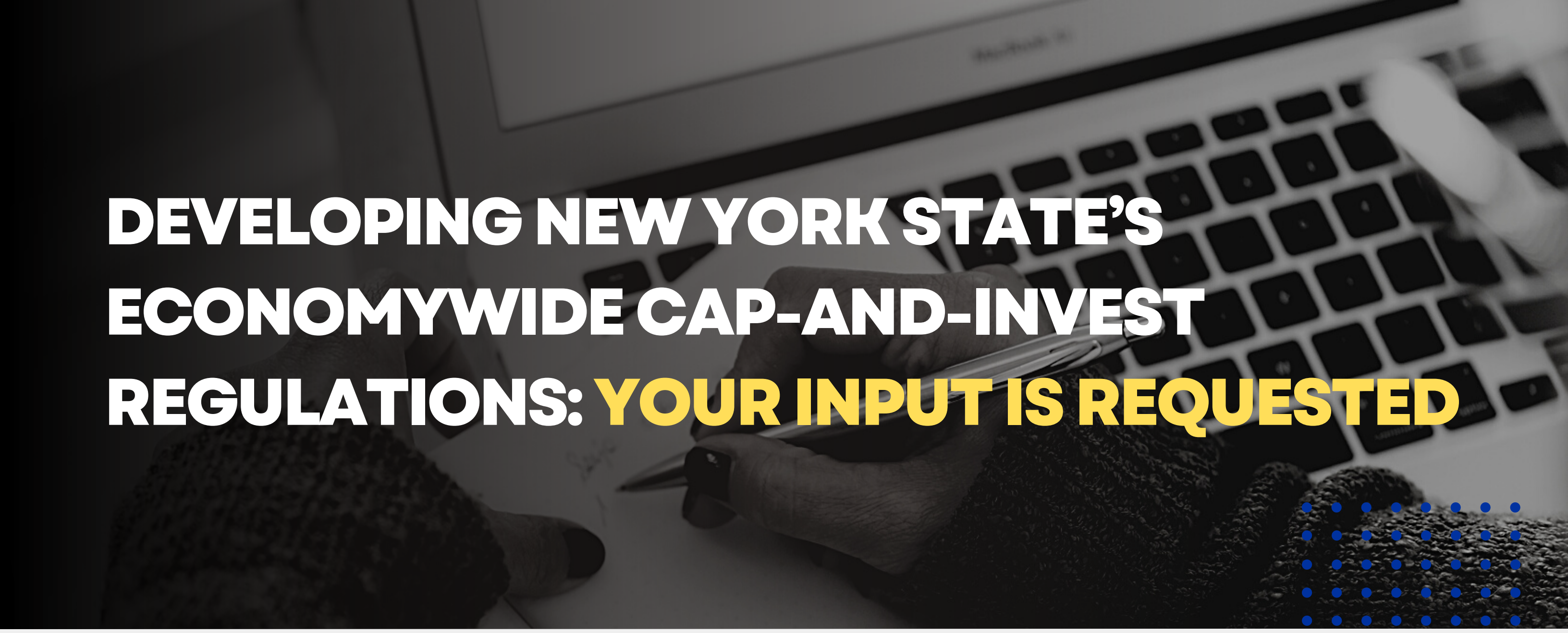

DEVELOPING NEW YORK STATE'S ECONOMYWIDE CAP-AND-INVEST REGULATIONS: YOUR INPUT IS REQUESTED

New York State is undertaking one of the most ambitious efforts in the U.S. to address climate change by reducing emissions from every sector of the economy. The Department of Environmental Conservation (DEC) and the New York State Energy Research and Development Authority will advance a **Cap-and-Invest Program** that establishes a declining cap on greenhouse gas (GHG) emissions and seeks to maintain the competitiveness of New York industries.

- An overview is available at https://capandinvest.ny.gov/. **To inform the development of the preproposal, DEC and NYSERDA request first round feedback on or around July 1, 2023.**
- A clickable form is available at **https://www.commentmanagement.com/comment/Cap-and-Invest**

Beginning immediately, DEC and NYSERDA will design a program that sets an annual cap on the amount of emissions that is permitted to be produced in New York, as recommended in the recently finalized Climate Action Council Scoping Plan. Every year, the emissions cap will be reduced, seeking to set the State on a trajectory to meet its Climate Act requirements of 40% in emissions by 2030, and at least 85% reduction from 1990 levels by 2050.

Large-scale GHG producers and distributors of heating and transportation fuels will be required to purchase allowances for the distribution GHG emissions associated with their activities from used fuels. By applying to each metric ton of carbon emissions, the Cap-and-Invest Program stated objective is to incentivize consumers, businesses and other entities to transition to lower-carbon alternatives.

The major design elements that New York is seeking feedback on at this time are listed on the following pages. The DEC and NYSERDA will review comments and further develop pre-proposal materials to define New York's program. Notices will be sent to those who provided comments when the second round of pre-proposal materials are posted.

