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**By Electronic Submission to the TCI-P Public Input Portal at** [www.transportationandclimate.org/](http://www.transportationandclimate.org/)

Kathleen A. Theoharides, Chair

Transportation & Climate Initiative of the Northeast and Mid-Atlantic States

Massachusetts Executive Office of Energy and Environmental Affairs

100 Cambridge Street, Suite 900

Boston, MA 02114

Ned Lamont, Connecticut Governor

Office of Governor Ned Lamont  
State Capitol  
210 Capitol Avenue  
Hartford, CT 06106

**Re: COMMENTS ON TRANSPORTATION AND CLIMATE INITATIVE DRAFT MODEL RULE (MAR. 30, 2021)**

Dear Ms Theoharides and Governor Lamont,

I am a Masters student at the Harvard Extension School’s Sustainability program, currently studying U.S. climate change laws and policies taught by Professor Aladdine Joroff, a lecturer at Harvard Law School’s Emmett Environmental Law and Policy Clinic. I respectfully submit this letter in support of the Transportation & Climate Initiative (TCI) Draft Model Rule (“Model Rule”), with comments on how the investment framework of the Model Rule could be strengthened in two critical areas: implement safeguards to ensure TCI funds are reserved for investment into net-new clean transportation projects; and establish investment assessment frameworks to determine which projects would best meet TCI’s goals. Together, the suggestions address the lack of detail in the draft on frameworks to ensure TCI investments are channelled into the most impactful projects for meeting the TCI goals of providing a clean, healthy and equitable transport network that reduces greenhouse gas (GHG) emissions.

As a concerned citizen, I am encouraged by the action taken to reduce greenhouse gas (GHG) emissions in the transportation sector, which account for 42% of total GHG emissions from TCI signatory jurisdictions. The strength of the TCI program lies in the ability to cap and reduce GHG emissions while generating long-term financing for the transition into a clean and healthy transportation network that provides environmental justice.

In brief, I urge the TCI to make the following additions to the Final Model Rule:

* Include safeguards to ensure that TCI funds are spent on net-new clean transportation projects. TCI funds should not be used for non-TCI-related state budgets, or used to reduce existing state transportation expenditures; and
* Establish a framework for determining which investments would best achieve the TCI’s purpose as defined in XX-1.1 of the Model Rule.

I urge the TCI signatories to amend the Model Rule to establish clearer investment guidelines for existing and future Signatory Jurisdictions to ensure that TCI funds are channelled into initiatives that would provide meaningful emission reductions from the transportation sector and ensure the long-term success of the TCI program. Similarly, states have separate obligation to its citizens to implement the TCI requirements into state statutes and regulations in such a way that ensures TCI funds are spent on their intended purposes. Each of these issues are addressed in greater detail below.

**I. Include requirements to safeguard and ensure TCI funds are spent on net-new clean transportation projects.**

1. TCI funds should be spent only on purposes related to TCI goals.

The draft Model Rule is largely silent on measures to ensure that TCI funds are spent by Signatory Jurisdictions on projects that further the TCI’s goals. The Model Rule should be amended to include provisions that require TCI auction proceeds to be deposited in dedicated funds that can only be spent on projects that further the TCI purposes as defined in XX 1.1. Loopholes allowing the diversion of funds to unrelated state budget purposes should be closed.

For example, past state budget records from the TCI signatory state of Connecticut show how legislative loopholes could hamper the progress of the TCI program through funds diversion. The Governor’s Bill 884[[1]](#footnote-1) requires TCI funds to be deposited into the Transportation Grants and Restricted Funds Account (TGRFA), which, according to state statute, “shall contain all transportation moneys that are restricted, not available for general use”[[2]](#footnote-2). The TGRFA is subjected to similar provisions as the Special Transportation Fund (STF). Connecticut voters approved the STF in 2018. The STF required funds to be protected by a constitutional lockbox that prevents the legislature from sweeping funds out of the STF to close General Fund budget gaps unrelated to transportation projects. Despite this, the Connecticut governor and legislature have been accused of bypassing lockbox protections, by diverting $170 million in 2019 and 2020 vehicle sales tax *before* the funds reached the STF[[3]](#footnote-3). Given that lockbox protections only apply to funds that have already been deposited into the STF, a loophole exists.

The public’s willingness to pay higher gasoline costs to fund the TCI is based on the commitment by signatory states to use auction proceeds to lower transportation emissions in a way that improves public health, increases mobility and create new economic opportunities. To maintain the public’s trust and support for the scheme, the Model Rule should be amended to safeguard raised funds in a dedicated TCI fund, as well as guardrails to prevent diversion of funds to unrelated purposes.

1. TCI funds should be used to fund net-new transportation emissions reduction projects, rather than subsidizing existing transportation budgets.

