Joint Comments: TCI-P Draft Model Rule and Public Engagement April 7, 2021

To:

TCI Leadership Team: Kathleen Theoharides, Secretary, Massachusetts Executive Office of Energy and Environmental Affairs and R. Earl Lewis, Jr., Deputy Secretary, Maryland Department of Transportation

TCI Executive Policy Committee: Marty Suuberg, Commissioner, Massachusetts Department of Environmental Protection and Roger Cohen, Senior Advisor to the Secretary, Pennsylvania Department of Transportation

TCI Technical Analysis Workgroup: Christine Kirby, Assistant Commissioner, Massachusetts Department of Environmental Protection and Chris Hoagland, Economist, Climate Change Division, Maryland Department of the Environment

TCI Investment and Equity Workgroup: Garrett Eucalitto, Deputy Commissioner, Connecticut Department of Transportation, Kate Fichter, Assistant Secretary, Massachusetts Department of Transportation, Kirsten Rigney, Legal Director, Connecticut Department of Energy and Environmental Protection and Dan Sieger, Undersecretary of Environmental Affairs, Massachusetts Executive Office of Energy and Environmental Affairs

TCI Outreach and Communications Workgroup: Chris Bast, Chief Deputy, Virginia Department of Environmental Quality and Elle O'Casey, Director of Communications and Outreach, Vermont Agency of Natural Resources

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

Dear Governors and Mayor:

Thank you for your continued commitment to reducing vehicle pollution through the Transportation and Climate Initiative (TCI). We, the 84 undersigned transportation, health, environmental, business, labor, and community groups write to provide feedback on the Transportation and Climate Initiative Program (TCI-P) Draft Model Rule and the plan for public engagement.

Many of our organizations have previously submitted comments[1] stating our support for an ambitious and equitable TCI-P that includes strong safeguards and guarantees for

[1] Joint comments on behalf of 200 organizations, Need for an Ambitious and Equitable Transportation and Climate Initiative Program, November 12, 2020.

overburdened and underserved communities as an important part of our shared efforts to combat the climate crisis, protect public health, and address inequities in the transportation sector. We appreciate that many of those recommendations have been incorporated in the Draft Model Rule, and we offer input to further strengthen the Final Model Rule, ensuring an ambitious and equitable TCI-P.

The Model Rule is critical to the integrity of the regional TCI-P, as it clearly conveys the shared terms through which all participating jurisdictions will implement the program. Thanks to the Draft Model Rule's detailed explanations of TCI-P's many technical elements, compliance entities benefit from a clear understanding of what to expect if they conduct business in a TCI-P jurisdiction. The Model Rule should extend the same level of attention and clarity to addressing the needs of overburdened and underserved communities in TCI-P jurisdictions. When a jurisdiction adopts the TCI-P Model Rule, it should convey unambiguous commitments to an inclusive process and equitable outcomes for the residents who suffer most from transportation pollution and benefit least from transportation investments made to date.

Below, we provide feedback on both the Draft Model Rule and TCI jurisdictions' Plan for Public Engagement.

I. Feedback on the Draft Model Rule

Subpart XX-1.2 Definitions

To ensure the proper functioning and maximize the benefits of the TCI-P, we urge TCI jurisdictions to modify and strengthen the following definitions in § XX-1.2 of the Draft Model Rule: "CO_2 cost containment reserve allowance or CO_2 CCR allowance," "CO_2 cost containment reserve trigger price or CCR trigger price," "Minimum reserve price," and "CO_2 emissions containment reserve trigger price or ECR trigger price." We strongly support the definition and inclusion of "CO_2 emissions containment reserve allowance or CO_2 ECR allowance" as a component of the program in the final rule.

Definition of Minimum Reserve Price

We strongly support including a "minimum reserve price"[2] in the Final Model Rule to establish a price below which TCI-P CO_2 allowances will not be sold. As we have seen in similar programs, a minimum reserve price is an important mechanism to maintain a market signal for CO_2 reductions in cases where the initial emissions cap is insufficiently ambitious—an inherent risk of program design that is heightened in the proposed TCI-P given the relatively modest initial pollution cap proposed.[3] In the case of the TCI-P, the CO_2 pollution cap will directly

[2] Draft Model Rule § XX-1.2, at 16.

