would provide additional funds to purchase the incremental volume needed. The EITE Emission Source would be required to provide financial security for the incremental volume of Allowances it seeks to purchase.
- The settlement of the sale of consigned Allowances and the EITE Emission Source's purchase of Allowances would be simultaneous, resulting in no carrying cost to the eligible GHG emission sources except insofar as it is seeking purchase Allowances in excess of its allocation.

Increasing Affordability via Potential Electric Utility Consignment

Similar to the above described EITE consignment, DEC and NYSERDA are considering an additional consignment approach for electric utilities. In order to be eligible for such consignment, electric utilities would be required to use all proceeds from the auction of consigned allowances for affordability of their ratepayers. Electric utilities regulated by the Public Service Commission (Commission) would be required to participate, and this affordability program would be overseen by that body. All other utilities wishing to participate for the benefit of their ratepayers would be required to submit an affordability program proposal to the Commission demonstrating how funds generated via consignment would be expended to the benefit of their ratepayers. Such utilities would be allowed to participate in the consignment program once it is established by the Commission that their proposal complies with the intended affordability purpose.

For participating utilities, the Cap-and-Invest Rule would consign Allowances on a load share basis where the maximum amount of consigned Allowances would be in proportion to total statewide load (that is, the consigned amount would be equal to that utility's load share applied to the maximum consignment volume; Allowances associated with utilities that do not participate would remain with DEC/NYSERDA and be auctioned as typical). Consigned Allowances would be automatically included in auctions by NYSERDA along with non-consigned Allowances. Proceeds from the sale of consigned Allowances would accrue to designated electric utilities and must be expended consistent with the affordability purpose as overseen by the Commission.

DEC and NYSERDA are interested in feedback from stakeholders on this potential electric utility consignment approach, as well as the volume of allowances to dedicate to this supplementary affordability mechanism and other design considerations.

Program Stability Measures and Cost Containment

Price Floor

Each auction would include a minimum reserve price below which Obligated Entities and General Market Participants may not submit bids.

The minimum price floor would be set at *$/ton* in 2025 and escalate annually by 8%, reflecting an annual adjustment and including anticipated inflation.

Cost Containment Reserve (CCR)

DEC and NYSERDA would create a CCR to make available additional Allowances that enter auctions if prices reach a price trigger. If auctions settle above the trigger price, only the quantity of Allowances needed to maintain the trigger price would be made available, with any remaining CCR Allowances remaining in the CCR rolling forward to the future.

CCR Allowances would be sourced from under the Allowance budget, with 5% of Allowance Budget Allowances placed in the reserve.

Allowances placed in CCR in the first six years of the program would be made available on a special schedule. The adjustment in CCR Allowance availability would not alter aggregate Allowance Budgets between 2025 and 2030 but would instead provide support for adequate supply as the program is initiated. Initial year CCR allocation would be structured as follows:

- CCR Allowances for 2025 and 2026 would all be vintaged 2025 and made available consistent with trigger prices beginning in 2025.
- CCR Allowances for 2027, 2028, 2029, and 2030 would all be vintaged 2027 and made available consistent with trigger prices beginning in 2027.
- The number of CCR Allowances made available in each specific auction would be at NYSERDA's discretion within these rules and would be announced in the auction notice issued before each auction.

The CCR trigger price in 2025 will be *$/ton*; in 2027 it will be *$/ton* and increase annually by 8%, reflecting an annual adjustment plus anticipated inflation.

To ensure adequate Allowance supply for Obligated Entities in the event of high demand, General Market Participants would not be permitted to offer a bid price greater than or equal to the cost containment reserve trigger price applicable for such an auction. As such, when auctions exceed these price levels, only Obligated Entities would be able to purchase Allowances.

Emissions Containment Reserve (ECR)

DEC and NYSERDA would create an ECR to withdraw Allowances from auctions if prices fall below a price trigger. Allowances would be released from an ECR only when prices exceed the trigger price; otherwise these Allowances would stay in the reserve and would not be sold in a given auction. The Emissions Containment Reserve is a part of the Allowance Budget and not incremental to it. The ECR will receive 10% of Allowances in each Allowance budget.

The ECR trigger price in 2025 will be *$/ton*; in 2027 it will be *$/ton* and increase annually by 8%, reflecting an annual adjustment plus anticipated inflation.

Price Ceiling

The Cap-and-Invest Rule would include a hard price ceiling, which would change annually in two distinct phases of the program. The first phase of the program would include the 2025 and 2026 compliance years; the second phase would include all subsequent years of the program.

