



State of Oregon Department of Environmental Quality

# Written Comments

## Commute Option Rulemaking 2021

### Advisory Committee Meeting 3

This document is a compilation of written comments received related to the third meeting of the advisory committee for the Commute Options 2021 Rulemaking held Sept. 21, 2022.

## Comments

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DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email [deqinfo@deq.oregon.gov](mailto:deqinfo@deq.oregon.gov).

October 10, 2022

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

Karen Williams  
Air Quality Planner  
Oregon Department of Environmental Quality  
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Dear Ms. Williams,

Thank you for the additional opportunity to submit comment on the Department of Environmental Quality's Commute Options Rulemaking.

Nike is grounded in cultivating a culture of innovation and a shared purpose to leave an enduring impact. Innovation is about more than record-breaking shoes or iconic apparel. Climate change is one of the biggest risks for the planet and for sport.

Nike recognizes that business has a role to play when it comes to helping to reduce emissions. At our World Headquarters we have invested in a variety of transportation options for our employees, including an all-electric last-mile shuttle and taxi program, campus bikeshare, and electric vehicle (EV) charging infrastructure, all of which are powered exclusively through green energy. Not only have we met our goals for commute reduction, we have exceeded them.

As DEQ considers possible policy changes to this program, we believe it is important that the Agency and the Rulemaking Advisory Committee (RAC) remain focused on the two questions posed at the outset of this process:

1. Should existing rules applicable to employers in the Portland metropolitan region be revised, and if so, in what way(s)?
2. Should new rules apply to employers in other urbanized areas of the state?

Although we recognize that many of the materials presented are draft and have been created for the purpose of discussion, it appears as if the Agency is moving in a direction towards expanded regulation in smaller communities as well as a scorecard methodology for assessing compliance. Although the RAC has not officially made such recommendations, the development of draft fiscal impact reports as agenda items for future meetings suggest these policy changes may be predetermined. In response, we offer the following feedback:

- *Geographic Expansion*: The DEQ ECO rule should remain focused on the existing regions currently regulated. Not only does the cost/benefit of expansion appear to be relatively small, there's also been no indication that increased DEQ staff support would be made available. We

would prefer to see employer challenges with the existing program (several raised in previous meetings) addressed prior to considering further growth.

- *Existing Program Improvement:* A chief complaint of the existing program is the administrative burden it places on employers, especially for surveying. To improve the effectiveness of the existing program, we would recommend greater DEQ support in both survey administration/data analysis (optional) and plan creation (not just a menu of options, but true site-specific consultation).
- *Baselines:* Draft materials suggest that the Agency may be considering resetting employer's auto-trip baselines. This move would be unfair to employers – like Nike – who have already made significant investment and progress in achieving their reduced drive-alone rates, effectively erasing our hard-won gains. It may also penalize employers moving forward as further reductions in auto-trips beyond what has already been achieved will be more challenging when the “lower-hanging fruit” has already been picked. Since the late 1990's, Nike's WHQ has been subject to the DEQ Employee Commute Options (ECO) Rule. Starting from a baseline drive alone rate of 89%, we invested heavily in a variety of programs to encourage more sustainable employee travel for both commuting and campus travel, and have since well-exceeded our 10% target reduction, realizing a 54% drive-alone rate in our 2022 employee survey.
- *Draft Scorecard:* While we appreciate the attempt at increased transparency in plan compliance assessment, several of the programming options presented in the draft scorecard are administratively burdensome, inflexible, and extremely costly. Several feel particularly prescriptive and impractical with the implementation realities for employers and staff on-the-ground. Above all else, it is our view that once a baseline reduction goal has been achieved, the contents of an employer's plan (or scores) should be immaterial. Let's focus on the results rather than a specific pathway. That said, our comments on specific scoring proposals are below:
  - o Incentivizing EV investment: The scorecard minimizes the value that employer-supported EV investments offer towards air-quality improvement. The ECO rule, and its focus on auto-trip reduction as the pathway to emissions reduction, was created at a time when EVs were not commonplace. Since then, EVs have grown tremendously as a percentage of the fleet and are on track to continue that trajectory, especially if Oregon and Washington follow California's lead in banning the sale of new internal combustion (ICE) vehicles. A nexus undoubtedly remains between ICE auto-trips and air quality and is likely to for some time. However, with increasing EV and Low-Emission Vehicle (LEV) growth, that nexus is weakening. While EVs are not a panacea, scorecard minimization of employer-supported EV charging to air-quality is illogical. We need all kinds of public and private entities to support electric charging to continue EV growth and this should be reflected in the scoring. What is not captured in Nike's remarkable reduction in drive-alone auto trips is our major investment in EV charging at our WHQ campus, all of which are powered with sustainably produced electricity. Thus, a good percentage of our remaining drive-alone trips have contributed zero emissions but are not yet recognized by the program.
  - o Paying into an MPO: It's unclear if there would be any tangible benefit to auto-trip reduction or shift to EV through a new compliance fee.

- E-Mobility Incentives: eBikes in particular have great potential to replace auto trips. Employer-supported resources and programming in this area are supported for potential scorecard inclusion.
- Employer-supported Last-Mile Programming: These programs and investments were among those not included in the scorecard options although they clearly support employee transit-use. We believe that this was likely an oversight that can be corrected.

As the agency moves forward with this process, we encourage staff and leadership to revisit the core questions posed to the RAC at the outset of this conversation and determine direction prior to getting further into the details of employer compliance. Furthermore, we believe that any revised compliance rules must be evaluated through the lens of employers and employees who will have to implement these policies and be impacted by their consequences. The most laudable policy goals will prove ineffective if they are not informed by the practical realities of program implementation. Finally, as previously stated we urge the Agency and RAC to emphasize results over prescriptive plan contents, and to pay specific attention to the link between trip reduction and emissions with the increasing adoption of electric vehicles.

We look forward to continued participation in the RAC process and additional opportunities to provide input as the rulemaking process progresses. Please let us know if you have any questions about the feedback above.

Sincerely,



Lindsay Walker  
Employee Transportation Program Manager  
CBRE | Nike, Inc. Account  
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# Commute Option Rule Policy and Regulatory Concepts for RAC Consideration

Submitted by:  
Vjera Thompson,  
9 Wood

## Trip Reduction Targets

Policy	Support	Concerns	Comments
<i>Auto Trip Reduction Targets</i>			
Retain 10% auto trip rate reduction from baseline as a target, not a compliance measure	x		From the perspective of administering a business, keeping this as a target is helpful.
Allow an alternative target of 20% full-time remote workers	x		
Provide incentive to reach 20% trip reduction from baseline: reduce survey frequency to once/ 4 years	x		

**Reducing Vehicle Miles Traveled**

Submitted by: Vjera Thompson, 9 Wood
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Policy	Support	Concerns	Comments
<i>Vehicle Miles Traveled Reduction</i>			
Trip reduction plans require MPO or local gov't approval as consistent with transportation system plans		x	This sounds like it could bog down the approval process.
Trip reduction plans require narrative explanation of consistency with MPO or local gov't transportation system plans		x	This could be complicated for administrators with limited time to accomplish.

**Reporting Requirements**

Submitted by:  
Vjera Thompson,  
9 Wood

Policy	Support	Concerns	Comments
<i>Reporting, Surveying and Trip Reduction Plan Requirements</i>			
Update employee commute option responsible person contact information within 30 days of change and at least annually		x	Although a reasonable ask, it is difficult to remember to do this when there is turnover. Annual confirmation is preferred.
Trip reduction plans include description of employer policies that support accessibility and distribution of commute option benefits among employees of color, across job types and across salary ranges.	x		
Survey employees 2 years after baseline survey, then every 4 years.	x		
Require 75% survey participation or alternative of 65% in every job type category (e.g. office-based, direct customer service, manufacturing) – only for employers outside of Portland metropolitan area.		x	I don't understand this as worded. I think you mean something like:  Require 75% survey participation or a survey alternative for employers outside of Portland metropolitan area if every job type category on the survey makes it to 65% (e.g. office-based, direct customer service, AND manufacturing)

**Geographic considerations**

Submitted by: Vjera Thompson, 9 Wood
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Policy	Support	Concerns	Comments
<i>Geographic considerations</i>			
Commute option programming mandatory for employers based within Metropolitan Planning Organization boundaries or within an urban growth boundary of an incorporated city with a population of at least 10,000.		x	Not certain I understand this fully.
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**Employer considerations**

Submitted by:  
Vjera Thompson,  
9 Wood

Policy	Support	Concerns	Comments
<i>Regulated employer considerations</i>			
Commuter option programming for employers with more than 100 employees at one worksite or more than 1,000 employees at multiple worksites within an MPO boundary or UGB of an incorporated city with a population of at least 10,000 people.	x		
Employer trip reduction plan total points requirement is tiered by employer size	x		Depending on how this is set up, might make sense.
Employers who voluntarily opt in to providing commuter options, surveying and reporting receive DEQ "commuter option leader" certification or other promotional materials from DEQ.	x		

**Exemptions**

Submitted by:  
Vjera Thompson,  
9 Wood

Policy	Support	Concerns	Comments
<i>Exemptions (see rule text next page)</i>			
Retain exemptions of OAR 340-0242-0210 and -0270 except change -0270(1)(C) to “Work shift changes occur between 7:00 p.m. and 7:00 a.m.”		x	It’s not feasible to use public transit to get to a shift change by 7 am in the Eugene area. 8 am would be more realistic.

