

TRANSPORTATION AND CLIMATE INITIATIVE PROGRAM
MODEL RULE SUMMARY
JUNE 10, 2021

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This Model Rule Summary provides a plain language explanation of the Model Rule for the Transportation and Climate Initiative Program (TCI-P).

The Model Rule Background and Process

- **Program Design and Analysis.** The Model Rule builds on extensive policy and technical work by Transportation and Climate Initiative (TCI) jurisdictions, including detailed modeling analysis to better understand the economic, environmental, and health benefits and impacts of the TCI-P. This work was also informed by ongoing stakeholder engagement and input.
- **Memorandum of Understanding.** On December 21, 2020, the Governors of Connecticut, Massachusetts, and Rhode Island and the Mayor of the District of Columbia entered into a Memorandum of Understanding (TCI-P MOU) expressing their mutual understandings and commitment to establish the multi-jurisdictional TCI-P with the goals of reducing emissions from the transportation sector, improving air quality and public health, and advancing equity for overburdened and underserved communities. In addition to setting out the key elements of the program, the MOU calls for the signatory jurisdictions to release a coordinated Model Rule after providing for public review and input on a draft.
- **Draft Model Rule.** On March 1, 2021, a draft Model Rule was released for an initial 30-day public review and input period. The public review period was later extended by five weeks to May 7, 2021.
- **Model Rule.** The Model Rule reflects the input received from stakeholders.

Purpose of the Model Rule. The Model Rule serves as a common framework that each TCI-P participating jurisdiction will use to develop its own regulations detailing program and compliance requirements for fuel suppliers within their respective jurisdictions. Regulations in each participating jurisdiction that are consistent with the Model Rule will facilitate the establishment of a multi-jurisdictional program and allowance market. The Model Rule may be adapted for use by each TCI-P participating jurisdiction, as necessary to reflect that jurisdiction's legal requirements or other jurisdiction-specific policies. Each participating jurisdiction will follow the rulemaking steps required by that jurisdiction's law, including issuing a draft jurisdiction-specific regulation and providing opportunity for public review and comment before finalizing that regulation.

Answering Key Model Rule Questions

- **How does the Model Rule help effectuate the TCI-P commitments on equity?** The Model Rule incorporates the TCI-P MOU commitments to advance equity for communities overburdened by pollution and underserved by the transportation system. The Model Rule commitments include:
 - *Equity Investment Commitment.* The Model Rule provides that the jurisdictions will work to invest no less than 35 percent of auction proceeds to ensure that overburdened and underserved communities benefit equitably from clean transportation projects and programs.
 - *Equity Advisory Body.* The Model Rule provides for the establishment or designation of an equity advisory body to advise on decision making and equitable outcomes for TCI-P.
 - *Equity Review and Reporting.* The Model Rule provides for the annual review and reporting on impacts of the TCI-P program, including with respect to equity.

To ensure just and equitable outcomes from TCI-P implementation, including emission reductions and access to low-carbon transportation for communities that are overburdened by pollution and underserved by the transportation system, each TCI-P jurisdiction will develop an Implementation Plan that describes the various steps and processes it will pursue to put the necessary regulations and other legal mechanisms into place, and the other steps it will take to advance the goals of the program. Each implementation plan will outline how the jurisdiction will work with stakeholders to develop a public engagement plan, invest proceeds through transparent processes, and advance additional policies to help achieve the goals of TCI-P.

- **When does the program start?** The Model Rule contemplates two key program start dates: the first when reporting obligations begin and the second when allowance requirements start.
 - *Reporting Obligations Begin as soon as January 1, 2022.* Requirements for regulated parties—both jurisdiction fuel suppliers and reporting-only entities—to submit fuel shipment data and emissions data are expected to begin January 1, 2022.
 - *Emissions Cap Limits Begin as soon as January 1, 2023.* Jurisdiction fuel suppliers will be responsible for surrendering allowances equal to emissions from transportation fuels delivered after January 1, 2023.
- **What emissions are covered by the program?** TCI-P's emissions reporting and allowance requirements apply to carbon dioxide (CO₂) emissions from the fossil fuel portion of gasoline and on-road diesel fuel. Because only the fossil fuel content of transportation fuels is covered by the TCI-P program, emissions will be calculated by multiplying fuel quantities by an emission factor that takes into account the biofuel content of the fuel. A default

biofuel content for each type of fuel is provided for use when the biofuel content is not specified in the shipping document in order to make emissions reporting easier.