The price ceiling would be effectuated via the creation and sale of Price Ceiling Units (PCUs). PCUs would be similar to Allowances in that Obligated Entities may submit them for compliance and they also represent the limited authorization to emit one ton of CO_2e. However, they would differ from Allowances in a number of important ways, including the following:

- May be purchased only near compliance deadlines consistent with a process that would be outlined in the Cap-and-Invest and Auction rules ahead of each deadline. *DEC and NYSERDA are seeking comment on the optimal timeframe to begin selling PCUs ahead of compliance deadlines*;
- May be purchased only if an entity, including its corporate associates, has submitted all available Allowances for compliance and has none remaining in its holding accounts;
- May only be purchased in quantities equal to its remaining compliance obligation; and
- Must be immediately retired for compliance and may not be banked or traded.

PCUs would be offered for sale in unlimited quantities under pursuant to the above conditions. In 2025, PCUs would have a specified value of *$/PCU*; in 2027 PCUs would have specified value of *$/PCU*. Each year subsequent to the specified years, the price of PCUs would increase by 8%. In order to purchase PCUs, Obligated Entities would apply to DEC for the amount of PCUs they require; DEC would certify to NYSERDA the eligibility of the Obligated Entity to purchase a specified amount of PCUs; NYSERDA would sell the PCUs to the Obligated Entity at the specified price level and deposit these immediately into the Obligated Entity’s compliance account. DEC would retire PCUs to satisfy the Obligated Entity’s Allowance obligation.

Allowance Banking

Allowances would not expire and would be able to be used the vintage year they are issued or in any subsequent year. An important exception to this is that Allowances issued in the first compliance period—2025 and 2026—would not be able to be used for compliance in any subsequent year. Retiring vintage 2025 Allowances would be allowed for compliance of GHG emissions which occur in 2025 or 2026; retiring vintage 2026 Allowances would only be permitted for GHG emissions that occur in 2026.

NYCI Program Considerations to Ensure No Disproportionate Impacts in Disadvantaged Communities

As set forth in the Climate Act, DEC must ensure that activities undertaken to comply with NYCI do not result in a net increase in co-pollutant emissions or otherwise disproportionately burden Disadvantaged Communities (DACs). In addition, the Climate Act requires DEC to prioritize measures to maximize net reductions of both GHG and co-pollutant emissions in DACs. Finally, as required by law, at least 35 percent, with a goal of 40 percent or more, of the NYCI program investments will directly benefit DACs.

Through the NYCI program as well as parallel regulatory actions and investments, DEC and NYSERDA are seeking to prioritize DACs across the State, as these communities have long suffered from disproportionate pollution impacts and environmental injustice. Below are examples of regulatory provisions under consideration within NYCI, as well as of complementary programs and requirements, to ensure NYCI does not result in disproportionate impacts within or near DACs.

No Offsets in NYCI

The NYCI program would not include any provisions for offsets. Some cap-and-invest programs provide for the creation of offsets based on investments in projects that reduce or sequester GHG emissions. In such programs, offsets can then be utilized by GHG Emissions Sources to cover part of their GHG emission compliance obligation. This mechanism can allow GHG Emissions Sources to increase their direct GHG emissions, based on GHG reduction or sequestration that may take place elsewhere.

In New York, many Stationary GHG Emissions Sources that are anticipated to be Obligated Entities under the Cap-and-Invest Rule are located in or near DACs. Allowing these GHG Emissions Sources to cover a portion of their compliance obligation with offsets could enable such sources to increase their direct on-site emissions. For this and other reasons, the Cap-and-Invest Rules would not include any provisions for the creation of offsets or for Obligated Entities to utilize offsets for compliance.

Other Potential Regulatory Mechanisms

In addition, DEC and NYSERDA have previously solicited stakeholder feedback on a number of different potential regulatory mechanisms to protect against the potential for disproportionate impacts on DACs as GHG Emissions Sources comply with NYCI Rules, including:

- Prohibiting Obligated Entities located in or near DACs from purchasing or trading Allowances from outside of DACs;

- Requiring Obligated Entities located in or near DACs to surrender Allowances at some multiple of greater GHG emissions, greater than the typical one Allowance to one ton of CO_2e general requirement; and
- Setting facility-specific emissions caps for Obligated Entities located in or near DACs.

Of these three options, DEC is considering various approaches to facility-specific emission caps for Obligated Entities located in or near DACs, as these may be the best means of protecting against the potential for net increases in emissions or other disproportionate impacts on DACs.

