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VIA EMAIL: [karen.williams@deq.oregon.gov](mailto:karen.williams@deq.oregon.gov)

Karen Williams  
Air Quality Planner  
Oregon Department of Environmental Quality  
700 NE Multnomah St.  
Suite 600  
Portland OR 97232

**RE: Comments on Commute Options 2021 Rules Advisory Committee Meeting #1**

Dear Ms. Williams:

Thank you for the opportunity to provide comments on the Department of Environmental Quality's Commute Options Rulemaking. Oregon Business & Industry (OBI) is a statewide general business association representing 1,600 members who collectively employ more than 250,000 Oregonians in a wide variety of sectors and from all parts of our state. OBI appreciates the opportunity to serve on the Rules Advisory Committee (RAC) on behalf of its large and diverse membership and we offer the following comments on the Commute Options RAC Meeting #1 held on May 9, 2022.

OBI and our members support and encourage employees to use alternative forms of transportation. However, to be realistic options for employees those alternatives to driving personal vehicles to work must take be realistic, practicable and implementable at a reasonable cost. We also support the current model, which requires the large business to make "a good faith effort" to implement their commute options plan. Employers can only provide alternatives and encourage their use they cannot require employees to utilize these options as transportation to work is a personal decision based on the individual employee's circumstances. Every employee has a unique set of reasons for what informs their transportation choices.

Many aspects of daily commuting have changed significantly since the Employee Commute Options (ECO) rule was first adopted. At the same time, many have not. All businesses that are or will be subject to the rule are different depending on their size (workforce of 100 or 1,000), specific location, job type (requirements, expectations and responsibilities), products they manufacture, services they offer, and the geographic region from which their employees commute. These unique factors must be considered as DEQ contemplates updates to the ECO program.

**COVID-19 Workforce Impacts**

One of the most obvious changes in employment in recent years was brought about by the COVID-19 pandemic. Across all economic sectors, the single biggest challenge employers continue to face are workforce shortages. As consumers, we all see the effects of the workforce

crisis at grocery stores, restaurants, medical offices, daycare providers, and retail stores. Many businesses have signs posted imploring customers to be patient because they are not fully staffed. In addition, employers are experiencing raw material shortages, supply chain interruptions, shipping delays, high inflation, rising employment costs, and changes in operations to keep employees safe by reducing COVID transmission. All of this has made it that much more challenging for businesses to get back on their feet.

For a variety of reasons, it will be challenging for employers to offer transit incentives that are sufficiently enticing to dissuade some employees from using their personal vehicles for commuting. Although the world is *beginning* to look more “normal,” COVID remains a significant factor in the decisions we make about our daily lives—including taking transit. Employees may be immunocompromised, live in a home with others who are immunocompromised, live in a multi-generational home, work in a setting where they are exposed to other immunocompromised people, care for young children not eligible for the vaccine, or any number of other scenarios that would discourage or prevent them from taking public transit.

It is critical this rulemaking take into account the realities at this point in time that do not create unrealistic or infeasible expectations of employers. This is particularly important when workforce issues remain a major challenge and employers are often hiring employees that live further away from the worksite as compared to their pre-pandemic workforce.

### **Carpool/Vanpool Options Will Also Be Impacted by COVID**

Similar to the COVID concerns described above related to transit, employees may not see carpools or vanpools as a viable option for them. Other riders in a carpool may not share the same concerns or values when it comes to reducing COVID transmission. An employee in a carpool could ask others in the carpool to mask, but, unless carpoolers all share the same view of masking, vaccines and limiting exposure, this could lead to difficult conversations or an unwillingness by some carpoolers to mask. The bottom line is that carpooling may be of limited use since employees participating in a single carpool will need to share similar values around COVID transmission, exposure, vaccines and masking.

### **COVID Impacts Make it Challenging to Calculate the Baseline for New Employers**

With the ECO program’s expansion to cities outside Portland Metro, employers new to the program will need to establish a baseline. We foresee challenges in trying to establish a fair and representative baseline for employers new to the program as compared to those that have been in the program for many years prior to the pandemic. At this point in time, telecommuting is not at its peak since the onset of the pandemic and greater numbers of employees are returning to in-person work. It is safe to say that:

- Many employees continue to telecommute or work in a hybrid format.
- Most employers have plans for returning to an in-person or hybrid work format that will result in an overall decrease in telecommuting.
- For office employees who, prior to the pandemic, carried out their work primarily in-person, it seems unlikely that there will be a wholesale return to the 100% in-person work format for the foreseeable future.

