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Submitted electronically via the [TCI Public Input Portal](#)

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**Governors and Other State Officials:** Connecticut, Delaware, New Hampshire, New Jersey, New York, North Carolina, Maryland, Massachusetts, Pennsylvania, Rhode Island, Vermont, Virginia

**Mayor and Other City Officials:** District of Columbia

Subject: Conservation Law Foundation Comments on Model Rule and Public Engagement Planning

Dear Governors, Mayor, and Transportation and Climate Initiative Leaders:

Thank you for the opportunity to comment on the Draft Transportation and Climate Initiative (“TCI”) Model Rule and public engagement planning process. Conservation Law Foundation (“CLF”)<sup>1</sup> is pleased to submit these comments with recommendations to improve the

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<sup>1</sup> CLF is a non-profit, member-supported, regional environmental organization that protects New England’s environment for the benefit of all people and future generations. We use the law, science, and markets to create solutions that preserve and restore our natural resources, build

public engagement process and strengthen the TCI Draft Model Rule to include greater accountability, improved price triggers, and commitments to address pollution hotspots, and to remove offsets. CLF advocates that all people should have a transportation system that is accessible, reliable, affordable, and free of air pollution and greenhouse gas emissions. To achieve that system, all people should be able to participate in and influence transportation planning, funding, and decision-making that impact their communities.

## **Comments on Public Engagement**

### **I. Introduction**

The TCI memorandum of understanding establishing the TCI Program (“TCI-P”) signed by leaders in Connecticut, Massachusetts, Rhode Island, and Washington D.C. (“Participating Jurisdictions”) falls well short of its potential. This is because the process for developing it failed to meaningfully engage the communities that suffer most from air pollution and desperately need new investments in clean transportation. The final memorandum of understanding and Draft Model Rule includes explicit references to equity in how the program will be implemented and the creation of equity advisory bodies in each jurisdiction. But these earnest and belated pledges do not compensate for lack of community input and a deficient memorandum of understanding.

Strong community engagement and leadership is a cornerstone of any successful climate action, particularly so when it comes to achieving a just transition towards a clean energy economy. Therefore, CLF asserts the importance of partnering with, not simply listening to, residents impacted first and worst by climate impacts and community-based organizations, to create and implement a broad transportation justice agenda, reduce air pollution in hotspots, and ensure that all public engagement opportunities are accessible.

To ensure that equity, environmental, climate, and transportation justice considerations are at the center of TCI-P implementation, we recommend:

- populating and convening equity advisory bodies prior to implementing regulatory processes in each Participating Jurisdiction;
- state and municipal TCI-P leaders partnering with representatives of environmental justice and community-based organizations to co-create a meaningful public engagement plan;
- implementing a broad transportation justice agenda developed through a process led by community-based organizations; and
- providing technical assistance to environmental justice and community-based organizations to ensure that they can meaningfully contribute ideas for TCI-P investments and program review.

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healthy and resilient communities, and sustain a vibrant economy. CLF works to combat climate change and improve access to healthy and safe multimodal transportation, while eliminating greenhouse gas emissions and air pollution, overcoming historic disinvestment and structural inequality, and improving public health and social mobility. CLF has been a participant in TCI regional and state discussions since April 2017.

II. Participating Jurisdictions Should Establish Equity Advisory Bodies Prior to Commencing Regulatory Proceedings.

To ensure that equity advisory bodies can influence TCI-P design and implementation, Participating Jurisdictions should work quickly to establish equity advisory bodies. CLF is pleased that each Participating Jurisdiction will create an equity advisory body where “a majority of members” will be “representatives of overburdened and underserved communities or populations.”<sup>2</sup> The update on public engagement planning released on March 1, 2021 indicates Participating Jurisdictions’ intent to facilitate the collaborative engagement of environmental justice stakeholders in designing, implementing, and participating in equity advisory bodies.<sup>3</sup> Following finalization of the Model Rule, each Participating Jurisdiction will commence rulemaking proceedings to implement the Model Rule and plan for investments. It is through these rulemaking proceedings that Participating Jurisdictions will establish binding legal requirements. As such, the equity advisory bodies should be established and convened prior to the Participating Jurisdiction commencing one or more rulemaking proceedings.

There are several key tasks for the equity advisory bodies to pursue including identifying overburdened and underserved communities, helping to determine what constitutes an investment in or benefit to overburdened and underserved communities, developing a model framework for public engagement in the Participating Jurisdiction, planning for investments, and developing metrics for TCI-P evaluation. All of these tasks require a meaningful composition of equity advisory bodies that reflect racial and ethnic diversity, geographic diversity, varying lived experiences with different modes of transportation and mobility needs. CLF recommends that Participating Jurisdictions seek out community-based organization recommendations for appointments to the equity advisory bodies.

