

Commute Options Rulemaking 2021

Summary

Rulemaking Advisory Committee Meeting #4

Nov. 18, 2022, 9 a.m. to 12 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
- Dennis Bell, Meduri Farms
- Elizabeth Graser-Lindsey, Community member
- Izzy Armenta, Oregon Walks
- Dr. Jenny Liu, Portland State University
- Jerrell Brown, NAACP Eugene-Springfield
- Jodi Parker, LiUNA Local 737
- Julie Warncke, Salem Public Works
- Kathy Kleczek, Northwest Transportation Options
- Kiki Dohman, Salem Area Mass Transit
- Lindsay Walker, Nike
- Michael Harrison, Oregon Health Sciences University
- Mike Jaffee, Mid-Willamette Valley Council of Governments
- Nick Meltzer, Oregon Cascades West Council of Governments
- Ophelia Cavill, Go Lloyd
- Paige West, Rogue Valley Transit District
- Peter Hurley, Portland Bureau of Transportation
- Rob Inerfeld, City of Eugene
- Sara Wright, Oregon Environmental Council
- Sharla Moffett, Oregon Business & Industry
- Stephanie Millar, Oregon Dept. of Transportation
- Vjera Thompson, 9 Wood

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

- Danielle Maillard, Oregon Walks
- Darin Lund, TriMet
- Liz Hormann, PBOT
- Marne Duke, Metro
- Tyler Deke, Bend MPO

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



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water.*

Agenda Item: Welcome, logistics, agenda review

DEQ staff review agenda, meeting participation tips and guidelines.

Agenda Item: Review and discuss proposed rule language for statewide employee commute option program

DEQ had sent draft rule language for a statewide commute option program to RAC members the week before the meeting. DEQ had arranged the draft rule language into categories, followed by questions to prompt RAC discussion. Before beginning discussion, DEQ reminded RAC members about the elements of a new statewide employer-based commute option program framework:

- scope of regulations (who they would apply to and where)
- targets and goals to reduce drive alone commutes
- purpose of a commute option program - to support employees/ers and reduce vehicle emissions
- building on flexibility and partnerships
- compliance requirements to survey, plan and report.

The categories that DEQ divided the rules into for the purposes of discussion were:

- Category 1: Rules that establish a statewide program
- Category 2: Rules that set requirements
- Category 3: Rules related to targets and plans
- Category 4: Rules describing options and partnerships
- Category 5: Rules describing voluntary participation.

Question: How will the rules that would apply in the new statewide program affect the existing program in the Portland area?

DEQ Response: New statewide rules would not affect existing rules or the existing commute option program in the Portland metro area. Although some of the concepts that we discuss today, we may decide that we want to incorporate these concepts when we do revise the Portland-based rules.

Comment: I appreciated how the rules were arranged; it made it easier to understand what each rule was trying to achieve. The categories of “benefits and incentives” at the end is especially helpful. Label these “rules incentivizing voluntary participation.” Within the rules, it would be good to call out available resources, so people are away even if this is new program, the resources to help are already out there.

Comment: Suggest laying out more clearly who the rules apply to. For example, define what you mean by “employer” (e.g. public and private sector, non-profit).

Comment: The rules were easy to follow.

Comment: The rules were straightforward and clear. I’d like to know how our business representatives on the RAC are reading these rules.

Comment: The rules are laid out pretty well. DEQ and the group has done a good job putting this together. I think employers will still have a lot of questions. Even though it’s spelled out in the rules who the rules will apply to, it’s going to make some people anxious.

Comment: From an accessibility standpoint, it may be good to have summaries and shorter bullet points, thinking about folks with disabilities that make reading comprehension challenging (e.g. dyslexia). For me, though, this is written out pretty plainly and I appreciate that.

Comment: The rules are straightforward in terms of presentation.

Question: If an employer has worksites within and outside of the Portland metro region, would they be subject to two sets of different rules?

DEQ Response: Yes, potentially, an employer could be subject to two sets of rules. We need to be thinking about this and hearing from employers who might be in this situation what their concerns are.

Comment: The rules were organized pretty well and understandable. I was expecting to see something about time of shifts in the rules – it seems like that is missing.

Question: For employers subject to two sets of rules, would the employers in different areas be managed solely by one set of rules.

DEQ Response: For now, that's what we are envisioning, but let's talk about this again when we discuss revisions to the Portland rules next month. Again, it will be important to hear from employers that might be in this situation.

