

REGULATION 14
MOBILE SOURCE EMISSIONS REDUCTION MEASURES
RULE 1
BAY AREA COMMUTER BENEFITS PROGRAM

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RULE 1
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14-1-100 GENERAL

14-1-101 Description: This rule serves as the regional commute benefits ordinance authorized by California Government Code section 65081. The purpose of this rule is to improve air quality, reduce emissions of greenhouse gases and other air pollutants, and decrease traffic congestion in the San Francisco Bay Area by encouraging employees to commute to work by transit and other alternative commute modes.

14-1-102 Applicability: This rule applies to all public, private, and non-profit employers for which an average of 50 or more full-time employees per week perform work for monetary compensation within the geographic boundaries of the Bay Area Air Quality Management District (District) as determined pursuant to Section 14-1-402.

14-1-103 Disclaimers: This rule shall not be interpreted to:

103.1 Prevent an employer from offering a commuter benefits program that is more generous than the minimum requirements described in this rule, provided that the employer complies with all provisions of this rule.

103.2 Require any employee to change his or her commute mode.

103.3 Absolve any employer or other party from any obligation required by an existing collective bargaining agreement with employees, or any provision of law.

14-1-200 DEFINITIONS

14-1-201 Air Pollution Control Officer (APCO): The Executive Officer of the Bay Area Air Quality Management District, or a designee of the APCO.

14-1-202 Alternative Commute Modes: Transit, vanpool, carpool, bicycling, or walking.

14-1-203 Commuter Benefits: Benefits, services, and information provided by an employer, consistent with Section 14-1-300, to encourage employees to commute by alternative commute modes.

14-1-204 Commuter Benefits Coordinator: An employee or other agent designated by the employer who is responsible for implementing the employer's commuter benefits program and complying with the requirements of this rule.

14-1-205 Employee: Any person who performs services for the employer in return for monetary compensation and to whom the employer has provided or will provide an Internal Revenue Service Form W-2.

14-1-206 District: The Bay Area Air Quality Management District.

14-1-207 Covered Employee: An employee who performed an average of at least 20 hours of work per week within the previous calendar month within the geographic boundaries of the District, excluding a seasonal/temporary employee as defined in Section 14-1-210.

14-1-208 Employer: Any public, private, or non-profit entity (person, corporation, partnership, business firm, government agency, special purpose agency, educational institution, health care facility, etc.) for which an average of 50 or more full-time employees per week perform work for monetary compensation within the geographic boundaries of the District as determined pursuant to Section 14-1-402. The term excludes seasonal/temporary employees as defined in Section 14-1-210.

14-1-209 Full-time Employee: An employee who performed an average of at least 30 hours of work per week within the previous calendar month within the geographic boundaries of the District, excluding a seasonal/temporary employee as defined in Section 14-1-210.

14-1-210 Seasonal/Temporary Employee: An employee who works for the employer 120 days or less within the calendar year.

14-1-211 Transit: Bus, rail, or ferry service operated by a public agency or a private entity.

14-1-212 Transportation Management Association (TMA): An organization, funded in whole or in part by employers and/or property owners, through which employers, developers, property managers or owners, business improvement districts, and/or local government agencies work together to provide information and services to encourage the use of alternative commute modes. The employer financial contribution to a TMA may be in the form of a direct membership payment, via an assessment earmarked for specific commuter benefit programs or services, or indirectly through the rent paid to a business park or building covered by a TMA.

14-1-213 Vanpool: A commute mode using a vehicle with a seating capacity of at least six adults (not including the driver) that meets the definition of “commuter highway vehicle” in Internal Revenue Code Section 132(f)(5)(B).

14-1-300 STANDARDS

14-1-301 Commuter Benefit Options: No later than six (6) months after adoption of this rule by the District Board of Directors and concurrence by the MTC Commission, whichever is later, each employer subject to this rule must offer, either directly or through a TMA as defined in Section 14-1-212, at least one of the following commuter benefit options to all covered employees.

301.1 Option 1: Pre-tax option: A program, consistent with Section 132(f) of the Internal Revenue Code, allowing covered employees to elect to exclude from taxable wages costs incurred for transit passes or vanpool charges, up to the maximum amount allowed by federal tax law.

301.2 Option 2: Employer-paid benefit: A program whereby the employer offers employees a subsidy to offset the monthly cost of commuting via transit or by vanpool. In 2013, the subsidy shall be equal to either the monthly cost of commuting via transit or vanpool, or seventy-five dollars (\$75), whichever is lower. The APCO shall annually adjust this amount consistent with the California Consumer Price Index for San Francisco-Oakland-San Jose. An employer may also elect to provide a subsidy for bicycle commuting costs in addition to subsidies for transit and vanpool costs.