III. Participating Jurisdictions Should Partner with Community-Based Organizations to Develop and Implement A Framework for Public Engagement.

TCI-P has made a commitment to center equity in its decision-making processes, but to do so, TCI-P leaders must ensure that community-based organizations and their members have significant input — not only regarding the technical program design but also on community impacts. Ideas of equity and justice cannot be translated into policy and action unless there is strong community partnership and transparency in decision-making. Environmental justice populations, organizations that prioritize transportation and labor justice, as well as academic institutions and most importantly community members themselves must have a place not only in the process but in the application and we encourage TCI-P decision-makers to build and strengthen those relationships at the outset.

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<sup>2</sup> Transportation and Climate Initiative, Update on Public Engagement Planning, March 1, 2021, available at <https://www.transportationandclimate.org/sites/default/files/TCI-P-Update-On-Public-Engagement-March-2021.pdf>.

<sup>3</sup> Transportation and Climate Initiative, Update on Public Engagement Planning, page 2, March 1, 2021, available at <https://www.transportationandclimate.org/sites/default/files/TCI-P-Update-On-Public-Engagement-March-2021.pdf>.

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To build trust between the various stakeholders that are involved in this equity process, there must be a move towards partnership between state government officials, environmental justice organizers and leaders, as well as representatives from transit justice and labor organizations. TCI-P decision-makers must evidence not only an understanding of the community concerns over technical design and impact but must show concrete and transparent steps that will be taken to address those concerns.

To that end, we recommend that TCI-P leaders work with one or more community-based organizations to co-convene public meetings and stakeholder sessions to get input on how to determine what constitutes an investment in or benefit to overburdened and underserved communities, planning for investments, and developing metrics for TCI-P evaluation. Representation of people of color led community-based organizations on the various equity advisory bodies is not enough — instead, community partners should be driving the conversations around impacts, which means that they must be at the forefront of developing the definitions and metrics that form the foundation of any impact analysis.

The framework for public engagement should include details about language access and accessibility. TCI-P decision-makers must ensure that public meetings are accessible to the communities and populations with which they seek to work. This means making sure that any advertisements and education materials for public meetings are translated into multiple languages as well as ensure the availability of language interpreters either on-site or available virtually for online meetings. Accessibility also means scheduling public meetings outside of typical work hours so that the audience captured reflects those community members whose interests are most at stake. It also means that public, in-person meetings should have childcare available for those who require it as access to childcare is an obstacle to public participation for many community members. Finally, accessibility means that people with disabilities are able to access both online and in-person engagement opportunities — this can be accomplished both by adhering to state and federal regulations but also by building relationships within communities and understanding their particular needs to fully participate.

#### IV. Participating Jurisdictions Should Work with Stakeholders to Implement a Broad Transportation Justice Agenda.

TCI-P jurisdictions who signed the memorandum of understanding committed to consider a range of complementary policies to achieve emissions reductions, particularly in underserved and overburdened communities. Such policies must not be considered complementary to the TCI-P, but rather, essential to make our transportation system and infrastructure more accessible and equitable. We recommend that TCI-P leaders work with stakeholders to begin implementing a broad agenda that makes progress toward transportation justice. It will be crucial for TCI-P leaders to meaningfully consider and implement such an agenda, recognizing that TCI-P auction proceeds may not be sufficient to cover the capital cost of items that are part of the transportation justice agenda.

COVID-19 has burdened transportation systems that have long been in a state of emergency. The pandemic has only illuminated what we already knew to be true — that the most vulnerable of our communities, those that rely on our public transportation system to go to

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school, do their jobs and feed their families, are the first to feel the effects of decreasing conditions. In addition to being on the frontlines of facing a pandemic, riders depend daily on a system that is riddled with safety issues, service delays and cuts, deferred upgrades, overcrowding, and a lack of funding.

The TCI-P decision-makers must understand and work towards solving, in partnership, the problems that are plaguing the overburdened and underserved communities. A coalition of Massachusetts organizations, led by community-based organizations, authored a letter and outlined in it a broad transportation justice agenda, which includes: addressing inequities in transit fares; expanding public transit access; electrifying transit; improving pedestrian and bicycle safety, especially in communities of color and low-income neighborhoods; and creating more mobility options in rural communities. CLF anticipates that stakeholders in other Participating Jurisdictions will similarly develop a transportation justice agenda. It is imperative that Participating Jurisdictions learn about the transportation justice agendas that are important to constituents, especially representatives of overburdened and underserved communities, and to work with stakeholders to implement that agenda regardless of whether funds for that agenda are generated by TCI-P. TCI-P must be paired with a broad transportation justice agenda.

