BEFORE THE AIR QUALITY CONTROL COMMISSION
STATE OF COLORADO

IN THE MATTER OF PROPOSED REVISIONS TO REGULATION NUMBERS 11, 20, AND 22

PREHEARING STATEMENT OF THE BOARD OF COUNTY COMMISSIONERS OF WELD COUNTY, COLORADO

EXECUTIVE SUMMARY

This Prehearing Statement is submitted on behalf of the Weld County Board of County Commissioners (Weld County) in connection with the above-captioned hearing and pursuant to C.R.S. §§ 24-4-101 *et seq.*, §§ 25- 7-101 *et seq.*, 5 CCR 1001-1, and the Filing Requirements for Parties circulated by the Air Quality Control Commission ("Commission"). Weld County appreciates the opportunity to participate in this rulemaking proceeding regarding the Employee Traffic Reduction Program revisions to Commission Regulation No. 22 ("ETRP" or "proposed rule") proposed by the Colorado Department of Public Health and Environment's Air Pollution Control Division ("the Division"). The proposed rule mandates large employers with 100 or more employees at a single worksite located within the 8-hour ozone non-attainment area (NAA) to develop and implement an ETRP Plan that is designed to achieve a Single Occupancy Vehicle (SOV) Drive Rate of 75 percent or less by July 1, 2023 and 60 percent or less by July 1, 2025.

The transportation sector is one of the largest contributors to GHG and ozone precursor emissions. Therefore, Weld County generally supports efforts to reduce SOV trips to achieve reductions in air pollution, including greenhouse gases (GHG) and ozone precursor emissions, from the sector. However, the mandatory trip reduction program set forth in the proposed rule is a one-size-fits-all approach for a complex issue involving efforts to significantly change individual commuting behaviors. As drafted, the proposed rule does not adequately consider the significant costs it imposes on both employees and employers, nor does it justify imposing these high costs given the minimal emission reductions it will likely achieve.

Therefore, the Commission should not adopt the proposed rule as drafted. Rather, the Commission should direct the Division to work with stakeholders to develop a voluntary, incentive-based program to more effectively reduce SOV Drive Rates at significantly lower costs. Alternatively, if the Commission decides to adopt some version of the proposed rule, it should correct critical errors in the rule and revise it to address Weld County's numerous concerns. **Exhibits 1 and 2** include Weld County's proposed revisions to the rule and the Statement of Basis and Purpose. Weld County's engineering consultant, Ramboll, has performed a technical review of the proposed rule. Ramboll's findings, including recommendations for the Commission, are summarized below and described in more detail in **Exhibit 3**.

VOLUMINOUS EXHIBITS

Weld County has attached a Table of Contents that lists all its exhibits to the prehearing statement. The below table lists exhibits that exceed 25 pages:

Number	**Title**
WeldCo_PHS_EX-005	Freakonomics: A Rogue Economist Explores the Hidden Side of Everything
WeldCo_PHS_EX-026	Economic Policy Institute, 2015. Irregular Work Scheduling and its Consequences
WeldCo_PHS_EX-033	Colorado Greenhouse Gas Pollution Reduction Roadmap
WeldCo_PHS_EX-041	SCAQMD, Draft Staff Report Regarding Proposed Rule 2305 – Warehouse Indirect Source Rule – Warehouse Actions and Investments to Reduce Emissions (WAIRE) Program and Proposed Rule 316 – Fees for Rule 2305
WeldCo_PHS_EX-042	California Environmental Protection Agency Air Resources Board, Staff Report: Calculating Life Cycle Carbon Intensity Values of Transportation Fuels in California
WeldCo_PHS_EX-047	Gladstein, Neandross & Associates, The State of Sustainable Fleets 2020
WeldCo_PHS_EX-048	American Gas Foundation, Renewable Sources of Natural Gas: Supply and Emissions Reduction Assessment
WeldCo_PHS_EX-050	Kenneth Gillingham and James Stock, The Cost of Reducing Greenhouse Gas Emissions

ESTIMATE OF TIME

Weld County requests 45 minutes for its affirmative and rebuttal testimony and any cross-examination questions it might ask.

TABLE OF CONTENTS

LEGAL, FACTUAL, AND POLICY CONCERNS

I. The Division's Proposed Rule Should Not Be Adopted as Drafted.

The Division claims its proposed rule is voluntary. It is not. The Division has proposed a mandatory rule that imposes high social and economic costs while not ensuring tangible emission reductions. Among other things, the proposed rule mandates the following:

- An employer must "develop an ETRP Plan for all of its ETRP-affected worksite," Section III.C.1.o;
- And employer must "begin implementing" the employer's proposed ETRP Plan, Section III.D.2; and
- An employer must certify that the ETRP Plan will be "implemented as submitted," Section III.E.1.c.(iii).

The requirements effectively mandate emission reductions. Under C.R.S. § 25-7-122(1)(b), the Division has broad authority to impose significant fines for failing to comply with any "emission control regulation." C.R.S. § 25-7-122(1)(b) ("Any person who violates any requirement or prohibition of an applicable emission control regulation of the commission . . . is subject to a civil penalty of not more than forty-seven thousand three hundred fifty-seven dollars per day for each day of the violation."). The Division has stated that the proposed rule does not mandate emission reductions, and it intends to employ a "compliance assistance" approach to enforcement. But the Statements of Basis and Purpose expressly states that the proposed rule constitutes an "emission control regulation[.]" Moreover, the "compliance assistance" approach is not expressly stated in the proposed rule, nor does the rule expressly exempt employers from civil penalties under Section 25-7-122(1)(b) for failing to achieve emission reduction targets. While the Division may exercise its discretion in the short term to not enforce the proposed rule, there is no guarantee that employers will not be subject to enforcement actions in the future.[1] Accordingly, to avoid the risk of being fined up to $47,357 per day, Weld County concludes that an employer *must* meet these emission reduction targets.

This mandatory program is problematic for numerous reasons. First, the proposed rule's mandatory program promises to be less effective and more costly than a voluntary program. Second, the proposed rule imposes significant burdens on disadvantaged communities. Third, the Division's Initial Economic Impact Analysis fails to adequately analyze the significant adverse impacts of the proposed rule.

Weld County supports efforts to reduce SOV trips to achieve reductions in VMT that reduce air pollution from the transportation sector. As set forth in this prehearing statement, Weld County recommends the Commission reject the proposed rule as drafted, and instead direct the

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[1] Other parties to this rulemaking have suggested the Division expressly exempt this proposed rule from civil penalties under Section 25-7-122(1)(b). Weld County supports this suggestion, and further requests the Division analyze its legal authority to create such an exemption in its rebuttal statement. Moreover, if the Division cannot provide that legal authority, Weld County requests the Division explain how it can ensure the Division enforcement personnel will not enforce the proposed rule once it's adopted.

Division to work with stakeholders to develop a voluntary, incentive-based trip reduction program. Weld County would welcome the opportunity to actively participate in that stakeholder process.

