



State of Oregon Department of Environmental Quality

Discussion Document: Draft Rules for Statewide Employee Commute Option Program

Commute Options Rulemaking 2021

Advisory Committee Meeting 4, Nov. 18, 2022

This document is a compilation of draft rules for a statewide employee commute option program presented to the rulemaking advisory committee for discussion on Nov. 18, 2022.

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Category 1: Rules that establish a statewide employer commute option program and applicability.

The draft rules in this category would:

- establish a statewide employee commute option program that DEQ would administer;
- describe the geographic areas within which DEQ would require certain employers to offer commute option programming to their employees;
- describe how the employer should count the number of employees at worksites to determine if they are subject to commute option program rule requirements.
- establish an annual reporting requirement for DEQ on commute option rule effectiveness.

Questions and considerations in preparation for Nov. 18, 2022 RAC meeting:

Does the geographic scope seem appropriate to address emissions from the regions emitting the most vehicular greenhouse gasses, outside of the Portland metro region?

Does the geographic scope adequately consider the presence or absence of transportation infrastructure and commute options?

Note: DEQ would calculate vehicle miles traveled and GHG reductions the program achieves.

340-254-0090**Statewide Employee Commute Option Program**

- (1) The purpose of the Statewide Employee Commute Program is to reduce greenhouse gas and other vehicle emissions through employer support of employees commuting by means other than driving alone.
- (2) Employers with worksites located outside the Portland Air Quality Maintenance Area must provide commute options to encourage their employees to reduce auto trips to the worksite if:
 - (a) the employer has one or more worksites located within a metropolitan planning organization boundary comprising a population of at least 50,000 people; and
 - (b) more than 100 employees report to any one worksite within the metropolitan planning organization boundary.
- (3) DEQ will annually report on its website the estimated reduced vehicle emissions and vehicle miles traveled that the Statewide Employee Commute Options Program has achieved.

340-254-0100**Statewide Employee Commute Option Program Employee Count**

- (1) The count of employees at a covered work site must include:
 - (a) Employees from all shifts, Monday through Friday, during a 24-hour period, averaged over a 12-month period; and
 - (b) Employees on the employer's payroll for at least six consecutive months at one work site; and
 - (c) Part-time employees assigned to a work site 80 or more hours per 28-day-period.
- (2) The count of employees at a work site may exclude volunteers, employees with a disability (as defined under the Americans with Disabilities Act), employees working on a non-scheduled work week, and employees required to use a personal vehicle as a condition of employment.

Category 2: Rules about requirements and enforcement within a statewide commute options program

The draft rules on the following page would require the employer to:

- Register with DEQ and designate a responsible person for commute option programming, an Employee Transportation Coordinator
- Survey employees biannually about how they get to work and calculate an auto trip rate
- Set an auto trip rate reduction target
- Design and implement an auto trip reduction plan and revise as necessary

The draft rules also establish “good faith effort” as the compliance standard and define what DEQ deems a good faith effort.

Questions and considerations in preparation for Nov. 18, 2022 RAC meeting:

Are these requirements clear and easy to understand?

Are the requirements achievable for most employers?

Is trip reduction plan revision an appropriate requirement if the employer doesn’t meet target auto trip rates?

Does “good faith effort” need additional definition?

340-254-0110

Requirements of the Statewide Employee Commute Option Program

To comply with the Statewide Employee Commute Option Program, an employer must:

- (1) Register all covered worksites with DEQ on one DEQ-supplied form.
- (2) Designate an Employee Transportation Coordinator responsible for implementing commute option programming at the worksite and reporting to DEQ.
- (3) Notwithstanding the allowance of 340-254-140(3), conduct a survey of counted employees upon registration and then biannually and with each survey calculate an auto trip rate for the worksite.
- (4) Establish a target auto trip rate for all covered worksites. If the employer has multiple covered worksites, the employer may establish different target auto trip rates for each covered worksite or may establish one target auto trip rate that applies to all covered worksites. 340-254-120 establishes the standards DEQ deems acceptable for setting a target auto trip rate.
- (5) Design and implement an auto trip reduction strategy that DEQ deems is reasonably likely to achieve and maintain the target auto trip rate at the worksite.
- (6) Revise and implement the revised auto trip reduction strategy if:
 - (a) the employer has not achieved the target auto trip rate within 6 years from the date of the first survey; or
 - (b) the auto trip rate has increased since the prior biannual employee survey.