In addressing transportation inequities, Participating Jurisdictions must commit to addressing public feedback through implementation of the transportation justice agenda, overcoming the historical exclusion of environmental justice populations from decision tables, and working transparently to repair and build relationships with communities at the frontlines of the climate crisis and transportation injustice.

### V. Participating Jurisdictions Should Distribute Plain Language Materials About TCI-P and Provide Technical Assistance to Environmental Justice and Community-Based Organizations.

Now that there is a final memorandum of understanding and Draft Model Rule, the Participating Jurisdictions know the regulated entities. The public would benefit from viewing a list of regulated entities in each Participating Jurisdiction. CLF recommends that Participating Jurisdictions map the location of each regulated entity and overlay environmental justice populations and overburdened and underserved communities once those locations are identified. The average resident is not likely to know which companies are fuel suppliers or terminal operators so there is a need for transparent and clear materials, available in multiple languages, to explain which entities are required to participate in the program and reduce emissions.

TCI-P is a complex program that requires people to read long and technical documents to learn program details. We recommend that Participating Jurisdictions invest time in working with community-based organizations and residents of environmental justice populations to offer technical assistance. Such assistance could include explaining the program details, hearing concerns and ideas, and ensuring that such stakeholders have enough information to provide meaningful and sustained input.

### **Comments on Draft Model Rule**

The Draft Model Rule should be strengthened to clarify definitions, expand on the equity section, strengthen reporting requirements, and remove the opportunity for offsets. We detail these recommendations below.

#### **Subpart XX-1.2 Definitions**

We recommend revising the following definitions: CO<sub>2</sub> cost containment reserve, CO<sub>2</sub> cost containment reserve trigger price, CO<sub>2</sub> emissions containment reserve allowance, and minimum reserve price.

CO<sub>2</sub> Cost Containment Reserve: The Draft Model Rule includes a cost containment reserve (“CCR”) that could increase allowable carbon pollution. The Draft Model Rule defines the CCR allowances as “allowances offered for sale at an auction are separate from and additional to CO<sub>2</sub> allowances allocated from the Jurisdiction TCI-P base budgets.”<sup>4</sup> This definition allows for the release of additional CO<sub>2</sub> allowances above the TCI-P cap. If designed well, a cost containment mechanism such as a CCR can help protect consumers from unanticipated events and provide greater certainty in terms of program costs, benefits, and performance. Unfortunately, the CCR in the Draft Model Rule could undermine the climate integrity of TCI-P by increasing allowable pollution.

The current TCI framework will not cut emissions at the scale needed to reach the climate targets set by New England states. With the passage of mandatory climate targets in five New England states, including all three TCI-P states, it is critical for the Model Rule to prohibit the release of any additional CO<sub>2</sub> allowances above the TCI-P cap in years when the CCR is triggered. The Draft Model Rule allows for additional CCR allowances above the cap up to 10 percent in any year.<sup>5</sup> Consequently, although the TCI-P cap is set to decline 30 percent between 2023 and 2032,<sup>6</sup> the CCR has the potential to reduce Participating Jurisdictions’ commitments to pollution reductions by as much as a third. The program is already insufficiently ambitious regarding the pollution cap. Further dilution through the CCR undermines the goals of the program.

If the Participating Jurisdictions move forward with a CCR, they should consider several alternative approaches. One could be to deduct as least as many allowances as are released under the CCR from future years’ emissions caps, potentially spread out over multiple years, which would provide the infusion of extra allowances and flexibility the participating jurisdictions seek while not cutting into the nine-year pollution reduction goals. If the participating jurisdictions use this approach, the number of allowances deducted from future year caps should be at least as high as the number of extra allowances released to the market under the CCR. There is greater value in reducing emissions in earlier program years to limit the worst impacts of climate change. Thus, deductions from future years’ caps should be larger than the

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<sup>4</sup> Draft Model Rule § XX-1.2, at 8.

<sup>5</sup> Draft Model Rule § XX-5.3(b), at 46.

