

# **Bay Area Air Quality Management District**

939 Ellis Street  
San Francisco, CA 94109

## **BAAQMD Regulation 14, Rule 1: BAY AREA COMMUTER BENEFITS PROGRAM**

In Cooperation with the Metropolitan Transportation Commission



BAY AREA  
AIR QUALITY  
MANAGEMENT  
DISTRICT



METROPOLITAN  
TRANSPORTATION  
COMMISSION

### **Workshop Report September 2013**

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DRAFT

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

**TABLE OF CONTENTS**

I.	<a href="#">INTRODUCTION</a>	3
II.	<a href="#">BACKGROUND</a>	4
	A. <a href="#">Rationale for the Program</a>	4
	B. <a href="#">Nexus to Bay Area 2010 Clean Air Plan</a>	8
	C. <a href="#">Commuter Benefits Provisions in the Federal Tax Code</a>	9
	D. <a href="#">Results from Existing Commuter Benefits Programs</a>	10
	E. <a href="#">Senate Bill 1339</a>	11
	F. <a href="#">Current Bay Area Context</a>	11
III.	<a href="#">KEY PROVISIONS OF THE DRAFT PROGRAM</a>	13
	A. <a href="#">Applicability</a>	13
	B. <a href="#">Key Definitions</a>	13
	C. <a href="#">Key Requirements of the Proposed Program</a>	14
	D. <a href="#">Commuter Benefit Options</a>	15
IV.	<a href="#">PROGRAM IMPLEMENTATION</a>	16
V.	<a href="#">ANTICIPATED OUTCOMES</a>	17
	A. <a href="#">Impacts on Employers: Compliance Costs and Potential Savings</a>	18
	B. <a href="#">Benefits to Employees</a>	21
	C. <a href="#">Benefits to All Bay Area Residents</a>	22
	D. <a href="#">Emission Reductions</a>	23
VI.	<a href="#">PROGRAM DEVELOPMENT / PUBLIC CONSULTATION PROCESS</a>	24
VII.	<a href="#">SOURCE DOCUMENTS</a>	25

## INTRODUCTION

Senate Bill 1339, signed into law in fall 2012, authorizes the Bay Area Air Quality Management District (Air District) and the Metropolitan Transportation Commission (MTC) to adopt and implement a Bay Area Commuter Benefits Program (Program) on a pilot basis through the end of year 2016. A new rule (Regulation 14, Rule 1) will be developed by Air District staff, in cooperation with MTC, through a process which provides opportunity for review and comments by interested parties and members of the public. A proposed rule will be presented for approval by the governing boards of both agencies in early 2014. The rule will provide the basic framework for the Program.

The Program, if approved by the governing boards, would require employers with 50 or more full-time employees in the Bay Area to select one of four commuter benefit options to offer their employees. The primary objective of the Program is to reduce emissions of greenhouse gases and criteria air pollutants. The Program would accomplish this by expanding the number of employers who provide commuter benefits to their employees, in particular by offering their employees the pre-tax benefits for transit and vanpooling in the federal tax code. By encouraging Bay Area commuters to choose alternative transportation modes instead of driving alone to work, the Program would improve air quality and reduce traffic congestion, especially during periods of peak demand. In addition to environmental benefits, the Program would provide significant economic benefits to employers, employees, and the region as a whole. By motivating more employers and employees to take advantage of commuter benefits in the federal tax code, the Program would put more dollars in the pockets of Bay Area businesses and residents and thus stimulate the regional economy.

The Air District and MTC are committed to working with Bay Area employers to make the Program easy to implement. Guidelines and educational materials will be provided to help employers understand the Program and to comply with the rule by developing effective commuter benefit programs for their employees.<sup>1</sup> The agencies will focus on educating employers and employees about the financial and environmental benefits of the Program as the most effective means to ensure employer participation in the Program. The Program will be designed to provide flexibility to employers and to minimize reporting and administrative requirements. **The Program will neither establish numerical performance targets for employers, nor will it require any employee to change his/her commute mode.**

The Program is expected to provide economic and environmental benefits to employers, employees, and the Bay Area community as a whole. These benefits, as discussed in Section V, include financial savings to employers and employees, improved employee productivity, decreased traffic congestion, and reduced emissions of air pollutants and greenhouse gases. In addition, the Program will help to implement key regional plans to improve air quality and protect the climate, including the *Bay Area 2010 Clean Air Plan* and the recently-adopted regional “sustainable communities’ strategy” known as *Plan Bay Area*.

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<sup>1</sup> The rule, complementary supporting materials, and administrative procedures, are collectively referred to as “the Program” in this Workshop Report.

## II. BACKGROUND

### A. Rationale for the Program

An effective transportation system is crucial to the economic and social vitality of the Bay Area. Year after year, however, the Bay Area experiences some of the worst traffic congestion in the nation. During peak periods, travel volume frequently exceeds roadway capacity in key Bay Area corridors. A recent study found that the Bay Area freeway system is congested 79 percent of the time on average during peak travel periods.<sup>2</sup> Traffic congestion increases emissions of air pollutants and greenhouse gases, and also imposes significant economic costs on the region. Since many Bay Area roadways are already congested during peak periods, even a modest increase in economic activity and/or population may push the region's roadways further toward gridlock.

The existing stress on the Bay Area transportation system will increase as the Bay Area recovers from the recent economic recession and as regional population grows in coming decades. Because there are major physical and financial constraints on expanding the transportation system, we need to develop policies and programs to maximize the efficient operation of the existing system and to minimize the negative impacts of the transportation system on air quality, climate and the environment. The Bay Area Commuter Benefits Program can provide both economic and environmental benefits through encouraging employers to extend commuter benefits to their employees.

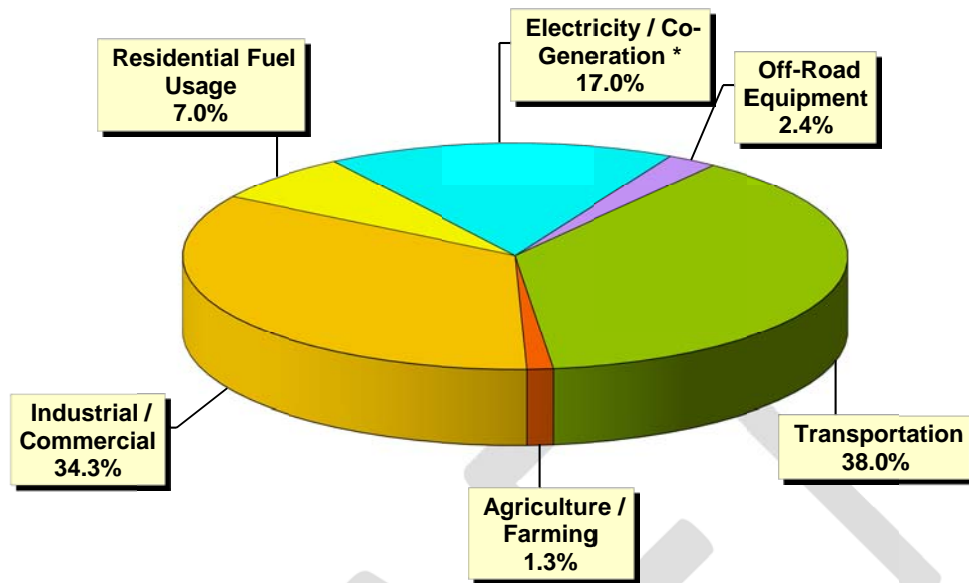
On-road motor vehicle trips are a major contributor to emissions of criteria air pollutants and greenhouse gases in the Bay Area. According to the Air District's Bay Area emissions inventory for year 2012, on-road motor vehicles account for 30 percent of emissions of reactive organic gases (ROG), 53 percent of oxides of nitrogen (NOx),<sup>3</sup> and 15 percent of directly-emitted fine particulate matter (PM2.5). The transportation sector is one of the largest sources of greenhouse gas (GHG) emissions in the Bay Area, accounting for 38 percent of total GHG emissions on a CO<sub>2</sub>-equivalent basis, as shown in Figure 1.