### 340-242-0210

#### **Employee Commute Options Program: Can an Existing Employer Comply with ECO Through Restricted Parking Ratios?**

An employer will be considered to have met the target trip reduction and is exempt from the ECO rules if the employer provides documentation of the following. An employer must submit this documentation with an exemption application to the Department by the deadline for plan or notice submittal and certify that they continue to meet these requirements every two years. Employers meeting the requirements of this rule do not need to conduct a baseline survey of employees. However, employers whose applications are denied must then conduct a baseline survey and submit the findings to the Department within 90 days of notice by the Department.

- (1) Work site is located in an area with maximum parking ratio requirements at least as stringent as the Department's maximum parking ratios (see OAR 340-242-0300 through 340-242-0390);
- (2) Free or subsidized all-day parking is generally unavailable within a one-half mile radius of the work site; and
- (3) If the employer provides free or subsidized parking, including leased parking, above the Department's maximum parking ratio to any employees at the work site (except to employees required to have a vehicle at the work site as a condition of employment), then either:
  - (a) A transportation allowance is offered to those employees provided free or subsidized parking that exceeds the Department's maximum parking ratio. The transportation allowance must be offered in lieu of the free or subsidized parking in an amount equal to or greater than the amount of the subsidy, but not to exceed the maximum allowed for transit by the Internal Revenue Service for the Qualified Transportation Fringe Benefits included under Section 132(F), Notice 94-3 of the tax code; or
  - (b) All employees at the work site are offered a transit subsidy or its equivalent at least equal to 50 percent of the value of a Tri-Met all-zone transit pass.

### 340-242-0270

#### **Employee Commute Options Program: Are Exemptions Allowed if an Employer is Unable to Reduce Trips or Take Advantage of Alternate Compliance Options?**

- (1) An employer is fully exempt from OAR 340-242-0010 through 340-242-0290 if the employer submits reasonable documentation for each of the following:

(a) Work site is located in an area for which:

(A) Public transit service during work shift changes is less frequent than thirty minute intervals; or

(B) The public transit service point is further than one-half mile from employee's usual parking area; or

(C) Work shift changes occur between 8:30 p.m. and 5:30 a.m.

(b) Upon completing the employee survey and providing reasonable promotion for a carpool matching program, employees indicating a willingness to car/vanpool cannot be matched within the work site or through Tri-Met's carpool matching database or employee turnover rate is greater than 50 percent per year;

(c) The nature of employees' work requires them to perform their work at the work site or during specific hours and days, eliminating the possibility of telecommuting or compressed work weeks/hours; and

(d) No options exist for the employer to achieve equivalent emission reductions at no net annualized cost to the employer (including both capital and operating costs).

(2) Partial exemptions.

(a) The Department will grant a partial exemption for that portion of an employer's work force for which sections (1)(a) through (c) of this rule apply;

(b) The Department will grant a partial exemption for section (1)(d) of this rule in direct proportion to the remaining work trips to be reduced after quantifying all available equivalent emission reductions.

(3) Employers must submit requests for partial or total exemptions to the Department, on application forms provided by the Department, by the deadline for plan or notice submittal. The Department will approve or deny the employer's request for exemption by letter to the employer. If the employer objects to any condition or limitation in that letter, the employer may request a contested case hearing as described in OAR 340-242-0170.

(4) Employers must renew requests for exemptions every three years.

October 10, 2022

Karen Williams  
Department of Environmental Quality  
700 NE Multnomah Suite 600  
Portland OR 97232

### **Re: Comments on Employee Commute Option Rulemaking Meeting 3**

Dear Ms. Williams:

On behalf of Oregon Business & Industry, I am submitting the following comments on the Department of Environmental Quality's (DEQ) Employee Commute Option (ECO) Rulemaking Meeting 3. 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. Thank you for the opportunity to comment on the policy concepts provided at the September 21 Rules Advisory Committee (RAC) meeting.

### **General Comments**

We appreciate DEQ's work in providing documents and concepts for the RAC to consider. There is a great deal to comment in these documents. Overall, we feel the proposals floated at the September meeting are a quantum leap in complexity and cost from the existing program and that a much more incremental approach would be more appropriate as DEQ contemplates bringing much smaller communities into the program. In addition to the challenges to employers, we believe that DEQ needs to spend more time thinking about its own capacity to implement the program. The inclusion of dozens more employers with a far more expansive program means a significant increase in the resources the agency will need to carry out new requirements beyond the staff of one who currently administers the program.

The air quality program has seen significant general fund increases over *at least* the last two biennia. When looking at this program versus others, where is the ECO program in DEQ's funding priorities? What is the cost/benefit of bringing cities of 10,000 into the program when, as DEQ's data shows, the total GHG emissions *from all seven cities* of 50,000 or more are roughly 60% of total emissions of a single metropolitan area—the Portland Air Quality Management Area (PAQMA)? The focus of many of the new proposals will regulate many more entities, but the net benefits to air quality and GHG emissions are likely to be negligible.

There are also many other questions that come to mind as we've looked more thoroughly at the proposals. When did the possibility of regulating employers in cities of more than 10,000 become a consideration? What resources or incentives will be provided to employers both inside and outside of the PAQMA to help them comply? Has DEQ done any cost analysis for the concepts that have been floated?

This rule has implications for both private and public employers. Cities, counties, state agencies, school districts, hospitals, law enforcement and many others will be subject to the new

requirements. How will these entities fund the significant increase in resources that will be needed to implement the new program?

Our fear is that additional taxes or fees will have to be levied on private employers in order for public employers to comply with the program. This is one of many examples in which businesses could be required to fund the program outside of their own regulatory obligation and in multiple ways.

It is essential that DEQ evaluate whether the requirements are realistic and implementable at a reasonable cost with a corresponding benefit. DEQ must consider whether all employers regulated by the program can comply with requirements from both a logistics and cost perspective. We urge DEQ to consider the broad implications of new program requirements that are significantly more complex, more stringent, more expansive and much more costly as it compiles draft rules to present to the RAC.

As we suggested in earlier comments, ECO program updates should take a much more incremental approach. It makes more sense to take a bite at the apple--by redoubling efforts around commute options that are low hanging fruit (refer to results from DEQ's employer survey) and focusing on achievable and cost-effective options--than trying to eat the apple in one bite with requirements that have a low chance of success or are cost prohibitive.

## **Comments on Specific Concepts**

### **Inclusion of Employers with 1,000 Employees Statewide**

We oppose changing the "more than 100 employees at a worksite" to "more than 100 employees at a worksite *or* more than 1,000 employees at multiple worksites." Simply because an employer has more than 1,000 employees statewide does not mean that the communities in which they operate have the infrastructure to help support a successful commute option program and employers must have access to public resources like transit to enable them to comply. Using this threshold for inclusion in the program, a Safeway store in Burns would be regulated by ECO as would a remotely-located ODOT maintenance facility. It does not make sense to include employers that cannot comply with the requirements and DEQ must ensure that there are adequate and reasonable compliance pathways for all regulated entities.

### **Transportation Plan Scoring Proposal**

OBI opposes the transportation plan scoring proposal. There is no one size fits all and additional regulatory concepts that were proposed, like covering an entire Metropolitan Planning Organization (MPO) instead of using city limits, make many of the strategies untenable. For example, a program that covers the Rogue Valley MPO seems doomed to fail since the Rogue Valley Transit District (RVTD) does not even service the entire MPO (according to maps on the RVTD website). The original notice of this rulemaking mentioned the inclusion of *cities of more than 50,000* in the program, not MPOs and now there are regulatory concepts being considered that would include *MPOs of 10,000*. We do not recall a serious discussion of including MPOs of 10,000, which we strenuously oppose. There 68 cities in Oregon of more than 10,000. A number of those are within the PAQMA, but many are isolated communities like Baker City,

Prineville, Newport, La Grande, Astoria, and Coos Bay. This population size is much too small to propose for regulation and should be dropped. The overall point is that the point system in conjunction with the regulatory concepts being floated have an additive effect and the realistic, cost-effective options for compliance diminish rapidly when applying the possible requirements to employers in these communities. DEQ's proposals box in employers and leave few compliance options available for smaller cities.