<sup>6</sup> Memorandum of Understanding, § 2A, December 30, 2020, available at <https://www.transportationandclimate.org/sites/default/files/TCI%20MOU%2012.2020.pdf>.



total number of allowances released under the CCR. These points need to be included in a modified definition of CO<sub>2</sub> CCR allowance under § XX-1.2 of the Model Rule and related language in § XX-5, CO<sub>2</sub> Allowance Allocations. The process of adjustment for banked allowances under the RGGI Model Rule provides a potential model for how these adjustments to future CO<sub>2</sub> allowance budgets to account for allowance releases from the CCR could be written into the Model Rule.<sup>7</sup>

CO<sub>2</sub> Containment Reserve Trigger Price: The CCR trigger prices should be increased. The Draft Model Rule established a CCR price trigger in 2023 of \$12 per ton.<sup>8</sup> We recommend raising the CCR trigger prices in the Draft Model Rule to at least \$24/ton starting in 2023, escalating by at least 7.5% each year. The CCR trigger prices contained in Table 1 of the Draft Model Rule reflect the proposed values released with the December TCI-P Memorandum of Understanding. Notwithstanding, these values are too low, and thus increase the likelihood that CO<sub>2</sub> allowances are released and thus threaten the climate integrity of the program.

Modeling from the TCI jurisdictions and others has shown that a TCI-P that produces CO<sub>2</sub> allowance prices of at least \$24/ton in 2023, growing by at least 7.5% per year, would produce the following benefits: annual net benefits to gross domestic product (\$3 billion), household income (\$2 billion), jobs (9,000), public health (\$10 billion), and avoided climate damages (\$892 million).<sup>9</sup> Preliminary results from the Transportation, Equity, Climate & Health (“TRECH”) study suggest the health benefits of such a scenario could be even larger, totaling \$11.6 billion, including 1,160 deaths and 46,000 childhood asthma attacks avoided, per year by 2032.<sup>10</sup> While the TRECH study may not include impacts or benefits specific to underserved and overburdened communities, the projected health benefits suggest that restricting TCI-P allowance prices would result in achieving less than the projected health benefits.

Given that a TCI-P with CO<sub>2</sub> allowance prices starting at \$24/ton in 2023 is projected to produce benefits across a wide array of indicators, restricting the TCI-P’s allowance prices to levels below this threshold would dampen higher prices by releasing additional allowances in the market at just \$12/ton in 2023. The TCI-P modeling suggests that CO<sub>2</sub> allowance prices will be substantially below \$24/ton in 2023 and future years under the emissions cap proposed. Should this projection be wrong, the modeling also shows that there is much greater headroom in the TCI-P for larger household and societal benefits at allowance prices that are higher than the proposed CCR trigger prices would enable. Therefore, we recommend increasing the CCR

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<sup>7</sup> See Regional Greenhouse Gas Initiative, 2017 Model Rule § XX-5.3(h) (Third adjustment for banked allowances), available at [https://www.rggi.org/sites/default/files/Uploads/Design-Archive/Model-Rule/2017-Program-Review-Update/2017\\_Model\\_Rule\\_revised.pdf](https://www.rggi.org/sites/default/files/Uploads/Design-Archive/Model-Rule/2017-Program-Review-Update/2017_Model_Rule_revised.pdf).

<sup>8</sup> Draft Model Rule § XX-1.2, at 9.

<sup>9</sup> Transportation and Climate Initiative, *Webinar on program design, modeling, and the implications of COVID-19*, slides 22, 25, 49 (September 16, 2020), available at <https://www.transportationandclimate.org/sites/default/files/Fall%202020%20modeling%20webinar%2C%20final%20as%20shown%20on%2020200916.pdf>.

<sup>10</sup> Transportation, Equity, Climate & Health Project, *Preliminary Results – Updated February 25, 2021*, slides 7, 25 (February 25, 2021), available at <https://cdn1.sph.harvard.edu/wp-content/uploads/sites/2343/2021/02/TRECH-SlidedeckUpdateFeb2021.pdf>.

trigger price to at least \$24/ton in 2023 escalating by at least 7.5% per year resulting in a CCR trigger price in 2032 at \$46.02/ton.

CO<sub>2</sub> Emissions Containment Reserve Allowance: It is appropriate for an emissions containment reserve (“ECR”) in the TCI-P to automatically and permanently withhold a portion of CO<sub>2</sub> allowances from sale if emissions reduction costs are lower than anticipated. The proposed ECR in the Draft Model Rule is an innovative mechanism to secure greater benefits for the region’s residents and environment if the costs of doing so are lower than anticipated. By automatically lowering the TCI-P pollution cap in response to lower than anticipated compliance costs, the ECR will help dynamically correct for unanticipated market factors that might otherwise reduce the effectiveness of the program. As provided elsewhere in the Draft Model Rule, the ECR can reduce the cap by up to 10 percent in years when it is triggered, with the number of allowances withheld dependent on allowance prices and bidding behavior. Combined with the minimum reserve price, the ECR will provide a safety mechanism to ensure climate progress under TCI-P between the launch of the program and its first program review. While we support including an ECR even without a CCR, if a CCR is included, the ECR becomes an essential complementary and counterbalancing mechanism.