Based on these assumptions, we draw the following conclusions with regard to telecommuting:

- a) Daily commuting remains at a significantly reduced level compared to pre-pandemic commuting rates.
- b) Daily commuting will increase from current levels.
- c) Daily commuting in personal vehicles will not fully return to pre-pandemic commuting rates anytime soon.

The current state of employee commuting makes it extremely problematic for employers new to the ECO program to calculate a baseline from which to establish a commute trip reduction plan. What if 70% of a business's workforce continues to telecommute at this time and their company goal is to have 80% return to a fully in-person work format with 20% telecommuting? In a scenario like this, an employer's goals for greater employee presence at the worksite would be directly in conflict with a 10% commute trip reduction plan calculated from the baseline if a survey carried out any time in the near term. An employer would not be able to demonstrate that "a good faith effort" was made to carry out the trip reduction plan when the employer's goal is to increase the number of onsite employees rather than decrease employee numbers.

Due to these circumstances, a more representative alternative to the current method of calculating the baseline will need to be developed. Alternatively, the employer survey results of employees who telecommute during all or part of their work week should be credited to the employer and count toward their new trip reduction goal. Employers should not be disincentivized or punished for trying to bring employees back to work after an historic global pandemic when telecommuting still remains relatively high and the goal is to get more employees back to the office. Parts of our state and economy will be forever harmed if businesses are never able to return to some version of "normal."

### **Workforce Size Will Dictate What Is Possible for an Employer**

The ECO program applies to employers with more than 100 employees. One of the options listed in the current rule is a shuttle that picks up employees at a transit stop and transports them to the worksite. This may be cost effective for an employer with 500 or more employees at a single location (or multiple worksites in close proximity). Shuttles are expensive to purchase or rent, they must be maintained, have a driver, be insured and shuttles create an additional liability for the employer. This is unlikely to be a cost effective option for most employers that maintain a workforce closer to 100. Additionally, a sufficient number of employees must take transit in order for this to make sense.

One example provided to OBI was of a very large employer in a community subject to the new rule that voluntarily spent more than \$12,000 one year for their employees to ride a private shuttle with established stops around the local area. On a "high ridership" day, there were about 23 employees that took advantage of the shuttle. Even if 23 employees used the shuttle 5 days a week for 49 weeks of the year (a high estimate), the per employee per trip cost would have been well over \$20 (nearly \$50 per day), which is not a good value even for a very large employer.

Changes in the proposed rule must take into account the restraints that smaller businesses must operate within and not burden them with unreasonable goals. And even very large

employers must see value in the options they provide to employees as alternatives to commuting in personal vehicles.

### **Commute Timeframe in the Current Rule and Time Shifting**

Currently, employers are exempt from including employees in the trip reduction plan with shift changes that occur between 8:30 p.m. and 5:30 a.m. That means the time window for shift changes or work hours for which employers must reduce commute trips is from 5:30 a.m. to 8:30 p.m., which is a 15-hour time window. This schedule fails to recognize that most commuting occurs between 7 and 9 a.m. and 4 and 6 or 6:30 p.m. We would urge you to develop schedules that align with commonly understood commute times.

Although the current rules do not include time shifting as an option, DEQ staff have stated that shifting work hours would be an acceptable commute option. Even if this were a viable alternative for some employers and their employees, the 15-hour window that applies to the ECO program does not allow for many realistic options. For example, if time shifted hours ran from 10 a.m. to 7 p.m., this would still be fully within the non-exempt period. If shifting work hours is to be a viable option, the exempt timeframe must be more flexible and reasonable.

### **Union Negotiated Work Schedules Are Not Flexible**

Many employees in Oregon's workforce are represented by unions that negotiate terms of employment on behalf of their members, including work schedules. These are complex negotiations and, once a contract is signed, an employer cannot modify the schedule. Additionally, it is often the case that there is some combination of union and non-union employees at a worksite. However, the presence of any union employees with negotiated work schedules at a worksite frequently impacts the scheduling needs for non-union employees as well. For any employer with union-represented employees at their worksite, modifying schedules is not a viable trip reduction option.