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<sup>2</sup> 2012 *Urban Mobility Report*, Texas Transportation Institute. <http://mobility.tamu.edu/ums/report>

<sup>3</sup> ROG and NOx are precursor gases that contribute to formation of ozone and particulate matter in the atmosphere.

**Figure 1: 2012 Bay Area GHG Emissions by Sector:**  
Source: BAAQMD Emissions Inventory Section

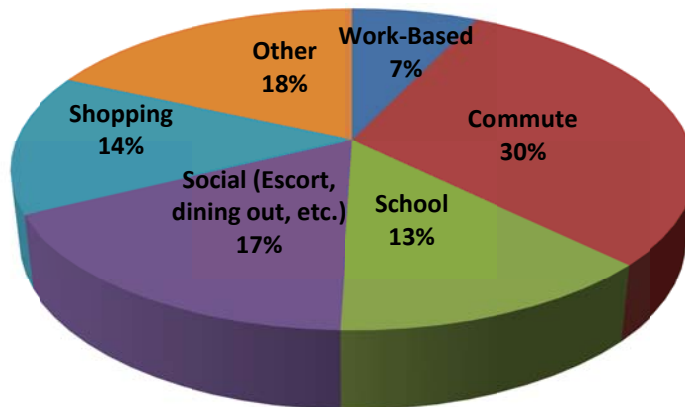


There are several reasons to focus on reducing commute trips as part of a broader strategy to reduce emissions from the on-road motor vehicle sector as a whole.<sup>4</sup> Commute trips represent a significant portion of motor vehicle travel. On a typical weekday, as shown in Figure 2, commute trips account for approximately 30 percent of vehicle trips, while another 7 percent of trips occur during work hours. In addition, because commute trips are concentrated during the morning and evening peak travel periods, they are the major cause of weekday rush-hour traffic congestion.

<sup>4</sup> The comprehensive strategy to reduce emissions from motor vehicle travel is defined in the Bay Area 2010 Clean Air Plan. [www.baaqmd.gov/Divisions/Planning-and-Research/Plans/Clean-Air-Plans.aspx](http://www.baaqmd.gov/Divisions/Planning-and-Research/Plans/Clean-Air-Plans.aspx)

**Figure 2: Vehicle Trips by Trip Purpose, 2010**

Source: MTC

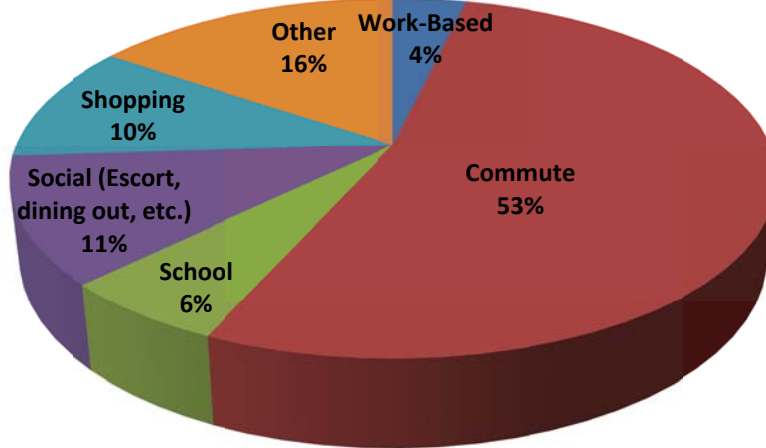


On average, commute trips are also longer in distance than other types of trips. Therefore, they account for an even greater proportion of total vehicle miles of travel than vehicle trips. As shown in Figure 3, commute travel accounts for just over half (53 percent) of weekday vehicle miles of travel (VMT) in the Bay Area.<sup>5</sup>

<sup>5</sup> The commute VMT shown in Figure 3 includes errands and stops made en route between home and work, such as stopping at the grocery store or to pick up children at day care. The VMT data in Figure 3 excludes commercial travel, as well as travel on the part of non-residents passing through the Bay Area.

**Figure 3: VMT by Trip Purpose, 2010**

Source: MTC

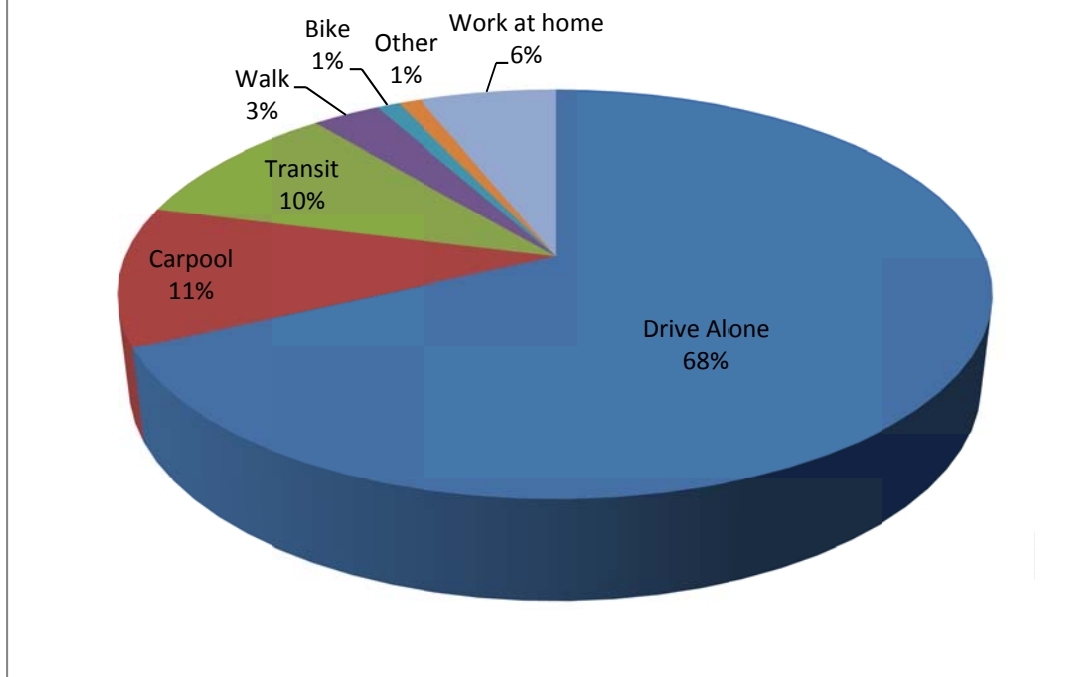


The average vehicle occupancy rate (number of passengers per vehicle) for commute trips is lower than for other types of trips. As shown in Figure 4, two-thirds of Bay Area employees currently drive to work alone. The large number of single-occupant vehicles on the road for commute purposes is a major cause of peak period congestion.