340-254-0130

Statewide Employee Commute Option Program Enforcement Procedures

- (1) Enforcement procedures and civil penalties in OAR, chapter 340, division 12 apply. Under 340-012-0053(2) and 340-012-0054(2)(g), violations of the Statewide Employee Commute Option rules are Class Two violations. Failure to achieve an auto trip rate is not a violation; failure to make a good faith effort toward, or prepare and implement a plan designed to achieve, an auto trip rate is a violation. Civil penalties are determined under 340-012-0045.
- (2) DEQ deems a good faith effort to include all of the following actions:
 - (a) employer conducts an initial employee survey and calculates an auto trip rate;
 - (b) employer selected auto trip reduction strategies that have a reasonable likelihood of achieving the target auto trip rate based on studies and reports on DEQ's Employee Commute Options webpage or equivalent documentation;
 - (c) employer fully implemented all selected strategies intended to achieve the target auto trip rate.

Category 3: Rules about setting a target auto trip rate and developing a trip reduction plan

The draft rules in this category describe the three options for the employer to choose an appropriate target auto trip rate most appropriate for their worksite and geographic location. The draft rules also list the requirements for a trip reduction plan.

Questions and considerations in preparation for Nov. 18, 2022 RAC meeting:

Is it helpful for employers to have flexibility around setting auto trip rates appropriate to the geographic location?

Note: the 2019 American Community Survey drive-alone Journey to Work rate for select counties:

Jackson: 81%

Marion: 78%

Linn: 77%

Deschutes: 71%

Lane: 71%

Note: DEQ suggests that involving employees in the selection of a target auto trip rate could also serve to promote commute option programming at the worksite.

340-254-0120

Options for setting a worksite target auto trip rate

- (1) The employer must use one of the following three methodologies to establish a target auto trip rate:
 - (a) 10% less than the auto trip rate measured in the initial employee survey; or
 - (b) 5% less than the auto drive-alone Journey to Work rate of the 2019 American Community Survey for the county in which the employer is located; or
 - (c) in consultation with worksite employees.
- (2) An employer with more than one covered work site as defined in 340-254-0090 may average its target trip reduction among those work sites.
- (3) The employer may include work sites with 100 or fewer employees in the interest of averaging trip reductions among all work sites, but the employer must then survey employees at all included work sites and include all survey results in the employer's report to DEQ.

340-254-0150

Requirements of an auto trip reduction plan

An auto trip reduction plan must include:

- (1) The results of the initial employee survey or comparable documentation, including a calculated auto trip rate at the work site;
- (2) The target auto trip rate for each or all covered worksites, established under the standards in 340-254-120.
- (3) Any employee commute option programs currently in use at the work site;
- (4) New commute options the employer intends to implement at the worksite that are reasonably likely to achieve and maintain the target auto trip rate;
- (5) Empirical evidence or references (e.g. government or consultants' reports), that current and newly offered commute options are reasonably likely to achieve and maintain the target auto trip rate.
- (6) Any unique aspects of the business or work site influencing the trip reduction strategies selected;
- (7) A schedule for implementing each of the selected commute option measures;
- (8) A narrative description of employer policies that support equitable accessibility and distribution of commute option benefits to employees of color and other protected class employees, and across job types and salary ranges.

(9) The name, title, telephone number, electronic mail address and business mailing address of the person the employer has designated to be the employee transportation coordinator for the work site (employee transportation coordinator does not have to be located at the work site); and a signed statement certifying that the documents and information submitted in the plan are true and correct to the best of that person's knowledge.

(10) The employer may develop one auto trip reduction plan for all covered work sites but must select strategies based on the specific transportation characteristics of each covered work site.

340-254-0160

Auto Trip Reduction Plan Approval and Deficiency Notification

(1) DEQ will strive to approve a submitted auto trip reduction plan in writing or notify the employer in writing of deficiencies in a submitted auto trip reduction plan, based on the criteria in OAR 340-254-0150, within 90 days.

(2) The employer will have 60 days from the date of DEQ's notification to correct any auto trip reduction plan deficiencies and resubmit the auto trip reduction plan to DEQ.

(3) If the employer objects to any condition or limitation in DEQ's notification of deficiencies, the employer may request a contested case hearing before the Commission or its authorized representative. The employer must request a hearing in writing to the Director and send the letter to DEQ within 20 days of writing the Director. Any subsequent hearing will be conducted under the provisions of ORS 183 and OAR 340, division 11.

Category 4: Rules describing commute options and partnership opportunities

The draft rules in this category describe a range of commute options employers may include in their auto trip reduction strategies. DEQ does not intend that any of these options be required, but rather that employers select the options that will be most effective at their worksite and be most helpful to their workforce.

Questions and considerations in preparation for Nov. 18, 2022 RAC meeting:

What additional options should we list in the rules?

