

As coalitions of labor unions and environmental groups, collectively representing millions of members and supporters, BlueGreen Alliance and New Jersey Work Environment Council submits comments on the Transportation and Climate Initiative Program (TCI-P) Draft Model Rule.

Transportation is fundamental to daily life, the economy, and access to opportunity. It is also the source of hundreds of thousands of jobs across the region spanning transit systems, trucking and delivery, and automotive manufacturing, amongst others. At the same time, transportation accounts for nearly 40% of greenhouse gas emissions in the Northeast and Mid-Atlantic region¹. A study of air pollution from cars, trucks, and buses in the Northeast and Mid-Atlantic found that communities of color are exposed to 66% more pollution from transportation than white communities.² Robust policies must address these emissions, as well as invest in transportation solutions that improve the wealth and quality of life of communities most hit by pollution and income inequality.

The purpose of TCI-P stated in section XX-1.1³ is to:

- a) Reduce carbon dioxide (CO₂) emissions from the transportation sector;
- b) Improve air quality and public health, increase resilience to the impacts of climate change, and provide more affordable access to clean transportation choices;
- c) Promote local economic opportunity and create high quality jobs;
- d) Maximize the efficiency of the multijurisdictional program to ensure greater benefits; and
- e) Advance equity for communities overburdened by pollution and underserved by the transportation system, including expanding low-carbon and clean mobility options in urban, suburban, and rural communities, particularly for populations and communities that are disproportionately adversely affected by climate change and transportation pollution and currently underserved by the transportation system.

In November of 2020, BlueGreen Alliance, Labor Network for Sustainability, and New Jersey Work Environmental Council submitted joint comments on the importance of including guidance on equity and high-quality job creation following the “TCI Webinar on Ensuring Environmental Justice and Equity in a Regional Low-Carbon Transportation Program.” While the December 2020 TCI-P Memorandum of Understanding and Draft TCI-P MOU included several commitments to equity, we are disappointed that these commitments have not been made more specific, including as related to the creation of high-quality jobs. We urge TCI-P jurisdictions to incorporate labor organizations’ recommendations, as communicated in our earlier comments and further developed below, in the Final TCI-P Model Rule as well as participating jurisdictions’ implementation plans.

While we agree with the purpose of the Draft Model Rule, we find that the Model Rule

¹ Union of Concerned Scientists. The Northeast Should Limit Pollution from Transportation. Daniel Gatti. Former Policy Analyst. September 12, 2017.

² Union of Concerned Scientists. June 27, 2019. <https://www.ucsusa.org/about/news/communities-color-breathe-66-more-air-pollution-vehicles>.

³ Draft Model Rule § XX-1.1 at 5.

requires more guidance to ensure participating jurisdictions meet the purposes fully. We strongly recommend that the Final Model Rule provide both stronger language and pathways in order to more fully realize equity goals for poor and working class communities, communities of color, and other historically overburdened and underserved communities affected by pollution, as well as provide specific recommendations on how participating jurisdictions will create high-quality jobs.

XX-3 Equity⁴

As TCI-P is implemented in participating jurisdictions, it will establish new streams of funding. We recommend revising section 3.1 Model Rule to explicitly mention that individual jurisdictions can and should implement a significantly higher minimum percentage of dedicated investments than the regional 35% floor and also at a percentage that is at least as large as the share of the total state population qualifying as “overburdened and underserved.” For example, recently filed legislation in Massachusetts would direct at least 70% of TCI-P proceeds to overburdened and underserved communities in the state⁵.