Comment: Employer's success at encouraging multimodalism is likely more dictated by where they are located than any other feature of the employers.

Question: How is remote working being addressed? How are seasonal remote workers to be addressed in the definition of a worksite? What if the employer defines your worksite as your home? There should be consistency with other state agency and state policy definitions.

DEQ Response: Let's look at the draft rule language – how worksite is defined, how employee count is calculated. Let us know if the language covers the example you shared.

Comment: As we think about employers that may have sites in different parts of the state, we should make compliance as easy as we can. Consistency will be important for the employers as well as how we report out on the program. As well, it will be important that the Portland area meet its goals for auto trip and air pollution reduction.

Comment: our business likely would be subject to two sets of rules. Not only will being in compliance be important for us as employer, but also that our programming, tools and benefits are equitably distributed and useful among employees.

Category 1 Considerations and Discussion

Comment: The maps you provided are helpful but they should have a scale and show the community bus routes so we can see how well they are served by transit.

Question: If DEQ calculates vehicle miles traveled and greenhouse gas reductions, would you use average distances or ask employers to provide more accurate information; you could also ask employers to ask their employees what type of vehicle they are using.

DEQ Response: DEQ is proposing that we ask for a bit more information on the survey than we ask for currently and we would use the information about where people are travelling from in our calculations.

Comment: Under the purpose of the rule, you say the purpose is to reduce greenhouse gasses, but you can do that by driving an electric vehicle. So you might want to adjust that to say you are trying to reduce single occupancy vehicle use. The boundaries make sense, but there's been concerns about using an MPO boundary for state rulemaking; DEQ should be consistent with the way the DLCD used MPO boundaries in their recent rulemaking.

Question: Why was the choice made to propose regulating employers with over 100 employees at a worksite, rather than 50? Whatever the reason is, you may want to document that somewhere so it's clear.

DEQ Response: DEQ is relying on its experience with the ECO program operating in the Portland area for 20 years; we found that employers with between 50 and 100 employees at a worksite often did not have the capacity to successfully implement a commute option program.

Comment: The original rule was for 50 or more employees at a worksite, and this added a large number of businesses to the program that DEQ staff had to keep track of and I recall that was a challenge for DEQ.

Comment: The context of these rules says that availability of adequate transportation options should be considered in determining the areas where the rules are mandatory and to whom they will apply; this context would be better suited to the trip reduction plans, not in determining geographic applicability; keep in mind that bikes and walking are often double transit use in metropolitan areas; you shouldn't determine whether or not an employer is subject to the program solely based on transit availability; carpooling, vanpooling and teleworking is still available to that employer. It would be fair to hold an employer with good transit access, however, to a higher standard.

Comment: Regarding what employees are counted – be careful about exempting employees who must have a vehicle as a condition of employment; in my area, about half the employers in our employee bus pass program have vehicle ownership as a condition of employment. This might be a consideration for the definitions category. Employee count should just be based on who is on the payroll. The way the employee count is determined – the three point count - in the draft rules is confusing.

Question: Where did the employee count methodology come from? The Portland rules?

DEQ Response: Yes, this is how the employee count is done in the Portland rules. We can try to clarify the language in the new rules.

Comment: Another factor is employers that only have an employee count (e.g. above 100) for a certain period of the year, such as employers that employ seasonal workers.

Question: Isn't the purpose of the draft rules to also comply with the Governor's Executive Order on climate, and doesn't the EO specify the emission reduction target and rate? Wouldn't it be appropriate to mention that in the draft rules?

DEQ Response: This is important context for us to convey in our public notices and communications. Other parts of the rules include targets and reductions and we'd like to move on to make sure we have time to talk about those.

Comment: Transit service is an important piece of infrastructure, especially for employers who can't have remote work. Many transit providers don't cover the whole MPO (e.g. Rogue River).

Comment: Employers are experiencing workforce shortages and it's not uncommon to source employees from 50 miles away; people are moving further from metropolitan areas to find affordable housing; concerns about how VMT is utilized; VMT can be a metric but there are many issues at play.

Comment: If the goals are to reduce greenhouse gasses from vehicles, I'm concerned we might be missing large employers that are outside of MPO areas, although we don't know how many there are or how they are distributed. It would be good to know if that exclusion makes a big difference in terms of outcomes. DEQ could also consider having different requirements for employers inside and outside MPOs.

