

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

RESOLUTION NO. 2014-02

**A Resolution of the Board of Directors of the
Bay Area Air Quality Management District
Adopting District Regulation 14, Rule 1: Bay Area Commuter Benefits Program;
and Adopting a CEQA Negative Declaration for the Project**

WHEREAS, a public hearing has been properly noticed in accordance with the provisions of Health & Safety Code § 40725;

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District has determined that a need exists to adopt proposed new Regulation 14, Rule 1: Bay Area Commuter Benefits Program; as set forth in Attachment A hereto (“Proposed Rule”);

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District obtains general authority to adopt, amend or repeal rules and regulations from Sections 40000, 40001, 40702, and 40725 through 40728.5, of the California Health & Safety Code and specific authority to adopt the Proposed Rule from Section 65081 of the California Government Code;

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District has determined that the Proposed Rule is written and displayed so that its meaning can be easily understood by the persons directly affected by the rule;

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District has determined that the Proposed Rule is in harmony with and not in conflict with or contradictory to existing statutes, court decisions, and state and federal regulations;

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District has determined that the Proposed Rule does not impose the same requirements as any existing state or federal regulation, and are necessary and proper to execute the power and duties granted to, and imposed upon, the District;

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District, by adopting the Proposed Rule, is implementing, interpreting or making specific the provisions of Health & Safety Code Sections 40001 (rules to achieve ambient air quality standards), and 40702 (rulemaking actions that are necessary and proper to execute the powers and duties granted to it), and the provisions of Government Code Section 65081;

WHEREAS, the District prepared an initial draft rule, published it for comment, and held public workshops in Alameda County on October 7, 2013; in Contra Costa County on October 8, 2013; in Marin County on October 10, 2013; in Napa County on October 9, 2013; in San Francisco on October 25, 2013; in San Mateo County on October 22, 2013; in Santa Clara County on October 22, 2013; in Solano County on October 9, 2013; and in

Sonoma County on October 10, 2013; to discuss the draft rule with interested parties and the public;

WHEREAS, the District and the Metropolitan Transportation Commission jointly presented a webcast over the internet on October 25, 2013 to explain and discuss the draft rule with interested parties and the public;

WHEREAS, on October 21, 2013, December 16, 2013, and March 17, 2014, District staff discussed the draft rule with the Executive Committee of the Board of Directors of the Bay Area Air Quality Management District;

WHEREAS, subsequent to the public workshops and webcast, District staff revised the draft rule based on comments provided by the public and published the Proposed Rule for comment in advance of the public hearing on March 19, 2014;

WHEREAS, on January 22, 2014, the District transmitted the text of the Proposed Rule to California Air Resources Board;

WHEREAS, on or before January 24 2014, District staff published in newspapers and distributed and published on the District's website a notice of a public hearing on March 19, 2014 to consider adoption of the Proposed Rule, and the notice included a request for public comments and input on the Proposed Rule;

WHEREAS, the Board of Directors of the Bay Area Air Quality Management District held a public hearing on March 19, 2014 to consider the Proposed Rule in accordance with all provisions of law;

WHEREAS, at the public hearing, the subject matter of the Proposed Rule was discussed with interested persons in accordance with all provisions of law;

WHEREAS, District staff has prepared and presented to the Board of Directors a detailed Staff Report regarding the Proposed Rule, which Staff Report has been considered by this Board and is incorporated herein by reference;

WHEREAS, the Board of Directors finds and determines that the Proposed Rule is considered a "project" pursuant to the California Environmental Quality Act ("CEQA") (Public Resources Code § 21000 *et seq.*);

WHEREAS, the District is the CEQA lead agency for this project pursuant to CEQA Guidelines § 15050 (California Code of Regulations ("CCR") tit. 14, § 15050);

WHEREAS, District staff prepared an Initial Study as required by CEQA, in which the potential environmental effects from the adoption and implementation of the Proposed Rule were analyzed, and subsequently prepared a Draft Negative Declaration for the proposed rulemaking project because the Initial Study identified no potentially significant effects on the environment and because there is no evidence in the record before the

District that there could be a significant effect on the environment from the adoption and implementation of this rulemaking project;