[3] In the early years of the Regional Greenhouse Gas Initiative's (RGGI), that program's minimum reserve price played a crucial role in preserving the value of RGGI allowances while maintaining the RGGI states' abilities to reinvest in clean energy and energy efficiency. *See* Acadia Center, *Regional Greenhouse Gas Initiative Status Report: Part I: Measuring Success*, https://362kp444oe5xj84kkwjq322g-wpengine.netdna-

provide a portion of the program's anticipated benefits. However, the investment side of TCI-P is also essential to achieve the program's full potential, including the range of projected and desired health, safety, equity, economic, jobs, consumer, and environmental benefits. By providing certainty on allowance prices and program proceeds, a minimum reserve price will increase program stability and the assurance of achieving TCI-P's intended benefits. Although TCI-P jurisdictions can and should address cap levels in the Final Model Rule and as part of regular, subsequent program reviews to ensure the cap itself is sufficiently ambitious, a minimum reserve price provides a safety mechanism and a bridge between the initial adoption of the program and the first TCI-P review to maintain climate progress and program investments in the interim.

While we support including a minimum reserve price for CO_2 allowances under TCI-P, the Draft Model Rule's proposed minimum reserve price of $2.50/ton in 2023, escalating by 2.5% per year, is too low, and should be increased. **Specifically, we recommend raising the minimum reserve price to <u>at least</u> $5.95/ton of CO_2 in 2023, escalating by 7.5% per year to ensure the TCI-P's significant and desired benefits will materialize.**

According to the available modeling, CO_2 allowance prices under the proposed cap are anticipated to be $5.95/ton in 2023 and grow by approximately 7.5% per year, providing over $2 billion per year for investment if all jurisdictions participate.[4] A program with allowance prices and corresponding investments at these levels will deliver significant benefits, including up to $3.3 billion in annual health and safety benefits across the region.[5]

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_2 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. This low minimum reserve price could result in substantial program benefits being left on the table.

To ensure needed TCI-P investments can be made and the program's benefits achieved, the minimum reserve price in the Final Model Rule should be set at least at the

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ssl.com/wp-content/uploads/2016/07/Acadia_Center_2016_RGGI_Report-Measuring_Success_FINAL_08092016.pdf, at 10.

[4] 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*, https://www.mjbradley.com/sites/default/files/TCI_Carbon_Market_State_Proceeds_Calculation_Tool.xlsm (last accessed March 16, 2021).

[5] Transportation and Climate Initiative, *Updates from Transportation & Climate Initiative: Public Participation, Equity Commitments*, and the Draft Model Rule (March 1, 2021), https://www.transportationandclimate.org/sites/default/files/TCI-P-Updates-Webinar-March-2021.pdfslide 13.

allowance prices projected in the central TCI-P modeling: $5.95/ton in 2023, increasing by 7.5% per year. As we discuss below in comments on the Cost Containment Reserve (CCR), modeling results to date have shown that higher allowance prices would produce still larger benefits. Thus, while we urge TCI jurisdictions to at least raise the minimum reserve price to $5.95/ton in 2023, escalating by 7.5% per year, **we encourage TCI jurisdictions to also consider adopting an even higher minimum reserve price in the Final Model Rule.**

Moreover, it is unacceptable for the proposed minimum reserve price for TCI-P in 2023 ($2.50/metric ton) to be lower than the 2023 minimum reserve price for CO_2 allowances in the Regional Greenhouse Gas Initiative (equivalent $2.76/metric ton).[6]

Definitions Related to the Cost Containment Reserve (CCR)

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. We support inclusion of a CCR under TCI-P if (1) the CCR maintains the overall climate integrity of the TCI-P and will not result in increased pollution; (2) the CCR's annual price triggers are set at levels that grow over time and are designed to mitigate prices during truly unexpected and exceptional circumstances; and (3) the CCR is paired with an Emissions Containment Reserve (ECR) to also address low price risk and share the benefits of lower compliance costs between residents and the environment. As discussed further below, we strongly support inclusion of an ECR in the proposed Model Rule. Unfortunately, the CCR in the Draft Model Rule could undermine the climate integrity of TCI-P by increasing allowable pollution. We are also concerned that the CCR's price triggers are too low.