- **What entities are subject to the program?** The Model Rule contemplates that TCI-P will regulate three categories of parties:

- (1) position holders, or owners of transportation fuel at large bulk terminals;
- (2) distributors, namely, companies that deliver that fuel to filling stations; and
- (3) terminal operators of large bulk fuel facilities.

Position holders and some distributors will be required to report emissions and surrender allowances to cover those emissions and are called “jurisdiction fuel suppliers.” Terminal operators and, in most cases, distributors are not required to obtain allowances under TCI-P; these entities only have reporting obligations and are called “reporting-only entities.” Jurisdictional fuel suppliers and reporting-only entities are further explained below.

- **Who are jurisdiction fuel suppliers?** ¹

- *Position Holders.* The position holders are the primary regulated parties that are required to hold and submit allowances to cover all emissions from transportation fuel sold in the jurisdiction. Position holders ship the vast majority of fuel from the bulk terminal system for delivery to filling stations in a given jurisdiction for final sale or consumption in that jurisdiction. The position holders are large companies that routinely buy, own, and sell fuel, and track the sale of fuel into specific jurisdictions through a shipping document created by the terminal operators.
- *Certain distributors.* In addition to the position holders, the Model Rule includes certain distributors in the definition of the term *jurisdiction fuel supplier*, specifically distributors that complete certain uncommon deliveries of transportation fuel in the jurisdiction that are outside the bulk terminal system or fall into specified categories.

Distributors are only required to surrender allowances for fuel shipments that cannot reasonably be assigned to a particular position holder. In general, this applies to fuel that, at the time of disbursement from a terminal, was not disbursed to a filling station in the jurisdiction, such as fuel delivered from a secondary storage facility or from Canada, or shipments that are diverted to a different destination after disbursement. The allowance surrender requirement also applies to any shipments for which the distributor fails to comply with the requirement to notify the position holder when

¹ The Model Rule contains the term “JURISDICTION fuel supplier.” Terms in all capital letters in the Model Rule are used as a placeholder for the name of a participating jurisdiction or the administrative agency within that jurisdiction, so that in Massachusetts, for example, the term would likely be proposed as “Massachusetts fuel supplier.”

delivering shipments from a terminal that does not report fuel shipments. The situations where this applies are listed in the definition of *jurisdiction fuel supplier*.

Independent retail gas stations that purchase their fuel from distributors would not be regulated because the distributor or position holder would be regulated for the fuel. A corporation that does business as a fuel retailer could be regulated, however, if it also does business as a position holder or a distributor.

A diagram illustrating the general requirements for jurisdiction fuel suppliers is included as Appendix A to this Model Rule summary. The diagram includes separate columns to identify requirements for position holders and distributors, and is color coded to show how different fuel shipment scenarios are treated under the Model Rule (red = compliance obligation, yellow = notification, green = no regulatory requirement).

- **What do jurisdiction fuel suppliers have to do?** Jurisdiction fuel suppliers are required to register, report emissions with third-party verification of those reports, and surrender allowances, as described below:
 - *Register.* Jurisdiction fuel suppliers must register with the Transportation Registration, Emissions, and Allowance Tracking System (TREATS) and establish one emissions reporting and one compliance account.
 - *Report fuel shipments.* Fuel shipment reporting is required monthly of jurisdiction fuel suppliers in the following circumstances:
 - all position holders that disburse transportation fuel for delivery to filling stations in the jurisdiction must report fuel shipments; and
 - distributors must report certain uncommon fuel shipments, generally those to filling stations in the jurisdiction that are made outside the terminal system.²
 - *Report emissions.* Jurisdiction fuel suppliers must report emissions for the transportation fuels they disbursed to or delivered to the jurisdiction in each quarter. The system will automatically calculate emissions based on reported product type, fuel volumes, and biofuel content. Emissions reports are due by the end of the second month following the quarter when the disbursement or delivery occurred. Fuel shipment data must also be reported. Recordkeeping requirements are also included in the Model Rule.
 - *Secure third-party verification of emissions reports.* Jurisdiction fuel suppliers are required to hire an independent (“third-party”) verifier to verify the accuracy of reported emissions data after the end of each year. The third-party verification system is adapted from existing California requirements that apply to fuel suppliers; consistency among programs can reduce the administrative burden of verification because TCI-P

