

April 28, 2021

Submitted via TCI Regional Policy Design Stakeholder Input Form (“TCI portal”)

Re: Comments on the Draft Model Rule for the Transportation and Climate Initiative Program

The Environmental Defense Fund (EDF) commends the continued effort of the Transportation and Climate Initiative (TCI) jurisdictions to design and implement a regional program to cap and reduce climate pollution from the transportation sector from Northeast, Mid-Atlantic, and Southeast states.

EDF has extensive experience with carbon market design: we appreciate the challenges and opportunities of developing a regional framework for reducing carbon pollution through a market-based program, and we respectfully offer the following comments and recommendations for consideration to the Draft Model Rule of the Transportation and Climate Initiative Program (TCI-P).

TCI jurisdictions must continue to engage directly with communities, especially those most overburdened by air pollution and underserved by transportation systems, to develop an equitable and just program. While we offer suggestions to strengthen the equity provisions of the TCI-P, we do not have the same expertise on these issues as community-based and environmental justice organizations; as such, review of our recommendations is not a substitute for direct input from community members and the integration of their recommendations. EDF’s comments specifically regarding the equity advisory bodies (recommendation number two below) were developed with input from the Transport Hartford Academy at the Center for Latino Progress. EDF urges the TCI jurisdictions to incorporate feedback from Transport Hartford’s comments on the Model Rule as well as those from other community-based organizations.

We suggest the following changes to the Model Rule:

- 1. Set the equity investment commitment equal to at least 35 percent or the proportion of each jurisdiction’s population that is considered “overburdened and underserved,” whichever is greater.** Benefits of the TCI-P, including the value from allowance proceeds, must be directed to communities overburdened by air pollution and underserved by transportation systems. The confluence of these two factors continues to exacerbate inequities in these communities – the value generated by the TCI-P presents an opportunity that must be seized to invest in equitable transportation that improves health outcomes for

those currently bearing a disproportionate impact of pollution. The development of equitable transportation systems must be central to the program design. The Model Rule currently establishes a minimum of 35 percent of allowance proceeds to be invested in these communities, but the percentage of proceeds invested in overburdened and underserved communities should be no less than the proportion of the population determined to be overburdened and underserved in each jurisdiction if that proportion is greater than 35 percent – and ideally greater than that proportion in order to ensure that investment strategies are targeted to begin to correct the historical imbalance in resource distribution. EDF also encourages each jurisdiction to exceed the minimums established by the Model Rule when determining the share of proceeds to commit to these communities.

**2. Ensure that Equity Advisory Bodies are representative of residents who live in communities disproportionately impacted by air pollution and that they have significant influence in implementing jurisdiction-level programs.**

- a. The Model Rule should include regulatory language ensuring that input from the equity advisory body is appropriately considered and factored into program implementation. The advisory body should have the ability to develop evaluation criteria for investment proposals. Each jurisdiction should report on how selected investments meet the evaluation criteria established by the advisory body, as well as whether and to what extent investments differ from the body's final recommendations. Equity advisory bodies should advise agency officials on the development of community outreach and stakeholder engagement plans. Additionally, the advisory body should have an integral role in the program review process by providing recommendations for program changes needed to ensure benefits are directed to overburdened and underserved communities.
- b. At a minimum, a majority of the members of the equity advisory body should live in or represent communities that 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: communities with lower incomes, 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 transgender people.
- c. Members of equity advisory bodies should disclose the potential for financial gain resulting from decisions made by the body. There should be a term limit for equity advisory body members, and the advisory body should be protected from political influence through a selection process that centers the priorities of overburdened and underserved communities and reduces the influence of elected officials.
- d. Participation in equity advisory bodies should be accessible to members of disproportionately impacted and underrepresented communities. Members of the equity advisory body should be offered compensation or reimbursement for their time and expenses associated with participation on the body. Jurisdictions should also offer substantial technical assistance and capacity support to members of the equity advisory body in the form of information, data, tools, training, and consultant and staff time.
- e. All communications and proceedings of this body should be accessible to the public with robust opportunities for public comment. Outreach communications, documents, and meetings should be translated in the most frequently spoken non-English languages in each jurisdiction to increase accessibility. Equity advisory body

meetings, both in-person and virtual, should be accessible for people with disabilities.