(a) "CO_2 cost containment reserve allowance or CO_2 CCR allowance"

Under the Draft Model Rule, the definition of "CO_2 cost containment reserve trigger price or CCR trigger price" states, "CO_2 CCR allowances offered for sale at an auction are separate from and additional to CO_2 allowances allocated from the JURISDICTION TCI-P base budgets."[7] Because this definition provides for the release of additional CO_2 allowances above the TCI-P cap in years when the CCR is triggered, the proposed CCR has the potential to enable greater levels of pollution than the TCI-P cap is intended to permit. As further provided in the Draft Model Rule, the number of additional CCR allowances that can be released above the cap in any year is up to 10% of the annual CO_2 pollution limit.[8] As a result, although the TCI-P cap is set to decline by 30% between 2023 and 2032, the CCR has the potential to reduce participating states' commitments to pollution reductions by as much as a third. Even if the CCR

[6] RGGI's 2023 minimum reserve price is $2.50/short ton of CO_2. 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_2 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.

[7] Draft Model Rule § XX-1.2, at 8.

[8] Draft Model Rule § XX-5.3(b), at 46.

is only triggered occasionally, as currently proposed it would undermine TCI jurisdictions' emission reduction and climate commitments. Given the relatively modest commitments under the TCI-P cap, dilution of this cap would challenge the central premise of this climate program.

We urge TCI jurisdictions to redesign the proposed CCR to ensure this mechanism is climate neutral.

One approach would be to deduct at least as many allowances as are released under the CCR from future years' emissions caps, similar to the approach California has adopted for the cost containment mechanism under that state's cap-and-invest program.[9] Deducting CCR allowances from future cap levels, potentially spread out over multiple years, would allow for an infusion of extra allowances when needed to ease unanticipated market constraints while ensuring achievement of jurisdictions' commitment to long-term pollution reduction goals. The number of allowances deducted from future years' caps should be at least as high as the number of extra allowances that are released to the market under the CCR. Given the greater value of earlier emissions reductions in avoiding the worst impacts of climate change, deductions from future years' caps should be larger than the total number of allowances released under the CCR.

The requirement for and process of deductions to account for CCR allowances should be included in a modified definition of CO_2 CCR allowance under § XX-1.2 of the Model Rule and corresponding language in § XX-5 (CO_2 Allowance Allocations), or other sections of the Model Rule, to provide for this automatic deduction.[10]

(b) "CO_2 cost containment reserve trigger price or CCR trigger price"

We urge jurisdictions to raise the CO_2 CCR trigger prices in the Draft Model Rule to <u>at least</u> $24/ton starting in 2023, escalating by 7.5% per year. The CCR trigger prices contained in Table 1 of the draft rule reflect the proposed values released with the December MOU;[11] however, we believe these values are too low and would artificially restrict the potential benefits of the TCI-P, potentially leading to lower economic, jobs, health, and environmental performance than is possible under the program.

Modeling from the TCI jurisdictions and others has shown that a TCI-P that produces CO_2 allowance prices of $24/ton in 2023, growing by 7.5% per year, would produce benefits that far outweigh the costs of the program. Such a scenario produced the largest annual net benefits

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[9] Environmental Defense Fund, *Carbon Market California: A Comprehensive Analysis of the Golden State's Cap-and-Trade Program*, http://www.edf.org/sites/default/files/content/carbon-market-california-year_two.pdf.

[10] The process of adjustment for banked allowances under the RGGI Model Rule provides a potential model for how these adjustments to future CO_2 allowance budgets to account for allowance releases from the CCR could be written into the TCI-P Model Rule. See Regional Greenhouse Gas Initiative, 2017 Model Rule § XX-5.3(h) (Third adjustment for banked allowances), https://www.rggi.org/sites/default/files/Uploads/Design-Archive/Model-Rule/2017-Program-Review-Update/2017_Model_Rule_revised.pdf.