We recommend TCI-P jurisdictions consider adopting higher trigger prices for this mechanism. The ECR trigger prices shown in Table 2 of the Draft Model Rule — \$6.50/ton in 2023, escalating by at least 7.5% per year — are consistent with the values proposed alongside the December MOU. However, as noted above, higher allowance prices than those proposed as the ECR trigger prices would provide a more cost-effective TCI-P.

We recommend TCI jurisdictions raise the ECR trigger price to \$12/ton or higher in 2023, escalating by at least 7.5% per year. Allowance prices of this level are similar to those projected in TCI jurisdictions’ previous mid-range cap ambition scenario modeling. The modeling of the mid-range scenario shows that a program with allowance prices starting in the \$12/ton range would produce net benefits across a wide range of economic and health indicators.

Minimum Reserve Price: CLF recommends implementing a higher minimum reserve price, which establishes a price below which CO<sub>2</sub> allowances will not be sold. TCI-P is a cap-and-invest mechanism that will establish a cap on the amount of transportation fuel pollution. The base cap for each Participating Jurisdiction is a known figure for 2023: Connecticut = 13,497,957 metric tons; Massachusetts = 24,467,216 metric tons; Rhode Island = 3,291,658 metric tons; and Washington D.C. = 877,715 metric tons.<sup>11</sup> These emissions limits will decline by 30 percent over nine years.<sup>12</sup> The unknown factor is the price that it will cost to pollute up to the amount of the cap.

A minimum reserve price maintains a market signal for carbon reductions in cases where the initial emissions cap is insufficient to achieve decarbonization goals. It further provides a

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<sup>11</sup> Transportation and Climate Initiative Memorandum of Understanding, page 2, December 2020, available at

<https://www.transportationandclimate.org/sites/default/files/TCI%20MOU%2012.2020.pdf>.

<sup>12</sup> *Id.*



safety mechanism and bridge between the initial adoption of the program and the first TCI-P review. The Draft Model Rule proposed minimum reserve price of \$2.50/ton in 2023, escalating by 1.025 multiplied by the minimum reserve price from the previous calendar year, is too low and should be increased. This minimum reserve price is lower than the 2023 minimum reserve price for CO<sub>2</sub> allowances in the Regional Greenhouse Gas Initiative.<sup>13</sup>

CLF recommends raising the minimum reserve price to at least \$5.95/ton in 2023, escalating by at least 7.5% per year. According to TCI modeling, CO<sub>2</sub> allowance prices are anticipated to be \$5.95/ton in 2023 and grow by approximately 7.5% per year, resulting in \$2 billion per year if all jurisdictions join TCI-P.<sup>14</sup> Without a more robust minimum reserve price, there is a risk, however, that these investments and benefits will not fully materialize. If the TCI-P cap ends up being too high — e.g., if baseline CO<sub>2</sub> emissions are lower than anticipated or if pollution reductions in future years are less expensive to achieve than the modeling projects — then allowance prices and available investment dollars will be lower than the modeling anticipates. Under the Draft Model Rule, the proposed minimum reserve price would allow TCI-P allowance prices to drop to less than half of the projected levels, generating fewer proceeds and curtailing jurisdictions' abilities to make much-needed transportation investments. A too-low minimum reserve price could result in program benefits being left on the table.

### Subpart XX-3 Equity

We recommend adding a section to XX-3 focused on air pollution hotspots and air pollution reduction targets. One critical missed opportunity in the Draft Model Rule is the exclusion of a commitment to reduce air pollution hotspots. Air pollution comes from various sources, with vehicle tailpipes, especially those with diesel engines, being a dominant source creating higher concentrations of air pollutants near busy roadways. Nitrogen oxides are emitted in vehicle exhaust and are a good indicator of traffic pollution.<sup>15</sup> The majority of pollutants such as nitrogen oxides, ultrafine particles, and black carbon are due to local traffic.<sup>16</sup> Exposure to

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<sup>13</sup> RGGI's 2023 minimum reserve price is \$2.50/short ton of CO<sub>2</sub>. Since TCI-P allowances are expressed in metric tons, the equivalent minimum reserve price for TCI-P would be \$2.76/metric ton of CO<sub>2</sub> in 2023, not \$2.50/metric ton as currently proposed. (1 metric ton equals 1.10231 short tons.) We note, however, that RGGI's minimum reserve price is also too low and should not be used as justification for adopting a too-low minimum reserve price under TCI-P. RGGI's minimum reserve price should also be increased above its current level.