To the extent DEC were to impose facility-specific emission caps on Obligated Entities located in or near DACs, such limits could be placed on GHGs, specified co-pollutant emissions, or both. DEC would seek to set any such limits at a level that protects against the possibility of net increases in emissions from these facilities or other disproportionate impacts on DACs, while still allowing for the operation of such facilities at a level consistent with the overall GHG Emission Cap reduction and Statewide GHG emission limits. Finally, any facility-specific emission caps would likely be established through DEC's existing permitting oversight process and codified in parallel regulations as described below, rather than within the Cap-and-Invest Rule.

DEC and NYSERDA are seeking comment on this potential approach, including regarding the following components: (1) the appropriateness of establishing facility-specific emission caps on Obligated Entities alongside NYCI; (2) whether any such caps should be on GHG emissions, specified co-pollutants, or both; (3) how this approach might interact with other requirements of NYCI; and (4) the process for establishing the appropriate level of any facility-specific emission cap.

Complementary Programs and Requirements

In addition to these potential regulatory provisions specific to NYCI, other complementary programs and requirements that help to address disproportionate impacts in DACs include:

- Other DEC air quality and air pollution control regulations (see generally 6 NYCRR Chapter III, Air Resources)
- Climate Act Section 7(3) and permitting
- 2023 Siting Law
- Statewide Community Air Monitoring Initiative

All Stationary GHG Emissions Sources located in or near DACs are subject to a variety of complementary regulatory and permitting requirements that will help to ensure no disproportionate impacts on DACs. This includes, for example, the requirements of Section 7(3) of the Climate Act. This provision requires that, in the context of making permitting and other administrative decisions, DEC and other State agencies not disproportionately burden DACs. DEC recently released a draft policy, Division of Environmental Permits (DEP) 23-1, to address the requirements of this provision in DEC permitting.

In addition, a new law[7], often referred to as the 2023 Siting Law, requires DEC to further consider the effects of disproportionate pollution impacts on DACs in the context of the State Environmental Quality Review Act and the Uniform Procedures Act. More specifically, this law aims to address the "effects of any proposed action on [DACs] including whether the action may cause or increase a disproportionate pollution burden on a [DAC.]" Thus the Department is required to develop regulations to implement this law and will have to consider the

[7] Chapter 840 of the Laws of 2022, as amended by Chapter 49 of the Laws of 2023.

impact of new and existing burdens in the issuance of a new permit or the approval of a modification to an existing permit.

These and other requirements will be applicable to a variety of GHG emission sources, including Obligated Entities that are located in or near DACs. In addition to complying with the requirements of NYCI, pollution sources will also have to comply with the requirements of Climate Act Section 7(3), the 2023 Siting Law, and other DEC regulatory provisions addressing co-pollution emissions.

Finally, DEC is currently undertaking a statewide Community Air Monitoring effort pursuant to the Climate Act in 10 DACs. The results of this monitoring effort will inform a variety of recommended mitigation actions to reduce GHG and other air pollutant emissions and exposure in these communities. Developing and implementing mitigation strategies will begin to address longstanding environmental injustice and historic burdens on the State's DACs. Advancing many of these actions will require State investments. Proceeds from the NYCI program can help to fund actions identified through the Community Air Monitoring initiative.

Auction Logistics and Mechanics

NYSERDA would design and administer Allowance auctions as part of the NYCI Program. Obligated Entities and General Market Participants would bid on and purchase Allowances. NYSERDA aims to design an auction system that minimizes the administrative burden for participating parties while being fair and transparent.

Implementation of Auctions

NYSERDA would design, implement, and administer Allowance auctions. NYSERDA may delegate implementation and administration to a qualified designee under NYSERDA's oversight.

- Auctions would be held at least quarterly/four times per year.
- NYSERDA would issue a public notice 60 days prior to the date of each auction with the standard information shown below. If needed, additional detail for the specific auction can be added to the public notice.

Table 3: Standard information anticipated to be included in public notices announcing NYCI auctions.

Public Notice
Date, time, and location of the Allowance auction
Categories of bidders who would be eligible to bid (Obligated Entities will be eligible every auction)
Quantity of Allowances to be auctioned (by Vintage Year)
Minimum reserve price, emissions containment reserve or cost containment reserve trigger prices, to the extent applicable (these topics will be addressed as part of the Cap-and-Invest Rule)
Auction format
Any participation limitations
Information regarding settling and clearing of Allowance payments
Instructions as to qualification of applications and forms for financial security
Terms and conditions that would govern auction transactions
Application deadline
NYSERDA contact person

Registration Requirements

Parties wishing to participate in Allowance auctions would need to submit a registration application to NYSERDA and provide required information no later than 30–45 days prior to each auction.