[11] Draft Model Rule § XX-1.2, at 9.

to GDP ($3 billion), household income ($2 billion), jobs (9,000), public health ($10 billion), and avoided climate damages ($892 million) reported by TCI jurisdictions in modeling results released last year.[12] Preliminary results from the 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.[13] The TRECH analysis also considered a scenario with carbon allowance prices starting above $30/ton in 2023 and projected even larger health benefits.[14]

Given that a TCI-P with CO_2 allowance prices starting at $24/ton in 2023 is projected to produce substantial benefits across a wide array of indicators, it would be a mistake to restrict the TCI-P's allowance prices to levels below this threshold by adopting a CCR trigger price that would dampen higher prices by releasing additional allowances in the market at just $12/ton in 2023. The TCI-P modeling suggests that CO_2 allowance prices will be substantially below $24/ton in 2023 and future years under the emissions cap proposed. However, 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.

We therefore urge TCI jurisdictions to increase the CCR trigger price to at least $24/ton in 2023, escalating by 7.5% per year, consistent with the table below.

Table 1. CO_2 CCR Trigger Price (revised)

2023	2024	2025	2026	2027	2028	2029	2030	2031	2032
$24.00	$25.80	$27.74	$29.82	$32.06	$34.46	$37.04	$39.82	$42.81	$46.02

This proposal should be the <u>minimum</u> level for CCR trigger prices considered for the Final Model Rule. After all, TCI-P modeling to date not only projects that higher allowance prices than $24/ton would produce still greater benefits, but other analyses have also shown that the damage from too little action on climate change will be severe. The Interagency Working Group on Social Cost of Greenhouse Gases, for example, estimates damages from CO_2 pollution in

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

[13] Transportation, Equity, Climate & Health Project, *Preliminary Results – Updated February 25, 2021*, https://cdn1.sph.harvard.edu/wp-content/uploads/sites/2343/2021/02/TRECH-SlidedeckUpdateFeb2021.pdf, slides 7, 25.

[14] *Id.* TCI jurisdictions also included this scenario (25% cap, illustrative investment portfolio A) in their modeling but have not reported the economic and health benefits modeling results from this scenario. If the jurisdictions' modeling likewise projects higher net positive benefits under a scenario with a $30/ton allowance in 2023, escalating by 7.5% per year, than the scenario with a $24/ton allowance prices in 2023, then we would recommend setting the CCR trigger price at $30/ton or higher in 2023.

the range of $51 to $76/ton in 2020.[15] This finding further shows that TCI-P allowance prices much higher than the currently proposed $12/ton CCR trigger prices are warranted and needed.

Definitions Related to the Emissions Containment Reserve (ECR)

(a) "CO_2 emissions containment reserve allowance or CO_2 ECR allowance"

We strongly support the TCI jurisdictions' proposal to include an ECR in the TCI-P that will automatically and permanently withhold a portion of CO_2 allowances from sale if emissions reduction costs are lower than anticipated.[16] The proposed ECR 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% in years when it is triggered, with the number of allowances withheld dependent on allowance prices and bidding behavior.[17] 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.

(b) "CO_2 emissions containment reserve trigger price or ECR trigger price"

Although we support inclusion of an ECR, as with the CCR, 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 7.5% per year—are consistent with the values proposed alongside the December MOU.[18] However, as noted above, higher allowance prices than those proposed as the ECR trigger prices would provide an even more beneficial, cost-effective TCI-P.