A. This Mandatory Program Will Be Less Effective and More Costly Than a Voluntary Program.

The express goal of the proposed rule is to require employers to implement plans to reduce "the number of measurable vehicle miles driven by employees commuting to and from their worksite." Section III.B.4. In other words, to achieve actual emissions, the proposed rule seeks to change consumer behavior. This goal is more likely to be accomplished through an incentive program, rather than a mandated rule.[2] The most effective incentive structures combine economic incentives (material gains and losses), social incentives (reputation gains and losses), and moral incentives (conscience gains and loses involved in doing what is "right").[3] In recent decades, studies have found that positive reinforcement, especially those that utilize social pressure, can positively influence people's decision making when crafted carefully.[4]

Colorado already has a roadmap for structuring successful incentive-based programs.[5] For instance, Colorado has established several incentive programs that encourage the conversion of conventional gasoline and diesel passenger vehicles into alternative fuel vehicles, which in turn will lead to a reduction in SOV Drive Rates (as defined in the proposed rule). These incentives include:

- <u>Alternative Fuel Vehicle Tax Credits</u>:[6] Under this program, purchased or leased alternative fuel vehicles such as electric vehicles (EVs), plug-in electric vehicles (PEVs), hydrogen vehicles, liquefied petroleum gas (LPG) vehicles, and compressed natural gas (CNG) vehicles titled and registered in Colorado are eligible for tax credits. As noted in the March 9, 2020 new article in The Colorado Sun,[8] approximately 1,800 to 3,000 taxpayers have

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[2] *See* WeldCo_PHS_EX-004, Anthony Pagano and JoAnn Verdin, *Employee Trip Reduction Without Government Mandates: Cost and Effectiveness Estimates from Chicago*, Transportation Research Record 1598, Jan. 1, 1997, at 43-48 (concluding that companies that offered cash incentives resulted in greater reductions in solo driving rates than programs that did not offer incentives).

[3] *See* WeldCo_PHS_EX-005, Levitt, Steven D., 2006. Freakonomics: A Rogue Economist Explores the Hidden Side of Everything.

[4] *See* WeldCo_PHS_EX-006, Kormos C, Gifford R, Brown E, 2015. The Influence of Descriptive Social Norm Information on Sustainable Transportation Behavior: A Field Experiment. *Environment and Behavior*.

[5] It is not clear to Weld County whether the Commission could establish a voluntary ETRP program administratively, or whether a rulemaking process is necessary to promulgate a voluntary ETRP program. Likewise, it is not clear whether the Commission has the authority to offer economic incentives as part of an ETRP program. Weld County urges the Division to address these questions in its Rebuttal Statement.

[6] *See* WeldCo_PHS_EX-007, The Colorado Sun, 2020. As more electric vehicles are on the way, Colorado's tax incentives begin to wind down. Accessible at: https://coloradosun.com/2020/03/09/evs-electric-vehicles-tax-incentives-refund-colorado-tesla-zev/.

claimed the EV tax credit each year from 2012 to 2017. Unfortunately, tax credits for most alternative fuel vehicles is set to expire on January 1, 2022.[7]

- ALT Fuels Colorado:[8] Under this program, the Regional Air Quality Council (RAQC) incentivizes the replacement and scrappage of pre-2009 vehicles with fully electric and renewable natural gas (RNG) fleet vehicles. Target vehicles include Class 4-8 school and intra-facility shuttle buses, Class 4-7 local freight trucks, and Class 8 local freight trucks. All public, private, and non-profit fleets within Colorado are eligible for this funding. This program has incentivized the purchase of over 960 alternatively fueled vehicles since 2014.

- Charge Ahead Colorado:[9] Under this program, the RAQC and Colorado Energy Office (CEO) provide financial support for the installation of electric vehicle charging stations (EVSE). RAQC administers grants inside the Denver Metro Area and CEO administers grants outside the Denver Metro Area. These grants will fund 80% of the cost of EVSE, up to $6,000 for a fleet-only Level 2 station, $9,000 for a dual port Level 2 station, up to $30,000 for a direct current (DC) fast charging EVSE, and up to $50,000 for a charging station capable of 100kW or higher charging. Eligible EVSE applicants are local governments, including school districts; state/federal agencies; public universities; public transit agencies; private non-profit or for-profit corporations; landlords of multi-family apartment buildings; and owners associations of common interest communities. This program has three application rounds each year in January, May, and October.[10] Since its inception in 2013, it has incentivized the installation of 930 electric vehicle charging stations across Colorado.[11]

As noted in the United States Department of Energy's Alternative Fuel Data Center,[12] other states have implemented incentive-based programs that successfully reduced SOV Drive Rates. For example, California has implemented two incentive programs that have had extensive participation and helped increase the number of alternative fuel light-, medium-, and heavy-duty vehicles on the road. These programs include:

[7] While credits for electric and plug-in electric passenger vehicles and trucks and hydrogen passenger vehicles has been extended to January 1, 2026, the value of the tax credit decreases by up to 50% in the future years as compared to 2019.
[8] *See* WeldCo_PHS_EX-008, ALT Fuels Colorado. Accessible at: http://cleanairfleets.org/programs/alt-fuels-colorado.
[9] *See* WeldCo_PHS_EX-009, Clean Air Fleets, Charge Ahead Colorado. Accessible at: https://cleanairfleets.org/programs/charge-ahead-colorado.
[10] *See* WeldCo_PHS_EX-010, Colorado Energy Office, Charge Ahead Colorado. Accessible at: https://energyoffice.colorado.gov/zero-emission-vehicles/charge-ahead-colorado.
[11] *See* WeldCo_PHS_EX-011, Colorado Department of Transportation, State Programs and Grants. Accessible at: https://www.codot.gov/programs/innovativemobility/electrification/state-programs-and-grants.
[12] *See* WeldCo_PHS_EX-012, U.S. Department of Energy Alternative Fuels Data Center. All Laws and Incentives Sorted by Type. Accessible at: https://afdc.energy.gov/laws/matrix?sort_by=incentive.

- California's Clean Vehicle Rebate Program (CVRP): [13] Under this program, California residents receive up to $7,000 for the purchase or lease of a new, eligible zero-emission or plug-in hybrid light duty vehicle. California's CVRP is tailored to increase participation of moderate/low income communities by introducing an income cap for eligible applicants and increased rebates for consumers with household incomes less than or equal to 400 percent of the federal poverty level. [14] This program has administered 409,609[15] rebates, since its inception in 2011.

- California's Hybrid and Zero-Emission Truck and Bus Voucher Incentive Project (HVIP):[16] The HVIP provides an average savings of 20% for the purchase of hybrid and zero emission medium- and heavy-duty vehicles such as transit buses, shuttle buses, school buses, solid waste collection vehicles step & panel vans, straight trucks, and tractors. Under HVIP the incentive is provided on a first come, first serve basis in the form of a voucher at the point of sale thereby reducing the paperwork needed for the application. The program has funded over 7,000 vehicles since its inception in 2009.

Compared to incentive-based programs, a mandatory program like the Division's proposed rule is not likely to achieve tangible emission reductions by changing consumer behavior. *See* Section I.C (discussing the proposed rule's minimal emission reductions). At the same time, a mandatory program like the proposed rule imposes significant costs on both employers and employees.[17] As described in Section I.B.1, the proposed rule imposes a significant burden on employees, effectively requiring some low-income,[18] hourly, and shift employees to utilize inefficient alternative modes of transportation. Regarding employers, the Division's Initial EIA estimates that employers will spend anywhere from $7,200 to $811,643 attempting to comply with the proposed rule. Moreover, as discussed in Section I.B.2, the proposed rule exposes employers to potential legal challenges based on their implementation of the rule. Considered together, these factors suggest that a mandatory program will be less effective and more costly than a voluntary program.

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[13] *See* WeldCo_PHS_EX-013, California Clean Vehicle Rebate Project. Accessible at: https://cleanvehiclerebate.org/eng.

[14] *See* WeldCo_PHS_EX-014, California Clean Vehicle Rebate Project Eligibility Guidelines. Accessible at: https://cleanvehiclerebate.org/eng/eligibility-guidelines.