- 3. Include reporting requirements for suppliers of additional fuels, including natural gas fuels (e.g., CNG, LNG) and liquefied 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. Natural gas combustion produces carbon dioxide, and upstream emissions from the production and transportation of these fuels can release methane, another powerful greenhouse gas, into the atmosphere.<sup>1</sup> Even if the program does not initially limit emissions from these fossil fuels, TCI jurisdictions can and should consider placing a compliance obligation on these fuels as soon as possible as a way to achieve deeper reductions in GHG emissions and local air pollutants. If TCI jurisdictions place 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. EDF notes that California's cap-and-trade program covers liquefied petroleum gas and natural gas,<sup>2</sup> 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 relative to these fossil-fuel alternatives. A clear picture of emissions is a valuable component of sound and ambitious climate policy. As demonstrated by GHG emission reporting programs in other states, it is often helpful for fuel suppliers, and other potential regulated entities to report emissions even when they are not required to reduce emissions. For example, Oregon's Greenhouse Gas Reporting Program requires any emissions source that produces 2,500 MTCO<sub>2</sub>e or more to report emissions annually.<sup>3</sup>
- 4. Through the minimum reserve price and emissions containment reserve (ECR), ensure allowance prices provide strong market signals to reduce emissions and generate anticipated levels of funding for transportation programs.** EDF supports the inclusion of a minimum reserve price and ECR. At a minimum, allowance prices should not be able to fall below the minimum reserve price for CO<sub>2</sub> allowances in the Regional Greenhouse Gas Initiative, which is equal to \$2.76 per metric ton in 2023. The current minimum reserve price for the TCI-P of \$2.50 per metric ton in 2023 is too low. The TCI jurisdictions should consider a minimum reserve price starting at \$5.95 per metric ton, increasing 7.5 percent annually. This is consistent with the allowance prices in TCI's latest modeling and will ensure that the anticipated level of funding from allowance proceeds is available to invest in initiatives that further the goals of the TCI-P.
- 5. Adjust the allowance budget to account for allowances added from triggering the Cost Containment Reserve (CCR).** While the CCR is a valuable feature that helps mitigate significant fluctuations in allowances prices, the price containment mechanism cannot compromise the ability of the TCI-P to reduce emissions in line with the established CO<sub>2</sub> emissions budget. The CCR as currently drafted could allow for CO<sub>2</sub> emissions to be above the level of the cap if future years' allowance budgets are not adjusted. The model rule could include regulatory language that directs participating jurisdictions to deduct at least as

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<sup>1</sup> Congressional Research Service. "Methane and Other Air Pollution Issues in Natural Gas Systems." September 2020. Available at: <https://fas.org/sgp/crs/misc/R42986.pdf>.

<sup>2</sup> California Air Resources Board. "Information for Entities That Take Delivery of Fuel for Fuels Phased into the Cap-and-Trade Program Beginning on January 1, 2015." Available at: [https://ww3.arb.ca.gov/cc/capandtrade/guidance/faq\\_fuel\\_purchasers.pdf](https://ww3.arb.ca.gov/cc/capandtrade/guidance/faq_fuel_purchasers.pdf).

<sup>3</sup> See <https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=1538>.

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.<sup>4</sup> These deductions could be spread out over several years. 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. EDF notes that investments of TCI-P allowance auction proceeds can also provide cost savings to consumers by reducing reliance on fossil fuel powered personal vehicles by improving public transit, biking, and walking infrastructure; expanding broadband internet access in rural communities; and making electric vehicles more affordable. A recent EDF analysis found that the lower vehicle and fuel costs of electric vehicles compared to gasoline vehicles will save consumers money over the life of the vehicle.<sup>5</sup>

6. **Incorporate air quality monitoring commitments.** Participating jurisdictions – with input from the equity advisory board; residents of environmental justice populations living adjacent to major highways, ports, airports, bus and truck depots, and distribution centers; air monitoring, environmental health, air toxics, and air pollution experts; and labor representatives – should commit to air quality monitoring programs that identify communities with high cumulative pollution exposure. The Model Rule should include language that, prior to the first compliance period, commits the participating jurisdiction to installing and operating air monitors in communities designated as overburdened and underserved that measure for local air pollutants such as black carbon, nitrogen oxides, and particulate matter.
7. **Participating jurisdictions should establish air pollution reduction targets informed by air quality monitoring data.** The Model Rule should include regulatory language to establish a process for identifying pollution hotspots based on air quality monitoring data and, with substantial input from the equity advisory body and informed by robust public input, establish a process for participating jurisdictions to set annual targets to improve the air quality in locations determined to be pollution hotspots. The rule should also include language committing jurisdictions to conducting regular analysis of air quality data to measure progress toward pollution reduction targets in local pollution hotspots, and this data should be publicly available.

