

Date: Sept. 4, 2020

To: Environmental Quality Commission

From: Colin McConnaha, Manager, Office of Greenhouse Gas Programs
Matt Davis, Senior Legislative and Policy Analyst
Richard Whitman, Director

Subject: Item H: Rules Advisory Committee for Cap and Reduce Rulemaking
(Informational)
Sept. 17-18, 2020, EQC meeting

Why this is important DEQ will initiate formal rulemaking late in 2020 or very early in 2021 to develop proposed “cap and reduce” rules for consideration by the commission. The purpose of this rulemaking is to establish broad limits on greenhouse gas emissions across different sectors of Oregon’s economy. This rulemaking is based on existing authority given to the commission to control emissions of air pollution in Oregon. Governor Brown has asked that the rulemaking be completed and cap and reduce programs be ready to begin in early 2022. Given the ambitious timeline, the breadth and complexity of this undertaking, and the potential impacts on Oregon communities and businesses, there is significant interest in the membership of the Rules Advisory Committee, or RAC, for this effort. RACs are a required element of rulemaking, and their purpose is to provide policy makers, like the commission, a full range of views on policy proposals, including potential impacts and policy design options.

Due to the high level of interest in the cap and reduce programs, DEQ is bringing this agenda item to the commission early on, seeking input on how to develop a set of candidates for consideration by the commission at its November 2020 meeting. While selection of a RAC is usually delegated to the director, DEQ is recommending that the commission exercise its authority to appoint advisory committee members directly for the Cap and Reduce Rules Advisory Committee.

This report and agenda item are intended to help the commission be ready to make decisions about RAC membership at its November 2020 meeting.

Background On March 10, Governor Kate Brown issued Executive Order 20-04. EO 20-04 asks the commission to exercise its existing authority granted by the Oregon legislature to take a number of actions designed to reduce greenhouse gas emissions. These actions, along with other complementary actions by other agencies, and by other public and private parties, can significantly reduce carbon emissions in Oregon and help us do our part to avoid the worst effects of climate change. Collectively, these actions can put large parts of Oregon’s economy on a pathway to a lower-carbon future.

One element of EO 20-04 calls on DEQ and EQC to develop rules that cap and reduce greenhouse gas emissions from broad sectors of Oregon’s economy, including large stationary emitters, transportation fuels, and other fossil fuels such as natural gas. This effort will establish broad sectoral limits or “caps” over emissions in these sectors, and reduce those limits over time.

The executive order asks the commission to adopt rules so that a cap and reduce program or programs can commence no later than Jan. 1, 2022. Rulemaking processes at DEQ can vary from eight months to two years of development, depending on the content and complexity of the rule proposals, so this is an ambitious target for establishing a new program or programs that will be both broad and complex. These rules will touch many different parts of Oregon and may involve regulating a diverse range of businesses. The rules will also need to address challenging policy topics such as how to effectively implement broad sectoral emission limits across a range of different sources, how quickly reductions are required, what the options are for complying with emissions limits that decline over time, what the effects of reduced greenhouse gas emissions are on public health, transportation, and costs to consumers, and how the program or programs can address the interests and concerns of Oregon communities disproportionately affected by pollution and climate change. Appointment of the RAC members to support this rulemaking is an important step for the commission.

Purpose of Rulemaking Advisory Committee Oregon’s Administrative Procedures Act describes the required elements of administrative rulemaking in Oregon. State agencies are encouraged to seek public input through rules advisory committees and, in certain situations, agencies are required to use such committees as a source of input concerning the projected fiscal impacts of rules. A RAC can help DEQ and the

commission understand diverse perspectives on policy questions, as well as help inform more technical questions involved in new rules.

For the cap-and-reduce rulemaking, DEQ expects the RAC to meet approximately once a month beginning in January 2021 through the late summer to early fall of 2021. Additional meetings may be needed from workgroups or subgroups that focus on specific parts to the proposed rules.

The work of the committee will include:

- Making recommendations on program and policy options
- Reviewing, evaluating and suggesting draft rule language
- Evaluating the fiscal, environmental and public health implications of draft rules

ORS 183.333 requires that DEQ ask the RAC to consider the fiscal and economic impact of the proposed rules, including:

- Whether the rules will have a fiscal impact, and if so, what the extent of that impact will be.
- Whether the rules will have a significant adverse impact on small businesses, and if so, how DEQ can reduce the rules' negative fiscal impact on small businesses.

Recognizing the complexity, breadth, and potential impacts of cap and reduce programs, DEQ does not intend to seek consensus recommendations from the committee, and generally will not ask the committee for formal votes on issues. DEQ will ask for input from the individual committee members, and assess the committee's overall level of support or concern with proposed policy concepts. The committee's discussions will inform the development of draft rules, which will then be proposed for broader public review and comment as part of the rulemaking process. DEQ will document the input received by the committee to share with the commission.