Further defining the term “underserved and overburdened communities” is necessary to enable effective evaluation and enforcement. Participating TCI-P jurisdictions must work with the equity advisory boards that they are committing to designate or establish under the Model Rule to ensure that “underserved and overburdened communities” are clearly defined and will benefit from TCI-P spending and implementation. This includes ensuring significant TCI-P benefits accrue to “communities and populations that face disproportionately high and adverse health, environmental, social, and economic burdens, including minority populations and low-income populations.” To address disproportionate harms faced by these communities and populations, TCI-P jurisdictions should ensure underserved and overburdened communities receive investments and benefits that are higher than their population share. As further discussed below, the Model Rule should also include greater specificity around other TCI-P definitions and processes to ensure that the program’s benefits materialize in these communities.

We further request that Title VI protections explicitly be applied to the TCI-P so that no person shall, on the grounds of race, color, or national origin be excluded from participation in or be denied the benefits of, or be subjected to discrimination under any TCI-P program or activity.

Achieving significant reductions in emissions in overburdened communities is an explicit goal of this program⁶, therefore we need a mechanism to evaluate this goal. If investments aren’t leading to the necessary reductions in air pollution in these communities, there should be relocation of funds to ensure reduction goals are met. This will force the program to be dynamic and ensure that transparency on the annual investments and reductions have an annual metric

⁴ Draft Model Rule § XX-3 at 41.

⁵ SD2317. An Act relative to transportation and environmental justice. Introduced by Senator Boncore. 192nd General Court of the Commonwealth of Massachusetts.
<https://malegislature.gov/Bills/192/SD2317>

⁶ Draft Model Rule § XX-1.1 e at 5

yardstick to be evaluated on, and held accountable to, to ensure emission reductions. We acknowledge that there are state and local policies and practices unrelated to TCI that are currently working to reduce emissions in overburdened communities. TCI driven policies, practices, proceeds generation, or investment decisions should not undermine these in-place and effective policies and practices, but rather support and enhance them.

XX-3.1 Equity investment commitment⁷

One of the major purposes of TCI-P is to improve air quality and health equity. In order to evaluate if the rule is meeting this purpose the Model Rule needs to ensure through objective reporting that air pollution is being reduced in participating jurisdictions. The geographical citing of these targets should be established between the Regulatory Agency in collaboration with the Equity Advisory Board and consider both traffic density as well as proximity to environmental justice communities.

The Model Rule should include the recommendation for 24-hour fenceline monitoring to be installed as best practice, vs modeling, and that PM10, PM2.5 and ultrafines are included. Results of these air quality monitors should be made available on as close to a real-time basis as possible as well as on an annual basis through comprehensive reporting to the Equity Advisory Board and the general public. Research links exposure to particulate matter smaller than 2.5 micrometers in diameter (PM2.5) to increased illness and death, primarily from heart and lung diseases.⁸

How TCI-P investments are made will determine whether the purposes of this rule are met. Promoting local economic opportunity and creating high-quality jobs is clearly identified as a priority objective of this program. To ensure these outcomes, the Final Model Rule language should include explicit guidance with respect to workforce investment approaches, stakeholder engagement, job quality targets, and a process to meet this purpose.

Model Rule language should be made more explicit to give participating jurisdictions clear direction regarding the allocation of meaningful dedicated investments, including the recommendation to prioritize investments, where there are community benefit/community workforce agreements in place that provide economic opportunities for people of color and low income communities. Regarding high-quality job creation, the Model Rule should include clear recommendations for TCI-P investments to include best practices for creating family-sustaining jobs, and high road economic development.

To meet their commitments, we urge TCI-P jurisdictions to incorporate the following labor standards, safeguards, and criteria in the Final Model Rule and in their implementation of the TCI-P regarding the use of TCI-P funds:

⁷ Draft Model Rule § XX-3.1 at 42.

⁸ Journal of Thoracic Disease. Yu-Fei Xing, Yue-Hua Xu, Min-Hua Shi, and Yi-Xin Lian. The impact of PM2.5 on the human respiratory system. January 8, 2016.