We recommend TCI jurisdictions raise the ECR trigger price to $12/ton or higher in 2023, escalating by 7.5% per year, as shown in Table 2 below. 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

[15] Interagency Working Group on Social Cost of Greenhouse Gases, *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990* (February 2021), https://www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf, at 5 (Table ES-1).
[16] Draft Model Rule § XX-1.2, at 9.
[17] Draft Model Rule § XX-5.3(c), at 46-47.
[18] Draft Model Rule § XX-1.2, at 9-10.

starting in the $12/ton range would produce net benefits across a wide range of economic and health indicators.[19]

Table 2. CO_2 ECR Trigger Price (revised)

2023	2024	2025	2026	2027	2028	2029	2030	2031	2032
$12.00	$12.90	$13.87	$14.91	$16.03	$17.23	$18.52	$19.91	$21.40	$23.01

Subpart XX-3 Equity

The entirety of the equity section, Subpart XX-3, is described as "an example of one possible approach" to implementing the TCI-P equity commitments. While each Participating Jurisdiction should be encouraged to build on the language in the Model Rule to ensure equitable outcomes and inclusive processes, the Model Rule should be clear that the subsections of Subpart XX-3 are minimum requirements.

Air pollution comes from various sources, with vehicle tailpipes 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.[20] The majority of pollutants such as nitrogen oxides, ultrafine particles, and black carbon are due to local traffic.[21] Exposure to ultrafine particulate matter is associated with a complex set of public health impacts.[22] Most existing air monitors in the region monitor criteria pollutants such as ozone and particulate matter ("PM"), such as PM_{10} and $PM_{2.5}$, 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

[19] These allowance prices are similar to those modeled by TCI jurisdictions under their 22% cap, illustrative investment portfolio B) scenario. Transportation and Climate Initiative, *Webinar on program design, modeling, and the implications of COVID-19* (September 16, 2020), https://www.transportationandclimate.org/sites/default/files/Fall%202020%20modeling%20webinar%2C%20final%20as%20shown%20on%2020200916.pdf, slides 22, 25, 53.

[20] 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.socaar.utoronto.ca/wp-content/uploads/2019/10/SOCAAR-Near-Road-Air-Pollution-Pilot-Study-Summary-Report-Fall-2019-web-Final.pdf.

[21] *Id.* at 7.

[22] 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.

communities with high cumulative exposure burdens from toxic air contaminants and criteria pollutants. The Model Rule could 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. The technical advisory committee would be responsible for identifying the likely air pollution hotspots due to high concentrations of traffic-related air pollution throughout the jurisdiction. Those areas should be equipped with new or expanded air monitors, and the Participating Jurisdiction should 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 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 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 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 shall also establish interim air quality target pollutants concentrations in each hotspots 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/overburdened or underserved status, and population size of each census tract or 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 greater-than-proportional investments from the program. If the "overburdened and underserved" population is found to make up more than 35% of the jurisdiction's population, then the percentage of dedicated investments must be at a minimum as large as and ideally significantly larger than their share of the population. The Draft Model Rule begins to address this concern by including the language, "in a manner that reflects the population of overburdened and underserved communities," but this language is not explicit enough to give participating jurisdictions clear direction regarding the allocation of meaningful dedicated investments. We recommend revising § 3.1 to specify investments should not only be allocated at a percentage that is 35% or higher but also at a percentage that is at least as large as the share of the total state population qualifying as "overburdened and underserved." Additionally, the Model Rule should explicitly mention that individual jurisdictions can and should implement a significantly higher minimum percentage of dedicated investments than the regional 35% floor.

We offer the following language to guide investment in overburdened and underserved communities:

> "JURISDICTION and/or REGULATORY AGENCY is/are committed to working collaboratively within the jurisdiction to invest no less than a minimum percent of the proceeds from the auction of allowances in a manner that is located within and directly benefiting overburdened and underserved communities. This minimum percent is the greater of:
>
> 1. 35 percent
> 2. The percent of the state's total population that qualifies as overburdened and underserved
>
> JURISDICTION and/or REGULATORY AGENCY is authorized and encouraged to increase the minimum percentage beyond what is required by this section, and to invest greater proceeds to benefit overburdened and underserved communities than what is required by the minimum percentage."

XX-3.2 Equity advisory body

The equity advisory body is a key lever of accountability and a channel through which the communities most impacted by the pollution from and failings of the current transportation system can make their voices heard to shape investments and other program decisions. In order to ensure newly formed equity advisory bodies are meaningfully representative of disproportionately impacted communities and have robust decision-making authority, section

3.2 must be significantly expanded to include more concrete detail about the body's formation, responsibilities, and more.