[15] *See* WeldCo_PHS_EX-015, CVRP Rebate Statistics (Data last updated April 14, 2021). Accessible at: https://cleanvehiclerebate.org/eng/rebate-statistics.

[16] *See* WeldCo_PHS_EX-016, California Hybrid and Zero-Emission Truck and Bus Voucher Incentive Project. Accessible at: https://californiahvip.org/.

[17] *See* WeldCo_PHS_EX-004, showing that mandatory programs are more costly than incentive-based programs because the latter does not include planning costs required under a mandatory program.

[18] When used in this prehearing statement, the term "low income" refers to those with an annual income less 400% of the federal poverty level for a household size of one. *See* WeldCo_PHS_EX-017, 2021 POVERTY GUIDELINES FOR THE 48 CONTIGUOUS STATES AND THE DISTRICT OF COLUMBIA. Accessible at: https://aspe.hhs.gov/2021-poverty-guidelines. The current 2021 poverty guideline for a household size of one is $12,880.

B. The Proposed Rule Creates Significant Adverse Consequences.

1. The Proposed Rule Will Disproportionately Impact Low-Income, Hourly, and Shift Employees in Sparsely Populated Areas.

Weld County is concerned about the proposed rule's potential adverse impacts on employees, particularly on low-income, hourly, and shift employees. To lessen these impacts, Weld County intended to propose an exemption for employers with a certain percentage of employees who are paid hourly. Critically, however, the data necessary to craft a well-reasoned exemption is not available. Weld County specifically requested this labor and employment data from the Division, including the percentage of employees who are paid hourly, performing shift work, or making less than $50,000 annually for each employer.[19] The Division responded that this information was not available, and therefore had not been considered when drafting the proposed rule. The Division's failure to consider such critical data in drafting this rule is reason enough to reject the proposed rule as written.

Even without this key data, it appears likely the proposed rule will have an outsized impact on hourly employees in sparsely populated areas like most of Weld County. The proposed rule requires employers to implement strategies to reduce SOV Drive Rates and provides specific measures for achieving these reductions. For instance, the rule lists telecommuting, flexible work schedules, public transit, ridesharing, shuttles, biking, and the use of ZEVs. *See* Section III.C.1.o. Yet many of these measures are not feasible for hourly employees, shift workers, or employees in sparsely populated areas with low population density or limited access to alternative commute measures. Considered together, hourly employees or shift workers in sparsely populated areas have precious few commuting options. Accordingly, both employers and employees in Weld County will face significant obstacles in attempting to comply with the proposed rule.

a. Employees in Sparsely Populated Areas Have Limited Commuting Options.

With a geographic area of about 4,000 square miles, Weld County is the third largest county in Colorado by size. However, with an estimated population of only about 325,000,[20] Weld County is one of the more sparsely populated counties in Colorado and has a much lower population density than other counties within the NAA that would be subject to the proposed rule.[21]

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[19] *See* WeldCo_PHS_EX-018, Letter from Weld County to the Division.

[20] *See* WeldCo_PHS_EX-019, United States Census Bureau, 2019. Accessible at: https://www.census.gov/quickfacts/fact/table/bouldercountycolorado,broomfieldcountycolorado,denvercountycolorado,weldcountycolorado/PST045219.

[21] For example, Weld County has a population density of only about 63 persons per square mile, while Broomfield County and Denver County have population densities of 1,691 and 3,922 persons per square mile, respectively. *See* WeldCo_PHS_EX-019. Further, while about a third of Weld County's population is concentrated in the city of Greeley, the population density of Greeley is still significantly lower than other urban areas subject to the proposed rule: 1,995 person per square mile in Greeley city as compared to 3,294, 3,948, and 3,922 for the cities of Longmont, Boulder, and Denver, respectively. *See* WeldCo_PHS_EX-020, United States Census Bureau, 2019. Accessible at: https://www.census.gov/quickfacts/fact/table/bouldercitycolorado,longmont citycolorado,denvercitycolorado,greeleycitycolorado/PST045219.

Accordingly, many of the proposed rule's alternative commute measures are either not available or not feasible for employers and employees in most areas of Weld County, particularly outside of Greeley.

For instance, many employees have extremely long commutes along highways or country roads, making biking impractical. Ridesharing is likewise infeasible or impractical because many employees live in sparsely populated areas. Similarly, public transit is not a viable commuting option for sparsely populated areas in Weld County. Unlike urban areas such as Denver, which is densely populated, public transit is practically nonexistent in Weld County's sparsely populated towns. While the Regional Transportation District provides public transportation in eight counties (including Denver and Boulder), it covers only a small portion of Weld County.[22] For example, data on commute mode from the NFRMPO's Regional Travel Demand Model (RTDM) indicates that only 0.7% of the 510,215 home-based work (HBW) commute trips in 2026 are forecasted to be transit trips.[23] This data provides strong evidence that current and projected public transit use and availability is limited for commute trips within the NFRMPO area, and will remain limited in 2026. Therefore, only a small fraction of employees in the NFRMPO are expected to utilize transit alternatives to SOV trips, which demonstrates one of the many compliance challenges faced by employees in this area. Further, the NFRMPO's Commute Rate Tiers presentation to the RAQC ETRP Rule Subgroup revealed that a uniform SOV Drive Rate is not achievable for many employers, such as those in suburban and rural areas or in the service and industrial sectors, both of which exist in large part in Weld County.[24]

Even if a public transit system could be established in rural areas like Weld County, it is not clear that this transit system would reduce air emissions compared to SOV trips. The potential emissions benefits would largely depend on the type of vehicle or transit, the level of ridership, and the location of these riders (i.e., the VMT), among other factors. Moreover, many individuals in rural areas would still need to drive significant distances to their nearest public transit stop, thereby reducing or negating the potential emission benefits from public transit. Similarly, implementing ridesharing in these areas has the potential to provide little to no emissions benefits due to the high VMT associated with picking up riders in sparsely populated areas. In its Initial EIA, the Division did not consider these factors, nor did they demonstrate that these commute trip reduction strategies are feasible or will provide meaningful emission reductions in sparsely populated areas.[25]

b. Low-Income Employees, Hourly Employees, and Shift Workers Have Limited Commuting Options.

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[22] *See* WeldCo_PHS_EX-021, RTD, 2021. Who We Are. Accessible at: https://www.rtd-denver.com/who-we-are

[23] *See* WeldCo_PHS_EX-022, NFRMPO, 2021. Data from the NFRMPO's 2015 Base Year (BY) Regional Travel Demand Model (RTDM) V5.11, forecasted to 2026.

[24] *See* WeldCo_PHS_EX-023, North Front Range Metropolitan Planning Organization, 2021. "Commute Rate Tiers". Accessible at: https://raqc.egnyte.com/dl/ItN64zu3Bp/

[25] *See* WeldCo_PHS_EX-003 (describing in detail the key factors influencing the potential emissions benefits of the proposed alternative commute measures).

The proposed rule will disproportionately impact hourly employees and shift workers. Unlike white collar workers living in urban areas, many of the alternative compliance measures listed in the proposed rule are not feasible for hourly employees or shift workers.

For instance, telecommuting is a common alternative commute measure, especially in the wake of the COVID-19 pandemic. However, as Figure 1 below shows, telecommuting is not possible for many industries, including agricultural, manufacturing, and construction. Given the nature of these industries, it is reasonable to assume that a higher proportion of their employees are paid hourly, when compared to employees in finance or management (the top portion of Figure 1). In other words, telecommuting is not a viable option for employees in the agricultural, manufacturing, and construction industries, many of whom are paid hourly.