- a) **Prioritize projects where employers commit to union neutrality in industries connected with TCI-P investments.** A “neutrality agreement” is an agreement between a union and an employer under which the employer agrees to not interfere with unionization efforts of its workers. Unions raise wages for all workers. Union workers earn significantly more on average than non-union counterparts and union employers are more likely to provide benefits. Women, Black, and Latinx workers have higher wages in unionized workplaces.^{9 10} Non-union workers earn on average 16% less weekly than workers who are union members.¹¹
- b) **Projects connected to TCI-P investments must meet prevailing wage requirements.** Prevailing wage establishes a wage floor for each occupation that all contractors on a project must pay at or above, typically set to reflect the average or market wage for a given type of work in a given area. The Davis-Bacon Act establishes prevailing wage rates for federal construction projects. Requirements or incentives for contractors to pay the prevailing wage can be extended to privately developed projects. Studies also show that prevailing wage laws provide social benefits from higher wages and better workplace safety, increased government revenues, and elevated worker skills in the construction industry.¹²
- c) **Funded projects, vehicle fleets, and technology must demonstrate a high percentage of components, sourced from US based manufacturers.** Domestic procurements drive economic investment and revitalization. Investing in public transportation provides a major opportunity to grow American manufacturing and jobs across every part of the supply chain.¹³ These investments can further shore up domestic suppliers of key materials, such as electrical steel, that are essential to our energy grid and EV charging infrastructure. Passenger rail and transit rail systems also provide a critical foundation for a competitive economy and generate jobs and economic growth. One way to increase economic growth is to require bidders to demonstrate in their proposals the percentage of materials the project will source from the United States.¹⁴ There are other procurement models that seek to incentivize quality job creation including wages and benefits, targeted hiring, training and advancement, and hiring opportunities from disadvantaged communities that should be evaluated and encouraged.

⁹ Center for Economic and Policy Research. John Schmitt. Unions and Upward Mobility for Women Workers. December 2008.

¹⁰ Center for Economic and Policy Reserach. John Schmitt. Unions and Upward Mobility for African American Workers. December 2008.

¹¹ Bureau of Labor Statistics. News Release, Union Members 2020. January 22, 2021.

¹² Economic Policy Institute. Nooshin Mahalia. Prevailing wages and government contracting costs, a review of the research. July 3, 2008.

¹³ BlueGreen Alliance and Environmental Law and Policy Center. Passenger Rail and Transit Rail in the United States. 2015.

¹⁴ Alliance for American Manufacturing. Prioritizing Industrial Policy in a COVID-19 World. July 28, 2020.

- d) **Companies or institutions connected to TCI-P funding commit to no mandatory arbitration.** Mandatory arbitration is a controversial practice in which a business requires employees to agree to arbitrate legal disputes with the business rather than going to court. It occurs when an employer conditions initial employment, continued employment, or important employment benefits on the employee's agreement to arbitrate any future claims against the employer. Mandatory arbitration deprives workers of the right to access the public court system.¹⁵ The practice results in workers finding it exponentially more difficult to enforce their rights going forward.
- e) **TCI-P funding should restrict investing in projects that contract with temporary staffing agencies (unless agencies certify that temporary employees are necessary to address an acute, short-term labor demand).** Temporary employees, with the same skills and experience, earn an average of 22% less pay for the same work and usually receive no benefits of any kind. Additionally, in some industries, 9 out of 10 workers report incidence of wage theft and no ability to recover what they are owed.¹⁶
- f) **Priority is given to projects that involve employers with collective bargaining contracts in place, or a Project Labor Agreement in place.** A collective bargaining agreement (CBA) is the written legal contract between an employer and a union representing the employees. The CBA is the result of an extensive negotiation process between the parties regarding topics such as wages, hours, and terms and conditions of employment. Project Labor Agreements provide comprehensive guidance for large projects. Project Labor Agreements (PLA) is the contract covering all of the craft workers on a construction project. Because they provide comprehensive guidance and set mutual expectations for large projects, PLAs are considered the gold standard of labor provisions by most building trades unions. Where a governmental purchaser shows that using a Project Labor Agreement is intended to protect/further the government's proprietary interest, PLAs should be encouraged.
- g) **Priority given to employers with “Ban the Box” or “Fair Chance” hiring policies in place.** Projects connected to TCI-P investments should demonstrate hiring policies that ensure people with criminal records are given access to employment by removing questions in the hiring process connected to criminal records. 1 in 3 adults in the U.S. has a conviction history.¹⁷ Communities of color are hardest hit by the effects of mass incarceration.¹⁸ Removing the “criminal history” box from job applications is necessary to give formerly-incarcerated people equal opportunity to compete for jobs, based on their skills and qualifications.

