

Commute Options Rulemaking 2021



State of Oregon
Department of
Environmental
Quality

Summary

Rulemaking Advisory Committee Meeting #2

June 13, 2022, 9 a.m. to 12:30 p.m. PT

Zoom Webinar

List of attendees

Committee Members in attendance (for all or part of meeting)

- Adriana Britton, Trimet
- André Lightsey-Walker, The Street Trust
- BreAnne Gale, City of Bend
- Dan Kaempff, Metro
- Elizabeth Graser-Lindsey, Community member
- Dr. Jenny Liu, Portland State University
- Dr. Jennifer Dill, Portland State University
- Jodi Parker, LiUNA Local 737
- Julie Warncke, Salem Public Works
- Kathy Fitzpatrick, Mid-Columbia Economic Development District
- Kiki Dohman, Salem Area Mass Transit
- Kim Curley, Commute Options
- Lindsay Walker, Nike
- Mike Jaffe, Mid-Willamette Valley Council of Governments
- Michael Harrison, Oregon Health Sciences University
- Ophelia Cavill, Go Lloyd
- Peter Hurley, Portland Bureau of Transportation
- Rob Inerfeld, City of Eugene
- Sara Wright, Oregon Environmental Council
- Stephanie Millar, Oregon Dept. of Transportation
- Tyler Deke, Bend Metropolitan Planning Organization (alternate)
- Vjera Thompson, 9 Wood

RAC Alternates in attendance (for all or part of meeting)

- Darin Lund, TriMet
- Liz Hormann, PBOT
- Marne Duke, Metro

DEQ Staff in attendance (for all or part of meeting)

- Karen F. Williams, Air Quality Planner and rule writer
- Rose Lim, Air Quality Operations Employee Commute Options Coordinator
- Gerik Kransky, Air Quality Operations and Policy Analyst

Agenda Item: Welcome, logistics, agenda review

DEQ staff review agenda, meeting participation tips and guidelines.

Agenda Items: Recap Meeting #1 Topics, Discussion

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Oregon's air, land and
water.*

DEQ staff review the scope of the rulemaking effort: looking at revisions to the Portland-area commute option rules and developing rules for commute options that would apply outside of the Portland area, in other urbanized areas of the state. The RAC will also be looking at how we evaluate effectiveness of the commute programs. DEQ will be sharing draft rules later this summer with the RAC and we'll ask the RAC to evaluate the fiscal effects of the draft proposed rules.

DEQ staff reviewed the topics discussed in the first RAC meeting. Current commute option rules are in place as a pollution control strategy that is part of the Portland Ozone Maintenance Plan. About 600 worksites in the Portland metro region, with more than 100 employees at a worksite, must survey employees, develop an auto trip reduction plan, and report results from biannual surveys to DEQ. The target auto trip reduction rate is 10% but DEQ bases compliance on a good faith effort to achieve this reduction, not the reduction, itself.

To review the ideas RAC members offered on ways to revise and improve the current Portland-area commute option program, DEQ staff referred to a document sent to RAC members ahead of the meeting (a table in which RAC member suggestions/comments were organized into three "buckets:" potential rule revisions, program delivery improvement, and cross-agency/jurisdiction/community partnerships. DEQ summarized suggestions related to potential regulatory changes as: those that involved changing targets (e.g. auto trip rate reduction, survey participation), those related to compliance requirements (e.g. number of worker threshold, exemptions) and those related to compliance options (e.g. weighting the most effective trip reduction strategies).

DEQ also noted the RAC members' suggestions from meeting #1 related to improving Employee Commute Option program delivery, data and information sharing, and program reporting. These are items not necessarily requiring rule revision but may require new resources or electronic infrastructure than currently available at DEQ. DEQ then reviewed RAC member suggestions for new and on-going collaborative partnerships with other state agencies, local governments and non-governmental organizations. Stephanie Millar, recently Oregon Department of Transportations' Transportation Option Program Manager (and now Principal Planner in ODOT's Urban Mobility office) briefly presented about the tools and resources ODOT has in place to support the existing Employee Commute Option program and a potential future statewide program. ODOT is building a survey module into the "Get There" tool that will allow employers to complete surveys online – via desktop or mobile devices. ODOT provides technical resources to TO providers, e.g. arranging carpools for late-shift workers that don't have ready access to email. ODOT has marketing and outreach tools (e.g. newsletter articles, Linked-In channel). ODOT provides funding to grantees across the state, such as planning organizations and transportation management agencies.

Comment: A RAC member noted how important technical assistance and funding will be to the success of a statewide commute option program.