Comment: Concern with employers self-identifying. DEQ should get more information about employers to know if they are subject to new rules.

DEQ Response: DEQ can request this information from the Employment Department – to better understand which employers would be subject to these rules – but need to have a confidentiality agreement in place. DEQ plans to access this information.

Comment: Recommend flagging the use of MPO boundaries to determine which employers rules will apply to because MPO boundaries change every 10 years and are defined differently. For example, there is the FOB – or federal aid urban boundary and there is the Metropolitan Planning Area boundary, which the MPO establishes and may be different than the FOB. DEQ should be definitive about what the boundaries are.

Category 2 Considerations and Discussion

Question: Is there a legal prohibition to use VMT as a target?

DEQ Response: DEQ is not aware of a legal prohibition to using VMT as a target.

Comment: Other parts of the state have shifted to using VMT as a target and this has benefits to reducing traffic, improving air quality, improving safety. It seems convoluted to have an auto trip reduction target calculation to VMT rather than a straightforward simple, direct VMT reduction. Strongly recommend that DEQ use VMT rather than auto trip reduction targets unless there is a legal prohibition.

DEQ Response: We'll talk more about targets when we get to Category 3, but please be thinking about the appropriateness of holding an individual employer to a regional target – such as a VMT reduction target. Recall also, targets are not enforceable; they are guides for an employer – to give them a goal to work towards.

Comment: Regarding revision to the trip reduction plans, 6 years is too long for a period to reach targets. We need to make significant GHG reductions by the end of the decade. If the employer is on track to achieve the target, they shouldn't have to revise their plan, but they should if they are not on track when reviewed annually or biannually. It's still a question if DEQ should survey annually or biannually.

Comment: Even though these rules would apply only outside the Portland area, there should be as little disparity as possible between statewide rules and Portland-applicable rules, even if standards in the Portland area will likely be higher.

Comment: At the last RAC meeting, several RAC members agreed that having an Employee Transportation Coordinator is crucial for commute option programming to be successful. The ETC is also crucial to the transportation option providers in a region – someone to hand off work to – because the TO providers will not have capacity to directly serve all the employers that will be newly regulated. So, it's good to see that ETCs will be required, even without a requirement for percent of time for that employee; but in the reporting, the employer should report how much of the ETC's time is dedicated to supporting commute option programming, and DEQ should consider that adequacy in its review.

Comment: Recommend that DEQ look to the performance measures in the ODOT Transportation Option Plan – one of the four is to track TO providers across the state and ETCs are considered in that category; TO providers have to report the percent FTE dedicated to TO programming – we count ETCs if they employer is able to provide us that information. Also, DLCD's Climate Friendly rules require cities to report in their transportation system plan updates on worksites that have commute option programming.

Question: Does biannual meeting every two years or twice year?

DEQ Response: DEQ uses biannual to mean every two years, but we can say “every two years” to be more clear.

Comment: Recommend that employer surveying and reporting to every year, rather than every two years. Employers have a lot of turnover, so even if an employer meets their target, the next year they might not because employees have changed. Commute option programming needs to become an institutionalized set of benefits and part of how employers communicate with their employees, for example in employee onboarding.

Comment: Support VMT reduction targets because we should be trying to link these rules to science and greenhouse gas reductions; and VMT is a bigger driver of that than auto trips. Trip reduction doesn’t make sense as a target because several employees could reduce one-mile trips and another drives 50 miles. However, trip reduction could be one measure that employers use to track what progress they are making. VMT should be the overall target that we are aiming for, but we should applaud employers that are using different ways to get to that target, such as having TDM plans and making progress on trip reduction.

Comment: Auto trip rate does not work as well as the emission rate because we know there are many people from rural areas that are commuting into urban centers to work. For example, reports show that most farmers have to work off-farm to have adequate income. They can’t get away from the auto trip, but they could get an electric car and reduce emissions.

Comment: Reiterate a concern brought up earlier about equity concerns with using VMT as a target because of the “drive until you qualify” nature of housing now.

Comment: EV investments should be rewarded since they directly impact emissions.

-- 10-minute break --

Category 3 Considerations and Discussion

DEQ opens discussion on Category 3 – targets – by saying that DEQ wrote the proposed rules with auto trip reduction targets for employers, rather than VMT reduction targets, because DEQ feels that it is DEQ’s job to calculate VMT reduction as an effectiveness measure on a programmatic level.