**Figure 4: Bay Area Commute Modes, 2010**

Source: MTC



Fortunately, individual mode choice can be more readily influenced in the case of commute trips compared to other trip types. Commute trips occur on a regular basis, and more transit service is available during the morning and evening peak periods when most commute trips occur. Although individual employees choose their commute mode, a solid body of evidence demonstrates that employers can influence an employee’s commute mode choice by offering information and services to encourage the use of alternative modes.

## **B. Nexus to Bay Area 2010 Clean Air Plan**

The Bay Area Commuter Benefits Program will help to implement the *Bay Area 2010 Clean Air Plan* (2010 CAP). The 2010 CAP sets forth a multi-pollutant control strategy to help the Bay Area attain and maintain State and national air quality standards, protect public health, and protect the climate. The control strategy includes a comprehensive set of Transportation Control Measures (TCMs) to reduce motor vehicle travel and vehicle emissions. The concept of developing a regional commuter benefits program is included in TCM C-1 (Voluntary Employer-Based Trip Reduction Programs). The Bay Area Commuter Benefits Program will help the Air District to implement the control strategy in the 2010 CAP in order to protect public health and reduce the region’s GHG emissions.

## C. Commuter Benefits Provisions in the Federal Tax Code

Historically, federal tax policies related to commuting focused on parking. By treating employer-paid parking as a tax-free benefit to the employee, section 132 of the Internal Revenue Code may act as an incentive for employees to drive to work.<sup>6</sup> However, more recent federal legislation has amended the Internal Revenue Code to broaden these tax benefits to include payments made by the employer or employee for transit and vanpool fares, or bicycle commuting expenses, thus helping to level the playing field in terms of how the federal tax code influences employee commute mode choice. The cap on the use of pre-tax dollars for transit and vanpool fares was increased from \$125 per month to \$245 per month for year 2013, thus bringing this benefit in line with the limit on the use of pre-tax dollars for commuter parking.<sup>7</sup>

For purposes of this Program, a key provision of Internal Revenue Code section 132 permits employers to allow employees to pay all or a portion of their transit or vanpool fares (up to \$245 per month) using pre-tax dollars. The employee does not pay income tax or FICA (Social Security and Medicare) taxes on the portion of employee salary used for the transit or vanpool fare. And the employer also does not pay its matching share of FICA taxes on the portion of employee salary used for the transit or vanpool fare. Under section 132, these tax benefits are also available for employer subsidies of up to \$20 per month (\$240 per year) for qualified bicycling commuting expenses (the purchase of a bicycle, as well as bicycle maintenance or storage), but not for employee pre-tax payments. These federal tax benefits can result in significant tax savings to both employers and employees, as described in Section V.

Although many employers already make the federal commuter benefits available to their employees, available evidence indicates that a substantial majority of employers still do not.<sup>8</sup> Not surprisingly, research indicates that employer size and worksite location both have a bearing on the percentage of employers who offer commuter benefits. Large employers, as well as employers located in central business districts that are well-served by transit, are more likely to offer commuter benefits.<sup>9</sup> One of the key objectives of the Program is to increase the number of employers who make the federal commuter tax benefits available to their employees, so that more Bay Area commuters will be able to take advantage of the tax benefits defined in the federal tax code.

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<sup>6</sup> Internal Revenue Code section 132(f) allows employers to provide up to \$245 per month to employees for qualified parking expenses, which include parking near the location from which the employee commutes to work (such as at a park-and-ride lot or at a transit station).

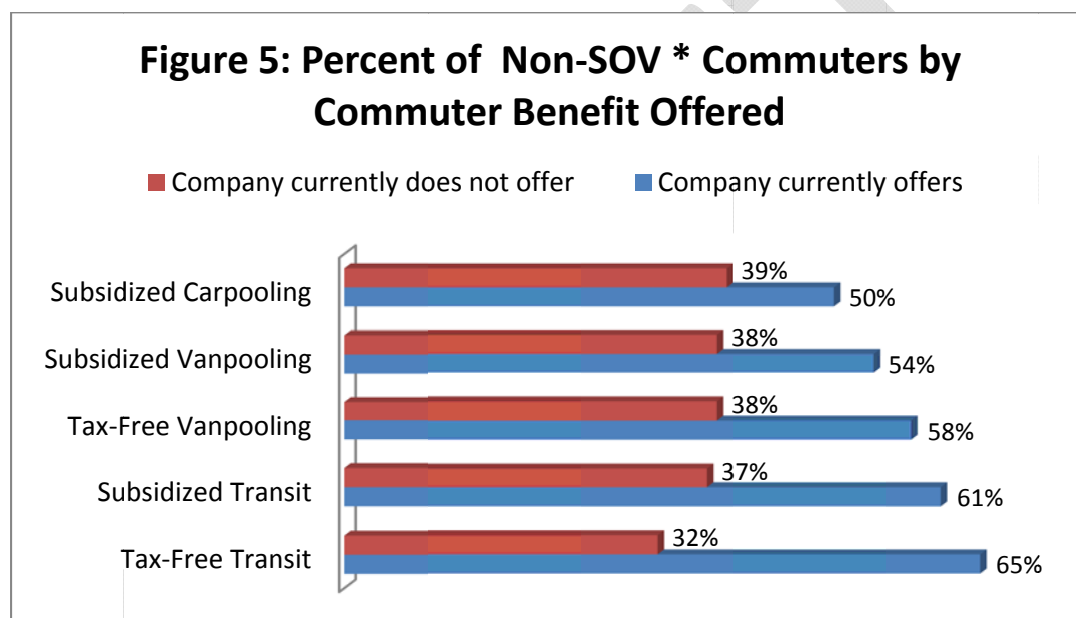
<sup>7</sup> However, the adjustment applied to 2013 only. Action is still needed to align the federal tax benefits for transit and vanpooling with the tax benefits for parking on a long-term basis.

<sup>8</sup> The *2010 Commuter Benefit Impact Survey* found that 21% of the 1,500 employers surveyed in the New York, Chicago, and San Francisco metropolitan areas were offering the pre-tax transit benefit in 2010. According to the March 2012 Employer Benefits Survey performed by the US Bureau of Labor Statistics, 11% of employers (all sizes) in the Pacific region currently offer commuter subsidies to their employees. Larger employers, especially those with 500 or more employees, are most likely to offer commuter subsidies. See <http://www.bls.gov/ncs/ebs/benefits/2012/ownership/civilian/table24a.htm>.