<sup>14</sup> According to estimates from M.J. Bradley & Associates, TCI-P proceeds across the entire TCI region could average over \$2.4 billion per year between 2023 and 2032. M.J. Bradley & Associates, *TCI Carbon Market Proceeds Estimator*, available at [https://www.mjbradley.com/sites/default/files/TCI\\_Carbon\\_Market\\_State\\_Proceeds\\_Calculation\\_Tool.xlsx](https://www.mjbradley.com/sites/default/files/TCI_Carbon_Market_State_Proceeds_Calculation_Tool.xlsx) (last accessed March 16, 2021).

<sup>15</sup> University of Toronto Faculty of Applied Science and Engineering, Southern Ontario Centre for Atmospheric Aerosol Research, *Near-Road Air Pollution Pilot Study: Summary Report*, at 6 (2019), Available at: <https://www.socaa.utoronto.ca/wp-content/uploads/2019/10/SOCAAR-Near-Road-Air-Pollution-Pilot-Study-Summary-Report-Fall-2019-web-Final.pdf>.

<sup>16</sup> *Id.* at 7.

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ultrafine particulate matter is associated with a complex set of public health impacts.<sup>17</sup> Most existing air monitors in the region monitor criteria pollutants such as ozone and particulate matter (“PM”), such as PM10 and PM2.5, which are larger particles than ultrafine particles associated with localized pollution hotspots. Thus, existing monitors and new ones are needed to monitor the traffic-related pollutants of ultrafine particles, black carbon, and nitrogen oxides.

Air quality monitoring commitments should be integrated into the Model Rule. We recommend that the Model Rule state that each Participating Jurisdiction will convene a technical advisory committee comprised of members of the equity advisory board; residents of environmental justice populations living adjacent to major highways, ports, airports, bus and truck depots, and distribution centers; academics with expertise in air monitoring, environmental health, air toxics, and air pollution; and labor representatives, for the purpose of identifying communities with high cumulative exposure burdens from toxic air contaminants and criteria pollutants. The Model Rule should require that the Participating Jurisdiction convene the technical advisory committee by December 1, 2021, or for jurisdictions that join TCI-P after September 1, 2021, to convene the technical advisory committee within six months of joining the program. The technical advisory committee would be responsible for identifying the likely air pollution hotspots due to high concentrations of traffic-related air pollution throughout each Participating Jurisdiction. Those should be equipped with new or expanded air monitors and establish a definition of “air quality” and “air quality target pollutants” that includes, but is not limited to, consideration of criteria pollutants, black carbon, and ultrafine particulate matter.

The final Model Rule should require that by June 30, 2022, prior to the first compliance period, each Participating Jurisdiction install and operate air monitors in communities designated as overburdened and underserved and in no case less than at least eight air pollution hotspots that measure for at least one of the following pollutants: black carbon, nitrogen oxides, ultrafine particulate matter. By December 31, 2022, each jurisdiction should determine baseline air quality in air pollution hotspots. Data from the air monitors should be publicly accessible and provide near-time information. Each jurisdiction should further commit under the Model Rule to work with residents of environmental justice populations to conduct participatory action research where residents can use mobile air sensors to expand the number of locations where residents can track air quality.

Each Participating Jurisdiction should establish air pollution reduction targets. Once hotspots are determined and baseline data are established, the final Model Rule should require the jurisdiction’s environmental regulator to set annual targets to decrease air quality target pollutants between 2023 and 2032 to improve the air quality in that location. At least every three years, air monitoring data that has been collected, should be analyzed to measure progress toward achieving air quality pollutants reduction targets. Such data should be publicly available. The Model Rule should state that by December 31, 2032, the Participating Jurisdiction shall ensure that air pollution hotspots will have achieved air quality target pollutant concentrations, consistent with recommendations from the equity advisory body and technical advisory committee and certify as such by publicly reporting compliance. The Participating Jurisdiction

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<sup>17</sup> Walker, D.I., Lane, K.J., Liu, K. *et al.* Metabolomic assessment of exposure to near-highway ultrafine particles. *J Expo Sci Environ Epidemiol* 29, 469–483 (2019), <https://doi.org/10.1038/s41370-018-0102-5>.

shall also establish interim air quality target pollutants concentrations in each hotspot to be achieved no later than 2030.

In addition to individual jurisdiction commitments to improved air quality under the Model Rule, analysis of air pollution reduction should be integrated into the periodic regional program reviews. Some important factors to include in this review to evaluate equity in pollution reductions are: (1) change in aggregate co-pollutants; (2) results from air pollution transport models documenting the trajectories of the pollutants monitored and modeled (including secondary pollutants formed through transport); (3) air quality results at the most granular level feasible and accurate over time; and (4) demographic, environmental justice and overburdened and underserved community status, and population size of each census block group.