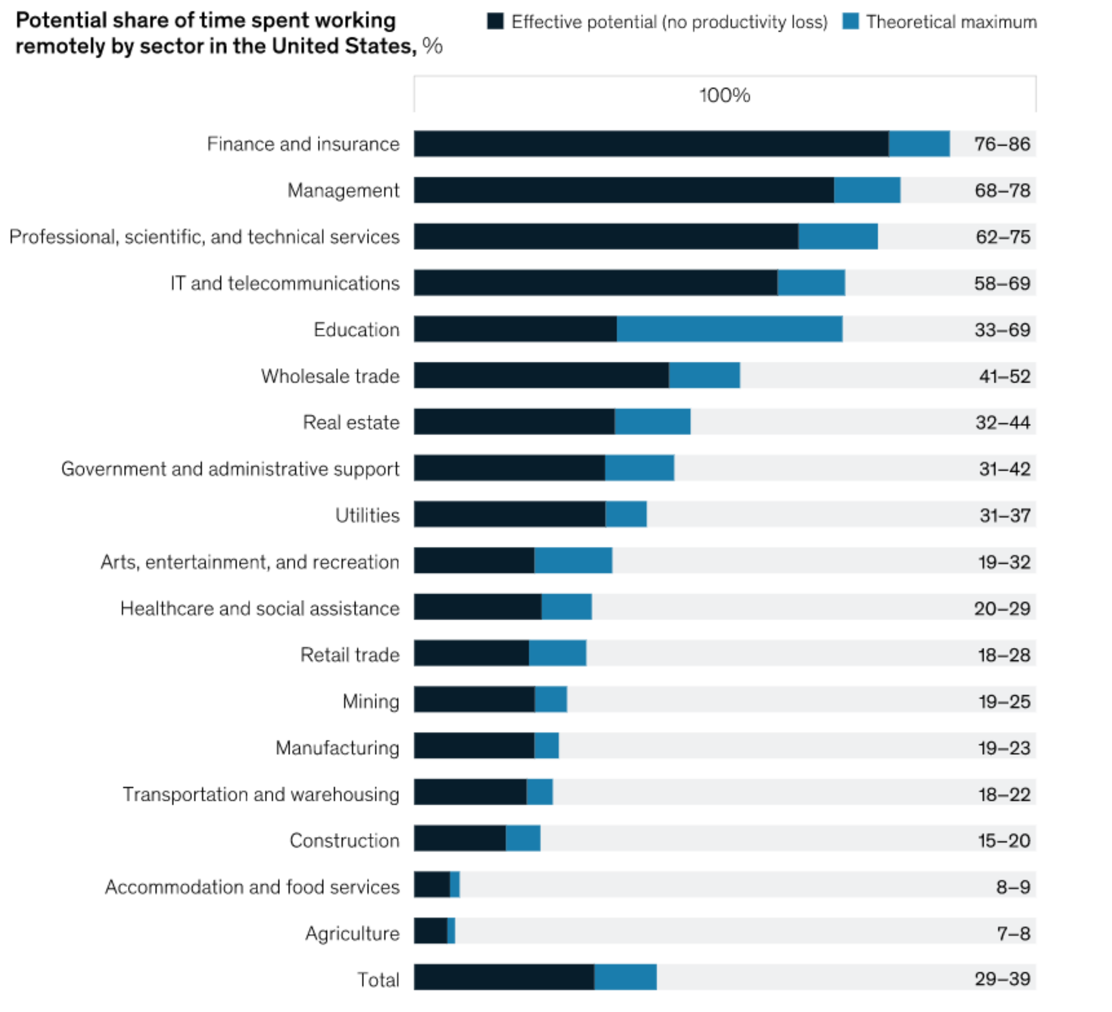

Figure 1: Potential share of time spent working remotely by sector in the United States.[26]

Similarly, the proposed rule suggests exempting Zero Emission Vehicles ("ZEVs") from parking limitations to encourage employees to drive ZEVs. But ZEV infrastructure, such as charging stations, is virtually non-existent in sparsely populated areas. Moreover, ZEVs are expensive and largely unavailable to low-income employees. For example, data from the U.S. Bureau of Labor Statistics Consumer Expenditure Survey shows that individuals with an annual income before taxes of less than $50,000 are able to spend a much smaller percentage of income on transportation expenses than those with income greater than $50,000.[27] The data shows that individuals with an annual income between $40,000 and $49,999 spend only 6.6% of their annual

[26] *See* WeldCo_PHS_EX-024, McKinsey Global Institute, 2020. What's next for remote work: An analysis of 2,000 tasks, 800 jobs, and nine countries. Accessible at: https://www.mckinsey.com/featured-insights/future-of-work/whats-next-for-remote-work-an-analysis-of-2000-tasks-800-jobs-and-nine-countries#

[27] *See* WeldCo_PHS_EX-025, Table 1203. Income before taxes: Shares of annual aggregate expenditures and sources of income, Consumer Expenditure Survey, 2019. Accessible at: https://www.bls.gov/cex/tables/calendar-year/aggregate-group-share/cu-income-before-taxes-2019.pdf

income on transportation while those with an annual income between $50,000 and $69,999 spend 12.9%. The difference between individuals with lower and higher incomes is even greater, as individuals with an annual income less than $15,000 spend only 4.7% of their income on transportation while individuals with income between $100,000 and $149,999 spent 19.3%. Accordingly, ZEVs are not a feasible alternative commute measure for a significant portion of Colorado's workforce.

In addition, public transit and ridesharing are not viable options for many hourly employees. Hourly employees often work non-standard shifts, such as night shifts and early morning shifts, where both the availability of public transit and the number of rideshares is highly limited. According to a 2015 Economic Policy Institute report on the American workforce, hourly and other non-salaried employees comprise a much larger fraction of the workforce working "unstable" work schedules (i.e., irregular shifts, on-call shifts, rotating shifts, or split shifts).[28] Furthermore, by income level, the lowest income workers face the most irregular work schedules, and by industry, irregular scheduling is most prevalent in agriculture, among other sectors.[29] Even if public transit is available, limiting these employees' options to inefficient public transit or ridesharing may come at great personal cost. For instance, these employees may have even less time for personal responsibilities, such as picking up and dropping off children at daycare. Indeed, employees who work irregular shift times, in contrast with those with more standard, regular shift times, experience greater work-family conflict, and sometimes experience greater work stress.[30]

Accordingly, the proposed rule disproportionately burdens low-income employees, hourly employees, and shift workers—especially those in sparsely populated areas—because many of the alternative compliance measures are not feasible for these employees.

c. The Proposed Rule Threatens to Worsen Existing Inequities.

Adopting the proposed rule could worsen existing inequities. In Weld County, the proposed rule will disproportionately affect certain employees, because alternative commute measures are either not available or not feasible for much of its workforce.