<sup>9</sup> See *2010 Commuter Benefit Impact Survey*. <http://www.transitcenter.org/images/CBIS.pdf>

## D. Results from Existing Commuter Benefits Programs

Commuter benefit programs have been implemented in a number of metropolitan areas in the U.S. Research indicates that commuter benefit programs are effective in increasing the use of alternative commute modes among employees at companies that offer these programs. The *2010 Commuter Benefit Impact Survey*, which analyzed the effectiveness of commuter benefits among 1,500 employers in the New York, Chicago, and San Francisco areas, found that the percentage of employees who use an alternative commute mode is much greater when employers offer commuter benefits. For example, as shown in Figure 5, this survey found that the use of alternative modes was double (65 percent versus 32 percent) at employers who provide the pre-tax transit option (i.e., Option 1 in the draft Bay Area Commuter Benefits Program).



\* SOV = single-occupant vehicle

A report by the Transit Cooperative Research Program (TCRP) synthesized the findings of various studies that analyzed the effectiveness of commuter benefit programs in various regions throughout the U.S.<sup>10</sup> Key findings from the TCRP report include the following:

- Transit ridership generally increases 10 percent or more when employers provide commuter benefits. However, the percentage increase varied greatly among the surveys. The increase in transit mode varied from 2 percent to 17 percent compared to the initial baseline.
- The effectiveness of commuter benefit programs in changing commute mode depends upon various factors, including transit availability, the level (if any) of subsidy provided by the employer, and supporting programs such as a guaranteed-ride-home program.

<sup>10</sup> Transit Cooperative Research Program, Report # 107, *Analyzing the Effectiveness of Commuter Benefit Programs*. 2005

- Both new and existing transit users benefit from commute benefit programs. Typically 10 to 40 percent of transit benefits recipients were new to transit, while the remainder of commuters who receive the benefits had already been riding transit.
- A significant portion (up to 35 percent) of transit benefits recipients reported that they increased their use of transit for both commute and non-commute trips.
- Most commuters who switched to transit in response to commuter benefit programs were previously driving alone to work.
- Employers who complement their commuter benefits with supporting measures, such as marketing and guaranteed-ride-home programs, see greater increases in transit ridership than those who simply implement the commuter benefit by itself.

## **E. Senate Bill 1339**

Senate Bill 1339 (Yee), which was signed by the Governor in fall 2012 and codified as Section 65081 of the California Government Code, authorized the Bay Area Commuter Benefits Program. SB 1339 won support from a wide range of stakeholders, including a variety of business groups, organized labor, environmental groups, public health organizations, transit agencies, and several Bay Area cities. The bill authorizes the Air District and MTC to require employers with 50 or more full-time employees in the Bay Area to offer commuter benefits to their employees. Employers would choose from several options that are described in Section III D: Commuter Benefit Options.

The legislation authorizes the Air District and MTC to jointly adopt and implement a pilot commuter benefits program for the Bay Area during the period from January 1, 2013 through December 31, 2016. The Air District and MTC are required to submit a report to the Legislature by July 1, 2016 describing the results of the Program in terms of increasing the number of employers that offer commuter benefits, reducing drive-alone commute trips to Bay Area worksites, and decreasing emissions of greenhouse gases.

## **F. Current Bay Area Context**

Many Bay Area employers, especially large companies and organizations, already offer various services and incentives to encourage the use of alternative commute modes. Various employer assistance programs and services exist to help Bay Area employers develop and implement effective programs. In designing the Bay Area Commuter Benefits Program, the Air District and MTC intend to complement and build upon these existing programs. A brief summary of current programs and services to promote commuter alternatives is provided below.

**Employer Assistance Programs:** At the regional scale, MTC administers the 511.org program. The Rideshare component of 511.org provides information and assistance to both employers and to individual

commuters to promote ridesharing and other commute alternatives on a regional basis. In addition, five Bay Area counties offer local programs to serve employers and employees within their areas. These regional and county programs include a program administered by the San Francisco Department of the Environment; the Peninsula Traffic Congestion Relief Alliance, serving San Mateo County; the Solano-Napa Commuter Information Program; as well as the 511 Contra Costa program serving Contra Costa County. These programs provide a variety of services to promote the use of alternative commute modes, including rideshare matching, vanpool formation, incentives to commuters to try alternative commute modes, and guaranteed ride programs. These existing programs would be available to assist employers in complying with this proposed Program, for example by helping employers evaluate the commuter benefit options and select and implement an appropriate commuter benefits option.

### **Employers with Existing Commuter Benefit Programs**

Many Bay Area employers already provide information, services, or benefits to encourage their employees to use alternative commute modes. However, the scope of these efforts varies greatly. For example, some employers offer commuter benefits based on the federal tax code. At one end of the spectrum, a small number of large employers operate their own transportation services providing door-to-door bus service (for example, from San Francisco to corporate sites in Silicon Valley), vanpool programs, and/or shuttle services to provide a link between a nearby transit station and their worksite. Employers who already offer commuter benefits may be motivated to provide these programs by a variety of factors, including a recognition that commuter benefits can be an important factor in employee recruitment and retention; the need to address specific issues at their worksites, such as insufficient parking, or a desire to use land currently dedicated to employee parking for other purposes; and a recognition of their environmental benefits.

**Transportation Management Associations (TMAs):** In addition to commuter programs offered by individual employers, a number of TMAs have been established in the Bay Area. TMAs typically provide commuter information and services to multiple employers in a specific office park or geographic area. TMAs are particularly well-suited to multi-tenant business parks that have a number of individual employers in a single complex. Pursuant to SB 1339, the draft rule provides that an employer shall be deemed in compliance with Program requirements if the employer participates in a TMA that provides one of the specified commute benefit options to its employees.

### **Local Commuter Benefit Ordinances**

In recent years, several Bay Area cities have adopted local ordinances that require employers to offer commuter benefits, as shown in the Table 1. These ordinances, which served as the model for Senate Bill 1339, allow the employer to select from several commuter benefit options. While their substantive requirements are very similar to the requirements of SB 1339, the local ordinances have a more stringent applicability threshold, as they apply to employers with either 10 or 20 employees nationwide that have a worksite in the relevant city. The Air District and MTC will work with the Bay Area cities that have

adopted commuter benefit ordinances to coordinate the implementation of the regional Program with the local ordinances.

**Table 1: Commuter Benefits Ordinances Adopted by Bay Area Cities**

Jurisdiction	Applicability Threshold	Effective Date of Ordinance
City & County of San Francisco	20 or more employees nationwide	January 19, 2009
San Francisco International Airport	20 or more employees nationwide	July 7, 2009
City of Berkeley	10 or more employees nationwide	December 2009
City of Richmond	10 or more employees nationwide	December 8, 2009

### III. KEY PROVISIONS OF THE DRAFT PROGRAM

This section describes key provisions of the draft Program, including applicability, the definition of key terms, and basic requirements.

#### A. Applicability

As defined in SB 1339, the Bay Area Commuter Benefits Program would apply to all employers (private sector, public sector, and non-profit) with 50 or more full-time employees within the jurisdiction of the Air District.<sup>11</sup> This threshold is based on the total number of employees at all Bay Area worksites combined for each respective employer. An employer with 50 or more full-time employees in the Bay Area would be subject to the Program, regardless of how the employees are distributed among worksites. For example, an employer with 10 full-time employees at each of five Bay Area worksites, for a total of 50 Bay Area full-time employees, would be subject to the Program. Data provided by the California Employment Development Department (EDD) indicate that there are approximately 10,000 employers in the Bay Area with 50 or more employees. The EDD data also show that employers with 50 or more employees account for approximately 60 percent of total employment in the region.<sup>12</sup>

#### B. Key Definitions

**Employee:** For purposes of the Program, the draft rule defines an employee as anyone who is treated as an employee for tax purposes; that is, anyone who receives a W-2 form from the employer. Independent contractors would not be counted as employees.