Question: Is DEQ saying that they would have the addresses of employees in order to calculate VMT reduction.

DEQ Response: No, but we would ask for more information about commute length in the survey for each employer so we could calculate VMT reduction at a program level.

Comment: Have concerns about employers looking at who they would hire based on where they live. That does not seem appropriate and seems like a significant equity issue. There is already a lot of information that employers have to track and the survey process can be challenging for many. Agree that DEQ can track certain pieces of this program, rather than have employers track them. But, this is a small program at DEQ and DEQ doesn’t have a lot of capacity and resources to track this.

Comment: As an employer, it would be easier to make progress on trip reduction than VMT reduction and trip reduction is easier to understand. And if you can get more employees choosing alternative commute methods, that will spread to other employees. While shorter trips reduced might not make as much impact on vehicle emission reductions, in the long run, it will because more people will get involved.

Comment: Regarding the three methods of setting targets in the proposed rules; they seem to make sense but I’m not sure I understand them yet.

Comment: The proposed options for setting trip reduction targets seem to be flexible. What will help employers the most is having a draft plan or boiler plate to look at as a guide. Most people will create something bigger and better from the boiler plate. Smaller employers may not think they have the band width to put together their own plan.

Comment: As an employer we've previously set energy reduction targets for another program, so we would likely use Option C – setting targets in consultation with employees.

DEQ asks what RAC members think about using American Community Survey Journey to Work data to set targets?

Comment: I've been disappointed with Journey to Work data collected by the census bureau because they ask the question, "what is your usual trip to work last week?" For example, you may have ridden your bike twice, but your usual trip is to drive. We've also found discrepancies between the Census and our local surveys on carpooling: the census reports higher numbers than we are seeing. We're not sure why this is but it may be that people consider it carpooling to take their kid to school and report that as carpooling in local surveys. Journey to Work data may work to compare one region to another, but it doesn't work on a micro-scale for individual employers.

Comment: Templates and draft plans will be important to help employers.

Question: DEQ lists certain assistance to employers who voluntarily join the program. Will DEQ also provide that assistance to employers mandated to be in the program?

DEQ Response: Yes.

Comment: Agree there are lots of ways to poke holes in ACS data. Using the four-year data rather than the one-year data is a better approach; we find fewer anomalies with the four-year data. ACS also sorts data by urbanized areas, so using that instead of county-level data might be better. With those considerations, using ACS data could be a good start.

Comment: Agree the ACS data is unreliable and not giving a complete picture about how people are getting around. The target options need to consider where an employer is in the region – in an urban core or at the periphery, with fewer commute options. Employers further out may find it difficult to even meet the ACS targets. What we are looking for in this program is that they are trying to do better than what they are doing now, so prefer the other two options. And also, have a way to encourage employers who already have achieved trip and VMT reductions to keep doing what they are doing – the employee consultation option may get at that. As we move toward implementation, we should publicize the employers who are doing a good job so others can learn from them.

Comment: As an employer, we want to focus our investments where we are most likely to get behavior change and that is the shorter trips. That's where we've seen the most success, rather than investing in reducing the longer commutes. Using the ACS target could be confusing – if it's based on census tracts, an employer might have multiple locations in different areas; or would it be based on an average for a particular area or metropolitan region. Keep it simple. Recall that the person at the employer assigned to coordinate the commute option program likely doesn't do transportation demand management on a regular basis.

Comment: Agree that ACS data is not very accurate and that we should use 5-yr estimates rather than 1-yr for more stable estimates.

Comment: Make it clear what a 10 % reduction is; with an 80% trip rate to start – is a 10% reduction 70% or 72%?

Comment: Make it clear whether or not targets would be updated or just continue to be compared to a starting point.

Comment: Is there a need or compelling reason to have options for targets rather than a single target? Having multiple options for targets is complex. And two of the three options are unlikely to make adequate progress toward needed GHG and VMT reduction. Keep it simple. Since single target reduction from a baseline is a percentage, it doesn't matter whether your employer has longer commutes or shorter commutes, as long as the employer makes progress.

Comment: I waver between the first (10% reduction) and third (employer-set/employee-influenced) target options. We should make sure we don't penalize an employer whose first baseline is already a low auto trip rate. It's challenging for them to reduce further because they started out with a low rate. For example, if they are not making progress, they would have to change their plan – but they are already doing a good job with the plan they have.