While telecommuting may be an option for salaried, high-income employees, telecommuting is rarely feasible for hourly or low-income individuals. For instance, only a small subset of Weld County's workforce can telecommute. As shown in Figures 2 and 3 below, only 23–25% of Weld County's employees work in sectors that have access to flexible workspaces.[31]

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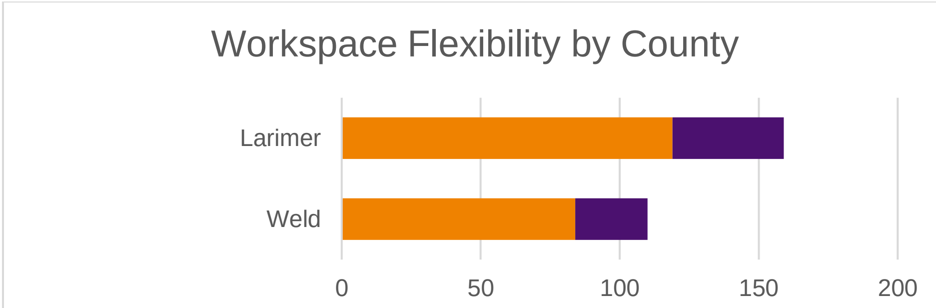
[28] *See* WeldCo_PHS_EX-026, Economic Policy Institute, 2015. Irregular Work Scheduling and its Consequences. Accessible at: https://files.epi.org/pdf/82524.pdf

[29] *See* WeldCo_PHS_EX-026.

[30] *See* WeldCo_PHS_EX-026.

[31] Workplace flexibility is determined based on the ability for employees to work remotely. Businesses with less access to flexible workspace are those with a low share of time spent working remotely. Personal communication from Rich Werner, President & CEO, Upstate Colorado Economic Development. *See* https://upstatecolorado.org/our-team/.



	Weld	Larimer
Business with less access to flexible workspace 203	84	119
Business with more access to flexible workspace 66	26	40

Figure 2: Workspace flexibility in Larimer and Weld Counties, Colorado.

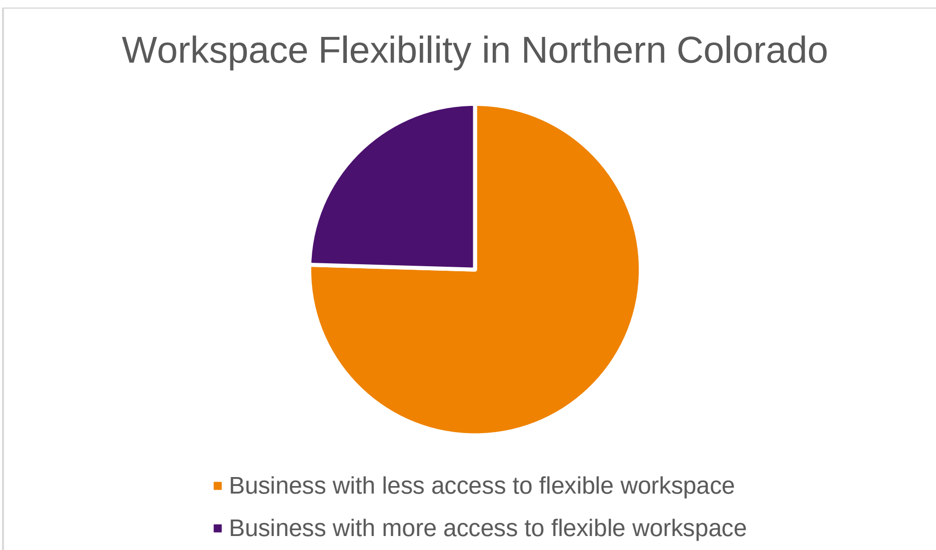


Figure 3: Pie chart representation of workspace flexibility in Larimer and Weld Counties, Colorado.

Moreover, it is unlikely that expensive ZEVs will be broadly adopted in Weld County, where the average annual wage is significantly less than the state average: $57,460 in Weld County compared to $71,552 statewide.[32] In fact, the average annual wage in Weld County is lower than all other counties within the NAA.[33] In addition, hourly employees and shift workers constitute a significant portion of Weld County's workforce. According to labor market information obtained

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[32] *See* WeldCo_PHS_EX-027, Labor Market Information, Quarterly Census of Employment and Wages Program, 2021. Area Profile for Multiple Areas: Employment Wage Statistics Table.

[33] *See* WeldCo_PHS_EX-028, Labor Market Information, Quarterly Census of Employment and Wages Program. Area Profile for Weld County, CO: Employment Wage Statistics Distribution Table.

from the Quarterly Census of Employment and Wages Program, Weld County's biggest industries are manufacturing, construction, retail trade, and health care and social assistance, which primarily pay hourly or require shift work.[34] As discussed above, public transit and ridesharing are not viable options for many hourly employees or shift workers. Additionally, these are the sectors with the lowest share of time spent working remotely (Figure 1), meaning telecommuting is not an option for these employees.

Finally, the proposed rule would disproportionately burden on black, indigenous, and people of color (BIPOC) in low-income jobs, who already face higher risks to both their earnings and health. BIPOC are disproportionately employed in low-income jobs.[35] Indeed, in Weld County, a large portion of low-income employees are minorities. Not only are BIPOC employed in jobs with greater exposure to risks, but they also earn less in those jobs. In the Northern Colorado region (including Weld and Larimer Counties), 44% of the jobs pay less than $20/hour. These same jobs comprise 74% of the jobs with the highest level of risk to both earnings and personal health.[36] Limiting these employees' options to infeasible alternative commute measures would impose a significant burden on these individuals.

The proposed rule provides white collar workers with numerous options—including working remotely or purchasing a ZEV—while effectively requiring low-income, hourly, and shift employees to utilize inefficient, non-cost-effective alternative modes of transportation. Despite the proposed rule's intent to provide employers with flexibility in implementing this mandatory rule, that flexibility is meaningless if the alternative commute measures are not feasible for a significant portion of the workforce.

2. The Proposed Rule Exposes Employers to Potential Legal Challenges.

By requiring employers to implement "strategies designed to reduce the employees' SOV Drive Rate," the proposed rule exposes employers to potential legal challenges. Though these challenges would not be directed at the Commission, the Commission should not adopt a rule that exposes employers to legal risk and forces them to bear these costs.[37] In fact, were the Commission to adopt the proposed rule, employers would be faced with the impossible choice of either (1) complying with the proposed rule to avoid civil penalties, or (2) implementing alternative commute measures and risk legal challenges.

For example, an employer's implementation of the proposed rule may cause a disparate impact on protected classes, particularly women, in violation of federal anti-discrimination laws. Title VII forbids not only intentional discrimination based on disparate treatment but also "'practices that are fair in form, but discriminatory in operation,' most often referred to as 'disparate impact' discrimination." *Tabor v. Hilti, Inc.*, 703 F.3d 1206 (10th Cir. 2013). Put another way, a disparate impact lawsuit alleges that "employment practices, adopted without a deliberately

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[34] *See* WeldCo_PHS_EX-029, Labor Market Information, Quarterly Census of Employment and Wages Program, 2021. Industry Employment Distribution Table.
[35] *See* WeldCo_PHS_EX-030, Occupational Risk Tool, 2021 at 2.
[36] *See* WeldCo_PHS_EX-030 at 2.
[37] At minimum, before the Commission adopts this rule and exposes employers to these legal risks, the Division should provide a thorough legal analysis of these issues.

discriminatory motive, [are] functionally equivalent to intentional discrimination." *Watson v. Fort Worth Bank & Trust*, 487 U.S. 977, 987 (1988).

Studies show that women are more likely to link different trips, or "trip chain," on the way to and from work.[38] This is especially true for women with younger children. *Id*. Yet restricting an individual's ability to drive to work makes trip chaining impossible. The alternative commute measures would likely increase commute time, while at the same time limit an individual's flexibility to combine trips to accomplish other tasks, e.g., pickup from daycare. An employer's implementation of alternative commute measures that limits this flexibility may significantly burden women, who are more likely to trip chain, and therefore impose a disparate impact.