**Full-time employee:** SB 1339 bases the applicability threshold upon the number of “full-time employees”, but the bill does not define this term. The draft rule proposes to define “full-time employee” as an

<sup>11</sup> The District’s jurisdiction consists of nine counties, including all of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, and Santa Clara counties, as well as the western portion of Solano County and the southern portion of Sonoma County.

<sup>12</sup> EDD data for 3<sup>rd</sup> quarter 2011.

employee who worked an average of at least 30 hours per week during the previous calendar month, excluding a seasonal/temporary employee.<sup>13</sup>

**Covered employee:** Consistent with SB 1339, the draft rule defines a “covered employee” as an employee who worked an average of 20 or more hours per week within the previous calendar month excluding a seasonal/temporary employee. Employers that are subject to the Program because they have 50 or more full-time employees in the Bay Area must make their commuter benefits available to all covered employees (i.e., any employee who works an average of 20 hours or more per week).

**Seasonal/temporary employee:** The draft rule proposes to exclude seasonal and temporary employees. A “seasonal/temporary employee” is defined as an employee who works for the employer 120 days or less within the calendar year.

### C. Key Requirements of Proposed Program

The Program will require employers to do the following:

- Designate a Commuter Benefits Coordinator (as defined in Sections 14-1-204 and 14-1-403) to implement the employer’s commuter benefits program and comply with the requirements of the Program. (It is expected that this role will typically be assigned to an employee already handling payroll and benefits).
- Select one of the commuter benefit options defined in Section 14-1-300 or 14-1-301 (see below).
- Submit a registration form to the Air District/MTC specifying which commuter benefit option the employer will provide.
- Notify employees of the commuter benefit option selected and make the benefit available to all eligible employees.
- Update their registration information on an annual basis.
- Maintain records to document implementation of the commuter benefit.
- Provide information requested by the Air District/MTC for Program evaluation purposes.

Pursuant to SB 1339, if an employer participates in a Transportation Management Association (TMA) that provides commuter benefits that comply with the Program, the TMA may represent the employer for purposes of fulfilling any or all of the requirements defined in the rule.

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<sup>13</sup> This is consistent with the IRS definition of “full-time employee” for purposes of health insurance coverage. See IRS Notice 2012-58: *Determining Full-Time Employees for Purposes of Shared Responsibility for Employers Regarding Health Coverage*.

## D. Commuter Benefit Options

Consistent with the provisions of SB 1339, the draft Program defines three basic commuter benefit options, as well as the option for an employer to implement an alternative benefit (Section 14-1-300 of the draft rule). These four options are described below.<sup>14</sup>

**Option 1: Pre-Tax Option:** The employer allows employees to pay their transit or vanpool fare using pre-tax dollars, up to the maximum amount allowed by federal law (currently \$245 per month). This option is based upon the provisions of Section 132(f) of the Internal Revenue Code.<sup>15</sup> (See Section 14-1-301 of the draft rule.)

**Option 2: Employer-Provided Subsidy:** The employer provides a transit or vanpool subsidy to cover the employee's monthly commute cost. For purposes of the Program, if the employee's monthly cost is greater than \$75 per month, then the maximum required subsidy for Option 2 is \$75 per month. (For future years, this maximum required subsidy amount will be indexed for inflation on an annual basis consistent with the California Consumer Price index.) However, an employer may choose to offer a higher subsidy amount (greater than \$75 per month). (See Section 14-1-301 of the draft rule.)

**Option 3: Employer-Provided Transportation:** The employer provides free or low-cost commuter transportation service for its employees. This could include any or all of the following: bus or vanpool service from the employee's home community to the worksite, or a shuttle service from one or more transit stations to the worksite. The transportation service can either be for the dedicated use by employees of a single employer, or shared among multiple employers. SB 1339 calls for the District and MTC to define "low cost" for purposes of Option 3. The agencies will define "low cost" for purposes of Option 3 in guidance materials, based on average transit fares in the region. (See Section 14-1-301 of the draft rule.)

**Option 4: Alternative Commuter Benefit:** SB 1339 states that, in lieu of choosing one of the three options described above, an employer may propose an alternative commuter benefit that would provide at least the same result in reducing single-occupant vehicle trips as any of the three options defined in SB 1339. The Air District and MTC will provide guidance to define the evaluation criteria and the review process for Option 4. To facilitate Option 4, the agencies are working to define "pre-approved" alternative options. This will expand the menu of options available to employers, assist employers who are interested in

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<sup>14</sup> An employer may choose to offer more than one of the benefits, or to offer more generous benefits than the minimum specified in the rule. For example, it is common practice for employers that provide a subsidy for transit and vanpools (Option 2) to also allow employees to pay their share of the cost using pre-tax dollars (Option 1).

<sup>15</sup> Senate Bill 1339 also references bicycling commuting in regard to the pre-tax option. However, although the federal tax code [IRS Code 132(f)] allows employers to provide a tax-free subsidy of up to \$20 per month to offset an employee's bicycle commuting expenses, it does not allow employees to use pre-tax dollars to pay for bicycle commuting expenses. Therefore, bicycle commuting is not included in Option 1 for purposes of the draft rule. However, an employer may choose to offer a subsidy for bicycle commuters either as an element of an alternative commute benefit pursuant to Option 4, or as a voluntary measure in addition to offering Option 1, 2, or 3.



pursuing an alternative approach, streamline the Option 4 review and approval process, and provide clarity as to the type of alternative benefits that will be deemed equivalent to the three options defined in SB 1339 in reducing single-occupant vehicle trips to worksites. In addition to any “pre-approved” alternatives, employers will have the flexibility to submit their own proposed alternative benefit for review and approval by the agencies. (See Section 14-1-302 of the draft rule.)

The Air District and MTC believe that Option 4 may be appropriate for certain employers and worksites. The three options defined in SB 1339 focus on promoting transit and vanpooling, because the federal commuter tax benefits primarily address these modes. However, many Bay Area commutes are not well served by transit, and vanpool programs, which are most viable at large worksites with tightly-defined work schedules, do not work in all contexts. Therefore, other alternative commute modes may be more effective in reducing single-occupant vehicle trips at certain worksites. For example, carpooling can be viable in a wide range of worksite sizes and geographic settings, and bicycling is an increasingly popular commute mode throughout the region. Telecommuting and compressed work week schedules may also be effective means to reducing commute trips, especially at worksites that are not well served by transit.