*All businesses are different and have unique circumstances. Employers should have flexibility in determining what is possible for them, what works for their employees and how best to reduce commute trips for their business model and workforce without the additional complexity of trying to obtain a specific transportation score to be compliant.*

*Further, the scoring systems seems preoccupied with promoting some strategies over others and minimizes strategies that would significantly reduce emissions. Commute plans should place greater emphasis on results and forego the prescriptive approaches that add up to a manufactured point score.*

While we strongly believe the scoring idea should be dropped from consideration, we must point out that the point value of some incentives/strategies does not correspond to a business's out of pocket cost for strategies that could significantly benefit air quality and GHG reduction. Installing EV charging stations is a major cost in and of itself and DEQ has assigned a point value of 10 when the requirement is that the employer also provide "free or subsidized EV charging," which is a second tier of cost. If a facility with few commute options available were to utilize alternative and enforceable reductions equal to a 10% trip reduction target, why would the business be required to do more? This strategy could require significant capital investments and the low point value for this strategy does not correspond with the public health and environmental benefit this could achieve.

### **Concerns with the Specific Strategies in the Scoring Proposal**

As provided in previous comments, there are several challenges related to transit. This year, one large employer discontinued annual subsidized TriMet passes because the vast majority of employees were telecommuting, and the transit agency refused to offer a lower price to accommodate the significant decrease in weekly ridership for this business's employees. Despite requests from many employers, TriMet has refused to offer new formats for its employer passes that reflect the new reality of greater telecommuting.

Providing onsite childcare carries a whole host of complex challenges—and that is before getting into the significant workforce challenge of finding qualified childcare employees. There are dozens of reasons that businesses might find themselves constrained from providing onsite childcare. Instead, a more viable strategy would be to offer incentive credits for businesses that locate near childcare or provide flexibility to their employees. Resources that can help reduce auto trips need not exist onsite or be managed by the employer. We must also underscore that there are many businesses—like those subject to Cleaner Air Oregon in which businesses must model cumulative health risks to sensitive and vulnerable populations like children—that would be precluded from offering onsite childcare.

Further, the result of some proposals is that DEQ effectively penalizes some business types (manufacturing, heavy industrial) due to their inconvenient proximity to services like transit while simultaneously penalizing them in other regulatory programs for being too close to population centers. This sets up conflicts between regulatory programs that make compliance impossible.

Many incentives/strategies in the scoring proposal are extremely ambitious. Program updates need to focus on low hanging fruit that achieves the greatest cost/benefit. Providing vanpools to a minimum of 50% of employees is a large percentage and in a different universe of options from the current program. DEQ appears to have taken one example from a RAC member and multiplied the potential for vanpools by a very significant factor. In the Meduri Farms example, we don't know the total size of the workforce, how long it took for the business to establish a little over a dozen vanpools or the total number of employees that utilize this service. We also wonder where all of these vans would suddenly come from and what the cost would be if subsidies were not available to the employer.

Here are a few final concerns with the incentives/strategies offered:

- Definition of a carpool. If two cohabitating adults share a ride and therefore reduce two commute trips daily (one roundtrip), why would they be precluded from being defined as a carpool? Parents especially may find this preferable to neither parent having a car accessible in the event that a sick child has to be picked up during the workday.
- Elimination of paid parking: The option presented lacked nuance to distinguish between a variety of parking arrangements. We presume that the focus is leased or contractual parking arrangements and would not apply to employers with ample onsite parking that is not paid.
- Employing an ECO coordinator: Does this mean this employee's sole responsibility would have to be coordination of the ECO program? Some employers may be inclined to assign a point of contact role to an existing employee with other job responsibilities. If the sole responsibility must be ECO coordination, we estimate this being \$80,000-100,000 of total cost for the employer even in small communities where wages and salaries are lower.
- Paying into a MPO: This amounts to double taxation for some employers in communities like Portland and Medford where transit is funded entirely by business taxes. Additionally, it's questionable whether an employer would receive any tangible benefit from this new fee.
- Providing commute options for contractors: This requirement needs clarification. If a large office building contracts with a cleaning business with more than 100 employees at the site, it seems appropriate that the cleaning business be subject to the ECO rules. The building owner or management should not be responsible for covering the contracting business's employees. This structure would avoid getting into complex employment law issues like the definition of an employee versus the definition of a contractor.
- Subsidized e-mobility memberships: This is a potentially reasonable incentive, however e-mobility access is limited to larger cities and therefore would not be available in many smaller cities. We see other challenges that would make e-mobility of limited use like seasonally driven conditions like snow/ice in cities like Bend. The bottom line is that e-



mobility must be accessible in order for employers to utilize this strategy in their commute plan.

## **Responses to Policy and Regulatory Concepts for RAC Consideration**

It would have been helpful for DEQ to clearly indicate which concepts are in the current rule and which are new proposals. Our responses to the concepts are below.

- We support retaining the 10% auto trip rate reduction. We are concerned, however, about any recalculation of new, post-COVID baselines. Many Portland-area employers have invested in commute programs that have produced hard-won results over decades. Any reset of the baseline would eliminate those gains and lead to unfair penalties. For these businesses, if a baseline has been met or exceeded, no further action should be required other than periodic surveys to ensure that commute trends have not changed. For employers new to the program, a baseline calculated at this time, when telecommuting remains high, would also be unfair. The program must be flexible in making allowances for the unique circumstances created by COVID. Employers should have the option to use a. their pre-COVID baseline for auto trip rate reduction or b. a straight trip reduction target to create a level playing field for those regulated by the current program and those subject to the new program.
- As stated above, we strongly oppose the inclusion of employers in MPOs or within an urban growth boundary of an incorporated city with a population of 10,000 or more. DEQ needs to think about the incremental expansion of this program and demonstrate that the program is workable in a more incrementally expanded program before including much smaller communities in the program.
- Employers are unlikely to opt into voluntary participation in the program by being certified as a “commute option leader.” If DEQ is serious about attracting voluntary efforts to reduce drive-alone rates, more thought needs to be given to what real incentives would encourage voluntary participation. The current proposal puts 100% of this burden on the employer and we do not see the current proposal as a sufficient incentive for employers to voluntarily opt in.

## **Concerns with the Existing ECO Rules**

In reviewing the existing ECO rules, we have noted some changes that should be included in the rule update:

At OAR 340-242-0270, there are exemptions for certain factors such as an employer’s location being a distance greater than one-half mile from public transit service or service that is less frequent than 30-minute intervals. If an employee must walk up to one-half mile between the transit and employer locations, it should be required that the route be deemed safe which includes the presence of sidewalks or other pedestrian access and also be well lit with streetlights. Taking transit that requires a one-half mile walk to work prior to a 7 a.m. shift in Oregon’s winter months means that it is not yet daylight making pedestrians vulnerable to being struck by a car or assaulted.

The exemption for public transit service at intervals less frequent than 30 minutes addresses one leg of an employee's commute, but it does not address a lengthy total transit time. In using TriMet's trip planner to get from my home in Cedar Mill to the NW Industrial District and Swan Island, the total ride time was an hour and 45 minutes and the earliest I could arrive at each location was *after* 8 a.m. The point is that this transit option could not get me to work at those locations by 6 a.m., 7 a.m. or even 8 a.m. Tardiness impacts employers in a variety of ways, but, for some, production slows or stops, and late employees can create unsafe working conditions for co-workers. **Employees must be able to get to work on time.**

Far too many aspects of the existing program place the administrative burden on employers and the proposals floated at the last meeting are even more so. If this program is truly a priority for DEQ and ODOT, these agencies should be offering greater support with surveying, administration, data analysis and plan development. Employers are mandated to offer a menu of options that they do their best to implement, but consultation on site-specific conditions and technical support to problem solve should be available when an employer's location or business model presents challenges for achieving commute reductions. For example, TriMet (and potentially other larger transit systems) has completed gap analysis for transit access via sidewalks/bikeways. This information should be provided to employers, but the current program places this burden on employers to unearth this information themselves. This is the type of the staff support DEQ should be **proactively** providing.

### **There Must Be a Focused Effort to Resolve Transit Issues**

DEQ has shelved the many challenges facing transit and ridership as "implementation issues" that are somehow disconnected from compliance with the ECO regulations. For the program to work, transit issues must be resolved. Workforce shortages have forced reduced transit schedules, employees are expressing serious concerns about the safety of transit, and agencies like TriMet are refusing to offer competitive pricing to employers at a time when many employees are not using transit passes five days a week due to greater telecommuting. Transit is essential to the ECO program and the state agencies advancing the expansion of the program must play a key role in addressing these significant challenges.

### **The "Good Faith Effort" Compliance Threshold Should Be Retained**

The program's intent is to improve air quality and reduce GHG emissions by providing commute *options*, not commute *mandates*. Employers must go to considerable effort and expense to implement their commute reduction plans and comply with the regulatory requirements of the program. However, employers cannot force employees to use these options and the program's compliance threshold must take this into account. Offering transit passes to employees for whom transit is not accessible, convenient, or feels unsafe is unlikely to be successful. Updating the ECO rules needs to focus on results, which means creating a workable program that provides flexibility factoring in each individual business's unique circumstances. We urge DEQ to retain the "good faith effort" compliance threshold in the updated rule.

