Manufacturers Association of Central New York & The Manufacturers Alliance
Comments on New York Cap-and-Invest Pre-proposal
June 30, 2023

MACNY, The Manufacturers Association, a trade association representing more than 300 companies employing over 100,000 Central and Upstate New York residents across more than 25 counties, and The Manufacturers Alliance of New York, a group of seven regional manufacturing associations across the state that collaborate for the growth and development of the manufacturing sector in New York, support a properly crafted Cap-and-Invest (NYCI) program.

A wisely developed NYCI program could potentially satisfy the emissions reductions goals of the Climate Leadership and Community Protection Act (CLCPA) while maintaining the viability and success of the state's manufacturing industry. However, achieving this balance depends heavily on the structure of the program to provide smart incentives, market predictability and compliance flexibility to those most impacted in Energy-Intensive and Trade-Exposed (EITE) manufacturing industries. Further, we maintain that a program should work in parallel with other State economic development goals and enhance the provision of safe, high quality, reliable and affordable energy service as well as availability of natural gas for heating and industrial processes until a market is developed for viable alternatives.

MACNY and the Manufacturers Alliance strongly encourages the development of a flexible and cost-effective program that does not overburden the state's growing manufacturing sector and disrupt economic development opportunities which are poised to re-vitalize communities across the state. Above all, we maintain that a program must not inhibit the state's manufacturing sector from remaining competitive in an increasingly competitive global market.

MACNY and the Manufacturers Alliance have below provided a set of comments on certain design elements as presented by the Department of Environmental Conservation (DEC). At this time, more information is still needed to provide more substantive comments on other aspects of the proposed program. As DEC and the New York State Energy Research and Development Authority (NYSERDA) move forward with formal rulemaking and solicit feedback on draft regulations we welcome the opportunity to have a more thorough dialogue on this critical program.

Applicability and Thresholds

The CLCPA specifically directs DEC to minimize leakage of EITE industries in its promulgation of the CLCPA emissions regulations. While it is important to prevent potential leakage from existing facilities, NYCI must also take into account the anticipated growth that the State's manufacturing sector is poised to make in the coming years. An overburdensome program could cause new investments that would be in New York State to be outside the state and in jurisdictions with less stringent environmental protections. It is critical to note that while it is anticipated most manufacturing facilities will initially qualify for no-cost allowances due to a EITE designation, all manufacturers are poised to see increases in energy costs which will have impacts to businesses and their workforce. NYCI rulemaking should seek to prevent and or minimize these negative impacts by emphasizing the following principles:

- The State should conduct an EITE inventory based on applicable North American Industry Classification System (NAICS) codes and the proposed threshold to fully understand how

facilities would be categorized and impacted. Nearly all manufacturers require meaningful and specialized energy usage and are trade exposed. The State should also look to industries identified in the Just Transition Working Group recommendations. In accordance with the CLCPA, all EITE manufacturing facilities above the approved threshold should receive allowances at no-cost in order to prevent leakage and remain competitive. Additionally, any EITE that the State determines would not qualify for no-cost allowances based on NAICS codes should be able to appeal this designation in a transparent manner if they can demonstrate that they are in fact energy-intensive and trade-exposed.

  - As rulemaking progresses the State should take an active role in conducting outreach to these companies to best inform them on potential impacts both short and long-term. This should be done in coordination with NYSERDA and Empire State Development (ESD). Further, the State should conduct a parallel economic impacts assessment on the program to identify impacts to companies, both obligated and non-obligated, along with impacts to their workforce. This should then be used to measure the costs and benefits of the program and allow for future programmatic adjustments to be made accordingly.

- Establish a reasonable threshold for obligated sources at no less than 25,000 tons per year which was the suggested threshold for NYCI and used in California and Washington State.
  - There should be a structure put in place to detail how long these companies would qualify for no-cost allowances in order to allow for future planning and necessary capital investments. Receiving no-cost allowances should not be subject to a rigorous application, or certain economic reporting standards and economic outputs that could be outside the control of a facility.
  - While taking the State's disadvantaged communities (DAC) criteria into account, a facility in a DAC census track should not be prohibited from qualifying for free allowances. The DAC map is subject to change and could cause confusion as the program evolves. More so, the State should explore alternative options to further emission reductions in these facilities such as prioritize these facilities for state incentives to upgrade facilities when feasible. Further, the State should not seek to require allowance premiums for facilities located in DACs due to potential impacts in allowance pricing. Placing additional requirements on facilities located in DACs could possibly lead to negative impacts to workers located in these communities.