340-254-0170

Commute options to reduce worksite auto trips

Employee commute option programs may include, but are not limited to:

- (1) Policies that support rural and long-distance commuters, such as:
 - (a) coordinating a carpool matching program;
 - (b) preferential parking for carpools at the work site;
 - (c) providing or subsidizing an employee vanpool.
- (2) Policies that provide employees financial incentives to choose commute options, such as:
 - (a) Ending parking subsidies, whereby the employer eliminates the portion of the parking cost the employer pays and the employee pays that parking cost. To minimize adverse financial effects on lower income employees, DEQ encourages a parking cash out program.
 - (b) Parking cash out, whereby the employer ends parking subsidies, begins to charge employees for parking and provides an amount equivalent to the previous subsidy to each employee. Employees have the choice of spending the subsidy equivalent on parking at the work site or retaining the subsidy equivalent if they choose not to drive to and park at the work site.
 - (c) Employer-funded transit passes if transit service provides convenient access to the worksite.
- (3) Policies that subsidize public and private high-occupancy transportation, such as:
 - (a) partially or fully subsidize public transit passes;
 - (b) partially or fully subsidize vanpool fare.
- (4) Policies that make active transportation convenient, affordable and attractive, such as:
 - (a) providing facilities such as covered, secure bicycle parking, showers and lockers;
 - (b) partially or fully subsidize electric micro-mobility memberships, where those services are available;
 - (c) offer employees an active transportation stipend for purchase or maintenance of active transportation equipment and supplies;
 - (d) provide “last mile” shuttles to transport employees safely from transit hubs or pedestrian areas to the worksite.
- (5) Policies that help employees balance work and family responsibilities, such as:
 - (a) offering remote work and telecommuting;
 - (b) offering flexible scheduling, including compressed work weeks;
 - (c) providing an emergency ride home;
 - (d) providing on-site or nearby child care.

(6) Policies that educate about and support employee participation in commute option programming, such as:

- (a) annual celebrations, competitions, or festivals that promote commute options
- (b) recognition of employees or workgroups using commute options
- (c) buddy systems or mentoring of employees new to commute options
- (d) membership in a transportation management agency that can offer technical, educational and promotional assistance.

340-254-180

Statewide Employee Commute Option Program Partnerships

- (1) DEQ encourages employers to enter partnerships with nearby employers and any transportation management agencies or transportation option providers serving the region.
- (2) Different employers with work sites located near each other or having common transportation needs may develop a joint auto trip reduction plan for all covered work sites. The plan must address each of the employers' total covered work sites separately from the other employers' covered work sites. Each employer must report initial and biannual survey findings for its own covered worksites.
- (3) Multiple employers may share the resources of one Employee Transportation Coordinator.

340-254-190

Statewide Employee Commute Options Recordkeeping Requirements

Employers must maintain records at a covered work site for at least three years, and must make those records available to the DEQ upon request. Records must include:

- (1) The contents and results of employee surveys or other information gathering efforts;
- (2) A full description of all measures and incentives offered to employees and the associated employee responses;
- (3) Other information associated with the development, implementation, evaluation, or modification of the auto trip reduction program.

Category 5: Rules describing voluntary participation in a statewide commute option program

The draft rules in this category describe the elements of a voluntary or “opt-in” commute option program that smaller employers or those outside metropolitan planning organization boundaries could join.

Questions and considerations in preparation for Nov. 18, 2022 RAC meeting:

Would these incentives encourage an employer to opt-in?

If not, what other ideas do you have?

340-254-0200

Voluntary Participation in Statewide Employee Commute Option Program

(1) Any employer not located in the Portland Air Quality Maintenance Area may voluntarily participate in the Statewide Employee Commute Option Program.

(2) Employers who choose to voluntarily participate in the Statewide Employee Commute Program must:

- (a) register with DEQ;
- (b) provide DEQ with name, electronic mail address, phone number and mailing address of the person responsible for commute option programming at the employer;
- (c) conduct initial and then biannual employee surveys, including a calculated auto trip rate;
- (d) biannual reporting to DEQ;
- (e) written documentation of commute options offered and equitable distribution of offerings among employees of color and other protected class employees;
- (f) all submittals to DEQ must be signed by the responsible person.

(3) DEQ will provide employers participating in the Statewide Employee Commute Option program voluntarily and fulfilling the requirements of section (2) of this rule the following:

- (a) technical assistance, including review and assessment of the employer's commute option programming;
- (b) document templates and educational resources;
- (c) a certificate, signed by the DEQ Director, recognizing the employer for voluntary participation in the Statewide Employee Commute Options program;
- (d) DEQ-branded promotional materials (e.g. logos, certificates) that the employer may publicize;
- (e) recognition on DEQ's Employee Commute Option webpage as a commuter-friendly workplace.
- (f) connection to technical and financial assistance programs offered through entities such as transit districts, transportation option providers, transportation management agencies and local governments.

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.