### **Conclusion**

Many proposals offered in the RAC meeting lack adequate compliance pathways, apply urban strategies in small towns, are overly prescriptive and don't factor in site-specific issues or unique

business attributes, place disproportionate focus on offering a menu of strategies rather than finding what works, and offer very little in terms of resources or incentives for employers. Additionally, we have numerous clarifying questions and thoughts to offer on a workable program and we would appreciate the opportunity to meet with DEQ staff to explore these ideas.

Thank you, again, for the opportunity to comment. OBI looks forward to continued participation in the rulemaking. Please contact me should you have questions about our comments.

Sincerely,

A handwritten signature in blue ink that reads "Sharla Moffett". The signature is written in a cursive, flowing style.

Sharla Moffett  
Director  
Energy, Environment, Natural Resources & Infrastructure

Commute Option Rule Policy and Regulatory Concepts for RAC Consideration

Submitted by: Liz Hormann, Peter Hurley, Portland Bureau of Transportation

**Trip Reduction Targets**

Policy	Support	Concerns	Comments
<i>Auto Trip Reduction Targets</i>			
<p>Retain 10% auto trip rate reduction from baseline as a target, not a compliance measure</p>		<p>X</p>	<p>For consistency, ECO targets should align with CFEC targets, i.e., they should be based on VMT reduction and should start with a 20% VMT reduction in the Portland Metro area. Targets in other parts of the state may be lower, as they are in CFEC. It's critical to have a higher bar than what we've had for years if we want to meet our VMT, GHG, and mobility targets. Consistent targets is perhaps the most important issue for the ECO update.</p> <p>We support considering lowering the survey response rate to 65% as an incentive, along with the higher VMT reduction target.</p>
<p>Allow an alternative target of 20% full-time remote workers</p>		<p>X</p>	<p>Not sure we should be separating out a different target for remote workers. And given the VMT data regarding remote workers (more VMT during the day, though let's try to find updated data, perhaps from PSU), this may not be the best strategy for reducing overall emissions.</p>

			It also raises fairness issues for businesses where many or most workers must work onsite. Drop this one.?
Provide incentive to reach 20% trip reduction from baseline: reduce survey frequency to once/ 4 years		X	While we support incentives for higher performance, the first few years it will be critical to be collecting data annually to determine what's working and what's not. Data is critical to understanding progress. Annual transportation data gathering has precedence, e.g., American Community Survey. An incentive would be to reduce reporting to bi-annual after a site has achieved the target for three years in a row.

Submitted by: Liz Hormann, Peter Hurley, Portland Bureau of Transportation

**Reducing Vehicle Miles Traveled**

Submitted by: Liz Hormann,  
Peter Hurley, Portland  
Bureau of Transportation

Policy	Support	Concerns	Comments
<i>Vehicle Miles Traveled Reduction</i>			
Trip reduction plans require MPO or local gov't approval as consistent with transportation system plans	X		Trip reduction plans should require MPO or local government approval based on the likelihood of achieving the VMT reduction target within the specified timeframe, based on either a points menu or a custom TDM plan.
Trip reduction plans require narrative explanation of consistency with MPO or local gov't transportation system plans	X		Is this necessary if the proposed plan has sufficient points? What is the benefit?

**Reporting Requirements**

Submitted by: Liz Hormann,  
Peter Hurley, Portland  
Bureau of Transportation

Policy	Support	Concerns	Comments
<i>Reporting, Surveying and Trip Reduction Plan Requirements</i>			
Update employee commute option responsible person contact information within 30 days of change and at least annually	X		
Trip reduction plans include description of employer policies that support accessibility and distribution of commute option benefits among employees of color, across job types and across salary ranges.	X		
Survey employees 2 years after baseline survey, then every 4 years.		X	Every 4 years is far too long to understand performance trends. Annual reporting will be important for monitoring progress and performance, at least until an employer consistently meets the VMT reduction target for three years.
Require 75% survey participation or alternative of 65% in every job type category (e.g. office-based, direct customer service, manufacturing) – only for employers outside of Portland metropolitan area.			We could allow for 65% survey participation in combination with annual reporting.

**Geographic considerations**

Submitted by: Liz Hormann,  
Peter Hurley, Portland  
Bureau of Transportation

Policy	Support	Concerns	Comments
<i>Geographic considerations</i>			
Commuter option programming mandatory for employers based within Metropolitan Planning Organization boundaries or within an urban growth boundary of an incorporated city with a population of at least 10,000.	X		



**Employer considerations**

Submitted by: Liz Hormann,  
Peter Hurley, Portland  
Bureau of Transportation

Policy	Support	Concerns	Comments
<i>Regulated employer considerations</i>			
Commute option programming for employers with more than 100 employees at one worksite or more than 1,000 employees at multiple worksites within an MPO boundary or UGB of an incorporated city with a population of at least 10,000 people.		X	The jump from 100 at one site to 1,000 across sites seems large, would like to know more about how DEQ selected this number?
Employer trip reduction plan total points requirement is tiered by employer size		X	Can support a tiered approach, but by employer size doesn't seem to be the right factor – should be location/ land use/ amount they are behind in meeting 10% target.
Employers who voluntarily opt in to providing commute options, surveying and reporting receive DEQ “commute option leader” certification or other promotional materials from DEQ.	X		These are employers not subject to ECO, correct?

**Exemptions**

Submitted by: Liz Hormann,  
Peter Hurley, Portland  
Bureau of Transportation

Policy	Support	Concerns	Comments
<i>Exemptions (see rule text next page)</i>			
Retain exemptions of OAR 340-0242-0210 and -0270 except change -0270(1)(C) to "Work shift changes occur between 7:00 p.m. and 7:00 a.m."		X	PBOT opposes maintaining the exemptions. The employers contribute to congestion, VMT, and GHG. The employees, who are often lower income workers in (currently exempt) industrial companies, deserve the same benefits as other workers if we want an equitable program.

Submitted by: Liz Hormann, Peter Hurley, Portland Bureau of Transportation

**340-242-0210**

**Employee Commute Options Program: Can an Existing Employer Comply with ECO Through Restricted Parking Ratios?**

An employer will be considered to have met the target trip reduction and is exempt from the ECO rules if the employer provides documentation of the following. An employer must submit this documentation with an exemption application to the Department by the deadline for plan or notice submittal and certify that they continue to meet these requirements every two years. Employers meeting the requirements of this rule do not need to conduct a baseline survey of employees. However, employers whose applications are denied must then conduct a baseline survey and submit the findings to the Department within 90 days of notice by the Department.

- (1) Work site is located in an area with maximum parking ratio requirements at least as stringent as the Department's maximum parking ratios (see OAR 340-242-0300 through 340-242-0390);
- (2) Free or subsidized all-day parking is generally unavailable within a one-half mile radius of the work site; and
- (3) If the employer provides free or subsidized parking, including leased parking, above the Department's maximum parking ratio to any employees at the work site (except to employees required to have a vehicle at the work site as a condition of employment), then either:
  - (a) A transportation allowance is offered to those employees provided free or subsidized parking that exceeds the Department's maximum parking ratio. The transportation allowance must be offered in lieu of the free or subsidized parking in an amount equal to or greater than the amount of the subsidy, but not to exceed the maximum allowed for transit by the Internal Revenue Service for the Qualified Transportation Fringe Benefits included under Section 132(F), Notice 94-3 of the tax code; or
  - (b) All employees at the work site are offered a transit subsidy or its equivalent at least equal to 50 percent of the value of a Tri-Met all-zone transit pass.

**Commented [HL1]:** These seem like we are still asking for certain ECO strategies for situations where there are restricted parking ratios, which means I think it would be more streamlined (and we could better track more employers) to remove these exemptions and could add restricted parking ratios to the menu of options for employers to choose. I don't really understand separating this out.

**Commented [HP2]:** And to regional and/or local governments.

**Commented [HP3]:** Annually.

**Commented [HP4]:** That seems odd. Isn't that the starting point for evaluating the program?

**Commented [HP5]:** Review...

**Commented [HP6]:** Is there anywhere within an urban area of the state without subsidized parking within a half mile? All of downtown Portland is covered by subsidized parking.

**Commented [HP7]:** Major loophole. Strike this.

**Commented [HP8]:** Why not all employees.

**Commented [HP9]:** Which is often less than the parking subsidy, so little VMT reduction is likely.

**340-242-0270**

**Employee Commute Options Program: Are Exemptions Allowed if an Employer is Unable to Reduce Trips or Take Advantage of Alternate Compliance Options?**

(1) An employer is fully exempt from OAR 340-242-0010 through 340-242-0290 if the employer submits reasonable documentation for each of the following:

**Commented [HL10]:** I think if we make the menu of options diverse enough, everyone should be able to create an ECO Trip Reduction Plan. And since it is all based on a good faith effort, then these exemptions seem unnecessary. Additionally, if we move toward points based on location/ land use these exemptions seem moot.

Submitted by: Liz  
Hormann, Peter Hurley,  
Portland Bureau of  
Transportation

(a) Work site is located in an area for which:

(A) Public transit service during work shift changes is less frequent than thirty minute intervals; or

(B) The public transit service point is further than one-half mile from employee's usual parking area; or

(C) Work shift changes occur between 8:30 p.m. and 5:30 a.m.