301.3 Option 3: Employer-provided transit: Transportation furnished by the employer at no cost, or low cost as determined by the APCO, to employees in a vanpool or bus, or similar multi-passenger vehicle operated by or for the employer.

14-1-302 Alternative Commuter Benefit Program: Pursuant to Government Code sections 65081(d) and (g), in lieu of complying with Section 14-1-301, an employer may offer an alternative benefit, either directly or through a TMA as defined in Section 14-1-212. The alternative benefit must be proposed in writing, must comply with guidelines issued by the APCO, and must be approved in writing by the APCO. The criterion for approval of an alternative commuter benefit is that it must provide at least the same reduction in single-occupant vehicle trips as any of the options described in Section 14-1-301.

14-1-400 ADMINISTRATIVE REQUIREMENTS

14-1-401 Notification to Employers: The APCO will provide notice to employers within the District regarding the adoption and implementation of this rule by means of written notice and/or email notification.

14-1-402 Determination of Employee Count: For purposes of determining applicability of this rule pursuant to Section 14-1-102, the number of full-time employees employed by an employer shall be determined by calculating the average number of employees per week carried on the payroll over the course of the most recent three-month period, consistent with guidelines issued by the APCO.

14-1-403 Designate Commuter Benefits Coordinator: Employers subject to this rule shall designate a Commuter Benefits Coordinator who is responsible for implementing the employer's commuter benefits program and complying with the requirements of this rule.

14-1-404 Initial Registration: Employers subject to this rule shall submit an initial registration to the APCO no later than six (6) months after the adoption of this rule by the District Board of Directors and concurrence by the MTC Commission, whichever is later. In registering, the

employer shall provide information necessary for purposes of this rule, consistent with any guidance issued by the APCO, and shall verify the accuracy of the information. This information shall include:

- 404.1 The employer name;
- 404.2 The name, job title, and contact information for the Commuter Benefits Coordinator;
- 404.3 The total number of full-time employees and covered employees within the geographic boundaries of the District;
- 404.4 The location of each work site within the District boundaries;
- 404.5 The number of full-time employees and covered employees at each work site;
- 404.6 The commuter benefits option that the employer has chosen to implement to comply with Section 14-1-300.
- 404.7 Employers who become subject to this rule at any time pursuant to Section 14-1-402 shall register with the APCO and comply with all requirements in this rule no later than six (6) months of becoming subject to this rule.

14-1-405 Employee Notification: Using appropriate means such as email messages, paper memos, in-house newsletters or bulletins, and/or conventional or electronic bulletin boards, the employer shall:

- 405.1 Notify all covered employees that the employer is subject to the requirements of the rule;
- 405.2 Inform employees as to which of the commuter benefit options the employer will offer;
- 405.3 Provide information as to how a covered employee may apply for and receive the commuter benefit;
- 405.4 Provide a point of contact within the organization for further information about the commuter benefit; and
- 405.5 Provide commuter benefits information as part of the employee benefits package explained to all newly hired employees.
- 405.6 The employer shall provide to employees the notifications required by Sections 14-1-405.2, 405.3, and 405.4 when the commuter benefit is first made available to employees, and at least once per year thereafter.

14-1-406 Annual Registration Update: After initially registering with the APCO pursuant to Section 14-1-404, the employer shall update and verify its registration information on an annual basis.

14-1-407 Program Evaluation: Employers shall provide information needed to evaluate the results of the rule, or facilitate the development of such information, upon request by the APCO.

14-1-408 Role of Transportation Management Association: An employer that participates in a TMA as defined in Section 14-1-212 may authorize the TMA to fulfill any or all of the administrative requirements described in Section 14-1-400.

14-1-409 Violations: Violations of this rule are subject to the civil penalty provisions for enforcement of air pollution control laws in the California Health and Safety Code beginning at section 42402.

14-1-500 MONITORING AND RECORDS

14-1-501 Recordkeeping Requirements: An employer, or a TMA as defined in Section 14-1-212 on behalf of an employer, shall:

- 501.1 Maintain and retain records, files, and documentation to establish compliance with the requirements of this rule;
- 501.2 Retain records, files, and documentation to establish compliance with this rule for a period of three years; and
- 501.3 Make records, files, and documentation available upon request by the APCO.