WHEREAS, that Draft Negative Declaration and Initial Study were offered for and subjected to public review and comment (Public Resources Code §§ 21082.1, 21091, 21092; California Code of Regulations, tit. 14, § 15070 *et seq.*);

WHEREAS, public notice was provided and copies of the Draft Negative Declaration were made available to all interested persons and provided an adequate comment period of at least 20 days pursuant to CEQA Guidelines § 15105, subdivision (b);

WHEREAS, no comments on the CEQA document were received from interested persons during the CEQA comment period;

WHEREAS, District staff, in exercising its independent judgment, has determined that there is no substantial evidence, in light of the whole record before the District, that the adoption and implementation of the Proposed Rule could have a significant effect on the environment;

WHEREAS, it is necessary that the adequacy of the Draft Negative Declaration be determined by the Board of Directors of the Bay Area Air Quality Management District prior to its adoption;

WHEREAS, the members of the Board of Directors voting on this Resolution have reviewed and considered the Draft Negative Declaration;

WHEREAS, the Board of Directors finds and determines that in light of the whole record before it (which specifically includes the Initial Study and the Draft Negative Declaration), the Proposed Rule will not have any significant effect on the environment, and the Negative Declaration reflects the District's independent judgment and analysis;

WHEREAS, the Board of Directors, pursuant to the requirements of Health & Safety Code § 40728.5, has actively considered the socioeconomic impacts of Proposed Rule and has reviewed and considered the "Socio-Economic Impact Study of Proposed Regulation 14, Rule 1: Bay Area Commuter Benefits Program" prepared for the District by BAE Urban Economics of San Francisco, California, and has determined that the Proposed Rule would have no significant socioeconomic impacts;

WHEREAS, the documents and other materials that constitute the record of proceedings on which this rulemaking project is based are located at the Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, 94109, and the custodian for these documents is Sean Gallagher, Clerk of the Boards;

WHEREAS, District staff recommends adoption of the Proposed Rule and adoption of the Negative Declaration for this rulemaking project;

WHEREAS, the Board of Directors concurs with District staff's recommendations and desires to adopt the Proposed Rule and to adopt the Negative Declaration for the Proposed Rule to comply with CEQA;

WHEREAS, California Government Code Section 65081 requires no later than July 1, 2016, a report to the Legislature regarding the Proposed Rule and its impacts on vehicle trips, vehicle miles traveled, and greenhouse gas emission reductions.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Bay Area Air Quality Management District does hereby adopt the Proposed Rule, pursuant to the authority granted by law, as set forth in Attachment A hereto, and discussed in the Staff Report (including Appendices) with instructions to staff to correct any typographical or formatting errors before final publication of the Proposed Rule.

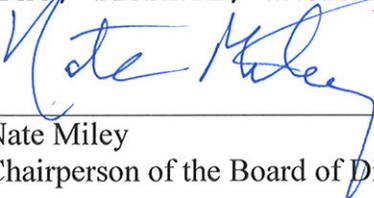
BE IT FURTHER RESOLVED, that the Board of Directors of the Bay Area Air Quality Management District does hereby adopt the Negative Declaration pursuant to CEQA for the Proposed Rule.

The foregoing resolution was duly and regularly introduced, passed and adopted at a regular meeting of the Board of Directors of the Bay Area Air Quality Management District on the Motion of Director KALRA, seconded by Director KNISS, on the 19th day of MARCH, 2014 by the following vote of the Board:

AYES: ADAMS, AVALOS, BATES, CHAVEZ, GIOIA, GROOM, HAGGERTY, HUDSON, KALRA, KIM, KLATT, KNISS, MAR, PEPPER, ROSS, SPERING, MILEY

NOES: NONE

ABSENT: ~~BARRETT, PIEPHO, SBRANTI, WAGENKNECHT, ZANE~~



Nate Miley
Chairperson of the Board of Directors

ATTEST:



Eric Mar
Secretary of the Board of Directors

ATTACHMENT A

[PROPOSED RULE]

**New Regulation 14, Rule 1: Bay Area Commuter Benefits
Program**

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

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

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.