To be qualified to participate in an auction, Registered Entities (Obligated Entities and General Market Participants) would need to:

- Provide basic corporate information including the Entity's legal name and contact information, identification of officers and directors, and ownership information.
- Notify NYSERDA of intent to participate in each auction,
- Identify as Obligated Entities or General Market Participants. If their status changes, parties would need to update their registration,
- Notify NYSERDA of ownership, corporate, or bidding associations with other Registered Entities as well as certain unregistered Entities (see below section on Market Integrity and Market Manipulation Prevention for more information on associations),
- Provide NYSERDA with additional information, such as designated account representatives and NYCI Consultants, account representatives, and account viewing agents,
- Provide financial security to NYSERDA.

In addition to the Entity registering, NYCI Consultants would need to register and disclose the name of the Registered Entity they are advising to NYSERDA before each auction and describe the services being performed for the Registered Entity.

Obligated Entities, General Market Participants, and NYCI Consultants would also need to provide assurance that they are not sharing information with other auction participants in contravention of prohibitions against collusive behavior. See below section on Market Integrity and Market Manipulation Prevention for more information on the prohibition of collusion.

Auction Format

Consistent with established practices in similar programs, including RGGI, the auction bidding format would be a single round, sealed-bid, uniform price auction.

- Bids would include a specific price and number of Allowances (in increments of 1,000).
- Registered Entities would be able to submit more than one bid per auction.
- Bids would only be accepted if they are consistent with that Entity's holding limit, auction purchase limit (see below), and limit of financial security submitted for the particular auction.
    - After bidding has concluded, bids or portions of bids of a Registered Entity would be rejected if acceptance of all the Registered Entity's bids would exceed the Registered Entity's holding limit, auction purchase limit, or limit of financial security.
    - If this occurs, bids or portions of bids would be rejected starting with the Registered Entity's lowest bid price and continuing in increasing order by bid price until the total of the Registered

Entity’s bids remaining would, if accepted, not exceed its holding limit, auction purchase limit, and limit of financial security.

- The complete and finalized list of bids, after modifications described above, would be sequenced in descending order, sometimes referred to as a bid stack. The auction clearance price would be determined based on the bid that exhausts all Allowances made available in that auction. All Allowances would be sold at the clearance price to those entities that bid at the clearance price or above.

Simplified Bidding Option

NYSERDA recognizes that the bidding process would be potentially burdensome for certain Entities (e.g., smaller facilities). To address this, NYSERDA would include a simplified bidding option for relatively small batches of Allowances, enabling certain Obligated Entities to acquire Allowances without complication and within the auction process.

- Participation would be limited to Obligated Entities below a specified GHG emission threshold. *NYSERDA is seeking stakeholder feedback on the threshold level.*
- Eligible Entities opting for the simplified approach would agree to purchase a specified bundle of Allowances at whatever price the auction clears. Functionally, these bids would be ordered at the top of the bid stack.
- Participation in simplified bidding would not preclude an eligible entity from also submitting bids in the traditional fashion.
- Limitations on simplified bidding at each auction would be determined at NYSERDA's discretion and would be announced in the auction notice. The auction notice would also specify procedures to address oversubscription for this component of the auction.

Publication of Results

NYSERDA would publish written summaries of each auction that include:

- The auction settlement price.
- Details regarding the number of Allowances sold and a description of how the Allowances were distributed among the Registered Entities that submitted bids, including the number of Registered Entities that purchased Allowances, without identifying which Registered Entities purchased the Allowances.
- The amount of proceeds generated by the auction.

Initial Auction Period

NYSERDA recognizes that Entities who anticipate having a compliance obligation under the Cap-and-Invest Rule and wish to participate in the initial auctions held at the outset of the program may need time to prepare reporting materials in order to determine their compliance obligations and establish compliance accounts.

- During the initial auction period, an Entity required to report under the Mandatory GHG Reporting Rule, may register as a Reporting Entity to participate in auctions and begin acquiring Allowances.
- During the initial auction period, *Reporting Entities* would be assigned the purchase and holding limits of

Obligated Entities, rather than the limits assigned to General Market Participants, to reflect their potential need to acquire Allowances for compliance. Such designation during the initial auction period for purposes of NYSERDA's Auction Rule would not necessarily mean that an entity is an Obligated Entity for purposes of the Cap-and-Invest Rule.

- After the initial auction period, Entities registered as Reporting Entities would need to register as either Obligated Entities or by default receive treatment under the Auction Rule as General Market Participants.

Market Integrity and Market Manipulation Prevention

NYSERDA anticipates incorporating a variety of measures intended to set acceptable competitive and market practices and ensure transparency on the part of all market participants. Clear rules help establish a fair and competitive market, set expectations for participants, and allow the State to effectively regulate Allowance auctions and trading.