(b) Upon completing the employee survey and providing reasonable promotion for a carpool matching program, employees indicating a willingness to car/vanpool cannot be matched within the work site or through Tri-Met's carpool matching database or employee turnover rate is greater than 50 percent per year;

(c) The nature of employees' work requires them to perform their work at the work site or during specific hours and days, eliminating the possibility of telecommuting or compressed work weeks/hours; and

(d) No options exist for the employer to achieve equivalent emission reductions at no net annualized cost to the employer (including both capital and operating costs).

(2) Partial exemptions.

(a) The Department will grant a partial exemption for that portion of an employer's work force for which sections (1)(a) through (c) of this rule apply;

(b) The Department will grant a partial exemption for section (1)(d) of this rule in direct proportion to the remaining work trips to be reduced after quantifying all available equivalent emission reductions.

(3) Employers must submit requests for partial or total exemptions to the Department, on application forms provided by the Department, by the deadline for plan or notice submittal. The Department will approve or deny the employer's request for exemption by letter to the employer. If the employer objects to any condition or limitation in that letter, the employer may request a contested case hearing as described in OAR 340-242-0170.

(4) Employers must renew requests for exemptions every three years.

**Commented [HP11]:** This is a very low bar. Use the DLCD CFEC standard, once an hour.

**Commented [HP12]:** Huh? This seems very odd. Why not ½ mile from an employee entrance?

**Commented [HP13]:** This sounds like the employer would be exempt if one of the shifts occurs during this time. Please clarify.

**Commented [HP14]:** What is "reasonable promotion?"

**Commented [HP15]:** 100% of the work force?

**Commented [HP16]:** Please explain.

**Commented [HP17]:** In the Metro region Metro or local government should be the deciding agency.

**Commented [HP18]:** Please provide examples.

**Commented [HP19]:** Why every three years when transit service changes at least yearly, often twice a year, and this proposal is linked to transit service.

## Potential Policy Elements for RAC Consideration

Submitted by: Liz Hormann, Peter Hurley, Portland Bureau of Transportation

### Tiered System for Trip Reduction Plan Criteria

	<b>Small</b> <i>101 – 249 emps</i>	<b>Medium</b> <i>250 – 999 emps</i>	<b>Large</b> <i>1000+ emps</i>
<b>Trip Reduction Plan total points</b>	<b>60</b>	<b>80</b>	<b>100</b>

**PBOT staff comments:** We do not see evidence that employer size impacts ability to meet thresholds. If there is not substantial evidence that employer size is related to performance, drop the small, medium, large categories and focus on the performance menu.

We also do not see an evidence-based approach to the point values given below. We support a TDM menu approach with points based on actual performance data, e.g., the [CAPCOA GHG Handbook](#). The base template could be developed by a contractor with familiarity with the CAPCOA work with a review committee of RAC members, managed by DEQ.

### Potential Trip Reduction Plan Criteria: Incentives, Strategies and Policies Scoring

Strategy/Policy/Incentive	Points	Comments
Charging for parking or parking cashout	50	Support parking pricing but should add specifics around this. Charging daily has larger VMT impact than monthly/annually, as OHSU and others pointed out in RAC #3.  We support parking cash-out, though be clear that the rate should be worth at least as much as market rate parking or equivalent to the cost of a transit pass.
At least half-time telecommute/remote work accessibility for at least 20% of workforce	40	Points should be based on performance. What does “telecommute/ remote work accessibility” look like?  40 points seems too high for a relatively modest percentage of the work force, and just half time. Does the evidence support this?
Carpool incentives and coordination (carpool defined as being two or more people from different households going to work)	20	Need more specifics and be tied to performance. Give some ranges on the incentives. Shouldn’t count to hand out \$1. Perhaps this should be part of a parking cash-out/transportation wallet to ensure the incentives are worth at least as much as daily parking.
Bike or active transportation amenities	20	Need more specifics/ examples here, and justification for the points proposed.

Subsidized or free transit pass	20	Need example subsidies ranges here... 25%, 50%, etc subsidy. And more points with a higher subsidy.
Guaranteed ride home, compressed work week, flexible scheduling – one or all of these incentives.	10	Emergency/ guaranteed ride home should be a requirement across the board/ baseline requirement.
<b>(new ideas)</b>		
Employing or contracting an employee commute option coordinator	20	Isn't this already required? Seems like a baseline requirement, not points based.
Provide vanpool accessible to at least 50% of employees	50	Shouldn't be so many points if it is just making vanpools accessible. Points should be based on performance. 50 points is too high, as vanpool performance isn't as strong as charging for parking and parking cash-out.
Provide onsite childcare	20	Why 20 points?
Pay into MPO, local government or Transportation Management Agency transportation option program	20	Pay how much? And is it feasible in all areas?
Provide commute option incentives for employees not counted in regulated total (e.g. contracted workforce, those working swing or late shift)	10	Why not count contracted workforce in the ECO update? Contracted worker impacts are no different than employee impacts. To exclude them favors some sectors and employers over others who do not employ any or many contractors.
Free/subsidized electric vehicle charging for employees	10	EV charging does not reduce VMT and still contributes to congestion and air pollution. While we support EV charging, since it does not reduce VMT (and has been shown to increase VMT by reducing vehicle operating costs), it's not a VMT reduction strategy supported by points. We would support points for subsidized e-bike purchases by employers, as e-bike use could reduce VMT.
Subsidized/provided e-mobility membership	10	Need a range or specifies on what the subsidy should be. Could be part of a transportation wallet provided regionally.
Alternative and enforceable emission reductions with DEQ approval	10	Is DEQ prepared for vetting all of these? Perhaps the alternatives, just as with TDM plan approval, should be done at the MPO or local government levels, at least in the Portland Metro region.

Submitted by: Liz  
Hormann, Peter Hurley,  
Portland Bureau of  
Transportation

**Survey questions to add (implementation, not part of rulemaking)**

Submitted by: Liz Hormann,  
Peter Hurley, Portland  
Bureau of Transportation

Question	What we'll do with the information	Comments
<b>PBOT Comment:</b> Is DEQ currently surveying about telework/work from home?		
List all job type categories (e.g. office/desk-based, direct customer service, manufacturing)	Allow for lower survey participation percentage if all job types surveyed at least 65% (only for employers outside Portland metropolitan area)	
Add e-mobility (e.g. commute by e-scooter, e-bike)	Understand emerging transportation modes; share info with MPOs and cities for planning	
Commute length	Understand better if using average commute length from household activity survey is reasonable for GHG reduction calculations	<b>PBOT Comment:</b> Yes, critical to understanding VMT reduction, which is now required for regions, cities, and counties.

## WILLIAMS Karen \* DEQ

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**From:** Elizabeth Graser-Lindsey  
**Sent:** Wednesday, September 21, 2022 12:45 PM  
**To:** WILLIAMS Karen \* DEQ  
**Subject:** Feedback from 9-21-2022 ECO RAC Mtg

Karen,

It is very easy to quantify CO2 emissions for each employee:

1) Google maps and many other software products (e.g. [https://www.mapdevelopers.com/mileage\\_calculator.php](https://www.mapdevelopers.com/mileage_calculator.php)) can be used to get the distance between the work site and the home in seconds by entering the addresses: **COMMUTE DISTANCE**

2) The employee would have to be asked on the survey date the model of car they have/used or other mode (bike, carpool, bus) they used for their commute trip to enter in the next paragraph: **TYPE OF COMMUTE TRIP**

3) A DEQ chart of average emissions per mile for commute trip (e.g. from EPA Emissions per mile or Fuel economy sheets for individual car models; TriMet has the bus data available) could be provided to businesses to give the multiplier associated with the Type of Commute Trip the employee provided (although they could be allowed to provide more precise info if they desired and wanted to make the effort): **EMISSIONS/MILE** e.g. 411 grams/mile for average cars

**4) MULTIPLYING** these two numbers (DISTANCE x EMISSIONS/MILE) gives the **EMPLOYEE COMMUTE EMISSION**.

It would be easy for businesses to report employee commute emissions for an updated and strengthened ECO rule.

Elizabeth



# Commute Option Rule Policy and Regulatory Concepts for RAC Consideration

Submitted by: BreAnne Gale, City of Bend

## Trip Reduction Targets

Policy	Support	Concerns	Comments
<i>Auto Trip Reduction Targets</i>			
Retain 10% auto trip rate reduction from baseline as a target, not a compliance measure	x		
Allow an alternative target of 20% full-time remote workers		x	While I like this option, I still think there should be targets and incentives for employees who are commuting.
Provide incentive to reach 20% trip reduction from baseline: reduce survey frequency to once/ 4 years		x	4 years seems way too long of frequency. I think every two years is the longest frequency I would support.