² Distributors are reporting-only entities for certain other shipments where they are not jurisdiction fuel suppliers and have only reporting obligations relative to those other shipments, as discussed below under reporting-only entities.

regulators, verifiers, and fuel suppliers can draw on experience in California when developing materials, preparing reports, and carrying out similar activities. Third party verification is particularly important to ensure that emissions are reported accurately when there is a financial incentive to under-report, as is the case in the TCI-P.³

- *Surrender allowances.* Jurisdiction fuel suppliers must surrender allowances to cover the emissions from the transportation fuels disbursed to or delivered in the jurisdiction after each three-year compliance period and file a compliance certification. There are also annual interim requirements described below.
- *Surrender allowances 3:1 and pay penalties when not in compliance.* For each ton of emissions above the number of allowances in the jurisdiction fuel supplier's compliance account at the compliance deadline, three allowances must be submitted, plus any other penalties under applicable law.
- **Who are “reporting-only entities”?** The model rule has fuel shipment reporting requirements for certain regulated parties called *reporting-only entities*,⁴ which include terminal operators in the jurisdiction and distributors in the jurisdiction under certain circumstances as described below. Terminal operators outside the jurisdiction may choose to voluntarily report fuel shipments to the jurisdiction through a common regional platform, and in so doing become reporting-only entities.
- **What do reporting-only entities have to do under the program?** Reporting-only entities only have fuel shipment reporting obligations. These reporting-only requirements ensure that most fuel shipment will receive at least two submittals to the jurisdiction where delivery for final sale or consumption occurs. Reporting-only entity requirements can be summarized as follows:
 - terminal operators located in the jurisdiction must report fuel shipments to the jurisdiction.
 - terminal operators serving the jurisdiction from outside the jurisdiction are not required to report—reducing the burdens on out-of-jurisdiction terminals—but they may opt into the TCI-P program to report fuel shipments to individual jurisdictions through a common regional platform to simplify reporting for their customers (distributors).
 - distributors must report certain fuel shipments even though they do not have emissions reporting or allowance surrender obligations for the shipments, namely those to filling stations in the jurisdiction that are disbursed from terminal racks in other jurisdictions that have not opted to report shipments and in certain other rare cases.
 - distributors that receive fuel shipments from out-of-jurisdiction terminals must also notify the position holders to confirm delivery of fuel in the jurisdiction, unless the out-of-jurisdiction terminal has opted into TCI-P fuel shipment reporting.

³ See <https://ww2.arb.ca.gov/verification> for more information about California's verification requirements.

⁴ The Model Rule contains a detailed definition of *reporting-only entities*.

- **Why have fuel shipment reporting?** This fuel shipment data will be used to identify all gallons of transportation fuel delivered for final sale and consumption in the jurisdiction, identify position holders disbursing shipments and other regulated parties, and confirm data submitted by jurisdiction fuel suppliers.

Fuel shipment data will be the source of all information required to calculate emissions (e.g., fuel volume and biofuel content). Fuel shipment data is used as an information source because it is already included in the standardized shipping document, normally issued by a terminal, that accompanies all fuel shipments, so the administrative burden associated with complying and reporting it will be low. The Model Rule includes a list of data elements and a timeline for fuel shipment data reporting during the month following the month when the shipment occurred. Fuel shipment reporting will occur using an electronic tracking system (see section L below). In designing that system, opportunities for streamlined reporting will be created, for example, information reported by position holders on fuel shipments could be used to pre-populate draft distributor notifications to confirm delivery of those fuel shipments.

- **What are the allowance budgets and scheduled reductions?** The model rule includes a section where each participating jurisdiction will insert its annual emissions budgets for purposes of that jurisdiction's regulation. Each participating jurisdiction's annual emissions budgets represent that jurisdiction's portion of the TCI-P regional emissions cap and the initial amount of allowances the jurisdiction will issue. In aggregate, the participating jurisdictions' annual emissions budget will collectively determine the maximum amount of greenhouse gas emissions from covered fuels in the TCI-P region. The starting budgets are set out in the TCI-P MOU as follows:

TCI-P Jurisdiction	Starting Budget
Connecticut	13,497,957
District of Columbia	877,715
Massachusetts	24,467,216
Rhode Island	3,291,658

Each participating jurisdiction's annual allowance budget will decline by an equal amount each year to achieve a 30% reduction by 2032.