Response: Stephanie responded that TO is indeed a marketing program and you need resources, such as people who can champion the work, to make it successful.

DEQ inquired with RAC members if DEQ has, so far, accurately captured RAC members' comments and suggestions regarding potential revisions to the Portland-based Employee Commute Option program.

Questions and Comments

Comment: A RAC member says they appreciate DEQ's organization of potential rule revisions into targets, requirements and compliance options. An increasingly stringent, progressive, quantitative auto trip reduction target seems to be what's intended by Every Mile Counts.

Question: Are we also under the Governor's climate executive order to reduce GHG's by 80% by 2050?

DEQ Response: The EO sets up context we are operating in when revising and developing commute option rules, but underlying statutes (that give DEQ authority for commute option programming) are different for Portland-based commute rules and statewide commute rules. Generally, our rulemaking work is under the “umbrella” of the Governor’s executive order but won’t necessarily have the same quantitative targets.

Comment: DEQ sent out information about how employers currently under the commute options program are doing meeting their targets. About 40% are meeting their targets. RAC member is concerned that in a program in place for 20 years that so many employers report they are not meeting targets but not telling DEQ why they are not meeting targets. RAC member is concerned that DEQ is asking the RAC what we suggest for making the program stronger when there hasn’t been an effort to ask employers what’s working and not working. Maybe that’s part of implementation.

Comment: RAC member seconds last commenter’s comments to better understand current program before we extend to the rest of the state. RAC member also asks if it is a given that commute options will be extended to the rest of the state because their impression was that DEQ was asking the RAC to weigh in on that question. Regarding setting VMT reduction targets, how would we implement something like that? For example, RAC member is now working on employer’s commuting survey and thinking about representative sampling done now versus what they would do next time and how that would affect reported VMT reduction results (e.g. commute options staff don’t have access to information about employee home location to know commute lengths).

Comment: RAC member comments that with ODOT’s “Get There” tool, you can make a network to use, for example, for carpool matching and it’s free and easily accessible. RAC member says they are happy to answer other’s questions about how to do that.

Question: Is there any latitude in DEQ coming up with statewide rule (as previous RAC member brought up) or it is pretty much certain DEQ is going to do that?

Response: The multi-agency Every Mile Counts group suggested that statewide commute options was one way to reduce GHGs from transportation and looked to DEQ to lead the effort to expand commute option programming statewide. Statewide rules are not a given (the Environmental Quality Commission is the body that approves or disapproves proposed rules), however, this RAC was indeed convened to advise DEQ on the development of statewide commute option rules. Using RAC input, DEQ would develop proposed rules that DEQ would present to the EQC.

Agenda Items: Elements of other commute option programs, Discussion

DEQ shifts the discussion to that of what a statewide commute option program might look like. For context, DEQ reiterates that the statute that authorizes the Portland-based employee commute program applies only to the Portland area as a strategy in the Portland Ozone Plan. Any new statewide rules would be put in place under a different statute that provides DEQ’s authority to regulate indirect sources of pollution. An indirect source is a development or landuse or facility that doesn’t necessarily emit air pollution but it generates auto trips. And those auto trips emit pollution. DEQ can develop rules that put in place certain practices that a facility or development has to have in place to limit those indirect sources of pollution, i.e. the auto trips. Both a Portland-based and a statewide program would have the same goals – to reduce auto trips – but the underlying statutes would be different.

DEQ presents information about the multi-agency effort called Every Mile Counts, which is a partnership among DEQ, ODOT, the Oregon Dept. of Energy and the Oregon Dept. of Land Conservation and Development. The goal of EMC is to reduce GHGs from the transportation sector. Several projects have been completed or are underway to increase electrification of the transportation sector and otherwise reduce the carbon content of transportation fuels. DLCD recently made revisions to that agency’s transportation

planning rule and developed new rules establishing requirements and guidelines for land use and development – termed Climate Friendly and Equitable Communities. DEQ was asked to lead development of a statewide commute option rules and DEQ sees this lining up well with DLCD’s rulemaking.

Question: What is the citation for the Indirect Source Rules?

Response: Oregon Administrative Rules Chapter 340 Division 254.

DEQ staff referred to materials sent to RAC members as optional to read through before this meeting. The materials summarized aspects of and provided links to more information about commute option programs being implemented in the state of Washington, San Francisco, CA and the South Coast Air Quality Management District (Los Angeles area, CA). DEQ generalizes the approaches to commute option programming among these three jurisdictions as, respectively: mandating planning, mandating incentives and mandating emission reduction. DEQ asked RAC members for their thoughts about the relevance of the three different kinds of programs to an Oregon statewide commute option program.