#### **IV. PROGRAM IMPLEMENTATION**

The Bay Area Commuter Benefits Program will impact a large and diverse set of employers, many of whom do not yet offer any of the commuter benefit options defined in the rule. Therefore, the Air District and MTC will provide information and assistance to help employers understand and comply with the requirements of the Program. Air District and MTC staff are working together to lay the groundwork for successful implementation of the Program. Key tasks include developing a database that will be used to notify employers about the Program and its requirements, creating an on-line registration system, and preparing employer assistance materials to help employers select an appropriate commuter benefit that meets the needs of their employees. The agencies are planning to use the 511.org website as the home base for Program information and implementation.

##### **Guidance Documents**

The Air District and MTC will develop guidance documents to complement the rule. The guidance documents will provide additional detail to explain key provisions of the rule. Topics that may be addressed in guidance documents include the following:

- Calculating the number of full-time employees at a business (for purposes of determining whether an employer is subject to the rule).
- Defining the term “low cost” for purposes of Option 3 (employer-provided transportation).
- Defining the process for an employer to propose an alternative commute benefit (Option 4), and the criteria that will be used to evaluate such proposals. The guidelines will also describe “pre-approved” alternatives that have been evaluated and approved in advance by Program staff.

## **Employer Assistance**

The 511.org Rideshare program will provide information and assistance to help employers understand Program requirements and implement effective commuter benefit programs, including web-based materials to:

- Describe basic Program requirements and the various commuter benefit options.
- Help employers evaluate the commuter benefit options and select an appropriate option for the employer's worksite(s) and work force.
- Define the key steps required to implement the three basic options, or the alternative commute benefit option (Option 4).

## **Registration Process**

The employer registration process will be on-line. The employer will access the registration web page and input the required information. Employers will be required to register at the outset of the Program and indicate which commute benefit option they will provide, and then to update their registration information on an annual basis. In addition to the on-line registration system, the agencies may make alternative means of registration available for employers that do not have the capacity to register on-line.

## **Compliance**

The Air District and MTC will encourage compliance by means of outreach and education to employers. Assistance will be provided to help those employers that do not already have commuter benefits programs (see above). Enforcement will be pursued only in the event that an employer refuses to implement any of the commuter benefit options, in which case enforcement would be handled by the Air District using the civil enforcement powers granted to it by California Health & Safety Code section 42402.

## **V. ANTICIPATED OUTCOMES**

This section provides a preliminary discussion of the anticipated costs and benefits of the Program, including compliance costs to employers, and potential savings to employers and employees. In addition, the anticipated environmental, social, and economic benefits to Bay Area residents as a whole are described, and potential reductions in vehicle travel and emissions of air pollutants are described. More detailed socio-economic and environmental analyses of the proposed rule will be provided as part of the proposed regulatory package that will be presented to the Air District and MTC governing boards for consideration in late 2013.

## A. Impacts on Employers: Compliance Costs and Potential Savings

Employers may experience both direct and indirect savings in response to the Program. Many Bay Area employers already offer commuter benefits programs that will fulfill the requirements of the proposed Program; these employers would experience only very modest costs to register and provide basic information about their existing program. Employers that do not already provide commuter benefits programs will experience compliance costs to evaluate the commuter benefit options, set up their programs, register, notify their employees about the commuter benefits, and administer the program on an on-going basis. The Air District and MTC will endeavor to minimize these costs by providing employer assistance (as described above), and by streamlining reporting processes. The discussion below describes the costs and savings associated with the various commuter benefit options. Because most employers are expected to choose the option that provides tax savings to the employer, we expect that these savings will offset most, if not all, compliance costs for many employers.

Both the potential costs and the potential savings to employers will depend upon (1) which commuter benefit option the employer selects, and (2) the number of employees who choose to utilize the benefit. Employers can experience direct savings from the federal tax provisions that exempt employers from paying FICA (Social Security and Medicare) taxes on dollars used to purchase transit or vanpool taxes pursuant to both Option 1 and Option 2.<sup>16</sup>

Experience in the Bay Area cities with local commuter benefit ordinances shows that most employers choose Option 1 (the pre-tax option). This is not surprising, since Option 1 is the most economical way to comply with the Program for most employers. For example, the City of San Francisco reports that nearly 80 percent of the employers who are complying with the City's ordinance have chosen Option 1.

We anticipate that Option 2 (employer-provided subsidy) will be the second most popular option among employers. The City of San Francisco reports that nearly 20 percent of the employers who are complying with the City's ordinance have chosen Option 2. This includes 14 percent of employers who are offering Option 2 alone, plus another 5 percent of employers report that they offer a combination of Option 1 and Option 2.

Option 1 (pre-tax commuter benefit): Of the three commuter benefit options defined in SB 1339, Option 1 (allowing employees to use pre-tax dollars to pay their transit or vanpool expenses) will be the most economical option for most employers. In terms of compliance costs, employers who choose Option 1 should experience only modest costs to administer the pre-tax benefit. These payroll tax savings described below will typically outweigh the administrative costs to implement Option 1. The employer could choose to administer the pre-tax benefit in-house, or to contract with an outside vendor that specializes in administering commuter benefit programs for employers. Available information indicates that these vendors generally charge approximately \$3 per employee per month for each employee electing to receive the commuter benefit.

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<sup>16</sup> Employers that do not contribute to Social Security will only realize the Medicare tax savings.

The employer pays no Social Security (6.2 percent) or Medicare tax (1.45 percent) on the portion of their salary that employees use to purchase their transit or vanpool fare; this represents a savings of 7.65% multiplied by the value of the transit or vanpool fare. The monthly savings to the employer on FICA taxes would range from \$5.75 per month per participating employee (for a transit or vanpool fare of \$75 per month) to \$18.75 per month (based on the \$245 per month cap in the IRS code). In addition, the employer may also experience savings on its state payroll taxes. In addition, the employer may also experience savings on its state and city (if applicable) payroll taxes, which include the State Unemployment Insurance (SUI) and State Disability Insurance (SDI) taxes. When taking into account state (and city) payroll tax deductions, the savings to employers is approximately 9% on the portion of their employee's salary which is used to purchase transit or vanpool fares. On an annual basis, employers can save up to \$225 per employee per year on payroll taxes, for a net savings of up to \$190 (assuming \$3 per employee per month in administrative costs). Therefore, most employers who select Option 1 should experience a net savings as a result of the Program.<sup>17</sup> The employer can reduce its FICA taxes not only for employees who switch mode as a result of the new benefits offered in response to the Program, but also for employees who were already commuting by transit or vanpool before the employer made the commuter benefits available.

Option 2 (employer-provided transit/vanpool subsidy): For employers who choose Option 2, the amount of the employer-provided subsidy will be based on the employee's monthly transit or vanpool fare. Pursuant to SB 1339, the required subsidy amount will be capped at a maximum of \$75 per month (in 2013 dollars). The cost for Option 2 will depend primarily on the number of employees who choose to commute by transit or vanpool.

The employer will not pay FICA taxes on the transit/vanpool subsidy. In addition, for employers who choose to offer both Option 1 and Option 2 (i.e., to subsidize a portion of the transit or vanpool fare, as well as to allow the employee to use pre-tax dollars to cover his or her share of the cost), the FICA tax savings on the portion of fare paid by the employee using pre-tax dollars would partially offset the direct cost of the subsidy.

Table 2 illustrates, for a hypothetical employee who is paid \$4,000 per month and has monthly transit costs of \$200, the simplified tax implications of these options for the employer and the employee, disregarding all other deductions and credits.