- **What provisions are included to maximize flexibility for entities subject to the program?**

The program structure is inherently flexible for regulated entities because the allowances are tradable, meaning that regulated fuel suppliers can buy and sell allowances in a “secondary market” if they choose not to purchase needed allowances at auction.⁵ The model rule includes several additional flexibility mechanisms, including: multi-year compliance periods; the ability to “bank” unused allowances for future use to provide temporal flexibility; and offset provisions provide a potential source of additional allowance supply from projects that meet applicable requirements.

- **How do 3-year compliance periods work?** At the end of each compliance period, or “control period,” jurisdiction fuel suppliers must surrender allowances to cover emissions during the compliance period. The Model Rule provides for a 3-year compliance period, which provides jurisdiction fuel suppliers with flexibility to plan compliance over a multi-year period. The first 3-year control period will begin January 1, 2023 and end December 31, 2025. Each subsequent control period will last three years. At the end of each of the first two years of a control period, or “interim control periods”, jurisdiction fuel suppliers must hold allowances equal to at least 50% of their annual emissions. At the end of each control period, jurisdiction fuel suppliers must hold allowances equal to at least 100% of their total emissions over the three-year period. The extended compliance schedule allows jurisdiction fuel suppliers significant flexibility with regard to when they obtain allowances needed for compliance. For example, a supplier that does not hold allowances equal to 100% of its emissions at the end of the first year can make up the deficit by purchasing extra allowances in the next two years.
- **What is allowance banking and how does it provide flexibility?** Allowances do not expire and may be banked for use for future compliance obligations. Similarly, if allowance prices are low at a particular time, a supplier will have the flexibility to purchase additional allowances to bank for use during a future compliance period.
- **What are offset allowances and how do they provide additional flexibility?** In addition to procuring allowances at auction or purchasing them from other market participants, a jurisdiction fuel supplier may also satisfy TCI-P compliance obligations by securing offset project allowances. A TCI-P CO₂ offset allowance represents a project-based greenhouse gas emission reduction outside of the capped transportation fuel sector. At this time, the award of offset allowances are limited to three project categories, each of which is designed to reduce or sequester emissions of carbon dioxide (CO₂) or methane (CH₄) within the region. By recognizing CO₂-equivalent (CO₂e) emissions reductions and carbon sequestration outside the capped sector, offsets provide compliance flexibility and create opportunities for low-cost emissions reductions and other co-benefits across

⁵ See <https://www.rggi.org/auctions/market-monitor-reports> for information about the RGGI allowance market.

sectors. These requirements ensure that awarded CO₂ offset allowances represent CO₂e emissions reductions or carbon sequestration that are real, additional, verifiable, enforceable, and permanent. Offset projects must generally be located within one or more of the TCI-P jurisdictions that award CO₂ offset allowances. However, the model rule does contemplate allowing offset allowances to come from a jurisdiction that is not a participating jurisdiction in TCI-P so long as the jurisdiction enters into a memorandum of understanding with the TCI-P jurisdictions to ensure offset projects in the non-TCI-P jurisdiction meet the requirements of the program. CO₂ offset allowances may be used to satisfy a limited portion of a jurisdiction fuel supplier's compliance obligation, consistent with any jurisdiction-specific requirements. The use of CO₂ offset allowances is constrained to 3.3 percent of that compliance obligation for each control period or interim control period. Regulated parties in any jurisdiction that allows the use of offsets for compliance may use CO₂ offset allowances awarded by another TCI-P jurisdiction.

- **How will jurisdiction fuel suppliers obtain allowances for compliance?** Jurisdiction fuel suppliers can obtain allowances at a quarterly auction of allowances or they can purchase allowances from sellers on the secondary market.
- **How do allowance auctions work?** The auction provisions in the model rule are adapted from the successful allowance auctions conducted for more than ten years by the states participating in the Regional Greenhouse Gas Initiative (RGGI).⁶

The TCI-P participating jurisdictions will conduct auctions to make allowances available on a regular basis. RGGI currently conducts these auctions on a quarterly basis. Allowances issued by one TCI-P jurisdiction may be used to meet compliance obligations in any of the other TCI-P jurisdiction.

