The Aluminum Association

703.358.2960
1400 Crystal Drive, Suite 430
Arlington, Virginia 22202

June 10, 2022

Submitted Electronically

NYSERDA
17 Columbia Circle
Albany, NY 12203-6399

RE: CLCPA Draft Scoping Plan Comments

The Aluminum Association appreciates the opportunity to provide comment on New York State's Draft Scoping Plan developed to support implementation of the 2019 Climate Leadership and Community Protection Act (CLCPA).

The Aluminum Association (the "Association"), based in Arlington, VA, represents U.S. suppliers of primary aluminum, aluminum recyclers, and producers of fabricated aluminum products, as well as industry related businesses. In 2022, the U.S. aluminum industry directly employs 164,400 workers and indirectly supports an additional 470,000 workers.

In New York State, the aluminum industry today directly employs 4,717 workers and directly generates an annual economic output of $2.7 billion. When considering direct and indirectly supported employment, the aluminum industry in New York State is responsible for the employment of 21,000 workers and an annual economic output of $7.4 billion. In the aluminum industry, New York State is one of only several US states that maintains both active primary aluminum production (smelting) and secondary aluminum production (remelting) as well as a variety of downstream semi-fabricated aluminum production (rolling, extrusion, etc.) operations. It is in recognition of New York State's importance to the US aluminum industry that the Aluminum Association is providing comment on the CLCPA draft scoping plan as per below.

ENERGY-INTENSIVE AND TRADE-EXPOSED (EITE) INDUSTRIES

Appendix C of the Draft Scoping Plan provides the recommendations of the Just Transition Working Group (JTWG) to the Council regarding measures to minimize the risks of employment and carbon leakage as well as minimize the anti-competitiveness impacts of carbon policies. In Appendix C, the JTWG acknowledges that EITE protections are necessary to prevent the loss of jobs, investment, and tax revenue due to carbon leakage and that in the absence of such protections, overall global emissions are likely to increase. However, the methods used to identify EITE industries are inherently flawed for the following reasons:

- The data set included in the Draft Scoping Plan to define EITE industries is not appropriate. The JTWG relied on Federal-level data to assess energy-intensity and trade-exposure (C-53, pp. 647 of PDF), including the *2018 U.S. Annual Survey of Manufacturers*, the *2017 U.S. Economic Census: Mining*, the *2018 U.S. International Trade Commission*, and the *2018 U.S. EIA Manufacturing Energy Consumption Survey*. However, the JTWG acknowledged in the *Key Limitations* section (C-54, pp. 648 of PDF) that data was available at the international trade-level only. Federal-level data and international shipments do not properly account for the risks of domestic carbon leakage between states when a specific state adopts decarbonization legislation in lieu of a national approach.
- Any formula needs to account for the future cost increases resulting from the implementation of climate legislation. For example, the calculation for Energy Intensity (C-7, pp. 601 of PDF) does not account for the expected increases in energy costs resulting from the implementation of the Climate Act as much of the energy (such as natural gas) used in manufacturing processes at this time also contains carbon and would therefore be subject to similar pricing pressures as manufactured products.
- The calculation for Trade Intensity (C-8, pp. 602) does not account for inter-state trade, an important consideration when assessing the affects of a state-based decarbonization protocol.

Using the calculations in the Draft Scoping Plan, energy-intensive industries such as secondary aluminum production that will require EITE provisions to ensure competitiveness and mitigate carbon leakage will be inadvertently omitted from these provisions. Notably, New York's potential methods of identifying EITEs represents a departure from provisions incorporated into existing carbon legislation (both domestic and international) as shown below:

- The Washington State Climate Commitment Act relies solely on NAICS codes to define industries that are energy-intensive and trade-exposed and are therefore eligible for carbon leakage protection.
- California assesses carbon leakage risk by industry sector and provides direct allocations to covered facilities.
- The European Union uses a sectoral approach based on NACE Code, an industry standard classification system used in Europe similar to NAICS, and provides free or reduced cost ETS allocations to covered sectors.