**Reducing Vehicle Miles Traveled**

Submitted by: BreAnne Gale, City of Bend

Policy	Support	Concerns	Comments
<i>Vehicle Miles Traveled Reduction</i>			
<p>Trip reduction plans require MPO or local gov't approval as consistent with transportation system plans</p>		x	<p>Concerns with how this would be implemented and additional burden on MPO and City staff and resources. Concerns with inconsistency and subjectivity across jurisdictions. Concerns with authority - what would happen if MPO/City don't "approve." Very hard to have clear and objective standards here.</p> <p>I would recommend</p>
<p>Trip reduction plans require narrative explanation of consistency with MPO or local gov't transportation system plans</p>	x		<p>If local review is required, findings should be included in the plan along with measurable targets and metrics to track progress.</p>
			<p>Trip reduction plans should be a "menu" that all employers have access to and could be easily electronically automated. Employers could check the boxes of what they are doing and this could greater improve the efficiency of reporting.</p>

**Reporting Requirements**

Submitted by: BreAnne Gale, City of Bend
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Policy	Support	Concerns	Comments
<i>Reporting, Surveying and Trip Reduction Plan Requirements</i>			
Update employee commute option responsible person contact information within 30 days of change and at least annually	x		
Trip reduction plans include description of employer policies that support accessibility and distribution of commute option benefits among employees of color, across job types and across salary ranges.		x	Only lists employees of color for equity purposes. This should be more broad and at a minimum, should include additional underserved populations including people with low income – look at CFEC list of underserved populations.
Survey employees 2 years after baseline survey, then every 4 years.		x	Should be every 2 years.
Require 75% survey participation or alternative of 65% in every job type category (e.g. office-based, direct customer service, manufacturing) – only for employers outside of Portland metropolitan area.		x	Useful info but could be very challenging for employers to categorize. Gross salary may be easier vs. job type.

Submitted by: BreAnne  
Gale, City of Bend

**Geographic considerations**

Policy	Support	Concerns	Comments
<i>Geographic considerations</i>			
Commuter option programming mandatory for employers based within Metropolitan Planning Organization boundaries or within an urban growth boundary of an incorporated city with a population of at least 10,000.	x		
			In UGB/MPO areas that are larger than a certain threshold – perhaps employers over a certain size should be required to pay for/participate in funding a position that would manage/oversee a local commuter options program and help tailor the program for the local employers.
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**Employer considerations**

Submitted by: BreAnne Gale, City of Bend

Policy	Support	Concerns	Comments
<i>Regulated employer considerations</i>			
Commuter option programming for employers with more than 100 employees at one worksite or more than 1,000 employees at multiple worksites within an MPO boundary or UGB of an incorporated city with a population of at least 10,000 people.	x		Numbers seem a little arbitrary and 1k employee threshold seems high.
Employer trip reduction plan total points requirement is tiered by employer size		x	I'm not sure I understand the rationale here.
Employers who voluntarily opt in to providing commuter options, surveying and reporting receive DEQ "commuter option leader" certification or other promotional materials from DEQ.	x		

**Exemptions**

Submitted by: BreAnne Gale, City of Bend
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Policy	Support	Concerns	Comments
<i>Exemptions (see rule text next page)</i>			
Retain exemptions of OAR 340-0242-0210 and -0270 except change -0270(1)(C) to “Work shift changes occur between 7:00 p.m. and 7:00 a.m.”		x	Do not support this proposed change. This would likely make some of the largest employers exempt. I would support reduced targets for employers with a XX% of employees at shift workers between the proposed times but employers must still be required to participate and to provide incentives for alt. transportation options.
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### **340-242-0210**

#### **Employee Commute Options Program: Can an Existing Employer Comply with ECO Through Restricted Parking Ratios?**

An employer will be considered to have met the target trip reduction and is exempt from the ECO rules if the employer provides documentation of the following. An employer must submit this documentation with an exemption application to the Department by the deadline for plan or notice submittal and certify that they continue to meet these requirements every two years. Employers meeting the requirements of this rule do not need to conduct a baseline survey of employees. However, employers whose applications are denied must then conduct a baseline survey and submit the findings to the Department within 90 days of notice by the Department.

- (1) Work site is located in an area with maximum parking ratio requirements at least as stringent as the Department's maximum parking ratios (see OAR 340-242-0300 through 340-242-0390);
- (2) Free or subsidized all-day parking is generally unavailable within a one-half mile radius of the work site; and
- (3) If the employer provides free or subsidized parking, including leased parking, above the Department's maximum parking ratio to any employees at the work site (except to employees required to have a vehicle at the work site as a condition of employment), then either:
  - (a) A transportation allowance is offered to those employees provided free or subsidized parking that exceeds the Department's maximum parking ratio. The transportation allowance must be offered in lieu of the free or subsidized parking in an amount equal to or greater than the amount of the subsidy, but not to exceed the maximum allowed for transit by the Internal Revenue Service for the Qualified Transportation Fringe Benefits included under Section 132(F), Notice 94-3 of the tax code; or
  - (b) All employees at the work site are offered a transit subsidy or its equivalent at least equal to 50 percent of the value of a Tri-Met all-zone transit pass.

### **340-242-0270**

#### **Employee Commute Options Program: Are Exemptions Allowed if an Employer is Unable to Reduce Trips or Take Advantage of Alternate Compliance Options?**

- (1) An employer is fully exempt from OAR 340-242-0010 through 340-242-0290 if the employer submits reasonable documentation for each of the following:

(a) Work site is located in an area for which:

(A) Public transit service during work shift changes is less frequent than thirty minute intervals; or

(B) The public transit service point is further than one-half mile from employee's usual parking area; or

(C) Work shift changes occur between 8:30 p.m. and 5:30 a.m.

(b) Upon completing the employee survey and providing reasonable promotion for a carpool matching program, employees indicating a willingness to car/vanpool cannot be matched within the work site or through Tri-Met's carpool matching database or employee turnover rate is greater than 50 percent per year;

(c) The nature of employees' work requires them to perform their work at the work site or during specific hours and days, eliminating the possibility of telecommuting or compressed work weeks/hours; and

(d) No options exist for the employer to achieve equivalent emission reductions at no net annualized cost to the employer (including both capital and operating costs).

(2) Partial exemptions.

(a) The Department will grant a partial exemption for that portion of an employer's work force for which sections (1)(a) through (c) of this rule apply;

(b) The Department will grant a partial exemption for section (1)(d) of this rule in direct proportion to the remaining work trips to be reduced after quantifying all available equivalent emission reductions.

(3) Employers must submit requests for partial or total exemptions to the Department, on application forms provided by the Department, by the deadline for plan or notice submittal. The Department will approve or deny the employer's request for exemption by letter to the employer. If the employer objects to any condition or limitation in that letter, the employer may request a contested case hearing as described in OAR 340-242-0170.

(4) Employers must renew requests for exemptions every three years.



[Tripredution2021@deq.oregon.gov](mailto:Tripredution2021@deq.oregon.gov) – send additional comments by 10/10/22

Commute Option Rule Policy and Regulatory Concepts for RAC Consideration

Submitted by: Marne Duke and Dan Kaempff, Metro; Stephanie Millar, ODOT

**Trip Reduction Targets**

Policy	Support	Concerns	Comments
<i>Auto Trip Reduction Targets</i>			
<p>Retain 10% auto trip rate reduction from baseline as a target, not a compliance measure</p>		<p>X</p>	<p>Percentage of reduction: The 10% is still arbitrary and admittedly not tied to GHG goal. Targets should align with regional or state guidelines, such as CFEC or Climate Smart Communities.</p> <p>Baselines: There is a need to reestablish baselines for businesses that have been subject to ECO for a long time (&gt; X yrs?). There should be a solution for adjusting everyone to a new baseline, and balance the work of businesses that have invested money and effort to meet their target, aka Nike.</p> <p>But foremost, there should be reduction targets based on regional goals and amenities available. While complicated, we should pursue an approach that (as Karen stated she was trying to achieve) allows regions to set the bar of TDM plans, and work with employers based on their access to TO amenities, but is also supported with required reductions to reach regional goals.</p> <p>ODOT: Perhaps we want a percentage of workers doing something other than driving alone as a baseline, rather than setting an arbitrary 10% improvement from today. The problem with this would be that different locations and types of industries would have different level of access to multimodal options based on land use, and different capacity to offer alternatives to coming to work, for example a place where you could</p>

			let people work remotely would have an advantage over places need people on the warehouse or factory floor .
Allow an alternative target of 20% full-time remote workers		X	<p>Remote work should be encouraged, although it should not be treated differently than any other travel option. Data to show that remote workers travel less is thin. Additionally, there should be a definition between fully remote and hybrid.</p> <p>Undesired outcomes could be:</p> <ul style="list-style-type: none"> <li>● Employers with workers who cannot telework may require all employees to report to a worksite, even those who could telework.</li> <li>● Potential for sites to provide telework for those who can, meet the ECO requirement, then offer no benefits to other employees.</li> <li>● unfair to businesses that don't have a large # of knowledge-based workers - not supportive for equity concerns</li> </ul>
Provide incentive to reach 20% trip reduction from baseline: reduce survey frequency to once/ 4 years			<p>Surveying every 2 yrs keeps employers, and program managers in touch with employees and employers (respectively).</p> <p>An alternative is to lower the percentage rate needed for compliance (once target is met), but keep every two years. Seattle is looking at reducing the required % to 65% for compliance on surveys. The data is negligible, and currently when sites are not able to get to 75% DEQ marks the missing 10% as drive alone. Lowering it could result in more accurate data. The amount of time spent with employers getting from 65% to 75% is significant, and could reduce administrative burdens for everyone.</p>