Prior to each auction, an auction notice will be published that provides an overview of the number of allowances that will be offered and the allocation year of allowances that will be offered for sale. The notice will also include key dates for submitting sealed bids, the minimum reserve price for the auction, and other information related to the upcoming auction. The auction will be conducted utilizing an online auction platform. The auctions will be sealed-bid, uniform price auctions that are open to all qualified participants. The auction will result in a single clearing price. All qualified participants will also need to post some form of financial security (e.g., bond, irrevocable letter of credit) to ensure payment by the qualified bidder. The auction platform will reject any bid that exceeds the financial security limitation or the bidder's bid limitation.

⁶ RGGI auction procedures, materials and results are available at <https://www.rggi.org/auctions/about-auctions>.

Following the auction, the TCI-P jurisdictions will post the auction clearing price. Once the final clearing price is established, allowances are awarded. Allowances may be banked for compliance or re-sold on the secondary market.

- **How does the TCI-P program design contribute to a well-functioning, competitive allowance market, and how will the allowance market be monitored to ensure fair conduct on the part of market participants?** The TCI-P program design builds on years of experience gained through other similar programs, like RGGI, to ensure a well-functioning, competitive allowance market. Some examples of this experience contained in the Model Rule include:
 - Regular allowance auctions provide timely information about allowance prices and a predictable source of allowance supply for all market participants.
 - Good auction design can foster competitive behavior, such as bid limits that prevent any single auction participant from gaining control of too large a share of auctioned allowances; uniform auction clearing prices, which guard against attempts to manipulate the auction clearing price; and open market participation increases competition by allowing a broad range of parties to bid.
 - The Model Rule contemplates an independent market monitor to evaluate the conduct of the market participants in the auction and secondary market to identify any potential anti-competitive conduct or significant barriers to market participation, including the potential for market manipulation, collusion, and the exercise of market power. The market monitor's review of the auctions and secondary market will protect and foster competition, as well as increase the confidence of participants and the public in the allowance market and the auctions.
- **How will regional collaboration across TCI-P jurisdictions drive efficiencies and make compliance easier for entities that operate in more than one TCI-P jurisdiction?** TCI-P's multi-jurisdictional approach means the participating jurisdictions can pool their resources to realize lower costs and greater efficiencies compared to implementation by each jurisdiction separately. Collaborative implementation also means the participating jurisdictions can make things easier for entities that operate in more than one participating jurisdiction. For example:
 - *A common emissions and allowance tracking system* means that entities that are required to register and report emissions and/or fuel shipment data can register with more than one jurisdiction and report in a single multi-jurisdictional system (referred to as TREATS).
 - *A shared auction platform* means a single location for obtaining allowances at auction.
 - *Joint market monitoring* means the participating jurisdictions are watching the whole multi-jurisdictional market.

Indeed, the TCI-P jurisdictions expect to coordinate on implementation wherever it makes sense to increase efficiency, lower costs, and bring enhanced program benefits.

- **What is the Cost-Containment Reserve and how does it function?** The Model Rule includes a Cost-Containment Reserve (CCR) to help address situations where emissions are higher than anticipated and to provide stability in the allowance market. The CCR consists of a quantity of allowances, in addition to the allowances in the annual allowance budgets, which are held in reserve and are released for sale if emissions reduction costs are higher than projected. When the price specified in the Model Rule as the “CCR Trigger Price” is triggered at auction, allowances in an amount up to 10% of the annual allowance budget may be released until the auction clearing price equals the CCR Trigger Price or the CCR is exhausted. Once the pool of allowances in the CCR is exhausted, no more CCR allowances will be available for future auction in that calendar year. The CCR is replenished at the start of each calendar year.
- **What is the Emissions Containment Reserve and how does it function?** The final Model Rule includes an Emissions Containment Reserve (ECR) to help address situations where emissions are lower than anticipated, in order to ensure additional emissions reductions, and to provide stability in the allowance market. The ECR will withhold allowances from the auction when emission reduction costs are lower than projected. When the price specified in the Model Rule as the “ECR Trigger Price” is triggered at auction, allowances in an amount up to 10% of the annual allowance budget are withheld from the auction. The ECR is designed to secure additional emissions reductions if the demand for allowances is lower than projected. ECR allowances are withheld until the final auction clearing price equals ECR Trigger Price or the ECR withholding limit is reached. Once the limit of ECR allowances available for withholding is reached, no further allowances can be withheld for the remainder of that calendar year. The ECR is reset at the start of each calendar year.
- **What is the Transportation Registration, Emissions, and Allowance Tracking System and how does it work?** The Transportation Registration, Emissions, and Allowance Tracking System (TREATS) is an electronic platform where regulated entities register and submit emissions and fuel shipment reports, and where allowances are banked and surrendered at the end of each compliance period. The tracking system also enables anyone that holds an allowance account—including individuals and entities that are not regulated entities—to receive, transfer, and hold allowances. All parties interested in holding allowances must open an account and obtain an account number.