Recommendation: Specifically identify sectors eligible for EITE carbon leakage protection by NAICS code in the CLCPA implementing regulations and include 331313 (primary aluminum production), 331314 (secondary aluminum production), and any co-located related manufacturing activity at sites in those NAICS code sectors in the identification.

ECONOMY-WIDE STRATEGIES

Chapter 16 of the Draft Scoping Plan highlights the significant benefits of manufacturing aluminum from scrap aluminum, which on average results in the avoidance of 95% of the GHG emissions generated from primary aluminum production (16.1, pp. 246 of PDF). In addition to its significant

GHG emissions reductions, aluminum recycling offers many benefits, including (but not limited to) landfill waste avoidance, land use/biodiversity protection, and water conservation. Furthermore, aluminum offers distinct advantages for the low carbon circular economy, including infinite recyclability and improved fuel economy through lightweighting of vehicles. In Chapter 17, it is acknowledged that a poorly design program could result in increased economic burdens on New York businesses, thereby reducing competitiveness (Chapter 17.1, pp. 262 of PDF). However, economy-wide *Carbon Pricing* and *Cap-and-Invest* programs focus solely on direct GHG emissions and fail to account for the broader contribution of materials such as aluminum toward an overall decarbonizing of the economy. Under these policies, the cost of recycling aluminum and similar materials would increase, negatively affecting the current and future investment in recycling within New York State at the exact time when policies promoting it should be encouraged.

Recommendation: Incorporate carbon credits, allocations, and/or other mechanisms into the Economy-Wide Strategy to support industries that can demonstrate broad economy-wide GHG benefits.

EMPLOYMENT AND CARBON LEAKAGE MITIGATION

Chapter 17 discusses measures for mitigating the risk of carbon leakage, including state level border carbon adjustments (17.2, pp. 269 of PDF). Border carbon adjustments are financial measures designed to prevent leakage by imposing a tax or similar measure on imports from regions without similar carbon controls in place. While the JTWG has acknowledged the risk of interstate leakage (C-13, pp, 607 of PDF), the proposed solutions included in the draft scoping plan do not adequately mitigate this risk. As a result, industries operating in New York will be severely challenged when competing against industries operating in states without carbon legislation.

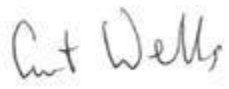
A significant portion of New York State manufactured goods are sold out of state and New York manufacturers compete against many companies that have no carbon restrictive policies in place. For commodity products like aluminum, this head-to-head competition occurs mainly based on price. New York State's imposition of a border tax would render New York State producers uncompetitive because it will impose additional costs on these companies that their competitors do not face. New York companies will therefore have to charge higher prices than their out of state competitors to compensate for these increased costs as a border tax will not protect NYS companies from head-to-head competition with more carbon intensive products in the states and markets outside of New York State where sales of New York State manufactured goods predominantly occur.

In fact, a border adjustment mechanism will likely only serve to make New York companies even less competitive for out-of-state sales. Many inputs used by New York manufacturers come from out of state suppliers and a border tax on these inputs will further increase costs for New York companies. As a result, New York companies will face higher production costs associated with their own carbon emissions and also pay a penalty for relying on out of state inputs that will likewise have a carbon surcharge. This is a double hit to New York State manufacturers that will not "level the playing field" as intended.

Recommendation: Extend EITE protections to imported raw materials and energy used by EITE's through exemptions and/or subsidies or provide a credit for the export of EITE manufactured goods equal to the additional costs for EITE products when they are sold outside of the state. New York's plan for carbon control must correctly exclude EITE products for the near term and this exclusion should be extended to EITE raw material and energy inputs as well. Using methods such as these, New York's climate policy would minimize some of the burden and the associated jobs and carbon leakage potential placed on New York EITE companies.

Again, the Aluminum Association appreciates the opportunity to provide these comments to NYSERDA as it considers how best to implement the provisions of the CLCPA. If you have any questions or would like to discuss any of these issues in greater detail, please contact me at 703-358-2976, 804-385-6351 or cwells@aluminum.org.

Sincerely,



Curt Wells
Senior Director of Regulatory Affairs
The Aluminum Association