In addition, employers may face lawsuits alleging that their alternative commute measures transform employees' commute into compensable work time. For instance, under the Fair Labor Standards Act ("FLSA"), employers must pay their employees for all time spent working on their behalf. *United Transp. Union Local 1745 v. City of Albuquerque*, 178 F.3d 1109, 1116 (10th Cir.1999) (citing 29 U.S.C. §§ 206, 207). Depending on how an employer structured its alternative commute measures, an employee could argue that the program falls within the purview of the FLSA and therefore requires compensation for time spent commuting. Alternatively, an employee could argue that an employer's enforcement of alternative commute measures runs afoul of C.R.S. § 24-34-402.5(1), which prohibits employers from terminating employees for engaging in lawful off-duty activities.

C. The Division's Initial EIA Fails to Adequately Analyze the Impacts of the Proposed Rule.

The Division's Initial EIA is so fundamentally flawed that it fails to meet the statutory requirements under the Colorado Air Pollution Prevention and Control Act. Under Section 25-7-110.5(4)(c), the Division must conduct a thorough economic impact analysis of its proposed rule. Because the Division chose to conduct its analysis using the methodology set forth in subsection (c)(III), the Division's economic analysis must:

> (A) Identif[y] the industrial and business sectors that will be impacted by the proposal; and
> (B) Quantif[y] the direct cost to the primary affected business or industrial sector; and
> (C) Incorporate[] an estimate of the economic impact of the proposal on the supporting business and industrial sectors associated with the primary affected business or industry sectors.

C.R.S. § 25-7-110.5(4)(c)(III).

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[38] *See* WeldCo_PHS_EX-031, Sharon Sarmiento, *Household, Gender, and Travel*, Union Consulting Group, July 30, 1998, https://www.fhwa.dot.gov/ohim/womens/chap3.pdf; *see also* WeldCo_PHS_EX-032, Linbo Li, et al., *Observing the Characteristics of Multi-Activity Trip Chain and Its Influencing Mechanism*, KSCE Journal of Civil Engineering, Aug. 28, 2020 ("The probability of females shifting from work to shopping/dining is significantly higher than that of males, while males are the opposite. It consists with the fact that more men have more social engagements in middle of the day, while more women need to buy household necessities in the morning or after work.").

The Division's Initial EIA was based on flawed methodology and incorrect assumptions. As a result, it improperly overestimated the potential emission benefits of the proposed rule and underestimated the cost per ton of reducing emissions. Ramboll performed a technical review of the proposed rule for Weld County, including a review of the assumptions, modeling inputs, and methodology used in the EIA, and identified several technical deficiencies in the Division's analysis. Additionally, Ramboll identified aspects of the proposed rule that are ambiguous or lack sufficient guidance, which would pose significant challenges to implementing the rule. Ramboll's findings, including recommendations for the Division to address, are summarized below and described in greater detail in **Exhibit 3**.

1. The Division has not provided key modeling inputs and assumptions used to estimate emission benefits using the GREET model.

The Division has not provided any documentation of the inputs and assumptions used to configure the GREET model, nor has it provided GREET model outputs (i.e., g/mile or g/MJ emission rate) that the emission reductions are based upon. Without such documentation, stakeholders and the public are unable to review and validate the basis upon which the benefits of the proposed rule are estimated.

2. The Division has oversimplified its representation of the employee vehicle fleet mix.

The Initial EIA assumes an oversimplified fleet mix that ignores the actual fleet mix of employee vehicles in Colorado, even though such data is available in the USEPA's Motor Vehicle Emission Simulator (MOVES) model used in Colorado's State Implementation Plan (SIP) for attainment of the National Ambient Air Quality Standards (NAAQSs) and in other air quality planning activities.

3. The Division has oversimplified its representation of the employee trip length.

The Initial EIA assumes a 25-mile round trip commute for each employee, which may not represent the actual trip lengths of employees traveling to and from a particular worksite. Trip length can vary significantly based on multiple factors, including the geographic location of the affected worksite (urban versus rural), financial status of the employee (low, medium, or high-income), and employment type/sector. Not only does the trip length directly influence estimated emission reductions from the proposed rule, but the feasibility and efficacy of control technologies or strategies that can be used to reduce the SOV Drive Rate vary significantly with commute trip lengths.

4. The Division erroneously assumes the baseline SOV Drive Rate is 100% for all large employers.

The Division incorrectly assumes the baseline SOV Drive Rate for all employers is 100%, despite data from the NFRMPO indicating the existing SOV Drive Rates in most of Colorado is well below 100%.[39] This assumption grossly overestimates the potential emission benefits of the proposed rule. In the Initial EIA, the Division even acknowledges that the baseline may not be 100%, stating that "[i]t is possible that some of these GHG reductions may have already occurred through existing voluntary commute reduction efforts by employers in the 8-Hour Ozone Control Area[.]"[40] Nevertheless, the Division chose to erroneously assume a 100% SOV Drive Rate baseline to estimate emissions and cost effectiveness.

5. The Division assumes all ETRP-affected large employers will achieve target SOV Drive Rate reductions.

The Division assumes that all ETRP-affected employers will achieve the SOV Drive Rate targets in 2023 and 2025, "as required under the proposed rule."[41] Yet the proposed rule does not guarantee that employers achieve the SOV Drive Rate targets. Further, the NFRMPO's Commute Rate Tiers presentation indicates that a uniform SOV Drive Rate is not achievable for many employers, such as those in suburban or rural areas or in the service and industrial sectors.[42]

6. The Division overstates the potential cost effectiveness of the ETRP by misrepresenting the lower bound of program cost effectiveness.

The Division misrepresents the lower bound of program cost effectiveness (i.e., $26 per ton of GHG reduced) by presenting a counterfactual scenario that assumes the baseline SOV Drive Rate is 100% for the purposes of calculating emissions reductions, while simultaneously assuming employers already meet the 60% SOV Drive Rate goal in Section III.D.2 of the proposed rule for the purposes of calculating costs to employers. This sort of double bias is particularly egregious and skews the conclusions of the Initial EIA.

7. The Division's estimated benefits fail to account for multiple emission sources.

Finally, the Division estimates the emissions benefits of the proposed rule based on the reduction in tailpipe emissions associated with vehicles assumed to no longer make SOV trips. However, the Division did not account for the following:

- Any additional emissions resulting from "new" trips that are introduced by vehicles such as buses, shuttles, vanpools, or other modes of transportation with non-zero emissions that are utilized by employees traveling to the worksite in lieu of SOV trips;

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[39] *See* WeldCo_PHS_EX-023. For example, slide 6 shows that the county-average SOV Drive Rate for all counties in Colorado (including those outside the NAA) with 2 or more employers having greater than 100 employees ranges from 51.4% to 83.7%. Slide 5 shows that the SOV Drive Rate for some census tracts within the NAA is even lower, with SOV Drive Rates below 60% in many areas. See **Exhibit 3** for additional analysis.
[40] *See* Economic Impact Analysis (initial) for Regs. 11, 20 and 22 at Page 27-28.
[41] *See* Economic Impact Analysis (initial) for Regs. 11, 20 and 22 at Page 22 ("It is assumed that ETRP-affected employers identified in this EIA will achieve the SOV commute rate reduction goal of 25% in 2023 and 40% in 2025, as required under the proposed rule."). Notably, this statement belies the Division's claim that the proposed rule is voluntary, and that enforcement will not follow a failure to meet its targets.
[42] *See* WeldCo_PHS_EX-023 at Slide 13.