¹⁵ Economic Policy Institute. The Growing Use of Mandatory Arbitration. Alexander J.S. Colvin. September 27, 2017.

¹⁶ National Employment Law Project and National Staffing Workers Alliance. Rebecca Smith and Claire McKenna. Temped Out: How the Domestic Outsourcing of Blue Collar Jobs Harms America's Workers.

¹⁷ Brennan Center for Justice. Matthew Friedman. Just Facts: As Many Americans Have Criminal Records as College Diplomas. November 17, 2015.

¹⁸ Brennan Center for Justice. James Cullen. The History of Mass Incarceration. July 20, 2018.

Despite extensive recommendations made by states on the best uses of the funds, it is undeniable that without protections these funds will be siphoned off. This is not an idle concern - states have an atrocious record on the spending of tobacco settlement funds and there has been a history of budget raids of the RGGI program in the Northeast. This is a recurring issue in multiple states raiding these funds to balance budget deficits including New Jersey, New York and Connecticut. The concern with TCI is that the raids could even exist under the transportation umbrella; Departments of Transportation could simply reallocate funds to road repair or even road expansion. This allocation of TCI funds would not only be diametrically opposed to carbon and air pollution reductions but could even increase pollutants in overburdened and underserved communities. TCI's core equity provisions should ensure a commitment to dedicate funds to their intended purposes and push for legally binding language that would revoke the funding if it's misallocated, including pursuing legislative solutions to this problem.

XX-3.2 Equity advisory body¹⁹

The TCI-P must ensure pollution reductions and transportation benefits in the most overburdened and underserved communities. In order to shape implementation of TCI-P in a way that aligns with the intention of the program it is crucial that the Draft Model Rule offer clearer standards and more specific language on equity to ensure consistent adoption in participating jurisdictions. In addition to these comments, BlueGreen Alliance has contributed to Regional Advocates' Equity Advisory Body Priorities which we ask be incorporated.

XX-11.9 Auction and secondary market monitoring²⁰

In order to prevent collusion, market power and/or price manipulation we recommend that the Model Rule provide further guidance on how Regulatory Agencies should regulate the secondary market.

We recommend that Auction Purchase Limits, like those included in the Regional Greenhouse Gas Initiative (RGGI) be included in the Model Rule. The Auction Purchase Limit is the maximum number of allowances offered at each quarterly auction which can be purchased by any entity or group of entities with a direct corporate association.

We also recommend that the Model Rule include the recommendation of a Holding Limit. While a Holding Limit would not solely regulate the secondary market, it would prevent any one company from holding too many allowances at one time, thus restricting the ability of speculators to accumulate allowances they do not need in order to manipulate the secondary market.

Conclusion

¹⁹ Draft Model Rule § XX-3.2 at 42.

²⁰ Draft Model Rule § XX-11.9 at 153.

To conclude, the Final Model Rule must provide stronger guidance for participating jurisdictions to achieve the purposes of the rule, including commitments to equity and workforce development. Without such clarity, achieving the purposes of the Model Rule will not be guaranteed. We look forward to receiving a response to these comments, and continuing conversations with the Georgetown Climate Center and Participating Jurisdictions regarding this rule.

Sincerely,

BlueGreen Alliance
New Jersey Work Environment Council