### **XX-3.1 Equity investment commitment**

To address the history of disproportionate pollution exposure and lack of access to quality transportation options for overburdened and underserved communities in the region, it is crucial that they receive a disproportionately high amount investments from the program. That amount must exceed a minimum of 35 percent. The Draft Model Rule includes a minimum percent of investments that are no less than 35 percent reserved for investment in overburdened and underserved communities.<sup>18</sup> Further, the Draft Model Rule states that if the overburdened and underserved populations are found to make up more than 35 percent of the jurisdiction's population, then the percentage of dedicated investments must be at a minimum as large as and ideally significantly greater than their share of the population.

CLF recommends revising section XX-3.1 to specify that investments should be at a percentage that is higher than the share of the total state population qualifying as overburdened and underserved. Additionally, the final Model Rule should explicitly mention that individual jurisdictions can and should implement a significantly higher minimum percentage of dedicated investments than the regional 35 percent floor.

### **XX-4.2 and XX-6.5 Compliance Certification and Enforcement**

The Draft Model Rule establishes that fuel suppliers must register with the program and establish one emissions reporting and one compliance account. For the emissions reporting, fuel suppliers will use the Emissions and Allowance Tracking System to report emissions associated with the transportation fuels they disbursed to or delivered in the jurisdiction.<sup>19</sup> For the compliance account, fuel suppliers must surrender allowances to cover the emissions from transportation fuels disbursed to or delivered in the jurisdiction after each 3-year compliance period. The Draft Model Rule also provides that in each compliance period, a fuel supplier may cover a portion of its reported emissions with offset allowances.<sup>20</sup>

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<sup>18</sup> Draft Model Rule § XX-3.1, at 41.

<sup>19</sup> Draft Model Rule §§ XX-6.1, XX-6.2, at 47-48.

<sup>20</sup> Draft Model Rule, § 6.5(a)(3), at 57.

CLF recommends adding language to the final Model Rule that grants explicit authority to the appropriate regulatory agency to take enforcement actions against fuel suppliers for failure to comply. Such enforcement language shall also authorize regulatory agencies to impose penalties against regulated entities. Additionally, CLF recommends removing the ability for a regulated entity to qualify for a limited number of offset allowances. As detailed below, CLF opposes the use of offsets in TCI-P and recommends removing Section XX-6.5(a)(3).

### Section XX-10 Offsets

The Draft Model Rule allows a fuel supplier to cover up to 3.3 percent of its reported emissions with offset allowances.<sup>21</sup> The offsets proposed in Section 10 *et seq.* of the Draft Model Rule will prevent the TCI-P from achieving two of its primary purposes and should therefore be eliminated. First, the proposed offsets will directly impede the TCI-P's efforts to “advance equity for communities overburdened by pollution and underserved by the transportation system”<sup>22</sup> because the proposed offsets allow communities in parts of the country outside TCI-P jurisdictions to reap all the benefits associated with emissions reductions from those offsets, while continuing to expose disproportionately burdened communities within the TCI-P jurisdictions to high levels of pollution. Second, the proposed offsets will hinder the TCI-P's efforts to “reduce carbon dioxide (CO<sub>2</sub>) emissions from the transportation sector”<sup>23</sup> by expressly allowing the very types of emissions covered under the program to exceed the cap, when substituted by offsets for emissions generated or avoided in other sectors. In light of these problems, and as discussed in further detail below, the proposed offsets should be eliminated.<sup>24</sup>

### Section XX-10.2 Definitions

Because CLF finds that incorporating offsets is counter to the goals of TCI-P and will exacerbate inequities for communities overburdened by transportation-related air pollution, we recommend removing the following definitions from the Draft Model Rule: CO<sub>2</sub> emissions offset project; forest offset project; forest offset project data report; and forest offset protocol.<sup>25</sup>

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<sup>21</sup> Draft Model Rule, § 6.5(a)(3), at 57.

<sup>22</sup> Draft Model Rule, § 1.1(e) (emphasis added), at 5.

<sup>23</sup> Draft Model Rule, § 1.1(a) (emphasis added), at 5.

<sup>24</sup> Notably, two TCI-P jurisdictions — Massachusetts and Rhode Island — no longer accept applications for any offset project types under their respective regulations governing the Regional Greenhouse Gas Emissions (RGGI), a similar cap-and-invest program aimed at reducing emissions from the electric sector. *See* 310 C.M.R. 7.70 (“CO<sub>2</sub> Budget Trading Regulations”); *see also* Regional Greenhouse Gas Initiative, Inc., “Offsets” (2021), available at: <https://www.rggi.org/allowance-tracking/offsets> (last accessed March 23, 2021).