- Differences in vehicles (including vehicle class, age, fuel type, and other factors that affect gram per mile emission factors) or the increases in VMT for the ridesharing vehicle required to pick up additional passengers; and
- The upstream or well-to-wheel[43] emissions associated with ZEVs and other vehicles that could be used to reduce the SOV Drive Rate.

At minimum, without an accurate economic analysis, the Commission cannot reasonably determine whether the estimates emission benefits of the proposed rule will be achieved or are worth high economic and social costs of implementing ETRP. Nor can the public—including individuals directly impacted by the rule—surmise whether the rule is worth its significant costs.[44] Therefore, the Division should revise the Initial EIA to accurately estimate the range of potentially achievable emission reductions and cost per ton of emission reductions by developing bounding scenarios covering the breadth of potential implementation outcomes. Additionally, the Division should release the basis for and assumptions used in developing the Initial EIA, including assumptions used to define the baseline and bounding scenarios, emission and cost benefit calculation methodologies, and emission model files that show inputs and outputs of each model run. Specific recommendations are discussed in **Exhibit 3.**

D. The Division Fails to Consider Alternative GHG Reduction Measures for the Transportation Sector.

As discussed in greater detail in **Exhibit 3**, the Colorado GHG Pollution Reduction Roadmap[45] dated January 14, 2021 provides a comprehensive list of strategies that the Division could pursue to reduce the statewide GHG emission inventory. Without providing a rationale for its decision, the Division chose the proposed rule as its first regulatory action in 2021 to reduce GHG emissions from the transportation sector. The Division should compare the potential emission benefits and cost effectiveness of the proposed rule to other GHG reduction strategies listed in Colorado's GHG Pollution Reduction Roadmap. Without such a comparison, stakeholders and the public cannot properly evaluate the merits of the Division's proposed rule. Weld County noted the Division's insufficient evaluation of alternative GHG reduction strategies in its April 20, 2021 letter to CDOT and CDPHE.[46] Weld County reiterates this concern here, and requests the Division perform the appropriate comparative analysis of emission benefits and cost effectiveness for alternative GHG reduction strategies that is necessary for a transparent public process.

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[43] The Well-to-Tank analysis includes all steps from recovery or production of the feedstock, to the blending and transport of the finished fuel to the retail service station for distribution to the vehicle tank. The Tank-to-Wheels analysis includes the use of the fuel in an automobile. The Well-to-Tank and Tank-to-Wheels are combined to create a complete Well-To-Wheels analysis of a transportation fuel.

[44] Moreover, the proposed rule imposes significant reporting and recordkeeping without ensuring emission reductions. *See, e.g.*, Section III.C.1. (establishing employer requirements under the proposed rule). Given the high cost of the proposed rule relative to its minimal emission benefits, this program is not "economically reasonable" as required by HB 1261. Accordingly, the proposed program violates at C.R.S. § 24-4-106(7)(b)(IV) by exceeding the statutory authority granted by HB 1261.

[45] *See* WeldCo_PHS_EX-033. Colorado Greenhouse Gas Pollution Reduction Roadmap

[46] *See* WeldCo_PHS_EX-034, Comment letter from Weld County Attorney to CDOT and CDPHE regarding Weld County Commissioner Comments on Transportation Greenhouse Gas (GHG) Reduction Rule Efforts.

II. If the Commission Adopts the Proposed Rule, It Should Revise Critical Errors in the Rule.

There are significant deficiencies in the proposed rule that cannot be entirely cured at this late stage in the rulemaking. Nevertheless, if the Commission decides to adopt some version of the proposed rule, despite the foregoing concerns and voluminous supporting data, it should revise the rule to address its most glaring deficiencies.

A. Three Exemptions Should be Added According to Weld County's Redline in Exhibit 1.

Weld County recommends several exemptions to the proposed rule to account for various equity, financial, environmental, and implementation concerns. These proposed exemptions are explained in more detail below and included in redline in **Exhibit 1**:

1. Exclude hourly or shift work employees from the employee count to determine if an employer is a large employer, per the definition of Large Employer in Section III.B.7 of the proposed rule;
2. Provide an exemption for employees with an income less than 400% of the Federal Poverty Level who live or work outside the service area of the RTD,[47] such that these employees are not factored into the SOV Drive Rate calculation as defined in Section III.B.11 of the proposed rule; and
3. Allow employers to submit a request to the Division for an exemption from all requirements of Regulation 22, Part B, Section III or from specific elements contained therein, for one or more of its worksites, as described in greater detail below.

1. Definition of "Large Employer"

As described in Section I.B above, the proposed rule has the potential to adversely impact both employers and employees, because it does not give adequate consideration to the challenges faced by hourly employees, shift work employees, or low-wage employees and their employers. Because of their job requirements, work schedule, geographic location, or income level, among other factors, these employees face unique challenges in implementing the alternative commute measures suggested in the proposed rule. Therefore, Weld County proposes that the rule be modified to exclude hourly or shift work employees from the employee count to determine if an employer is a large employer, per the definition of Large Employer in Section III.B.7 of the proposed rule.

2. Hardship Exemption for Large Employers

The proposed rule constitutes a mandatory program that will place significant administrative, financial, and other burdens on large employers and expose employers to potential

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[47] *See* WeldCo_PHS_EX-035, for a map of the RTD service area. Accessible at: https://www.rtd-denver.com/rider-info/system-map

legal challenges based on their implementation of the rule. Therefore, Weld County strongly recommends the Division add a hardship waiver exemption to the proposed rule. Such an exemption would allow employers to submit a request to the Division for an exemption from all requirements of Regulation 22, Part B, Section III or from specific elements contained therein, for one or more of its worksites. The request must cite the specific requirements from which it is seeking an exemption, if applicable, and demonstrate that:

- Due to the characteristics of the affected employer's business, workforce, or location, complying with the requirements of this Regulation 22, Part B, Section III would cause undue hardship, such as bankruptcy; or
- The affected employer is unable for economic reasons to implement any measures that could reduce the proportion of SOV trips per employee.

Examples of hardship waiver exemptions exist in other trip reduction programs. For example, the Seattle Commute Trip Reduction (CTR) Ordinance provides exemptions from CTR requirements and adjustments to CTR calculations under Section 25.02.070.[48] The Seattle CTR Ordinance allows an affected employer to submit a request for an exemption from the requirement to implement its CTR program or from specific elements contained therein, for one or more of its worksites. The proposed exemption to the proposed rule is critical to minimize adverse impacts to certain large employers and their employees who are unable to reasonably meet ETRP requirements, many of whom are still suffering in the wake of the COVID-19 pandemic.

3. Stipulations for Counting the Number of Employees in the SOV Drive Rate Calculation

As discussed in Section I.B.1, low-income employees[49] in sparsely populated areas may be disproportionately impacted by the proposed rule, given their lack of access to affordable options to achieve SOV trip reductions. Accordingly, Weld County suggests an exemption to the SOV Drive Rate calculation for employees with an income less than 400% of the Federal Poverty Level who live or work outside the service area of the Regional Transportation District.[50]

B. The Language Should Be Modified According to Weld County's Redline in Exhibit 1.

If the Commission adopts the proposed rule, the proposed rule should be modified as described in **Exhibit 1**.

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[48] See WeldCo_PHS_EX-036, 25.02.070 Exemptions from CTR requirements and adjustments to CTR calculations. Available at: https://library.municode.com/wa/seattle/codes/municipal_code?nodeId=TIT25ENPRHIPR_CH25.02COTRRE_25.02.070EXCTREADCTCA.