The Model Rule should give the equity advisory body considerable agency by charging the advisory body with expanded responsibilities. In addition to providing final recommendations for equitable investments and additional policies, the advisory body should have the ability to develop investment proposal evaluation and scoring criteria. In order to ensure that the recommendations of this body are seriously taken into account and incorporated into final investment decisions, each jurisdiction should be required to report to the advisory body how their selected investments meet this set of evaluation and scoring criteria, if they differ from the advisory body's final investment recommendations. Equity advisory bodies should have the defined responsibility to advise agency officials on the development of community outreach and stakeholder engagement plans. Additionally, members of this body should have the role of actively informing air quality monitoring expansion plans and recommending air pollution hotspots for monitoring. Lastly, this advisory body should actively provide guidance during program review by recommending concrete program changes needed to meaningfully ensure benefits are located in and directly benefit "overburdened and underserved" communities.

The equity advisory body should be made up of at least a majority of members who are overburdened by exposure to transportation pollution or who lack access to quality, affordable, accessible transportation options. This group of stakeholders should strive to include representation from the following communities: low income communities, communities of color, workers, people with disabilities, transportation users in rural communities, older adults, youth, communities who speak a non-English language as their primary language, immigrant communities, and queer and/or trans people who feel unsafe riding public transit.

Members of new equity advisory bodies must follow a common set of standards, which include term limits and requirements to disclose the potential for financial gain as a result of decisions made by the body. Members should also be selected through a nomination and appointment process that centers the preferences of "overburdened and underserved" communities and reduces the influence of political bias that may occur with changing administrations.

In order to increase accessibility of participation on the equity advisory body for disproportionately impacted communities, jurisdictions should offer significant capacity support to these bodies. Members of the equity advisory body should be offered some form of compensation or reimbursement for their time and expenses associated with participation on the body. Also, participating jurisdictions should offer substantial technical assistance to members of the equity advisory body in the form of information, data, tools, training, consultant and staff time to support the body in making recommendations.

All communications and proceedings of this body should be accessible to the public with robust opportunities for public comment. Additionally, documents and meetings of this body should be translated and interpreted in the most frequently spoken languages in each

jurisdiction to increase accessibility for communities whose primary language is a non-English language. Equity advisory body meetings, both in-person and virtual, should be accessible for people with disabilities.

Subpart XX-3.3 Equity Review and Reporting

The Final MOU includes an important provision in § 3(C) ("Transparency") that requires participating jurisdictions to annually review and report on the impacts of their individual programs. More specifically, the last sentence of that paragraph makes clear that each jurisdiction's annual report must "specify how TCI-P proceeds are spent by each TCI-P participating jurisdiction and include lists of projects and programs supported by TCI-P proceeds and the levels of investment received by each." (Final MOU §3(C).)

These annual reports are necessary for ensuring each state complies with the crucial equitable investment requirements outlined in § 3 of the MOU. The overall transparency that the annual reports will foster is critical to the success of all other goals of the TCI-P. Requiring each state to report on the level of TCI-P proceeds invested into specific projects and programs will allow the residents of each jurisdiction to know how their jurisdiction's TCI-P proceeds are being spent, to better advocate for the investments they deem the most important, and to hold their decision-makers accountable if they stray too far from TCI-P's purposes with those investments.

In light of this provision's importance, we recommend including the annual review and reporting requirement in the Model Rule in a manner that applies to all categories of a jurisdiction's investment of TCI-P proceeds. This could be accomplished by including the annual review and reporting requirement as a new provision within § XX-1 ("General Provisions").

