§ 75-0109. Promulgation of regulations to achieve statewide greenhouse gas emissions reductions.

1. No later than December thirty-first, two thousand twenty-eight, the department, after public workshops and consultation with the council, the environmental justice advisory group, and the climate justice working group established pursuant to section 75-0111 of this article, representatives of regulated entities, community organizations, environmental groups, health professionals, labor unions, municipal corporations, trade associations and other stakeholders, shall, after no less than two public hearings, promulgate, in accordance with subdivision three of this section, rules and regulations designed to: (i) achieve, to the maximum extent feasible and cost effective, a sixty percent reduction in statewide greenhouse gas emissions from 1990 emissions by two thousand forty; and (ii) to ensure compliance with the statewide emissions reduction limit established in paragraph b of subdivision one of section 75-0107 of this article, and work with other state agencies and authorities to promulgate regulations required by section eight of chapter one hundred six of the laws of two thousand nineteen.

2. The regulations promulgated by the department pursuant to this section shall:

a. Ensure that the aggregate emissions of greenhouse gases from greenhouse gas emission sources will not exceed the statewide greenhouse gas emissions limits established in section 75-0107 of this article.

b. Include legally enforceable emissions limits, performance standards, or measures or other requirements to control emissions from greenhouse gas emission sources, with the exception of agricultural emissions from livestock.

c. Reflect, in substantial part, the findings of the scoping plan prepared pursuant to section 75-0103 of this article.

d. Include measures to reduce emissions from greenhouse gas emission

sources that have a cumulatively significant impact on statewide greenhouse gas emissions, such as internal combustion vehicles that burn gasoline or diesel fuel and boilers or furnaces that burn oil or natural gas.

3. In promulgating these regulations, the department shall:

a. Design and implement all regulations in a manner that seeks to be equitable, to minimize costs and to maximize the total benefits to New York, and encourages early action to reduce greenhouse gas emissions;

b. Ensure that greenhouse gas emissions reductions achieved are real, permanent, quantifiable, verifiable, and enforceable by the department;

c. Ensure that activities undertaken to comply with the regulations do not result in a net increase in co-pollutant emissions or otherwise disproportionately burden disadvantaged communities as identified pursuant to section 75-0111 of this article;

d. Prioritize measures to maximize net reductions of greenhouse gas emissions and co-pollutants in disadvantaged communities as identified pursuant to section 75-0111 of this article and encourage early action to reduce greenhouse gas emissions and co-pollutants;

e. Incorporate measures to minimize leakage; and

f. Consider the following, in the course of developing a regulatory program or programs as required by this section:

i. the feasibility and adoption of: programs that utilize regulatory mechanisms, including a market-based economy-wide cap-and-invest program that could be linked to other jurisdictions and provide market certainty; clean energy supply standards; and other regulations;

ii. the affordability of the programs identified in subparagraph i of this paragraph for state residents, businesses and other entities, including how the pace and sequencing of the emissions reduction

strategies affect total costs over time, and through assessing energy cost impacts across customer classes and uses, as well as the utilization of effective cost containment measures as needed;

iii. the importance of fostering the state's economic growth and competitiveness, including the creation and maintenance of well-paying and family-sustaining jobs;

iv. the economy-wide emissions reduction strategies that result in improved public health, increased quality of life, and a cleaner environment for all New Yorkers, and that any new revenue equitably supports these outcomes;

v. the ability to maximize available funding and other resources to support emissions reductions; and

vi. the development and commercialization of low and zero emission technologies to achieve the goals of programs identified in subparagraph i of this paragraph.

4. a. The department may establish an alternative compliance mechanism to be used by sources subject to greenhouse gas emissions limits to achieve net zero emissions.

b. The use of such mechanism shall account for not greater than fifteen percent of statewide greenhouse gas emissions estimated as a percentage of nineteen ninety emissions pursuant to section 75-0105 of this article, provided that the use of this mechanism must offset a quantity greater than or equal to the greenhouse gases emitted. The offset of greenhouse gas emissions shall not result in disadvantaged communities having to bear a disproportionate burden of environmental impacts.

c. The department shall verify that greenhouse gas emission offset projects authorized pursuant to this subdivision represent greenhouse gas equivalent emission reductions or carbon sequestration that are real, additional, verifiable, enforceable, and permanent.

d. Any greenhouse gas emissions offset project shall comply with all of the requirements of this subdivision.

e. The department shall establish an application process that, at a minimum, requires a source to sufficiently demonstrate that compliance with the greenhouse gas emissions limits is not technologically feasible, and that the source has reduced emissions to the maximum extent practicable. After an initial four year period, the department shall review the participation of a source in this mechanism, and make a determination as to the source's continued need for an alternative compliance, considering the extent to which the source is utilizing the best available technology standards.

f. Sources in the electric generation sector shall not be eligible to participate in such mechanism.

g. The following types of projects shall be prohibited:

i. waste-to-energy projects, including incineration and pyrolysis; and

ii. biofuels used for energy or transportation purposes.

h. Any greenhouse gas emission offset project approved by the department shall:

i. be designed to provide a discernable benefit to the environment rather than to the source;

ii. be located in the same county, and within twenty-five linear miles, of the source of emissions, to the extent practicable;

iii. enhance the conditions of the ecosystem or geographic area adversely affected; and

iv. substantially reduce or prevent the generation or release of pollutants through source reduction.

i. A greenhouse gas emission offset project shall not be approved by the department where the project:

i. is required pursuant to any local, state or federal law, regulation, or administrative or judicial order;

ii. contains measures which the source would have undertaken anyway within the next five years;

iii. contributes to environmental research at a college or university; or

iv. is a study or assessment without a commitment to implement the results.

j. In approving greenhouse gas emission offset projects, the department shall prioritize projects that maximize public health and environmental benefits within the state and especially localized benefits in disadvantaged communities, defined pursuant to section 75-0111 of this article.

k. The department shall establish a public registry of greenhouse gas emission offset projects approved pursuant to this subdivision.

l. Prior to the inclusion of any alternative compliance mechanism in the regulations, to the extent feasible and in the furtherance of achieving the statewide greenhouse gas emissions limit, the department shall do all of the following:

i. consult with the council, the environmental justice advisory group, and the climate justice working group;

ii. consider the potential for direct, indirect, and cumulative emission impacts from this mechanism, including localized impacts in disadvantaged communities as identified pursuant to section 75-0111 of this article;

iii. design the alternative compliance mechanism to prevent any increase in the emissions of co-pollutants; and

iv. maximize additional environmental, public health, and economic benefits for the state and for disadvantaged communities identified pursuant to section 75-0111 of this article, as appropriate.