TCI funds should only be used to fund “net-new” transportation emissions reduction projects: i.e., projects that are outside of, or additional to projects that would have ordinarily been funded by existing state transportation budgets. TCI funds should not be used to subsidize or reduce existing annual state transportation budgets that would have ordinarily been allocated in the absence of TCI, such as for the maintenance of existing roads or public transit infrastructure.

Connecticut’s case demonstrates the effect of the Model Rule’s lack of clarity on investment requirements. Connecticut’s current budget proposal shows TCI funds allocated to replace and reduce existing transportation expenditure, with TCI funding for this purpose growing from $24.3 million in 2023 to $69 million by 2026[[4]](#footnote-4). This is a loophole allowing Connecticut to reduce its existing transportation-related budget, and redirect funds to non-transport related spending instead. Such actions negate the purpose of a cap-and-invest program if funds are only used to maintain the status quo instead of being invested in projects that accelerate clean transport adoption.

Further, in order to defend the TCI against potential legal challenges arguing that the TCI program is in effect a gasoline tax, the Model Rule should ensure that TCI funds do not act as an indirect gas-based transportation user fee. The California Global Warming Solutions Act of 2006, a cap and trade program similar to TCI was challenged in the court case *California Chamber of Commerce et al.,v. State Air Resources Board et al.,* C075930 Cal. Ct. App. 3d. Dist., (2017), where the court described a gas tax as a user fee designed for transportation system users to pay for maintaining and improving the system, and that such a tax cemented the status quo and increased gas usage. The court found investments from California’s program in clean transportation systems promoted a move away from petroleum-based transport and hence did not constitute a gas tax. I recommend Model Rule revisions that require funds to be spent on transitioning to a low-carbon transportation sector rather than maintaining the existing gas-dominated transport systems, in order for TCI to avoid being classified as a gas tax.

Lastly, given that the transportation sector accounts for such a significant portion of total emissions in signatory states, the clean energy transition will only be possible if the Model Rule is amended to encourage a commitment from signatory states to maintain existing transportation budget levels while allocating the additional TCI funds to accelerate the transition.

**II. Establish a framework for determining which investments would best achieve the TCI’s purpose as defined in XX-1.1 of the Model Rule.**

The Model Rule currently lacks assessment measures determining which investment projects would be cost-effective and impactful for advancing the TCI purposes. Only Subpart XX-3.2 of the Model Rule provides a framework for determining and evaluating how 35% of investments are to be spent to advance equity to fulfil the TCI purposes outlined XX-1.1 (e). This section should be expanded to similarly determine how the remaining 65% of investments should be spent to best advance TCI purposes XX-1.1 (a - d). A suggested insertion is provided below:

# *“XX-\_\_ Investment advisory body*

1. *By [date], JURISDICTION shall establish an investment advisory body within a relevant state agency, such as the Department of Transport, to advise on decision-making for TCI-P, including:*
   1. *Developing criteria for assessing which investments would best meet the TCI purposes XX-1.1 (a - d), as measured from an economic cost-benefit perspective, including but not limited to cost per metric ton of carbon dioxide equivalent (CO2eMT) reduced. Such assessments should be based on best available data and science, including but not necessarily limited to data and science produced or used by JURISDICTION agencies in transportation, environmental, energy, health and hazard mitigation planning.*
   2. *Undertaking and publicly publishing such investment assessments at a minimum of every five years and using the assessments to recommend the best investment allocations.*
   3. *Developing metrics for evaluating how investments of program proceeds demonstrably provide direct and meaningful benefits to advance TCI purposes XX-1.1 (a - d).”*

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In summary, the TCI Final Model Rule should be amended to provide clearer provisions on how TCI funds raised from emission allowance auctions are to be invested. The Final Model Rule should encourage legislative guardrails preventing TCI funds from being spent on non-TCI-related expenditures. Protections should also be added to prevent TCI funds from being used to subsidize existing transportation budgets, and to prevent the perception that the TCI program is a gas tax. Lastly, data-driven investment assessment frameworks should be established to drive TCI investment into projects that provide the most value to state citizens, and the highest GHG emission reductions, from a cost-benefit perspective. Only with investment oversight controls can citizens can see and reap the value generated by the TCI program, to ensure the continued support of TCI.

Thank you for your attention to these comments.

Sincerely,

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1. <https://www.cga.ct.gov/2021/TOB/S/PDF/2021SB-00884-R00-SB.PDF> [↑](#footnote-ref-1)
2. <https://www.cga.ct.gov/2021/TOB/S/PDF/2021SB-00884-R00-SB.PDF> [↑](#footnote-ref-2)
3. <https://yankeeinstitute.org/2020/01/16/fact-check-governor-denies-diverting-transportation-funds-budget-says-otherwise/> [↑](#footnote-ref-3)
4. <https://yankeeinstitute.org/2021/03/23/fact-check-tci-money-will-go-into-the-special-transportation-fund/> [↑](#footnote-ref-4)