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<sup>17</sup> Employers which do not pay Social Security taxes would not experience the full payroll tax savings. Some of these employers may therefore incur a modest net cost to comply with the Program.

**Table 2: Example of Tax Impact for Option 1 & Option 2**

Scenario	Employee's Taxable Income	Wages for Employer Payroll Taxes	Net Effect on Employee	Net Effect on Employer
No Pre-Tax Benefit (employee pays for commuting out of pocket)	\$4,000	\$4,000	n/a	n/a
Option 1 (employee pays for transit passes with pre-tax deductions from income)	\$3,800	\$3,800	Savings equal to tax on \$200	Reduction in payroll tax likely to exceed program costs
Option 2 (employer pays \$75 toward transit passes as additional benefit)	\$4,000	\$4,000	\$75 expense avoided	Expenses increased by \$75

Options 3 (employer-provided transportation): The cost to an employer that chooses to implement Option 3 would vary depending upon the type and scope of transportation services provided. Because of the relatively high costs of directly providing transportation services to employees, we expect that few employers, if any, will select Option 3 merely to comply with the requirements of the Program. Among employers complying with the San Francisco commuter benefits ordinance, only 2 percent have chosen Option 3. The few employers that did choose to comply with the San Francisco ordinance by means of Option 3 were already offering employer-provided transportation to their employees for their own business reasons before the ordinance was adopted.<sup>18</sup>

In terms of potential tax benefits, a private-sector employer that selects Option 3 may be able to deduct the costs of its commuter transportation program as a business expense when calculating its corporate tax liability. To offset program costs, employers that select Option 3 could choose to recoup a portion of the costs to provide the transportation service by charging employees a modest user fee. (Any such fee would need to be “low cost” as defined by the Air District and MTC.) However, available information indicates that among employers who currently provide bus or shuttle service, very few currently charge a fee to users.

Although Option 3 would probably be the most expensive option for most employers, it could also provide the greatest benefit in reducing vehicle trips, enhancing employee productivity, etc. A small percentage of employers currently provide transportation services akin to Option 3. These employers typically provide transportation services because they have specific needs or problems (e.g. lack of

<sup>18</sup> Staff who implement the commuter benefit ordinances in cities of San Francisco, Berkeley, and Richmond report that they are not aware of any employers have established employer-provided transportation programs directly in response to their local ordinances.

parking at the worksite), or because they perceive their transportation programs as a major inducement for employee recruitment and retention.

Option 4 (alternative benefit): Pursuant to SB 1339, the Program will allow employers to offer an alternative commuter benefit, provided that the alternative would be as effective as the basic options in reducing single-occupant commute trips to the worksite. Staff is working to define potential pre-approved alternatives to help employers interested in Option 4. Since the specific elements of these alternative benefits have not yet been defined, it is not possible to analyze the potential costs and savings to employers at this time.

**Indirect Benefits and Savings to Employers:** In addition to the direct FICA tax in the federal tax code described above, employers may experience a variety of indirect benefits as well. These include:

- Employee recruitment and retention
- Enhanced employee productivity (due to reduced commute stress)
- Reduced health care costs in response to better air quality
- Reduced goods movement costs (due to reduced traffic congestion)

According to the *2010 Commuter Benefit Impact Survey*, among employers that offer tax-free commuter benefits, 72 percent believe that this increases employee job satisfaction, 64 percent see the benefits as helpful in retaining their current employees, and 61 percent see the benefits as useful in recruiting new employees.

The potential savings in terms of reduced traffic congestion and better air quality are discussed in the section on *Benefits to All Bay Area Residents* below.

## **B. Benefits to Employees**

Bay Area commuters will be major beneficiaries of the Program. The Program is expected to provide economic benefits to both (1) employees who switch from driving alone to transit or vanpool in response to the Program and (2) employees who already commute by transit or vanpool, but work for employers that do not yet offer a commuter benefit. Employees working at Bay Area employers that do not yet offer any of the commuter benefit options defined in the Program will gain parity with their fellow commuters who already enjoy these benefits.<sup>19</sup>

The savings to employees will depend upon which option the employer offers to its employees, the commute mode chosen by the employee, the monthly cost of the commute mode, and the employee's tax bracket. Employees who become eligible to use pre-tax dollars to pay for transit or vanpool fares (Option 1) can save \$1200 or more per year. Employees of companies that elect to offer a direct subsidy (Option 2) can save \$900 (12 X \$75 per month) tax free per year. The employee may save even more if

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<sup>19</sup> TCRP Report #107 found that a high proportion (anywhere from 60% to 90%) of the recipients of transit benefits were already riding transit.

the employer chooses to offer Option 1 as well as Option 2. Depending upon the employee's monthly commute cost tax bracket, employee savings from a combination of Option 1 and Option 2 could exceed \$1,600 per year. In addition to the tax savings that reduce the cost of a transit or vanpool fare, an employee who switches from driving alone may realize considerable savings in terms of reduced vehicle operating costs.<sup>20</sup>

In addition to reducing commute trips, the Program may have indirect effects in reducing motor vehicle use for other types of trips as well. Employees who switch to transit may increase their use of transit for other trip purposes, as they become more familiar with transit options.<sup>21</sup> Commuter benefits may even enable some employees to forego ownership of a personal vehicle. This could yield significant cost savings to the employee (by eliminating of the cost of the vehicle, insurance, maintenance, registration and fuel costs) and additional reductions in emissions of air pollutants and greenhouse gases.

Employees may also experience a variety of non-monetary benefits from the Program. For example, they may experience reduced commute stress, and enjoy the flexibility to work or relax while riding transit, etc.

### **C. Benefits to All Bay Area Residents**

The Program will provide benefits to all Bay Area residents, including people who do not commute. These benefits include:

- Improved air quality:
  - Improved public health
  - Reduced health care costs
- Reduced greenhouse gas emissions:
  - Protecting the climate
  - Helping to achieve regional & state GHG reduction targets
- Economic benefits
  - Reduced traffic congestion means less time wasted in traffic for everyone
  - More employee earnings that stay in Bay Area stimulates the local economy

Traffic congestion and air pollution both impose major economic and social costs on the Bay Area. Therefore, the relatively modest reductions in traffic congestion and air pollution expected from the Program should provide substantial economic benefit to the region. According to the *2012 Urban Mobility Report* issued by the Texas Transportation Institute, the annual cost of congestion to the Bay Area (including delays, excess fuel consumption and truck delays) is \$4.25 billion. On an individual basis,

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<sup>20</sup> A drive-alone commuter with an average trip length of 15 miles one-way will drive 7,500 miles per year for commute purposes. Based on the current IRS mileage rate of \$0.56 per mile, a drive-alone commuter who switches to an alternative mode can potentially save a major portion of the \$4,200 per year in driving expenses currently incurred for commute purposes.

<sup>21</sup> Transit Cooperative Research Program Report #107 found that a significant portion (up to 35 percent) of transit benefits recipients reported increasing their use of transit for both commute and non-commute trips.

traffic congestion costs the average Bay Area commuter \$1,266 per year.<sup>22</sup> Because commute trips account for a major share of rush-hour traffic, and even a modest reduction in traffic volumes can provide substantial reductions in congestion, the Program may provide savings in time and money for all Bay Area residents.