Comment: Each of the programs are focused on changing employee behavior and an employer does not control that, so having the focus be on required effort rather than required outcome makes more sense.

Comment: RAC member thinks mandated emission reduction is closer to the Governor’s climate executive order. Both employers and employees need to have an attitude switch. RAC member refers to May 30th New York Times article titled, ‘New York City Companies are Opening Offices where their Workers Live.’ RAC members says companies are reported to be moving to ease their workers’ commutes.

Comment: All three approaches have merit. RAC member likes the idea of required incentives. Employers can only do so much to change employee behavior, but we also have to reduce emissions. Ideally, we can figure out a way to package elements of all these programs. RAC member likes the way the current commute option program sets a reduction from a baseline because this allows flexibility for employers with different levels of transit access. We need to design programs that can work in different kinds of land uses. A percent reduction from a baseline may also be more politically palatable for employers in less urbanized areas than an aggressive quantitative emission reduction mandate.

Comment: RAC member likes DEQ’s identifying the focus areas of the three different types of programs. Agrees with RAC member who noted the Governor’s executive order points to specific emission reduction outcomes. In the end, we all want an effective program and suggest that we look at how each of these types of programs is performing. Look at the Washington state legislative report for the CTR program, for example.

Comment: RAC member likes the San Francisco action-oriented approach. Planning is great, but you need tools to put the plan in place. RAC member’s job is to sell an employee benefit programs that incentivizes employees to choose commute options (called Get There Rewards program). What RAC member has seen not work is not having tools or solutions for the employers; nothing will happen with a mandate to do something without support. Transportation options will generally not be part of an employer’s business vision. If you don’t bring gifts (e.g. vanpooling, transit passes) you won’t get in the door. RAC member would really like to see emphasis on incentives.

Comment: RAC member struggles with requiring incentives (e.g. transit passes) in areas that don’t have good transportation options. In RAC member’s experience, incentives often reward the people that are already doing the right thing (e.g. alternative commuting). It’s good to reward this behavior but doesn’t lead to behavior change. RAC member has heard that barriers to alternative commuting is not lack of incentives but rather inadequate transit service or lacking bike/ped infrastructure. RAC member doesn’t see how DEQ is planning to address those barriers; how can we get to transportation options that meet employees’ needs?

Comment: Agree with previous commenter that we need infrastructure, particularly in rural areas. But there is still carpooling, vanpooling and creative options that you can offer employers and employees. Incentives are not just rewards, but also solutions. For example, for many farmworkers working in RAC member's region, vanpooling doesn't work because the work areas are so spread out, but we can incentivize and help set up carpools. RAC member would encourage employers to use the transportation option and transportation agency partners – leverage their resources and on-going technical assistance. Foundation of rulemaking has to be having technical assistance and partnerships in place.

Comment: RAC member says long and successful record of encouraging employees to use transit (e.g. \$5/month transit passes) has eroded because employees say they do not feel safe on transit. We all want to get employees out of single occupancy cars as much as possible, but we don't have levers to change perceptions. Beyond rulemaking, we need to find ways to resolve public's concerns about transit.

Comment: Regarding finding solutions, RAC member has worked for many years in their region to get shoulders on rural roads for safe biking and so far it hasn't happened. RAC member would rather find solutions than give penalties. I think the biggest problem for people is the distance between their home and their work; employer should get credit when they are able to help solve that problem.

Comment: RAC member notes the scope of rulemaking and that DEQ doesn't have authority or resources to widen roads or build infrastructure.

Comment: RAC member notes they are getting a lot out of this conversation among RAC members and hearing about their experiences. We're missing a big issue and that is telecommuting and how employers are incentivizing and supporting that. Seems like that option addresses safety and convenience concerns. Though it's not always feasible or appropriate, COVID has shown that it can work for a lot of people. RAC member would like to find ways to keep this momentum going.

Comment: As an employer, RAC member has participated in the Commute Challenge and this gives them a focused time once a year to promote and talk about commute options. The social aspects of the challenge – bringing people together to talk about commuting options has been beneficial (e.g. co-workers taking the bus together where they wouldn't have done so on their own).

Agenda Item: Considerations for Oregon statewide commute options, Discussion

DEQ staff ask RAC members to keep racial equity in mind as we continue discussions on how to develop rules for a statewide commute options program. DEQ shares a statement on striving for racial equity in government policy making from the Governor's State of Oregon Framework in COVID-19 Response and Recovery.

DEQ suggests framing the discussion with four questions: Where should we have a mandatory commute option program, who (i.e. which employers) should be regulated, what will the program require them to do, and how will the program be implemented.