Allowance Allocation, Auction Rules and Market Rules

As previously stated, obligated EITE facilities should receive no-cost allowances courtesy of the State. There should be a robust stakeholder outreach effort to communicate the time table set for these free allowances to provide predictability to companies as they make investments and plan for the possible expiration of free allowances. Companies need this predictability in order to plan for necessary capital investments infrastructure or resources to cover allowance costs.

Separately, the State should not allow non-obligated entities to participate into auctions. Allowing non-obligated auction participants could result in inflated auction prices. In result this could lead to higher energy prices thus negatively impacting energy intensive businesses. This has shown to be the case in Washington State where a number of non-obligated market participants made auction purchases and allowances prices increased significantly above projected levels. This is a cautionary example for both businesses and consumers. If the State considers allowing non-obligated sources to participate in auctions, this should caped or limited in nature.

As advised in the Scoping Plan, NYCI should allow for some type of banking or trading in order to provide for compliance flexibility. This along with, establishing pathways for linkage with other jurisdictions are two components which could provide for better market conditions to reduce the risk of inflated allowances prices and in result energy costs. Prohibiting companies from banking or trading allowances would lead to companies purchasing the lowest number of allowances and would then lead to companies making a choice between noncompliance penalties or facility shutdowns if it is on track to exceed its purchased allowances. In both cases it would have negative impacts to businesses and their workers.

Program Stability Mechanisms

Especially in the initial years of the program, a price cap should be used in order to better control allowance prices and establish expectations for the market. A price cap could be adjusted accordingly based on the results of the first few auctions, in order to best control impacts on energy prices and understand how well energy rebates are functioning to offset increased energy costs.

Since NYCI is aimed to be an economy-wide program, available allowances will be heavily dependent on reductions made in non-obligated sectors. More information is needed about the relationship between reductions made in obligated and non-obligated sectors and the impacts to obligated industries if non-obligated industries do not meet emissions reductions goals.

The Alliance is supportive of program stability mechanisms such as establishing a Cost Containment Reserve for the first few years of the program. Any actions that will preserve the availability of allowances for obligated industries and help to gradually phase in the program is desired. Additional program stability mechanisms should be considered, but at this time more information would be appreciated to better understand how they would impact the program.

Reporting and Verification

DEC has indicted that mandatory reporting will be required for a broader group of facilities than those subject to allowance obligations. The State should use caution on placing stringent reporting and recording keeping obligations that will lead to increased costs for facilities. This is especially true for companies that have not previously been subject to this type of interaction and monitoring with the State. If a facility has an existing air permit with the State, DEC should seek to minimize additional recording keeping by requiring those facilities to report emissions in line with existing permits. NYCI should also not be duplicative in reporting. Non-obligated sources should not be subject to reporting if their emissions are already being reported by another entity such as a fuel provider.

Use of Proceeds

As prescribed in the FY 2023-2024 State Budget, revenue from the program will be critical for emissions reductions across the manufacturing sector. Revenue generated by NYCI should be used to support research and development of new emissions reducing technologies, the buildout lower-emissions systems, and for rebates to offset anticipated increased energy costs. Allowing revenue from NYCI to be used for energy efficiency upgrades and new system technologies will be critical in order to reach aggregate greenhouse gas emissions for both facilities with and without process emissions. The State should continue to partner with the manufacturing industry to fully develop

new technologies that will enable the state to reach its goals. Additionally, the State should seek to support the incorporation of new systems at facilities by offering financial incentives to offset the cost of upgrades and expediate the buildout of these systems.

The Small Industrial Business account is potential pathway to provide rebates to companies which are high energy users but not emissions intensive. Energy rebates to these companies will be critical to reduce the negative impacts of increased energy costs, especially in the initial years of the program. Both obligated facilities and non-obligated facilities should be eligible for this rebate and a determination should be made in an equitable and transparent manner to high energy users who will bare financial risk to increased energy prices.

MACNY and the Manufacturers Alliance appreciate the opportunity to comment on the pre-proposal stage of NYCI. We highly encourage the State to continue its robust public outreach effort in the coming months to best inform industry stakeholders about the program. As the State reviews these comments, we welcome the opportunity to continue a dialogue on how to best shape NYCI in a manner that will lead to New York reaching its climate goals while continuing the revitalization of the manufacturing industry.

Members of the Manufacturers Alliance of New York State