Subpart XX-5 CO2 Allowance Allocations

XX-5.3 CO2 allowance allocations

As noted and further explained above in our comments on CCR-related definitions in § XX-1.2 of the Model Rule, we urge TCI jurisdictions to ensure the CCR is climate neutral by deducting, potentially over multiple years, at least as many allowances released under the CCR from jurisdictions' future years' allowance budgets. Language should be added to § XX-5.3 (or other sections of the rule) to provide for this automatic deduction.[23]

As also noted above, we strongly support the inclusion of the proposed ECR in the Model Rule, as covered in this section of the rule and other parts of the rule. If allowance prices are lower than anticipated, triggering the ECR, this signifies that the TCI-P cap has been set too

[23] The process of adjustment for banked allowances under the RGGI Model Rule provides a potential model for how these adjustments to future CO2 allowance budgets to account for allowance releases from the CCR could be written into the TCI-P Model Rule. See Regional Greenhouse Gas Initiative, 2017 Model Rule § XX-5.3(h) (Third adjustment for banked allowances), https://www.rggi.org/sites/default/files/Uploads/Design-Archive/Model-Rule/2017-Program-Review-Update/2017_Model_Rule_revised.pdf.

high. Accordingly, excess allowances withheld under the CCR should be permanently withdrawn from the market to dynamically adjust the cap downward and correct, at least in part, this cap-setting error.[24] We support the provisions in § XX-5.3(c) that effectuate this adjustment by requiring that allowances withheld under the ECR and deposited in a jurisdiction's ECR account not subsequently be withdrawn. Alternatively, jurisdictions could provide that allowances deposited in ECR accounts be automatically and permanently retired. We support including an ECR independent of whether TCI-P jurisdictions also include a CCR; however, if a CCR is included, an ECR becomes an essential complementary and counterbalancing mechanism.

Subpart XX-8 CO2 Emissions Reporting

We recommend including reporting requirements for suppliers of additional fuels, including natural gas fuels (e.g., CNG, LNG) and liquified petroleum gas. The Model Rule will limit emissions from motor gasoline and on-road diesel fuel. While encouraging the transition to cleaner fuels is a desired outcome of the program, not including other emitting fuel types may lead vehicle fleets, such as transit buses, to convert to other fossil fuels not covered by the program. The program might not initially limit emissions from these fuels, but TCI jurisdictions may decide to place a compliance obligation on these fuels in the future in order to achieve deeper reductions in GHG emissions and local air pollutants. By placing reporting requirements on suppliers of these fuels at the outset of the program, it will be easier to implement compliance obligations during subsequent program reviews. California's cap-and-invest program covers liquefied petroleum gas and natural gas, and such a design choice helps to ensure that electricity – the emissions from which are covered under the Regional Greenhouse Gas Initiative – is not disadvantaged as a fuel choice.

Subpart XX-9 Reporting verification requirements

We support the inclusion of third party verification in the Model Rule (Subpart XX-9 Reporting verification requirements). We understand these provisions have been modeled on state and international standards developed for GHG emission inventories, reporting and verification. We will be interested in learning how the states will develop accreditation standards for verifiers and who will manage that process across the TCI-P region.

Verification requirements are a critical check on the integrity of the data being reported by fuel suppliers and distributors. Since TCI-P is a new program with many new players who have not been part of a cap-and-invest program before, verification will help ensure compliance with the program, and that the emission reductions envisioned are achieved. In particular, the requirement that a firm switch verifiers every 6 years (2 cycles of compliance) is important to

[24] Such a cap error may result from modeling or regulatory judgments that are too conservative or from unforeseen developments, such as faster than expected declines in the cost of clean transportation alternatives or other economic trends. Regardless of the cause, it is important to adjust the TCI-P cap downward -- via the ECR and also as part of regular, periodic program reviews -- when costs are lower than anticipated to maintain climate progress and avoid flooding the market with excess allowances.

ensure independence of the verifiers in determining whether data are missing, submitted incorrectly or perhaps intentionally misconstrued.