Applicability & Thresholds: Which sources are covered by the regulations, and at what emissions thresholds.

Some suggested language that National Fuel supports:

- Sources should be determined transparently, equitably and consistently across sectors.
- Coordination of the economywide cap-and-invest program with the Regional Greenhouse Gas Initiative should ensure that "double-counting" is avoided for the electricity sector without creating an inequitable and/or unfair advantage for that sector in comparison to other sectors or sources.
- Emission factors for upstream out of state emissions should be based on actual, not estimated, data whenever possible and should account for the use of fuels derived from low-GHG intensity basins, certified natural gas and renewable natural gas.
- Emissions standards and reporting developed by the DEC should align with similar standards and reporting being developed by the New York Public Service Commission in its CLCPA Implementation proceeding (Case 22-M-0149), and New York's GHG accounting should be modified to be consistent with other jurisdictions and the Federal Government.
- Failure to align New York's emissions accounting and reporting could isolate and disadvantage New York and its residents and businesses in a way that could result in economic harm and emissions leakage.

Allowance Allocation: How allowances are made available.

Some suggested language that National Fuel supports:

- Allowances should be allocated equitably and consistently across sectors and sources. Deviations, such as no cost or fixed price allowances, should be authorized to avoid economic harm and to add flexibility to the program, with eligibility determined in a non-discriminatory manner.

Auction and Market Rules: The rules for market participation, and the trading of allowances.

Some suggested language that National Fuel supports:

- Auction and market rules should be implemented that are easy to understand, set up, and ensures flexibility. For example, the program should be designed to allow ample trading of allowances and should consider authorizing trading of allowances with other/linked jurisdictions.

Ambition: The economywide emissions cap, and allowance budget.

Some suggested language that National Fuel supports:

- A poorly designed, overly aggressive cap-and-invest program could impose unsustainable cost burdens on residents and businesses and disproportionately burden certain regions of the state, including Western New York. Establishing such a program to generate monies to fund the state's energy transformation would hardly be worth it if a designed program resulted in emissions and economic leakage and disproportionate negative impacts on certain individual, sectors and/or regions of the state.
- Consistent with the Scoping Plan, which "recommends gradually phasing in the program with cost containment mechanisms," the program should be implemented in a careful, measured manner with sufficient flexibility. The emissions cap should be set high at the outset and, at least initially, reductions in the cap should not be fixed or automatic. Any changes to the cap should follow a thorough review and evaluation of the program's progress and impacts. These reviews should occur at regular intervals of sufficient frequency to ensure that any negative economic impacts are identified promptly. If negative impacts are detected, the program should have built in off-ramps that are activated. If no negative impacts are detected, reductions in the cap should be conservatively instituted.

Program Stability: The automatic and planned program adjustments to moderate costs and sustain program ambition if emissions are higher or lower than anticipated.

Some suggested language that National Fuel supports:

- Program stability mechanisms should be employed to moderate costs and avoid economic harm. For example, cost containment reserves (CCR) should be adopted and designed to respond to higher than anticipated prices.
- An offset program should be designed and implemented in New York. California, Washington and Quebec all utilize offset credits as an important mechanism for cost containment and compliance flexibility for entities participating in their cap-and-trade programs. California's offset program prioritizes disadvantaged communities and California and Quebec's offset programs are linked such that offset credits purchased in each jurisdiction are interchangeable. Washington's program commenced as of the first of this year and was designed to link with other programs like California and Quebec. These initiatives are consistent with the Governor's stated goals that cap-and-invest should "prioritize the frontline disadvantaged communities in our state" and should be designed "with the capacity to link with other current and future programs to further catalyze a nationwide movement towards carbon pricing, which can lower the price of the transition overall."

Compliance, Enforcement and Penalties: Compliance periods and types of enforcement mechanisms.

Some suggested language that National Fuel supports:

- Multi-year compliance periods and related techniques should be adopted at the outset of the program to give Obligated sources maximum flexibility as they commence and continue compliance with the program.
- Enforcement should take into account the newness of the cap-and-invest program in New York (indeed, only two other similar economywide programs have been adopted in the U.S.) and the inevitable learning curve for participants. Consideration should be given to institution of a safe harbor from penalties for a period following program commencement.

Reporting and Verification: The start and frequency of reporting, how reporting should be verified, and how to leverage existing reporting programs.

Some suggested language that National Fuel supports:

- Reporting should be developed that leverages existing emissions reports that are currently being filed in the state and should align with similar standards and reporting being developed by the New York Public Service Commission in its CLCPA Implementation proceeding (Case 22-M-0149).
- New York's GHG accounting framework should be modified to be consistent with other jurisdictions; a necessity if the Governor wants to link with current and future cap-and-invest/trade programs in these jurisdictions.