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# DEC and NYSERDA Release New Details About New York's Forthcoming Cap-and-Invest Program

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In early 2023, Governor Kathy Hochul announced that New York State will implement a large-scale Cap-and-Invest Program (NYCI) to help the State meet the aggressive greenhouse gas (GHG) emissions reductions goals set by its Climate Leadership and Community Protection Act (CLCPA). NYCI will have a transformative effect on the State's economy, particularly in the energy, manufacturing and waste sectors.

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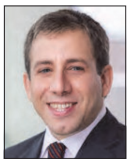

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Though the mechanics of NYCI are still being finalized, the recent release of a pre-proposal outline by the New York State Department of Environmental Conservation (DEC) and the New York State Energy Research and Development Authority (NYSERDA) offers the most detailed explanation to date of how NYCI will likely work.

As the name implies, Cap-and-Invest will set a declining cap on the annual amount of permitted in-state GHG emissions. To enforce the cap, the State will require large emitters to pay the State for their emissions through the purchase of "allowances." The funds generated from the sale of allowances will then be invested into programs aimed at further driving down emissions and, perhaps, the cost of compliance.

As conceived, NYCI will be implemented through three separate but interconnected regulatory components: (1) the Mandatory Greenhouse Gas Reporting Program Rule, (2) the Cap-and-Invest Rule, and (3) the Auction Rule.

The Mandatory Greenhouse Gas Reporting Program Rule will establish a mandatory reporting system that collects GHG emissions data from sources owned or operated in New York State which meet certain threshold categories. The reported data will then be used to determine if a source qualifies as an "obligated entity." Obligated entities will be required to purchase allowances to cover their emissions.

The Cap-and-Invest Rule and the Auction Rule are the keystones of NYCI. Collectively, these regulations will establish a market in which both obligated entities and general market participants can purchase allowances through NYSERDA-administered auctions. Each allowance permits up to one metric ton of carbon-dioxide-equivalent (CO2e) emissions. While obligated entities will have to surrender allowances to DEC to cover their emissions, obligated entities that reduce their emissions and non-obligated participants can hold or sell their allowances on the secondary market.

DEC will determine the amount of allowances to be auctioned off each year in accordance with that year's cap on GHG emissions. The annual cap will decline over the course of the program in order to meet the 2030 and 2050 emissions caps set by the CLCPA.

To mitigate carbon leakage, facilities in certain emissions-heavy manufacturing industries, such as paper, cement, glass and steel, will receive a limited amount of free allowances while simultaneously participating in NYSERDA auctions as obligated entities. These free allowances will get consigned for sale at auction, with the proceeds going to the facility that the allowance was originally allocated to. If the number of allowances a facility purchases at auction is less than the number of their consigned allowances sold, they will net a profit, effectively being rewarded for reducing emissions. A similar consignment system is planned for participating utilities, who, instead, will be required to use any net proceeds to benefit ratepayers.

Though DEC and NYSERDA are still soliciting preliminary public feedback, the final regulations are set to take effect as soon as 2025. Businesses in the industries impacted by NYCI should continue to monitor and participate in the program's development, but start to formulate a plan for navigating its complex compliance regime.

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