DEQ presents some options for where new commute rules could apply: within Metropolitan Planning Organization boundaries, urban growth boundaries, city boundaries. Other geographic considerations could be land use, development types, place types, as described by ODOT and DLCD – in this case, being subject to commute option rules would be determined by, for example, the transit services and transportation options that are available. Another consideration could be expanding commute options in areas where residents have not had access to safe, convenient, accessible transportation to support that development. Many agencies are developing equity maps to better understand different transportation needs based on where people live and how investments have been made or not made in those communities. We could also consider where there are already successful commute options programs running – having a mandated program could build on their

success. DEQ asks RAC members for comments on where commute option programming should be mandatory for employers.

Comment: In Region 5 – Harney, Morrow, Grant counties and to the state’s eastern border – there are 46 cities with populations less than 5,000 people. In Pendleton, there are 4,400 incoming employees Monday – Friday. 40% of those people live 25 miles or more away from work and are not likely making very high hourly wages. These are tragic quality of life issues affecting folks that don’t live within a UGB. And in eastern OR, there are only two MPOs, one of which is mostly in an adjacent state. So mandatory commute option programming only within MPOs leaves out these populations.

Question: Are statewide commute option rules only going to apply to employers with more than 100 employees?

Response: Not necessarily – we’ll be talking about that soon.

Comment: RAC member is hesitant to have new rules apply statewide if it would affect all employers, rather than just larger employers. But if we’re just talking about larger employers, it seems it should apply statewide. Seems like rural workers could benefit more because they are likely driving longer distances than urban workers. Since rural areas and smaller cities have fewer transportation options, perhaps we’d have different requirements in those areas. Or for truly rural areas, perhaps we could have employers provide incentives for electric vehicle use (e.g. charging) as a way to reduce emissions, if not auto trips.

Comment: Since it’s become a privilege to be able to live close to city centers and employment, RAC member likes the idea of extending options beyond urbanized areas. Would prefer than program is not punitive, even if mandatory, and would like to see responsibility to coordinate not all on the employer (an employer of 100 is not really a big employer) – could DEQ lean in and help coordinate, perhaps leverage multiple employers to share responsibilities (e.g. split cost of a vanpool).

Comment: There is an economy of scale to focus requirements in MPO areas, which makes it easier to deliver funds to support the programs. We could still serve employers outside of MPO areas even if they are not required to participate in a new commute option program (i.e. regulated by new rules).

Comment: RAC member suggests reframing: keeping in mind equity concerns, e.g. people struggling financially or logistically to get to work, or who can’t access employment because they don’t have transportation. While we don’t want to put undue burden on employers, there are things employers can do to remove some of the barriers that prevent people from commuting to work by other means than driving alone. These rules could create opportunities to have those conversations with employers.

Comment: In rural areas, there don’t have to be mandates because employers are coming to transportation option organizations for solutions to help them recruit and retain employees (e.g. gas costs may be more than they make in a day). If TO organizations can help them set up carpool and vanpool programs, we may not need mandates.

DEQ staff present some options for discussion about who – which employers might be regulated by new commute option rules? Regulation could apply to employers by size, by business type, by types of positions (e.g. contracted workers), or to employers that have an air quality permit?

Comment: When an employer has multiple locations, when they add up to 100, they should be subject to the new rules.

Question: How does DEQ know which employers have more than 100 employees at a worksite?

Response: Employers with multiple worksites are responsible for updating this information with DEQ when they send their biannual surveys. New employers may be notified by a parent company that they are subject to ECO, but generally it is the business's responsibility to contact DEQ and inquire if they are subject to ECO.

Question: How many worksites are currently exempt from ECO because they have air quality permits and have taken emission reductions in their permits? Are we considering similar kinds of exemptions for a statewide rule?

Response: Less than about 20, but we can look this up and get back to you with a more exact number. Exemptions could be part of a statewide rule – that's up for discussion.

Comment: RAC member would not just limit to MPO areas; Hopes the program is both rules and incentives. In RAC member's area, has a TO program in urban area, but program also provides service to areas in adjacent counties. We want to help employer in a rural county that is having trouble getting workers to their facility. And reducing GHGs from all areas, not just urban, supports the Governor's executive order.

Question: For employers exempt because they are making reductions elsewhere in their air quality permits, is there a way to know how much emission reduction they've achieved that way?

Response: Generally, yes, because they would be reporting their emissions to DEQ as part of their permit requirements.