<sup>25</sup> Should Participating Jurisdictions disagree with removing offsets from the Draft Model Rule, then we recommend updating the definition of system benefit fund. System benefit fund: The definition of “system benefit fund” in Section 10.2 should be modified to state: “Any fund, including any public benefit fund to support energy efficiency programs, renewable energy development or low-income energy assistance, collected directly from retail electricity or natural gas ratepayers as involuntary system benefits charges or as voluntary payments.” These modifications will prevent projects that receive funding or other incentives from system benefit

CO<sub>2</sub> emissions offset project: As detailed below, CLF recommends excluding offsets from TCI-P. As such, we recommend removing this definition from the Model Rule.

Forest offset project: As detailed below, CLF recommends excluding offsets from TCI-P. As such, we recommend removing this definition from the Model Rule.

Forest offset project data report: As detailed below, CLF recommends excluding offsets from TCI-P. As such, we recommend removing this definition from the Model Rule.

Forest offset protocol: As detailed below, CLF recommends excluding offsets from TCI-P. As such, we recommend removing this definition from the Model Rule.

### **Section XX-10.3 General Requirements**

The Draft Model Rule includes offsets for activities that are unrelated to the transportation sector. Under Section 10.3(a)(1) of the Draft Model Rule, three types of projects are eligible for the award of offset allowances: landfill methane capture and destruction; carbon sequestration from reforestation, improved forest management, or avoided conversion; and avoided methane emissions from agricultural manure management operations. By their definition and description, none of these projects will reduce carbon dioxide emissions, and none of these projects will reduce emissions from the transportation sector. As a result, any offsets awarded under Section 10 will directly undermine a primary purpose of the TCI-P — reducing carbon dioxide emissions from the transportation sector. We fully support emissions reductions in other sectors, but such reductions are most appropriately and beneficially achieved through programs that directly address those sectors, rather than offsets in a transportation-sector program.

The Draft Model Rule includes offsets for activities outside TCI-P jurisdictions. Under Section 10.3(a)(2)(i)(b), eligible offset projects may be located in “any United States jurisdiction in which a cooperating regulatory agency has entered into a memorandum of understanding with the appropriate regulatory agencies of all participating jurisdictions to carry out certain obligations relative to CO<sub>2</sub> emissions offset projects” (emphasis added). As a result, there is no requirement that there be any physical nexus or proximity between the offsets and the TCI-P jurisdictions. This lack of nexus means that parts of the country outside TCI-P jurisdictions will reap the benefits associated with emissions reductions from out-of-state offset projects, while continuing to expose disproportionately burdened communities within the TCI-P jurisdictions to high levels of pollution.<sup>26</sup> The lack of a nexus between offset projects and TCI-P jurisdictions also limits oversight by the TCI-P jurisdictions. Even when attempting to regulate offsets within

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funds of varying types from qualifying for offset allowances and thus from further undermining the goals of the TCI-P.

<sup>26</sup> Green For All, “Designing an Equitable Cap-and-Invest Policy for Transportation,” December 2019, available at <https://www.thedreamcorps.org/wp-content/uploads/2019/12/Green-For-All-Policy-Toolkit-1.pdf> (last accessed March 23, 2021).

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a jurisdiction, they can be difficult to quantify, monitor, and enforce. Adding reliance on the support of out-of-state “cooperating regulatory agencies” for monitoring and reporting on offset projects further jeopardizes the accuracy and reliability of the offset program.

The threat posed by out-of-state offset projects to the TCI-P’s purposes is not theoretical. Under California’s cap-and-trade system, which covers the majority of economic activity in the state, including the transportation sector, studies have shown that 75.6 percent of the offset allowances were issued for projects located outside the state.<sup>27</sup> As a result, more than three-quarters of the benefits of offset projects were realized outside of California. For all these reasons, the Draft Model Rule should be revised to prohibit offset projects outside TCI-P jurisdictions.

Thank you for your consideration of these comments. If you have any questions, please contact Staci Rubin at [SRubin@clf.org](mailto:SRubin@clf.org).

Sincerely,



Staci Rubin  
Senior Attorney

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<sup>27</sup> Cushing, L., Blaustein-Rejto, D., Wander, M., Pastor, M., Sadd, J., Zhu, A., & Morello-Frosch, R. (2018). “Carbon trading, co-pollutants, and environmental equity: Evidence from California’s cap-and-trade program (2011–2015).” *PLOS Medicine*, 15(7). Available at: <https://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.1002604> (last accessed March 23, 2021).