### **Shifted and Compressed Work Schedules Could Negatively Affect Equity**

Employees have unique reasons why transit doesn't work for them. Employees with very young children or school-age children are likely to have difficulties utilizing a shifted or compressed work schedule (e.g. four 10-hour days rather than five 8-hour days) due to childcare needs. Affordable childcare is a scarce commodity, and is often not located with convenient transit in mind. Daycare, school or other childcare options are most likely to work primarily for employees with a fairly traditional work schedule—and that usually still requires some juggling by the employee/parent.

Lower income families are generally more likely to have two working parents than higher income families. And, in a single-parent household, that one parent normally must work. In general, low income, two-working parent and single-working parent households are very unlikely to be able to utilize shifted and compressed work schedules due to the typical hours of operation for childcare providers and schools.

### **Transit Options Are Limited for Early Morning Shifts and Can Be Lengthy**

Many industrial, manufacturing, healthcare and other shifts begin at 6 a.m. That means employees must arrive at the site prior to 6 a.m. and be ready to clock in at 6 a.m. While there is

an exemption for transit stops that are less frequent than 30-minute intervals, a quick review of TriMet's early morning schedules indicates that many intervals are 29 minutes, which is still a fairly long wait time. Additionally, the new rule should consider how many stops and transfers a single commute would entail. The fact is that transit options are extremely limited at this time of day and walking to transit stops during non-daylight hours for much of the year could also present safety concerns that would naturally deter an employee from utilizing transit during those hours.

Using TriMet's trip planner from my home in Cedar Mill (a Portland address in unincorporated Washington County), current transit schedules would not allow me to get to many locations by 6 a.m. The example destinations I used are OBI members that are employers subject to the ECO rule and located in the NW Industrial District and Swan Island areas. The distance from my home to all business locations I searched was between 10 and 15 miles. I could not get to any of these destinations by 6 a.m. using public transportation and earliest the transit trip to one business location took an hour and 43 minutes with an arrival time of 8:01 a.m. Many trip times were not substantially reduced at any point in the day due to poor transit access.

Additionally, other agencies are proposing rules that will necessitate changing work schedules. Oregon OSHA has adopted rules requiring employers to limit employees' exposure to excessive heat and wildfire smoke. In most cases, that will require changes to nontraditional working times. Transit simply isn't a reasonable option when work shifts start at 2 a.m. or 3 a.m.

Finally, if early morning transit options and very lengthy trip times are a problem for getting employees to work efficiently and on time for what is, by far, the state's largest transit agency, we have to assume that these challenges would be even more significant for smaller transit providers.

### **Transit Providers Are Also Experiencing Workforce Shortages**

In December 2021, Portland Metro Area transit provider TriMet announced the cancellation of 50-60 transit runs per day. An [April 26, 2022 OPB story](#) reported that TriMet is experiencing its most severe staffing shortages in history, many routes are delayed and 300 operators are needed to maintain its normal service levels.

Smaller transit agencies are even more strained. With smaller budgets, more limited workforces, less frequent service and lower ridership, it is almost a certainty that the cities subject to the new rule are experiencing more significant challenges impacting a transit rider's ability to get where they are going in a timely manner.

### **Safety Concerns Make Transit Less Attractive**

Since the onset of the pandemic, news outlets have reported on safety issues in Portland including violence as well attacks on transit employees. Increasing violence, open drug use and trash in the urban core have become more prevalent making employees more inclined to drive personal vehicles. As the Northwest Labor Press reported in February 2022 in its article [Unsafe Streets](#), there were 649 physical attacks on TriMet employees in 2021, up 51% from the previous year. In January 2022, the TriMet board was compelled to create a new offense that applies to individuals who propel bodily fluids or other dangerous substances at a TriMet

employee or contractor. Although the article doesn't indicate that transit passengers were subjects of assault, violent acts on public transit are becoming more prevalent and the perception of transit safety is becoming increasingly negative.

In Bike Portland's March 2022 post [How Can We Improve Safety on Public Transit](#), the article notes that women and people of color are most vulnerable to harassment and assault when using public transportation and that more needs to be done to improve safety on transit.