In addition, as participating jurisdictions take steps to implement the TCI-P through legislation and regulation, we suggest they consider the following:

1. **Investing in electrification of medium- and heavy-duty vehicles can reduce emissions in overburdened communities.** Transitioning medium- and heavy-duty vehicles to zero-emissions alternatives is a critical component of a just transition to a low-emissions future. Medium- and heavy-duty vehicles are significant sources of NO<sub>x</sub> and particulate matter emissions – pollution that heavily contributes to harmful health impacts. This localized pollution disproportionately impacts low- and moderate-income and environmental justice communities that are more likely to be located near freight corridors, ports, bus depots, warehouses and distribution centers, and airports. Exposure to these pollutants contributes to higher levels of respiratory and cardiovascular disease. The TCI jurisdictions must take

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<sup>4</sup> Environmental Defense Fund. “Carbon Market California: A Comprehensive Analysis of the Golden State’s Cap-and-Trade Program.” Available at: <http://www.edf.org/sites/default/files/content/carbon-market-california-year-two.pdf>.

<sup>5</sup>Environmental Defense Fund. “Clean Cars, Clean Air, Consumer Savings: 100% New Zero Emission Vehicle Sales by 2035 Will Deliver Extensive Economic, Health and Environmental Benefits to all Americans.” January 2021. Available at: <http://blogs.edf.org/climate411/files/2021/01/FINAL-National-White-Paper-Protective-Clean-Car-Standards-1.26.21.pdf>.

action in order to start mitigating the impact of these vehicles and ensure that environmental justice communities are prioritized for infrastructure and vehicle deployment so that the near-term public health and community benefits can be maximized. Allowance proceeds from the TCI-P provide a valuable funding source to invest in initiatives that will reduce pollution from medium- and heavy-duty vehicle fleets and improve public health in these communities. For example, participating jurisdictions can lower upfront vehicle costs through incentives and invest in charging infrastructure using funding generated by allowance sales. The consideration of any such program must include robust input from frontline communities and close coordination with equity advisory bodies to ensure that it is designed in a way that incorporates the needs and recommendations of these communities, and that the process for adoption enables ample participation from those that are most impacted by harmful transportation pollution in order to ensure equitable deployment of these funds.

2. **TCI jurisdictions should commit to transparent program reviews with concrete timelines, occurring every three years.** As outlined in the Memorandum of Understanding, jurisdictions should meet every three years to make updates to the program, reassess and adjust program ambition (e.g., emission budgets, fuel coverage), and make general improvements. A concrete timeline removes the uncertainty around the timing of program reviews and provides stakeholders with ample notice. Participating jurisdictions should commit to conducting these reviews transparently and with robust public engagement and in close coordination with equity advisory bodies.
3. **Participating jurisdictions should put protections in place to ensure that TCI-P proceeds are used only for purposes related to the goals of TCI and the TCI-P and not for general budget obligations.** Analysis has shown that investments of TCI-P allowance proceeds will lead to environmental, economic, and public health benefits.<sup>6,7</sup> However, if those proceeds are used to fund other unrelated state obligations, these benefits will not materialize. Jurisdictions should ensure that investments are directed to programs that further reduce greenhouse gas emissions, improve air quality and public health, promote local economic opportunity, and advance equity in communities overburdened by pollution and underserved by the transportation system.

We appreciate the work the TCI jurisdictions have done to date in developing the TCI-P to address the impacts of the transportation sector on climate change. We look forward to the final Model Rule and implementation of this important initiative. Thank you for your consideration of these comments.

Sincerely,

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<sup>6</sup> TRECH Project Research Update: Preliminary Results – Updated February 2021. Available at: <https://cdn1.sph.harvard.edu/wp-content/uploads/sites/2343/2021/02/TRECH-ResearchUpdateFeb2021.pdf>.

<sup>7</sup> Estimating the Regional Environmental, Health, and Economic Benefits and Costs of the Transportation and Climate Initiative Program – Updated March 16, 2021. Available at: [https://www.transportationandclimate.org/sites/default/files/TCI-P\\_modeling-summary\\_12-21-2020.pdf](https://www.transportationandclimate.org/sites/default/files/TCI-P_modeling-summary_12-21-2020.pdf).

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