Comment: For employers that are meeting a certain level of emission reduction (to be determined), they would continue to be exempt from ECO requirements. If they haven't achieved a certain level, they could meet their permit requirements by reducing emissions from employee commuting. There needs to be transparency with the public how companies are complying with or exempted from Commute Rule requirements and why. For new statewide rules, first, inventory transportation option infrastructure available to employers then, for those without good option, they have lesser requirements: e.g. don't have to survey but do have to have a plan or have staff assigned to help employees find transportation options.

Comment: RAC member would support requiring employers that have an air quality permit be subject to commute option rules for their indirect emissions.

Comment: As we are considering the "where" and "who" should be regulated, we should consider what the rules are trying to achieve and how we measure compliance. If the objective is to lower GHGs and pollutant emissions, we may need to measure outcomes beyond auto trips reduced and give credit for other emission reductions; for example, an employer whose employees need to drive trucks for work, and don't have access to good transit, could comply by having incentives for employees to use electric or hybrid trucks.

DEQ reviews options for consideration regarding what employers subject to new commute options rules should be required to do. DEQ asks RAC members to consider what else beyond surveys, planning and reporting might we require:

Comment: Because many areas of the state don't have fixed route transit and even in areas with transit, it's not available at all hours that people might need to get to work, having employers offer vanpools in these areas could be important and doable.

Comment: RAC member supports the quantitative approach to a trip reduction plan and exploring moving it towards an emission reduction plan.

Comment: This advisory group could benefit from more research, particularly from academia, what incentives are most effective? We need to match the right incentives with right employers and also have

backup of penalties (e.g. for not submitting a plan at all). I'd like to know more about why so many employers in the Portland area are not meeting targets, what works and what doesn't.

Comment: RAC member suggests we connect the regulatory and compliance aspects of this rulemaking conversation to the DLCD Climate Friendly and Equitable Communities rulemaking. Looking at the requirements for those areas can help us answer who, where and to what extent to regulate. For example, MPOs will be required to reduce VMT in specific areas – we could consider both 'sticks and carrots' in those areas. Outside of CFEC areas, we could concentrate on incentives – particularly for rural areas with transportation needs.

Comment: As an employer of about 200 employees, we'd likely have the same staff person doing employee surveys and working with employee to support commute options. So, keeping the survey administrative requirements simple would help us focusing on employee support and behavior change.

Comment: In some jurisdictions in Washington, they require that worksites have an assigned employee transportation option coordinator – a point of contact. We've heard this is a challenge for employees who would like to access commute options – not knowing where to go for information.

Comment: RAC member offers to inquire with academic colleagues about research being done to investigate most effective transportation option incentives and share with committee what they learn.

Comment: RAC member does support requiring large employers to have commute option programs in place, even while continuing to explore ways to help employees feel more safe on transit.

Comment: RAC member agrees we should be 'carrot' focused in rural areas. As far as 'sticks,' mandating a subsidy for transit is a good one – not a lot, but making sure employer has some 'skin in the game.' Also mandating that a coordinator be appointed is necessary for success. Keep reporting light and focus on actions, using TO programs to assist or take care of reporting. How does DEQ intend to collaborate with ODOT's TO program and utilize all the tools they bring? RAC member hopes those programs are integrated across agencies.

DEQ presents a few more questions on how DEQ might implement a new statewide commute option program, how to incentivize the most effective strategies to reduce auto trips, and how to make sure that commute option benefits are distributed as equitably as possible among employees. DEQ invites RAC members to follow up with emailed comments.

Agenda Item: Wrap up, roundtable, next steps

DEQ requests that RAC members send comments on this RAC meeting and the discussion questions to TripReduction2021@deq.oregon.gov by Monday, July 11, 2022. DEQ will be holding a make-up RAC meeting by the end of the month for members who could not make it today. DEQ suggests that the RAC not meet in July to allow DEQ more time to assemble information the RAC has requested and draft rules for RAC review. This would mean meeting in August in review draft rules and in September to review fiscal impacts.

Question: Will DEQ be bringing scenarios and options for the RAC to consider or just one set of proposed rules?

Response: DEQ's intent was to take input received and composing proposed rule language. DEQ could consider presenting options for RAC consideration as well.

Comment: RAC member expresses concern that DEQ is moving to draft rules before having general buy-in among RAC members on direction and concepts. Other RAC's that member has served on – other agencies –

have indeed sought buy-in from RAC members. Another meeting is warranted to get this right. This feels rushed.

Comment: RAC member thinks it would be helpful to have another added meeting to review more refined concepts, before reviewing draft rule language.

Response: DEQ will consider adding another meeting and be in touch with RAC members about next steps.

Agenda Item: Public comment

There was no public input.

Meeting adjourned at approximately 12:30 p.m. Pacific Time.

Alternative formats

DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email deqinfo@deq.state.or.us