Category 4 Considerations and Discussion

DEQ asks what other options RAC members would like to see added to the list of example commute options and if the list, as arranged, is easily understandable.

Comment: Add emergency ride home to list of commute options.

Comment: If an employer offers a free bus pass, for example, but not all employees live where they can access public transit and active transportation is not practical, the employer should give a financial equivalent of a bus pass to those more remote employees towards the purchase of an electric vehicle.

Comment: Agree with sentiment of previous commenter to make sure financial benefits are distributed equitably. There are bulk discounts available and also some free bus pass programs based on income. The onboarding process for new employees is a good time for a human resources department to have a discussion about the transit system, bike and pedestrian options and employee transportation benefits available.

Comment: For employers that are already doing a good job and offering many of these options, perhaps offering them a set auto trip rate target (such as the ACS journey to work data) would be good for them (they have likely already achieved it).

Comment: I like that the set of commute options is not as prescriptive as the score card proposal we saw earlier, specifically not saying that it has to be a certain percentage of employees who can telecommute. Like that the list of options is open-ended and not presented as exhaustive. I would like to see investment in electric vehicles added.

Question: why was scoring methodology dropped?

DEQ Response: DEQ did not hear much support at the last RAC meeting for a quantitative, prescriptive scoring proposal.

Comment: Scoring methodology based on meta-analysis, like CAPCOA standards, provides a clear and objective standard for judging the adequacy of trip reduction plans. Without that, no one will know what is adequate. The language around adequacy is pretty vague. I didn't support the numeric scores in the previous proposal, but supported the concept – we should revisit having a clear and objective standards to judge adequacy of trip reduction plans.

DEQ Response: DEQ was not hearing much support for quantitative standards in the last RAC meeting, but did hear support for more clear and objective standards for plan adequacy. DEQ tried to get at that concept in

the draft rules by requiring employers to use or cite certain studies and reports that provide evidence that the trip reduction options they've chosen to implement are likely to achieve their trip reduction goals. DEQ would compile those studies, summarize them and make them easily accessible to employers.

Category 5 Considerations and Discussion

DEQ asks if the incentives for voluntary enrollment in DEQ's statewide commute option program as written in the draft rules would be sufficient to entice an employer to participate.

Comment: As an employer, we are already providing commute options, 15 vanpools, to our employees and we fall outside an MPO, but draw employees from within an MPO. We'd be happy to participate in this program. DEQ would need to be able to get the word out to employers outside of MPOs who are providing commute options, so they knew they could participate in the DEQ program.

Comment: Previous commenter gives me an idea for a compliance option we could add -- Employers that are already achieving high standards and goals could be spokespeople and help with outreach to other companies and get credit for that. Successful employers could be accessible in a database so companies that would like to try commute options but think they don't have capacity can talk with successful employers and learn how they did it.

Comment: There would have to be some greater incentives offered to get voluntary participation. They are feeling the strain of higher taxes – corporate activities tax, paid family leave – and struggling with workforce and supply chain issues. A voluntary program that did not carry cost requirements might be possible but DEQ would likely need to sweeten the pot more than proposed rules as written.

Comment: Most of the incentives listed are not compelling – not enough to overcome the burden of doing the work. The survey and analysis is a pretty big time and financial commitment. What is compelling is the technical assistance component; otherwise an employer would need to go out and hire a consultant. DEQ could come in and help the employer develop their plan, not just review it. DEQ could also, with permission, act as a matchmaker between employers with similar goals or needs.

Comment: DEQ could put in a legislative proposal to give a tax credit to employers that offer commute options.

Comment: Regarding greenhouse gas reduction, DEQ, other state agencies and the Legislature have established many other rules and programs recently to do this: 100 % clean electricity, Climate Protection Program, expansion of Clean Fuels Program, Clean Trucks Rule, soon likely to be adopted Clean Cars II, Climate Friendly and Equitable Communities. Employee Commute Options is one important piece, but the state is doing a lot and many employers will be regulated by those other programs, too.

Agenda Item: Wrap up, roundtable, next steps

DEQ requests that RAC members send comments on this RAC meeting and the policy concepts to TripReduction2021@deq.oregon.gov by Friday, Dec. 16, 2022.

Agenda Item: Public input

No members of the public provided input. Some RAC members suggested having public input at the beginning of RAC meetings.

Meeting adjourned at approximately 12:10 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