

Commute Options Rulemaking 2021

Summary

Rulemaking Advisory Committee Meeting #2 Make-up

June 30, 2022, 1 p.m. to 3 p.m. PT

Zoom Webinar

List of attendees

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

- André Lightsey-Walker, The Street Trust
- Dennis Bell, Meduri Farms Inc.
- Eloise Navarro, NAACP Eugene-Springfield
- Izzy Armenta, Oregon Walks
- Kathy Kleczek, Northern Oregon Coast Transit and Transportation Options
- Sharla Moffett, Oregon Business and Industry
- Dr. Jennifer Dill, Portland State University
- Kim Curley, Commute Options

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

Agenda Item: Welcome, logistics, agenda review

DEQ staff review agenda, meeting participation tips and guidelines.

Agenda Items: Recap Meeting #1 Topics, Discussion

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).



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of Oregon's air, land and
water.*

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.

Questions and Comments

Question: In the summary table you sent, there's a comment about requiring employers to provide commute option incentives to contracted employees and there's a note that says that is likely outside DEQ authority – could you explain that?

Response: DEQ doesn't have authority to require employers to provide benefits to contracted employees. The issue was raised by an employer in last RAC meeting who works with a large contracted workforce. On the issue of counting contracted employees toward the worksite threshold, DEQ could possibly change that requirement in rules but even then, we'd want to confer with employers, Dept. of Justice to make sure we were not stepping into complicated areas around employment law. We also heard there may be legal implications for employers providing benefits to contracted employees.

Question: Couldn't there be other ways to incentivize employers to include contracted employees in their commute option program?

Response: Yes, possibly.

Comment: RAC member confirms the legal complexities of employment law around treating contract employees like regular employees. Something like a bulletin board to arrange carpools might work, but other benefits would not. Nice thing about program now is its simplicity.

Comment: RAC member suggests an idea, since a large number of people are telecommuting now: if an employer can demonstrate that, for example, 20% of employee work hours are by telecommuting, they've met the goal. RAC member does have concerns with several of the ideas other RAC members suggested, but agrees that DEQ has captured them accurately.

Question: Does this apply to public employers? School districts?

Response: Yes, the rule covers government and nongovernment entities, so school districts are included.

Comment: RAC member echoes the importance of the rules' simplicity, so there's not excessive burden on employer to participate. The right incentives are important. RAC member sees issues with data gathering around VMT – how do you measure this and what tool would you use to assess program effectiveness? In an urban area, gift cards for food/beverages might motivate employees; for those further away, need financial incentives, not just for employers but employees.

Comment: A RAC member notes that having someone on site to administer a commute option program makes a positive difference. This person can work with transportation option organizations to assist with paperwork and focus more of their time on programming at the worksite. In WA, the Commute Rule has a requirement to have a program contact at a worksite.

Agenda Item: Review elements of other commute option programs, Discuss

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 land use 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. 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.

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.

Questions and Comments

Comment: RAC member had worked for Bay Area Air Quality Management District (California) implementing their employer trip reduction rule and before that, for EPA where RAC member worked with South Coast AQMD's regulation. RAC member thinks the San Francisco rule is their version of the current Bay Area rule. They call it a "Commuter Benefits Program" and employers have five options to comply. It may be worth looking at how the program works in the whole Bay Area District, because it covers nine counties, not all as transit-rich as San Francisco.

Question: Does anyone have information about the San Francisco program – how the incentives are purchased, who pays for them? Is it the nine-county area? Are there fees?

Response: DEQ did not come across this information in its research. A RAC member familiar with past Bay Area program assumes the employer has to pay for the incentives (e.g. transit subsidies). But it's a partnership with the Metropolitan Transportation Commission – the MPO for the area – so there's guidance and help provided to employers.

Comment: Looking at other programs is valuable, but some of the programs we're looking at for examples are very different places than smaller cities in Oregon. Oregon's "large" cities aren't really very large. RAC member reviewed material DEQ sent about the percentages of employers by size who are meeting trip reduction targets: less than half of employers with 100 – 200 employees are meeting target and around 84% of employers greater than 500 are meeting targets. We should confer with individual employers to find out what's working and what's not working and why. RAC member suggests that there is economy of scale with larger employers. It would also be useful to meet with transit agencies to discuss passes they provide to employers, in light of larger role of remote work in people's typical work weeks and safety concerns.

Comment: This program should not be burdensome to employers or impact their ability to hire people. It will be helpful to frame this as a benefit rather than a burden to employers. Talk with employers where program is working well, ask why and then talk to employers in other areas to find out if those strategies would work

there. RAC member is concerned about “commute options” being translated to “transit options” because transit systems across the state are set up very differently. We need to incentivize other options, too, like vanpools, carpools, telecommuting. RAC member suggests looking at Nashville, TN “Hitch Rewards” program and sends link to report prepared by the US Dept. of Transportation regarding a cash incentive program used to gather data about VMT and GHG reduction and how it was adopted by employers and employees. People may mistakenly think that you can’t do cash incentive programs with federal money, but this program was able to do that because they were “purchasing data.”

Comment: RAC member says they are employer of about 300 people and have a successful vanpool program – about 20% of the workforce commutes by vanpool. They have embraced this as an effective way to recruit and retain employees. People ask for information on the van pools every week, especially with gas prices being so high. We get about a third of our funding to rent vans through commute option subsidies provided through local transit agency.

Comment: RAC member thanks previously speaking RAC member and says hearing about employer successes like these and challenges is important to this process. Cautions against rejecting case studies from other areas different from Oregon; we should be searching for more and particularly look at whether or not they are achieving their goals. RAC member promotes simplicity by focusing on what we are trying to do – reducing emissions, reducing SOV trips – then designing rules to achieve those goals.