### **Shifting to a Vehicle Miles Traveled (VMT) Approach May Negatively Affect Equity**

The affordable housing crisis in Oregon is not news. Real estate prices and building costs are at an all-time high as the result of low inventory, increased costs for building materials, rising interest rates, increased labor costs, high land costs exacerbated by land use restrictions, and skyrocketing inflation. For many Oregonians, the only way to find affordable housing is to move further away from metropolitan areas where housing costs are high.

During the meeting, an idea was floated by a RAC member to shift the program's objective to reducing VMT rather than commute trips. Many Willamette Valley employers that will be subject to the expanded rule have employees commuting significant distances including from coastal communities. It is important to recognize that many low income employees are increasing the distance of their commutes in order to find more affordable housing. Oregon policymakers are trying to find answers to this challenging and complex issue, but shifting to a reduction of total employee VMT would make where an employee lives an employer problem. Employers would ostensibly be required to track the number of miles each of their employees is commuting to comply with the program. Not only would this be significantly more labor intensive for employers, but this policy could result in employees commuting from greater distances to be less attractive candidates to employers than those that live closer to the worksite. This would be a discriminatory outcome for employees who want jobs and an unfortunate result for employers that are experiencing major workforce shortages.

For these reasons, OBI believes the program should continue its focus on employee commute trips rather than a reduction in total VMT.

### **The Survey Process is Labor Intensive and DEQ Should Be Thoughtful About Requiring More Data**

In talking with our members, carrying out the survey process and getting the required number of employee surveys returned can be extremely challenging. Although employers with more than 400 employees may use a statistically valid sample rather than obtaining completed surveys from 75% of employees, determining what is statistically valid has presented some challenges. Employers have found it extremely difficult to reach this threshold and often have to pester employees for weeks to reach the 75% threshold. We would appreciate some discussion around an alternative survey methodology that facilitates obtaining the necessary data but does not result in such a burden to employers or force them to hassle employees repeatedly for weeks. There was also fairly significant support during the RAC meeting for more data gathering related to the ECO program. With the challenges around getting surveys returned, we would like to make sure there is a thoughtful discussion around the type and amount of data that is truly needed. Is it "need to know" data or "nice to know" data? What is the cost to employers versus

the benefit to ECO program? Would more survey questions be an additional barrier to getting surveys returned?

A longer survey doesn't necessarily mean a better survey. And it certainly doesn't provide value if an employee doesn't complete it because it is too long. Consider what additional data is truly important and whether additional survey questions could be another deterrent to getting completed surveys back from employees.

### **Smaller Cities Have Fewer Viable Commute Options**

We have articulated some of the commute option limitations that smaller cities subject to the new rule will face, but it bears repeating that, for the seven new cities that will be included in the rulemaking, it is going to be challenging to offer meaningful commute options due to much more limited budgets and investments in transit, bicycle and pedestrian transportation. Although there are several RAC members from outside the Portland Metro Area, it is important that expectations for the tri-county area are not imposed on smaller communities, unless, after thoughtful deliberation, they are truly viable commute options that work for all seven of the new cities subject to the rule.

### **Employers Will Differ in Their Ability to Achieve Trip Reduction Targets and 'A Good Faith Effort' Should Remain the Compliance Threshold**

Although OBI has presented a long list of challenges we see at this point in time, we support the ECO program and recognize the important contributions it can make in improving air quality and reducing GHG emissions. Our manufacturing and industrial members work to improve air quality every day through implementing the terms of their state air permits and, more than ever, are navigating an exceedingly complex and challenging regulatory environment.

Our overriding concern is that each workplace is unique based on dozens of factors and the rule expansion must recognize these differences. What works for one employer based on proximity to transit, times of shift changes, size of workforce, and ability to offer onsite services to employees, may not work for other employers. Most of all, the commute options being offered must fit the needs of the workforce at that particular company or the options are unlikely to be utilized. An employer's good faith effort to implement the ECO program should continue to be the requirement since an employer can only offer options, but cannot require employees to utilize them.

Thank you for the opportunity to provide comments on the ECO RAC Meeting #1. We look forward to the discussions ahead on this important rulemaking.

Sincerely,



Sharla Moffett  
Director  
Energy, Environment, Natural Resources & Infrastructure