II. Feedback on the Plan for Public Engagement

TCI-P decision-makers must attribute the same weight and urgency to comments from overburdened and underserved communities discussing impacts of TCI-P on those communities as they do to comments regarding technical program design. Moreover, TCI leaders have solicited significant input, regionally and within individual jurisdictions, on a suite of transportation and climate policies. While much of that input has been incorporated into the TCI-P Draft Model Rule, TCI jurisdictions have not yet delivered firm commitments on additional policies to intentionally and concurrently address pollution hotspots and transportation injustice. Those additional commitments are necessary to meaningfully address the feedback of EJ communities and to build confidence in the TCI jurisdictions' commitment to delivering health and transportation benefits to historically marginalized communities.

We call on Participating Jurisdiction leadership to create two processes: (1) an equity advisory body with a manageable number of people to work through implementation details; and (2) a broader process open to the public that is co-convened by state officials and grassroots leaders. These two processes could support a broader multi-policy transportation and environmental justice framework, within which TCI-P could be included. For the equity advisory body, we recommend that TCI officials consider whether to address equity questions regarding TCI-P through existing advisory bodies or to create a separate committee specifically focused on implementation of TCI. There are opportunities for each Participating Jurisdiction to form an equity advisory body based on the membership of one or more existing advisory councils focused on equity and environmental justice. Alternatively, if a Participating Jurisdiction establishes a new equity advisory body for TCI-P, officials should consult members of the aforementioned groups.

For the broader process open to the public, we recommend a partnership between state officials and leaders from environmental justice organizations, transit justice organizations, and labor unions. We ask each Participating Jurisdiction to commit to go far beyond the constraints that the regional negotiation process imposes on ambition and equity for our transportation and EJ solutions. A conversation co-convened by state officials and grassroots leaders is a way to enable a broad set of stakeholders to build trust, advance the goals outlined in this letter, and ensure an improved transportation future across the Participating Jurisdiction. We are ready to work with you to ensure that future.

Sincerely,

Acadia Center
Alliance for Business Leadership
Alliance for Clean Energy New York
Appalachian Mountain Club
Bedford 2030
CALSTART
Central Maryland Transportation Alliance
Ceres
Chesapeake Climate Action Network
Citizens Campaign for the Environment
Citizens for Regional Transit
Citizens' Climate Lobby, Lower Delaware
Citizens' Climate Lobby, New York
Clean Air Council
Climate & Clean Energy Working Group, Virginia Grassroots Coalition
The Climate Group
Climate Law & Policy Project
Climate XChange
Coalition for Smarter Growth
Connecticut League of Conservation Voters
ConnPIRG
Delaware Electric Vehicle Association
Drive Electric Long Island Coalition
E2 (Environmental Entrepreneurs)
East Coast Greenway Alliance
Elders Climate Action of DC-Maryland-Virginia
Elected Officials to Protect America
Environment America
Environment Connecticut
Environment Maine
Environment Maryland
Environment Massachusetts
Environment New Hampshire
Environment New Jersey
Environment New York
Environment Rhode Island
Environment Virginia
Environmental Defense Fund
Environmental League of Massachusetts
Faith Alliance for Climate Solutions
Generation180
Green Energy Consumers Alliance
League of Women Voters of Delaware
League of Women Voters of Massachusetts
Lewinsville Faith in Action
Maine Conservation Voters
Maryland League of Conservation Voters
Maryland Legislative Coalition
Maryland PIRG
MassBike
MassPIRG
Natural Resources Council of Maine
Natural Resources Defense Council
New Jersey League of Conservation Voters
New Jersey Sustainable Business Council
New York Communities for Change
New York League of Conservation Voters
New Yorkers for Clean Power
NHPIRG
NJPIRG
PennEnvironment
PennPIRG
Philadelphia Solar Energy Association
Plug in America
Rails-to-Trails Conservancy
Renewable Energy Long Island
RIPIRG
RUPCO
Save the Sound
Southern Alliance for Clean Energy
Southern Environmental Law Center
Sustainable Hudson Valley
Transit Choices
Transport Hartford Academy at the Center for Latino Progress
Transportation for Massachusetts
Tri-State Transportation Campaign
U.S. PIRG
Union of Concerned Scientists
VEIC
Vermont Businesses for Social Responsibility
Vermont Natural Resources Council
Vermont PIRG
Virginia Conservation Network
YSG Solar