Agenda Item: Considerations for Oregon statewide commute options

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 DLCDC – 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.

Questions and Comments

Comment: RAC member had envisioned that new commute option rule mandates would be applying in cities over 50,000. Notes that MPO boundaries are different from city boundaries and urban growth boundaries. RAC member sees need and importance of commute option rules but the challenge is applying a model like the Portland-based commute rules to less populous areas of the state, particularly when even employers in the Portland area are having trouble meeting trip reduction targets. For example, in rural Oregon, there are likely fewer office workers who would be able to telecommute. It’s a big leap to bring Portland-like program to the coast, for example. There could be incentives for employers to participate, however.

Comment: Where you regulate should be related to the goals and objectives of the program. If goal is to reduce GHGs, that is needed everywhere, as opposed to ozone reduction, which is a pollutant where you focus on certain geographies and times of day. Rules need to balance GHG reduction where it's needed with program feasibility. If we focused requirement only on areas that are transit-rich, would that create a disincentive for employers to locate and expand in those areas, to avoid the rule? Favors expansive application of mandate but that requirements and goals would be different in different areas. Notes other RAC member's success with vanpools as example of solutions that work outside of Portland.

Comment: Where to apply commute option rules is a complicated question. Success will depend on layering rules with other funding when you go outside of the metro-area. Should be done in collaboration with funding expansion for other transportation GHG reduction programs (e.g. electric buses, convenient and safe park and ride lots for late shift workers). Need to be other factors considered besides population.

Comment: RAC member is thinking about cities like Eugene or Corvallis, that are relatively walkable and bikeable. People in those areas, with access to those amenities and good public transportation will benefit from new commute option rules. It would be a shame to see the same gap in access to transportation options as we see in Portland, especially as it relates to racial equity and environmental justice.

Comment: RAC member advocates for geographic application matching program objectives. For example, if goal is GHG reduction, which MPO – after Portland – has the greatest amount of GHG emissions?

Comment: RAC member encourages DEQ to consider the resources the agency has to implement an expanded program. What are staffing and resource needs and where does that fall in DEQ's priorities?

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: RAC member favors requirements only on larger worksites, though as TO provider, they work with employers of all sizes. A larger worksite gives employers more “customers” to promote commute options to. Promoting commute options is more effective through larger employers than, for example, sending fliers to a neighborhood where people are all commuting to different worksites. Even small cities have larger employers, like a hospital or city government, where a large number of employees are commuting to work.

Comment: RAC member suggests looking to what's already being done to answer some questions. Look for employers who are opting into commute options now – and ask why. This will help understand where mandatory commute options would be the best fit – so the program will spread because it works, not because it's mandatory.

Comment: Using employer size makes sense, for economy of scale. RAC member notes that larger employers have been more successful meeting trip reduction goals. Many businesses use telecommuting as a common and effective way to reduce employee trips. RAC member suggests focusing on goal to reduce employee trips, even as other air quality benefits are achieved (GHG reduction, VMT reduction). Requiring commute options at any employer that has an AQ permit could impact a lot of small businesses and would not align with objective to establish programs that are likely to be successful in their local setting.

Comment: RAC member thinks size of employer is a reasonable factor to consider for rule applicability. There are larger employers in rural areas that draw employees to and from metropolitan areas. The challenge is deciding what is the right size, how the program would benefit both employer and employee, and considering that a large percentage of employees may not be interested in participating in commute option programs.

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. In particular, what do RAC members think about a “point system,” where commute options that are more effective at changing commute behavior (e.g. charging for parking) are rated higher in a trip reduction plan than, for example, installing a bike rack.

Comment: RAC member knows of a business that just installed a very expensive bike barn, so not all biker amenities are the same. A point system needs to allow for subjectivity to differentiate the quality of the amenities provided. Seems there will still need to be a baseline survey and RAC member has concerns that current high percentage of telecommuting will count against employers trying to get more of their employees to come to the office more for check-ins and interpersonal communication.

Comment: RAC member does not have strong preference for program requirements (e.g. particular incentives) versus performance target (e.g. trip reduction determined via survey). Traditionally, performance targets are the way we regulate air quality; it’s quantifiable and easier to track progress. But the simplicity of the Bay Area program (i.e. required incentives) is appealing. If you go with the “points system” approach to achieve goal, there could still be alternatives (a different mix of options) – allowing flexibility for employer to come up with an assortment of strategies that better fits with their workforce. Regarding the current high percentage of employees telecommuting (and the difficulty of getting even more trip reductions), perhaps target could be not a trip reduction, but rather a rate target (e.g. x vehicle trips/100 employees).

Comment: RAC member supports concept of charging for parking but cautions about adverse impacts on lower-paid workers or employees otherwise struggling financially. Paying employees for not parking might alleviate such adverse impacts. Recommends any point system be based on data about programs that work, informed by employers implementing successful programs.

Comment: RAC member recommends including reporting on distribution of incentive types. This would be a step towards meeting equity goal – to see types of employees and demographics of employees receiving the benefits and the value of those benefits.

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, 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 conveys feedback received at June 13 RAC meeting – that RAC members are not ready to see draft rules yet. Instead, DEQ suggests the next meeting be for receiving RAC feedback on draft regulatory concepts and that meeting be in August, with no July meetings. There would then be two more meetings, held in September where the RAC would review draft rules and fiscal impacts.

Meeting adjourned at approximately 3 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