Principles and factors to consider in forming the RAC:

- Size - large enough to reflect most or all perspectives, but small enough so that members have ample opportunity to speak
- Balance - a balance of interest so that no one perspective dominates, and a full range of opinions is well-reflected
- Capacity - some RAC members will have more capacity and resources to participate, particularly over time, than others; structuring the RAC

so that we account for and do not exacerbate any inequities is important.

**Proposed
process for
identifying
members**

DEQ will develop a proposed RAC roster through a process that incorporates direction from the commission, and input received from stakeholders and the public.

In May 2020, DEQ released a draft report on the cap and reduce program development with an opportunity for public comment. The agency specifically sought input on the design and makeup of the RAC. Based on input received at that time, and consideration of the communities and entities potentially affected by the program, DEQ proposes the following process for developing a proposal for RAC membership:

- Number of members: 20 to 25, with alternates allowed
- Co-Chairs: DEQ recommends identifying two co-chairs to assist in preparation of RAC meetings and meeting materials, and to help with the running of the meetings, in addition to a neutral facilitator
- First meeting date: To be determined
- DEQ solicits written statements of interest from individuals who want to participate as a member of the RAC. The statements of interest will identify:
 - Whether they represent one of the interests below;
 - A short description of what expertise and/or experience (including community experience) they believe they would bring to the RAC;
 - Any other information they believe the commission should consider;
 - If the individual has an alternate (and, if so, who)
- DEQ will compile the statements of interest, and provide them to the commission along with a recommendation.
- DEQ intends to have RAC members from the following sectors and communities, to allow for representative decision-making:
 - Tribal¹ communities (at least two individuals)
 - Frontline communities (at least two individuals)
 - Environmental organizations (two individuals)
 - General business organizations (two individuals)
 - Local governments (one or two individuals)

¹ DEQ also is requesting government-to-government meetings with each of the federally-recognized Tribes in Oregon to provide information and hear input from each Tribe.

- Public health (one or two individuals)
- Large GHG-emitting facilities (at least two individuals)
- Transportation fuels (at least two individuals)
- Natural gas (two individuals)
- Other non-transportation fuels (one individual)
- Members at-large (at least two individuals)

DEQ proposes to issue notice in late September, requesting statements of interest for RAC membership and to receive those statements for approximately three weeks. DEQ will also ask interested parties to identify whether resources are needed to participate effectively, such as a stipend or childcare and including any needs for physical accommodation or language assistance. DEQ will assemble the statements, and present them to the commission at its November 2020 meeting, along with a recommended roster for the RAC.

Other elements for the RAC

DEQ also seeks commission and public input on the following concepts and considerations regarding the operation of the advisory committee and rulemaking process more generally.

Under-resourced stakeholders

DEQ is actively exploring strategies to remove barriers and otherwise encourage participation by environmental justice and frontline communities, and organizations that represents those communities. DEQ is issuing a Request for Proposals for groups interested in serving as a clearinghouse for these organizations, and is also exploring other mechanisms to increase engagement including stipends for advisory committee participation, requests for DEQ to make presentations at regular meetings of frontline community and environmental justice organizations, and ensuring that committee and policy materials are provided in plain language and accessible formats.

Sub-committees or focus meetings

Given the complexity of this rulemaking, DEQ expects to utilize occasional focus groups to gather input on very specific or technical policy issues. These meetings will be open to the public, and RAC participation will be invited. A possible example is evaluating potential emissions leakage risks posed in the transportation fuels sector, and the relation between leakage and thresholds for regulation.

Subject Matter Expert council(s)

Similar to the concept described previously, DEQ acknowledges there may be certain instances the process will benefit from the input and expertise of key stakeholders not serving on the advisory committee. This could include ad-hoc meetings where advisory committee members and non-member stakeholders meet to explore specific policy questions or an invitation from the agency to key stakeholders to provide information in-writing or verbal testimony to the committee.

Public involvement at RAC meetings

All RAC meetings will be open to the public and the agency proposes that each meeting have a time-certain agenda item where members of the public can provide testimony directly to the agency and RAC. This ensures the public has opportunities to inform the rules as they develop, in addition to commenting on proposed rules prior to formal proposal to EQC.

Key questions for EQC

1. Does the commission agree with DEQ's proposal to identify committee members through an application process?
2. Are there additional areas of expertise or perspectives that should be represented on the committee?
 1. Is the proposed committee structure appropriately balanced?

Next steps and EQC involvement

DEQ will propose its recommendations for the Cap and Reduce Program Rules Advisory Committee membership roster, including any alternates, at the November 2020 EQC meeting, and will request commission action to appoint the members of the RAC. DEQ will then engage the RAC members and begin the rules development process for the Cap and Reduce Program in late 2020 or early 2021, and provide updates to the commission through the development process.