



May 7, 2021

Georgetown Climate Center  
600 New Jersey Avenue, NW  
Washington, DC 20001-2075

RE: API Comments to TCI-P Model Rule

API represents all segments of America's oil and natural gas industry. Our 600 members produce, process, and distribute most of the nation's energy. The industry supports more than ten million U.S. jobs and is backed by a growing grassroots movement of millions of Americans. API was formed in 1919 as a standards-setting organization. In our first 100 years, API has developed more than 700 standards to enhance operational and environmental safety, efficiency and sustainability. API and its members are committed to delivering solutions that reduce the risks of climate change while meeting society's growing energy needs. We appreciate the release of detailed program information in the Draft Model Rule and the opportunity to comment on the Transportation and Climate Initiative Program (TCI-P).

API supports technology-neutral policies at the federal level that drive greenhouse gas emissions reductions in the transportation sector, taking a holistic approach to fuels, vehicles, and infrastructure systems. API has not taken a position on the overall TCI-P program.

### **Program Scope**

TCI-P considers only transportation sector emissions and risks imposing higher costs on consumers relative to those incurred from the adoption of carbon abatement strategies in multiple sectors. A broader program scope that affects a greater portion of the economy would help to promote the lowest cost carbon mitigation strategies. Furthermore, broader participation by the jurisdictions that signed the memorandum of understanding is key for the durability and market efficiency of this program. In the event a federal program is developed, TCI-P should avoid policy duplication by sunseting the regional approach as a federal program is implemented.

Although TCI-P focuses only on transportation fuels, the scope of emissions reductions could be expanded by increasing opportunities to generate offsets. The Model Rule limits offset opportunities to 3.3% of an obligation, and only for activities in the TCI-P region. These place unnecessary restrictions on the opportunities for our industry to invest in technologies that can reduce the carbon impact of transportation. API recommends increasing offset opportunities to at least 10% of an obligation and to allow qualifying activities to occur at the refinery or other locations outside the TCI-P region. Similarly, renewable fuels used to displace petroleum fuels in heating, industrial, or aviation applications in the region should also qualify for offsets. Failing to include biofuels used in other sectors would only encourage fuel shifting that erodes the CO<sub>2</sub> benefits of the program. For example, the program may encourage diverting biomass-based diesel into the highway diesel market that otherwise would have been used in the local heating oil market.

### **Covered Entities**

To ensure a level market playing field, parties that make the business decision to supply fuel in the TCI-P region should incur obligations under the TCI-P program. Position holders (PH) at the rack are the appropriate obligated party for fuel

delivered in the TCI-P region as designated on original the Bill of Lading (BOL). This is the same point in the distribution chain that fuel taxes are applied, allowing regulators and regulated entities to leverage existing data collection and reporting activities to ensure compliance.

In the event fuel is delivered to a destination other than the location listed on the original BOL and subsequently enters the TCI-P region, the obligation would be placed with the distributor that makes the decision to divert the fuel into the TCI jurisdiction. The program should allow the PH and distributors by mutual agreement to correct a BOL for fuel that is diverted into the TCI-P jurisdiction. In other words, the TCI documentation requirements should encompass re-issued or substitute BOLs in order to allow position holders to incur the obligation (*i.e.*, the new BOL showing a destination in the TCI-P region would no longer be considered a “diversion”). The program must not allow distributors to pass on unexpected obligations to position holders. Distributors should be able to divert supplies into the TCI-P region without being deterred by onerous requirements, and position holders need the ability place the appropriate value on the products they offer at the rack.

Deliveries of fuel with a BOL showing a destination in the TCI-P region that is ultimately delivered out of the TCI region, need to be accounted for and excluded from the program. The parties in the transaction by mutual agreement should have the ability to adjust the BOL to indicate a destination outside the TCI jurisdictions when the fuel is in fact diverted outside the TCI states. Even if the BOL is not revised, the volume of fuel diverted outside the TCI jurisdiction should be deducted from the obligation of the position holder.

Ownership of fuel products may change at the terminal, or even in transit, and TCI-P should ensure obligations are assigned to the parties that either hold title as product crosses the rack (*i.e.*, the position holder) or the final party to hold title as product is dropped at the retail site (*i.e.*, the distributor), and not intermediate parties in the event of diversions of fuel into the TCI jurisdictions. In addition, all parties in the fuel distribution chain (including those with no reporting or compliance obligations) should be covered by record keeping obligations to provide state enforcement agencies an adequate paper trail to ensure program integrity.

### **Compliance**

Registration and reporting should be achieved through a single uniform online portal, and not a state-by-state approach. A single uniform interface will help mitigate confusion for cross-state transactions within the TCI region, and movements in or out of the TCI-P region. Obligated parties, and participating states should be able to access data and generate reports specific to their needs and eliminate the need for state specific registrations or reporting requirements. It is not clear that TCI-P will meet its ambitious timeline to implement the program, and early testing of the system established for monitoring compliance and transactions under the TCI program is necessary to ensure any issues can be addressed in the initial reporting year.

Three-year compliance periods are appropriate. However, monthly reporting places an unnecessary administrative burden on both obligated parties and regulators with no discernable benefit to program integrity. Quarterly and annual reporting is more appropriate and consistent with federal and California fuel programs and align with the TCI-P stated goal of “maximizing efficiency.” In addition, the regulation should allow adequate time for obligated parties to consolidate and validate reporting data. We suggest no less than 60 days from the end of the reporting period; similar state and federal programs allow 90 or more days.

The Model Rule includes emissions containment and cost containment reserve mechanisms that should help maintain program consistency and provide needed market certainty for fuel providers. The cost effectiveness of the TCI-P program will depend in large part on states' deployment of program proceeds. The delivery of the total reductions is also heavily reliant on the success of federal fuel economy and other such programs, outside the control of TCI-P jurisdictions. We remain concerned that market conditions could exist that would necessitate additional CCR flexibility beyond the 10% threshold, or potentially a second tier of cost containment, to protect consumers from potential unexpected cost increases. TCI-P should ensure the program maintains the flexibility to address situations that unduly harm consumers.

### **Other Issues**

As part of finalizing the Model Rule and providing it to participating jurisdictions for rulemaking, API requests that TCI-P provide an anticipated cost of compliance. Also, further discussion on the basis and findings of the Harvard TRECH report is warranted, including the February 25, 2021 update. [High death rate attributed to NO<sub>2</sub> – does not agree with EPA's NO<sub>2</sub> ISA. The TRECH study indicates that the lion share of health benefits of the proposed TCI-P result from the relatively small investment in active mobility investments and not as a co-pollutant benefit of large on-road investments *i.e.*, TCI-P looks like a very expensive program for the benefits of bike and walking pathways].

We appreciate the opportunity to provide these comments.

Sincerely,



Patrick Kelly