As discussed above, at the end of the first two interim control periods and the three-year control period, jurisdiction fuel suppliers must surrender allowances to cover the emissions from the transportation fuels they disbursed to or delivered in the jurisdiction. The jurisdiction fuel suppliers must upload to the tracking system a compliance certification attesting that the fuel supplier is in compliance with the requirements of the Model Rule.

The TCI-P jurisdictions will create a shared transportation registration, emissions, and allowance tracking system, which will be available for regulated parties and other

participants in the TCI-P program in each jurisdiction to use for reporting and allowance tracking. This joint system will result in efficient program administration for regulated parties and other program participants.

POSITION HOLDERS AND BELOW-THE-RACK DISTRIBUTORS MAY BE REQUIRED TO REPORT EMISSIONS AND SUBMIT ALLOWANCES

POSITION HOLDERS (owners of fuel at terminals anywhere in the US)

Did the position holder make disbursements* for which the shipping document lists [jurisdiction] as the destination? **NO**

For this fuel, the **position holder is not required to report emissions or submit allowances** to [jurisdiction].

The position holder may be required to report emissions and submit allowances.

Did any of the position holder's disbursements for final sale or consumption in [jurisdiction]** occur at reporting terminals?*** **YES**

For this fuel, the **position holder must report emissions and submit allowances** unless a diversion to another jurisdiction is reported by a distributor or position holder.

Was the position holder notified of any disbursements from terminals that are not reporting terminals that were delivered for final sale or consumption in [jurisdiction]?** **YES**

For this fuel, the **position holder must report emissions and submit allowances** upon notification by a distributor.

Regulated position holders and (for less common delivery scenarios) distributors will be required to submit allowances covering emissions resulting from the combustion of gasoline and on-road diesel fuel. Reporting requirements will be consistent with information contained in shipping documents issued by terminals at the time of disbursement. Emissions will be calculated by multiplying fuel quantities by an emission factor, discounted to account for the biofuel content of the fuel. Monthly fuel shipment reporting will occur using an electronic tracking system that allows for streamlined reporting by, for example, using information reported by position holders to pre-populate draft distributor notification reports.

DISTRIBUTORS (owners of fuel in [jurisdiction] after removal from a terminal)

Did the distributor deliver fuel for final sale or consumption in [jurisdiction]?** **NO**

For this fuel, the **distributor is not required to report emissions or submit allowances** to [jurisdiction].

The distributor may be required to report emissions and submit allowances.

Was any of the fuel disbursed to the distributor at a reporting terminal with a shipping document that lists [jurisdiction] as the destination? **YES**

For this fuel, the **distributor is not required to report emissions or submit allowances** to [jurisdiction].

Was any of the fuel disbursed to the distributor at a terminal that is not a reporting terminal with a shipping document listing [jurisdiction] as the destination? **YES**

For this fuel, the **distributor must provide notification** to the position holder and report fuel shipment information to [jurisdiction].

Did the distributor deliver any other fuel to filling stations in [jurisdiction] (i.e., fuel diverted into [jurisdiction] or shipped from Canada or secondary storage)? **YES**

For this fuel, the **distributor must report emissions and submit allowances** to [jurisdiction].

If the distributor fails to provide notification, the distributor **must report emissions and submit allowances** to [jurisdiction].

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* A disbursement is a physical removal of liquid product from a terminal.

** Including disbursements and deliveries to filling stations, not secondary storage facilities.

*** Reporting terminals include terminals in [jurisdiction] and other terminals that participate voluntarily.