Studies show that emissions of air pollutants from motor vehicles cause or exacerbate a wide range of health effects, including respiratory disease such as asthma, bronchitis, and emphysema, as well as cardiovascular disease that are linked to premature mortality, such as atherosclerosis, strokes, and heart attacks. Analyses find that the health-related costs of air pollution exceed \$10 billion per year in the Bay Area, including direct medical costs, lost productivity, and premature mortality.<sup>23</sup> By decreasing commute trips and motor vehicle emissions, the Program should reduce negative health effects from air pollution. In the long run, this may reduce health costs and health insurance premiums for employers, as well as health care expenses to employees and their families.

Finally, the regional economy should benefit because the Program will put more dollars back into the pockets of Bay Area employers and employees. For every 1,000 employees who are able to take advantage of the pre-tax option as a result of the Program (including employees who already commute by transit or vanpool, as well as those who switch mode in response to the Program), approximately \$1 million or more will stay in the pockets of Bay Area employers and employees and thus benefit the regional economy.<sup>24</sup> If 50,000 employees who commute by transit or vanpool gain access to the IRS commute benefits as a result of the Program, this could add approximately \$50 million per year into the regional economy.

## **D. Emission Reductions**

An analysis performed by ICF International (*Commuter Benefits Sketch Analysis*, June 25, 2013) provides an estimate of the potential emission reductions from the proposed Program. The analysis estimates that the proposed Program would increase transit ridership among employees at worksites where Option 1 is offered by 7% in year 2015 (and by 20% in year 2035, assuming the Program would still be in place). This would equate to a reduction of 2% in single-occupant vehicle (SOV) trips to worksites covered by the Program in 2015 (and 7% in 2035). The estimated reduction in SOV commute trips, vehicle miles of travel (VMT), CO<sub>2</sub> (the leading greenhouse gas), and the key criteria air pollutants are shown in Table 3 and Table 4 below.

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<sup>22</sup> This includes \$3.38 billion for the San Francisco-Oakland area, plus \$970 million for the San Jose area.

<sup>23</sup> See the health burden analysis in Volume I, Appendix A of the *Bay Area 2010 Clean Air Plan*.

Also, see *Health Impact Analysis of Fine Particulate Matter in the San Francisco Bay Area* (Sept 2011).

<sup>24</sup> This estimate is based on the following assumptions:

- Average commute cost of \$200 per month (\$2,400 per year)
- Employee saving 40% (\$960) from combination of federal and state income taxes, FICA, and Medicare.
- Employer saving 7.65% (\$185) from not paying FICA and Medicare taxes.

Total savings equal \$1,145 per employee per year, or \$1.145 million per 1,000 employees.



**Table 3: 2015 Region-wide changes in SOV trips, VMT, and emissions as a result of the Commuter Benefits Program**

Daily SOV Commute Trips	Daily Commute VMT	CO <sub>2</sub> Annual (MT)	ROG Annual (MT)	NO <sub>x</sub> Annual (MT)	PM <sub>10</sub> Annual (MT)	PM <sub>2.5</sub> Annual (MT)	CO Annual (MT)
-0.6%	-0.3%	-12,714	-2.8	-5.9	-0.1	-0.1	-62.4

**Table 4: 2035 Region-wide changes in SOV trips, VMT, and emissions as a result of the Commuter Benefits Program**

Daily SOV Commute Trips	Daily Commute VMT	CO <sub>2</sub> Annual (MT)	ROG Annual (MT)	NO <sub>x</sub> Annual (MT)	PM <sub>10</sub> Annual (MT)	PM <sub>2.5</sub> Annual (MT)	CO Annual (MT)
-2.5%	-1.1%	-47,957	-4.6	-8.9	-0.3	-0.3	-100.5

## VI. PROGRAM DEVELOPMENT / PUBLIC CONSULTATION PROCESS

In the course of developing the draft Program described in this report, Air District staff has engaged with a wide range of stakeholders, including employer groups, congestion management agencies, the staff of the various employer commute assistance programs, the staff of local cities with commuter benefit ordinances, vendors that administer commuter benefit programs for employers, and Bay Area transit agencies.

The Air District and MTC will hold public workshops in October 2013 on the draft Rule 14-1 and the Program described in this Workshop Report. During the workshops, staff will respond to questions about information presented in the Workshop Report and solicit input. Based on the input received at the workshops and written comments submitted during the public comment period, staff will assess whether changes to the proposal are necessary prior to releasing a proposed final rule for public review and comment in late 2013.

The Air District will also prepare a California Environmental Quality Act (CEQA) analysis of the proposed rule, as well as a Socio-Economic Analysis of the proposed rule. Staff anticipates that the proposed rule will be considered at a public hearing before the Air District Board of Directors in early 2014. The proposed rule will also be submitted to the MTC Commission for its review and concurrence.

## SOURCE DOCUMENTS

Bay Area 2010 Clean Air Plan. [www.baaqmd.gov/Divisions/Planning-and-Research/Plans/Clean-Air-Plans.aspx](http://www.baaqmd.gov/Divisions/Planning-and-Research/Plans/Clean-Air-Plans.aspx)

Health Impact Analysis of Fine Particulate Matter in the San Francisco Bay Area (Sept 2011)  
[www.baaqmd.gov/Divisions/Planning-and-Research/Research-and-Modeling/Publications/Reports.aspx](http://www.baaqmd.gov/Divisions/Planning-and-Research/Research-and-Modeling/Publications/Reports.aspx)

2012 Urban Mobility Report, Texas Transportation Institute. <http://mobility.tamu.edu/ums/report/>

### **Explanations of Commuter Benefits**

Publication 15b, Employer's Tax Guide to Fringe Benefits—Transportation (Commuting) Benefits  
(<http://www.irs.gov/pub/irs-pdf/p15b.pdf>)

Taxable Fringe Benefits Guide ([http://www.irs.gov/pub/irs-tege/fringe\\_benefit\\_fslq.pdf](http://www.irs.gov/pub/irs-tege/fringe_benefit_fslq.pdf))

Final Regulation Concerning Qualified Transportation Fringe Benefits (<http://www.gpo.gov/fdsys/pkg/FR-2001-01-11/pdf/01-294.pdf>)

### **Effectiveness of Commuter Benefit Programs**

TCRP Report 87 Strategies for Increasing the Effectiveness of Commuter Benefits Programs (2002)  
([http://www.trb.org/publications/tcrp/tcrp\\_rpt\\_87](http://www.trb.org/publications/tcrp/tcrp_rpt_87))

TCRP Report 107 – Analyzing the Effectiveness of Commuter Benefits Programs (2005)  
([http://onlinepubs.trb.org/onlinepubs/tcrp/tcrp\\_rpt\\_107.pdf](http://onlinepubs.trb.org/onlinepubs/tcrp/tcrp_rpt_107.pdf))

Transit Center, 2010 Commuter Benefit Impact Survey. <http://www.transitcenter.org/images/CBIS.pdf>

ICF International, *Commuter Benefits Sketch Analysis*, June 25, 2013