Submitted by: Marne Duke and Dan Kaempff, Metro; Stephanie Millar, ODOT

Submitted by: Marne Duke and Dan Kaempff, Metro; Stephanie Millar, ODOT

**Reducing Vehicle Miles Traveled**

Policy	Support	Concerns	Comments
<i>Vehicle Miles Traveled Reduction</i>			
Trip reduction plans require MPO or local gov't approval as consistent with transportation system plans	X		<p>This is an interesting work around not being able to mandate local gov's. Will ODOT step in if an employer does not have a local program lead?</p> <p>Metro endorses this path to involve MPO to lead programming and TDM plan approvals. TDM plans can be approved quarterly, and as they are done only for those not in compliance, the number could be fairly low (after the initial baseline).</p> <p>ODOT: I don't know how MPOs or local governments could possibly keep up with approving all those plans. Perhaps a better work around is a menu businesses can choose from or approved interventions.</p>
Trip reduction plans require narrative explanation of consistency with MPO or local gov't transportation system plans	X		<p>ODOT: From the business perspective this is going to be difficult. They don't think or know much about government policies, they think about business services. We need to frame this so they see <u>What Is In This For Me?</u></p>
			<p>General – a number of comments (particularly from PGE rep) about using electric vehicle trips as a means of compliance. (This poses a conflict with Metro as we're trying to reduce auto trips for other purposes besides air quality. Recognize that we've used ECO as a lever for trip/VMT reduction. Need to discuss, respond.)</p>

			There is a rule in the governor's mandate that only 40% of compliance to the mandate can be reached through electric vehicles. We could use that measure to cap the percentage of trip reduction reached through electrification.

Submitted by: Marne Duke and  
Dan Kaempff, Metro;  
Stephanie Millar, ODOT

Submitted by: Marne Duke and Dan Kaempff, Metro; Stephanie Millar, ODOT

**Reporting Requirements**

Policy	Support	Concerns	Comments
<i>Reporting, Surveying and Trip Reduction Plan Requirements</i>			
Update employee commute option responsible person contact information within 30 days of change and at least annually	X		Industry term is ETC (employee transportation coordinator) Metro is In support of Paige West’s comment that an ETC should be required. Washington State has this as one of their three requirements: <ol style="list-style-type: none"> <li>1. Survey</li> <li>2. ETC</li> <li>3. TDM plan</li> </ol>
Trip reduction plans include description of employer policies that support accessibility and distribution of commute option benefits among employees of color, across job types and across salary ranges.	X		This will be a learning curve for businesses, perhaps clarifying that TDM templates provided by MPO/region would have some guidance.
Survey employees 2 years after baseline survey, then every 4 years.		X	Per above comments, Metro does not endorse this change
Require 75% survey participation or alternative of 65% in every job type category (e.g. office-based, direct customer service, manufacturing) – only for employers outside of Portland metropolitan area.	X	X	Data is negligible from 65-75%, and a significant portion of time is spent getting employees to fill out surveys, often the last 10% to reach compliance.  Program leads could offer small incentives (chance to win) for survey completion. This would be an added bonus, as we do not have funding allocated for that right now.  I’m confused on this point and the 75/65% mentioned here and inside/outside Metro region reference.

Submitted by: Marne Duke and Dan Kaempff, Metro; Stephanie Millar, ODOT

**Geographic considerations**

Policy	Support	Concerns	Comments
<i>Geographic considerations</i>			
Commuter option programming mandatory for employers based within Metropolitan Planning Organization boundaries or within an urban growth boundary of an incorporated city with a population of at least 10,000.		X	<p>So all employers of all size as long as they are in a CFEC zone? (Marne)</p> <p>Needs to be coupled with some level of support service availability.</p> <p>Suggest we stick to MPOs for required participation as there is more likely to be the infrastructure to offer transportation options and funds to provide support to businesses at scale at that level.</p>

Submitted by: Mame Duke and  
 Dan Kaempff, Metro;  
 Stephanie Millar, ODOT

**Employer considerations**

Policy	Support	Concerns	Comments
<i>Regulated employer considerations</i>			
Commuter option programming for employers with more than 100 employees at one worksite or more than 1,000 employees at multiple worksites within an MPO boundary or UGB of an incorporated city with a population of at least 10,000 people.	X		<p>With the increased numbers of employees teleworking now, we should define clearly “employees at a worksite.” See my notes above. Washington and others have stated that employees who have the worksite available to them are included in the worksite number. So that would cover hybrid workers, but not FT telework.</p> <p>Maintain the threshold of 100 full-time employees per site: If a company meets this threshold, then all employees, including on-site contract and telework employees, must be included in the TDM Plan and receive the benefits.</p>
Employer trip reduction plan total points requirement is tiered by employer size	X		Point system for TDM plans should align with regional modal goals, and available infrastructure to businesses. Point system could be determined by the TDM board/committee and point designation defined by existing regional plans
Employers who voluntarily opt in to providing commute options, surveying and reporting receive DEQ “commute option leader” certification or other promotional materials from DEQ.	X		Metro will be leading “best workplaces” and other promotions (in partnership with DEQ and ODOT) to support ETC and worksites.

**Exemptions**

Submitted by: Marne Duke and Dan Kaempff, Metro; Stephanie Millar, ODOT

Policy	Support	Concerns	Comments
<i>Exemptions (see rule text next page)</i>			
Retain exemptions of OAR 340-0242-0210 and -0270 except change -0270(1)(C) to "Work shift changes occur between 7:00 p.m. and 7:00 a.m."		x	This could be addressed with carpooling and vanpooling programs. We do not recommend this remain.



Submitted by: Marne Duke and  
Dan Kaempff, Metro;  
Stephanie Millar, ODOT

### 340-242-0210

#### **Employee Commute Options Program: Can an Existing Employer Comply with ECO Through Restricted Parking Ratios?**

An employer will be considered to have met the target trip reduction and is exempt from the ECO rules if the employer provides documentation of the following. An employer must submit this documentation with an exemption application to the Department by the deadline for plan or notice submittal and certify that they continue to meet these requirements every two years. Employers meeting the requirements of this rule do not need to conduct a baseline survey of employees. However, employers whose applications are denied must then conduct a baseline survey and submit the findings to the Department within 90 days of notice by the Department.

- (1) Work site is located in an area with maximum parking ratio requirements at least as stringent as the Department's maximum parking ratios (see OAR 340-242-0300 through 340-242-0390);
- (2) Free or subsidized all-day parking is generally unavailable within a one-half mile radius of the work site; and
- (3) If the employer provides free or subsidized parking, including leased parking, above the Department's maximum parking ratio to any employees at the work site (except to employees required to have a vehicle at the work site as a condition of employment), then either:
  - (a) A transportation allowance is offered to those employees provided free or subsidized parking that exceeds the Department's maximum parking ratio. The transportation allowance must be offered in lieu of the free or subsidized parking in an amount equal to or greater than the amount of the subsidy, but not to exceed the maximum allowed for transit by the Internal Revenue Service for the Qualified Transportation Fringe Benefits included under Section 132(F), Notice 94-3 of the tax code; or
  - (b) All employees at the work site are offered a transit subsidy or its equivalent at least equal to 50 percent of the value of a Tri-Met ~~all-zone~~ transit pass.

Commented [1]: no longer called that, could be updated

### 340-242-0270

#### **Employee Commute Options Program: Are Exemptions Allowed if an Employer is Unable to Reduce Trips or Take Advantage of Alternate Compliance Options?**

- (1) An employer is fully exempt from OAR 340-242-0010 through 340-242-0290 if the employer submits reasonable documentation for each of the following:

Submitted by: Marne Duke and Dan Kaempff, Metro; Stephanie Millar, ODOT

(a) Work site is located in an area for which:

(A) Public transit service during work shift changes is less frequent than thirty minute intervals; or

**Commented [2]:** carpool and vanpool are also options, we could consider changing this

(B) The public transit service point is further than one-half mile from employee's usual parking area; or

(C) Work shift changes occur between 8:30 p.m. and 5:30 a.m.

**Commented [3]:** this does not match the 7PM to 7AM described above

(b) Upon completing the employee survey and providing reasonable promotion for a carpool matching program, employees indicating a willingness to car/vanpool cannot be matched within the work site or through Tri-Met's carpool matching database or employee turnover rate is greater than 50 percent per year;

**Commented [4]:** Need to update this to Get There Oregon

(c) The nature of employees' work requires them to perform their work at the work site or during specific hours and days, eliminating the possibility of telecommuting or compressed work weeks/hours; and

**Commented [5]:** consider adding - employee is required to use personal vehicle for work and must travel between sites during the work day

(d) No options exist for the employer to achieve equivalent emission reductions at no net annualized cost to the employer (including both capital and operating costs).