Prohibition of Collusion

The Auction Rule would incorporate an explicit prohibition of collusion and market manipulation of any kind and establish clear parameters and consequences for violating this prohibition (e.g., disqualification from participating in future auctions). At a minimum, the following actions would be prohibited:

- Except as part of certain registered associations (discussed further below) and subject to certain restrictions, a Registered Entity would be prohibited from publicly releasing or disclosing to any other Registered Entity any bidding information including, but not limited to:
    - Intent to participate or refrain from participating in a particular auction;
    - Auction approval status;
    - Intent to bid;
    - Bidding strategy;
    - Bid price or Allowance quantities; or
    - Information on the financial security provided to the financial administrator.
- No party would be allowed to coordinate the bidding strategy of more than one auction participant, unless the participants are in a disclosed association.
- Parties coordinating the bidding strategy for an auction participant (e.g., a consulting firm) would be prohibited from participating in auctions (e.g., as General Market Participants).
- Consequences of collusion could include, but are not limited to, suspension or denial of permission to participate in future auctions.

Auction Purchase Limits

Single-auction purchase limits help prevent the exercise of excessive market power, where a single Entity or collection of Entities have outsized influence over market prices and can manipulate prices for private gain.

- Auction purchase limits for Obligated Entities would be 25% of each auction's Allowances.
- Auction purchase limits for General Market Participants would be 4% of each Auction's Allowances.

- After the initial GHG reporting deadline pursuant to the Mandatory GHG Reporting Rule, the regulations would allow for Entities with a large share of total GHG emissions to seek higher auction purchase limits, only if and where needed to enable compliance.

Holding Limits

Like auction purchase limits, holding limits on the amount of Allowances Registered Entities can hold help prevent the exercise of market power. *DEC and NYSERDA are seeking comment on both auction purchase limits and holding limits.*

- The holding limit formula would be:

$$\text{Holding Limit} = 2.5\ \text{MMT} + 0.025 * (\text{Annual Allowance Budget} - 25\ \text{MMT})$$

- Once an Allowance would be submitted for compliance with the Cap-and-Invest Rule, that Allowance would no longer count towards the Entity's holding limit.
- The regulations would allow for a process for Obligated Entities with a large share of total GHG emissions to demonstrate that they would need to exceed the holding limit in order to comply with the Allowance requirements of the Cap-and-Invest Rule, and in this case allow them to exceed the limits described here.

Minimum Hold Times

Minimum hold times would limit high-frequency trading which can drive excessive price volatility and speculative trading.

- A 72-hour minimum hold period would be instituted, with tracking enabled by time-stamping Allowance transactions.

Associations

There would be two types of associations for auction participants:

1. Corporate/Legal Associations: An association among auction participants based on the required disclosure of partnerships or subsidiaries of a common parent company.
2. Bidding Associations: An association among auction participants allowing limited coordinated action among participants. Bidding associations may relieve administrative burden of individual Entities developing bid strategies.

The following requirements would apply to associations:

- Auction participants in either type of association would need to disclose their affiliations to NYSERDA.
- Auction purchase limits and Allowance holding limits would apply at the association level collectively for participants in either type of association.
- Auction participants in either type of association would need to disclose how the association would apportion shares of the auction purchase limit and Allowance holding limit among constituent participants in a manner consistent with the rules for Obligated Entities and General Market Participants.

Table 4: Application of auction purchase limits and holding limits to associations.

Regulation Component	Application to Bidding Associations	Application to Corporate Associations
Auction Purchase Limit	The bidding association would make coordinated bids in the auction and the auction purchase limit would collectively apply to all associated Entities.	Auction purchase limits would be collectively applied to all corporately associated Entities.
Holding Limit	The bidding association would make coordinated bids in the Auction, and the Allowance holding limits would collectively apply to all associated Entities.	Allowance holding limits would be collectively applied to all corporately associated Entities within a corporate association.

Market Monitoring

Market monitors are used to oversee commodity and energy auctions. They provide objective, independent oversight of the auction process, ensure regulatory requirements are fulfilled, and examine bid prices to identify potentially manipulative behavior and other prohibited practices.

- NYSERDA would retain a professional independent monitor to observe the conduct and outcome of each Allowance auction and issue a report addressing whether the auction was conducted in accordance with established rules and procedures.
- The monitor would employ data collection methods, metrics, and analytic techniques, and thresholds for identifying any bidding behavior or activity that may have a significant impact on the efficiency and performance of such auctions, including, but not limited to collusion and market manipulation.
- The monitor would also monitor secondary Allowance markets and derivative markets to ensure fair competition, efficient pricing, and protection against collusive or manipulative behavior.