(2) Partial exemptions.

(a) The Department will grant a partial exemption for that portion of an employer's work force for which sections (1)(a) through (c) of this rule apply;

(b) The Department will grant a partial exemption for section (1)(d) of this rule in direct proportion to the remaining work trips to be reduced after quantifying all available equivalent emission reductions.

(3) Employers must submit requests for partial or total exemptions to the Department, on application forms provided by the Department, by the deadline for plan or notice submittal. The Department will approve or deny the employer's request for exemption by letter to the employer. If the employer objects to any condition or limitation in that letter, the employer may request a contested case hearing as described in OAR 340-242-0170.

(4) Employers must renew requests for exemptions every three years.

# Commute Option Rule Policy and Regulatory Concepts for RAC Consideration

Submitted by: Adriana Britton, TriMet

## Trip Reduction Targets

Policy	Support	Concerns	Comments
<i>Auto Trip Reduction Targets</i>			
<p>Retain 10% auto trip rate reduction from baseline as a target, not a compliance measure</p>		<p>The current non compliance doesn't support the goals of the program.</p>	<p>Consider a progressive reduction target toward assisting with the state's climate goals. For example, 5% for the first follow up survey, 10% for the second and 15% for the third and up to 20% by fifth follow up. This is a span of ten years which would allow for adoption of commute options policies to be implemented over time but that could be achieved within a year. Consider incentivizing reaching a higher percent such as 45% and skipping a survey period.</p>
<p>Allow an alternative target of 20% full-time remote workers</p>		<p>A much higher percent is achievable; 20% is too low to support the GHG goals alone.</p>	<p>The overall goals should be the auto trip rate reduction but remote workers could be among the modes used toward achieving the auto trip reduction. Some employers could achieve much greater than 20% full time remote workers as discovered during the pandemic with offices going fully remote and many continuing full- to partial-remote schedules.</p>

Provide incentive to reach 20% trip reduction from baseline: reduce survey frequency to once/ 4 years		20% is too low.	20% is too low. Consider incentivizing reaching a higher percent such as 45% and skipping a survey period.

Submitted by: Adriana Britton, TriMet

**Reducing Vehicle Miles Traveled**

Submitted by: Adriana Britton, TriMet

Policy	Support	Concerns	Comments
<i>Vehicle Miles Traveled Reduction</i>			
Trip reduction plans require MPO or local gov't approval as consistent with transportation system plans			
Trip reduction plans require narrative explanation of consistency with MPO or local gov't transportation system plans			

**Reporting Requirements**

Submitted by: Adriana Britton, TriMet
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Policy	Support	Concerns	Comments
<i>Reporting, Surveying and Trip Reduction Plan Requirements</i>			
Update employee commute option responsible person contact information within 30 days of change and at least annually			
Trip reduction plans include description of employer policies that support accessibility and distribution of commute option benefits among employees of color, across job types and across salary ranges.			
Survey employees 2 years after baseline survey, then every 4 years.			
Require 75% survey participation or alternative of 65% in every job type category (e.g. office-based, direct customer service, manufacturing) – only for employers outside of Portland metropolitan area.			

**Geographic considerations**

Submitted by: Adriana Britton, TriMet
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Policy	Support	Concerns	Comments
<i>Geographic considerations</i>			
Commuter option programming mandatory for employers based within Metropolitan Planning Organization boundaries or within an urban growth boundary of an incorporated city with a population of at least 10,000.			

**Employer considerations**

Submitted by: Adriana Britton, TriMet
---------------------------------------

Policy	Support	Concerns	Comments
<i>Regulated employer considerations</i>			
Commute option programming for employers with more than 100 employees at one worksite or more than 1,000 employees at multiple worksites within an MPO boundary or UGB of an incorporated city with a population of at least 10,000 people.			
Employer trip reduction plan total points requirement is tiered by employer size			
Employers who voluntarily opt in to providing commute options, surveying and reporting receive DEQ “commute option leader” certification or other promotional materials from DEQ.			



**Exemptions**

Submitted by: Adriana Britton, TriMet
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Policy	Support	Concerns	Comments
<i>Exemptions (see rule text next page)</i>			
Retain exemptions of OAR 340-0242-0210 and -0270 except change -0270(1)(C) to “Work shift changes occur between 7:00 p.m. and 7:00 a.m.”			

### **340-242-0210**

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  - (b) All employees at the work site are offered a transit subsidy or its equivalent at least equal to 50 percent of the value of a Tri-Met all-zone transit pass.

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(C) Work shift changes occur between 8:30 p.m. and 5:30 a.m.

(b) Upon completing the employee survey and providing reasonable promotion for a carpool matching program, employees indicating a willingness to car/vanpool cannot be matched within the work site or through Tri-Met's carpool matching database or employee turnover rate is greater than 50 percent per year;

(c) The nature of employees' work requires them to perform their work at the work site or during specific hours and days, eliminating the possibility of telecommuting or compressed work weeks/hours; and

(d) No options exist for the employer to achieve equivalent emission reductions at no net annualized cost to the employer (including both capital and operating costs).

(2) Partial exemptions.

(a) The Department will grant a partial exemption for that portion of an employer's work force for which sections (1)(a) through (c) of this rule apply;

(b) The Department will grant a partial exemption for section (1)(d) of this rule in direct proportion to the remaining work trips to be reduced after quantifying all available equivalent emission reductions.

(3) Employers must submit requests for partial or total exemptions to the Department, on application forms provided by the Department, by the deadline for plan or notice submittal. The Department will approve or deny the employer's request for exemption by letter to the employer. If the employer objects to any condition or limitation in that letter, the employer may request a contested case hearing as described in OAR 340-242-0170.

(4) Employers must renew requests for exemptions every three years.

## Potential Policy Elements for RAC Consideration

Submitted by: Adriana Britton, TriMet

### Tiered System for Trip Reduction Plan Criteria

	Small	Medium	Large
	101 – 249 emps	250 – 999 emps	1000+ emps
<b>Trip Reduction Plan total points</b>	<b>60</b>	<b>80</b>	<b>100</b>

### Potential Trip Reduction Plan Criteria: Incentives, Strategies and Policies Scoring

Strategy/Policy/Incentive	Points	Comments
Charging for parking or parking cashout	50	Include brief description, example of parking cashout. Provide guidance about parking rates to charge based on local rates such as in Hood River, Pendleton, for example.
At least half-time telecommute/remote work accessibility for at least 20% of workforce	40	The point score should be progressive with the percent of telecommute days per week and percent of employees.
Carpool incentives and coordination (carpool defined as being two or more people from different households going to work)	20	Add separate policy/incentive of designated rideshare spot in parking lot. Use a % of all spaces such as 5% and 10% with progressive points of 5 and 10. Add points for a policy that allows carpoolers to align their shifts.
Bike or active transportation amenities	20	List the amenities, separate the points per amenity. Eg. Shower/changing room – more points, covered bike parking, indoor or secure bike parking, wet lockers, bike repair/tool station, e-bike charging policy. Also include recommendations for placing bike locking facilities near building entrances, not in the far corner of a parking lot.
Subsidized or free transit pass	20	Also consider a progressive point system for example, 20 points for a 100% subsidy and 10 points for a 50% subsidy. Some points should be offered for a minimum subsidy such as 5 points for 10%/per employee/per month.
Guaranteed ride home, compressed work week, flexible scheduling – one or all of these incentives.		Each of these incentives could be separate and offer varying point levels based on the potential to reduce car trips. For example, Guaranteed ride home alone may have less impact but should be recommended to be combined with a transit subsidy or carpool support.

		Consider placing GRH next to transit subsidy and awarding 5 points.
<b><i>(new ideas)</i></b>		
Employing or contracting an employee commute option coordinator	20	
Provide vanpool accessible to at least 50% of employees	50	
Provide onsite childcare	20	Award points for partial childcare subsidy because onsite childcare may not be desirable at industrial locations.
Pay into MPO, local government or Transportation Management Agency transportation option program	20	
Provide commute option incentives for employees not counted in regulated total (e.g. contracted workforce, those working swing or late shift)	10	
Free/subsidized electric vehicle charging for employees	10	Also award a few points for installing an EV charger and reserving the adjacent parking spots, similar to carpool parking spots.
Subsidized/provided e-mobility membership	10	Describe what is allowed under e-mobility.
Alternative and enforceable emission reductions with DEQ approval	10	

Submitted by: Adriana Britton, TriMet

## Survey questions to add (implementation, not part of rulemaking)

Question	What we'll do with the information	Comments
List all job type categories (e.g. office/desk-based, direct customer service, manufacturing)	Allow for lower survey participation percentage if all job types surveyed at least 65% (only for employers outside Portland metropolitan area)	
Add e-mobility (e.g. commute by e-scooter, e-bike)	Understand emerging transportation modes; share info with MPOs and cities for planning	
Commute length	Understand better if using average commute length from household activity survey is reasonable for GHG reduction calculations	