[49] *See* WeldCo_PHS_EX-017. The current 2021 poverty guideline for a household size of one is $12,880, which would provide an exemption for employees with an annual income less than $51,520.

[50] As described in Section I.B.1, Weld County planned to propose an exemption for employers with a certain percentage of employees who are paid hourly, among other things. However, Weld County does not have access to the data necessary to craft this exemption, nor was the Division able to provide it in response to Weld County's request on June 28, 2021. *See* WeldCo_PHS_EX-018 (letter to the Division).

1. Geographic Scope

As stated in the May 26, 2021 Notice of Rulemaking Hearing, determining the proper geographic boundary of ETRP is within the scope of this rulemaking. As drafted, the proposed rule applies "to any large employer within the 8-hour ozone control area, other ozone nonattainment area, or ozone attainment maintenance area."[51] However, the geographic areas of applicability for the ETRP rule is better defined by the portion of the program area of the motor vehicle inspection and readjustment program as defined in C.R.S. § 42-4-304(20)(a) that lies within the NAA.[52] **Exhibit 37** shows a map of the affected counties with the NAA (as defined in the proposed rule) represented by the hatched area and the inspection and maintenance (I&M) area shaded in blue.[53] The locations of employers with 100 or more employees are shown as brown dots on the figure.[54]

As shown in **Exhibit 37**, the I&M area covers nearly all employers with 100 or more employees that fall within the NAA. Only 24 employers in Weld, Larimer, and Arapahoe Counties fall within the NAA boundary but outside the I&M area boundary. These employers are generally located in more rural areas that face the compliance challenges described in Section I.B above. This proposed change would likely have little impact on the potential emissions benefits of the program, while simultaneously focusing the geographic scope of the program on more urbanized areas with greater access to public transit and alternative commute measures.

2. Definition of "Employer"

As drafted, the definition of "employer" does not include "employers in the operations covered under § 25-7-109(8)(a), C.R.S."[55] Weld County understands, based on Attachment A, that this definition is intended to give special consideration to agricultural operations: "[w]hile these operations will be encouraged to reduce single occupancy employee commuting voluntarily, they will not be subject to ETRP requirements."[56] Weld County appreciates the special consideration given to agricultural operations. To capture this special consideration more accurately, Weld County believes the definition of "employer" should be revised to explicitly list the various operations involved in agricultural, horticultural, or floricultural production or processing that are exempt from the proposed rule.

3. "Flexible Scheduling"

Section III.C.1.o of the proposed rule includes a list of potential control technologies and strategies that can be included in ETRP plans to accomplish the SOV Drive Rate reductions in

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[51] *See* III.A of the Proposed Rule Language for Regulation 22 at Page 10.
[52] *See* Colo. Rev. Stat. § 42-4-304. Accessible at: https://advance.lexis.com/documentpage/?pdmfid=1000516&.
[53] *See* WeldCo_PHS_EX-037, Ramboll, 2021. Colorado Statewide Employers Map.
[54] *See* WeldCo_PHS_EX-038 for statewide employer data, including location, as provided by the Division. Accessible at: https://docs.google.com/spreadsheets/d/13rQkfkhFPSuwH5NlHUejNZbyRhj-EcXqRrgztFWPeOM/edit?usp=sharing.
[55] *See* III.B.6 of the Proposed Rule Language for Regulation 22 at Page 11.
[56] *See* Regulation 22 Attachment A: Climate Equity Considerations at Page 3.

Section III.D.1 and III.D.2. One such strategy listed in Section III.C.1.o.(iii)(C) is "flexible scheduling to shift commute trips to the worksite by employees outside of the period between 6 a.m. and 12 p.m."[57] Weld County acknowledges that such a strategy may reduce traffic by shifting commute trips out of the peak commute period and in turn increase average vehicle speed, which may lead to marginal reductions in tailpipe emissions. However, the shifting of commute trips to different times of day does not result in material GHG emission reductions and has no impact on the SOV Drive Rate calculated pursuant to Section III.B.11. Because this is not a relevant strategy to achieve SOV Drive Rate reductions, Weld County recommends that Section III.C.1.o.(iii)(C) be stricken from the proposed rule to avoid confusion.

C. The Proposed Rule Lacks Implementation Guidance.

As described in Ramboll's report in **Exhibit 3**, certain aspects of the proposed rule are ambiguous, including surveys and SOV Drive Rate calculations, and there is insufficient guidance for the design, review, and implementation of ETRP plans. For example, the proposed rule does not define the "calculation period" for the SOV Drive Rate and does not clearly define the methodology used to interpret the employee survey results in certain situations. Most importantly, the proposed rule does not include guidance required to estimate the SOV Drive Rate reductions achievable from different control technologies and strategies, such as those outlined in Sections III.C.1.o.(i) – (xvi) of the proposed rule, nor does it provide guidance to help employers identify specific implementation details for each control technology and strategy.

The Division should provide guidance on how employers can quantify the SOV Drive Rate reductions achievable from various control technologies and strategies. Otherwise, employers will not know how to quantify the SOV Drive Rate reductions achievable from different measures, what methodology should be used to design the ETRP plan, and how the employers will certify under Section III.E.1.c of the proposed rule that the "ETRP Plan . . . is designed to achieve the applicable SOV Drive Rate reductions set forth in Sections III.D.1. and III.D.2[.]" Finally, without additional guidance from the Division, different employers may estimate different SOV reductions from the same measures, leading to inconsistency among ETRP plans.

D. Incentives Are Needed to Ensure Program Success.

Finally, for this program to be successful, it should be complemented with incentive programs that minimize the costs to employees and employers for implementing control strategies and technologies that reduce the SOV Drive Rate. For instance, the Division could consider the following incentive programs:

- <u>Incentives for Purchase of ZEVs</u>: Weld County recommends the Division consider establishing a rebate program similar to California's Clean Vehicle Rebate Program (CVRP),[58] which is aimed at low-income, wage-based employees who do not have access to public transit and have minimal options to reduce their SOV Drive Rate. Additionally, Weld County requests the Division work with electric utilities to establish favorable electricity rate structures for residential consumers that own and operate electric vehicles

[57] *See* III.C.1.o.(iii)(C) of the Proposed Rule Language for Regulation 22 at Page 14.
[58] *See* WeldCo_PHS_EX-013.

in Colorado. While some utilities like Xcel Energy[59] already have electric vehicle charging programs, other like Black Hills Energy[60] only provide rebates for EV charger installation. Establishing favorable rate structures for residential EV and PEV owners across Colorado will encourage additional demand for these vehicles.

- Incentives for the Purchase of Alternative Fuel Buses: Additional GHG reductions can be achieved if buses are powered by alternative fuels such as RNG or electricity. While the ALT Fuels Colorado program incentivizes the replacement and scrappage of pre-2009 vehicles with electric and RNG fleet vehicles, it does not incentivize the purchase of new electric and RNG buses. The Division should consider establishing a voucher program like California's Hybrid and Zero-Emission Truck and Bus Voucher Incentive Project (HVIP), [61] which incentivizes the purchase of new alternative fuel buses. Establishing such a program can increase the sales of zero emission buses that reduce the SOV Drive Rate.

- Incentives for EVSE: As noted in Section I.A above, Charge Ahead Colorado already provides incentives for the installation of EVSE. Weld County recommends the Division work with RAQC and CEO to (1) identify and eliminate barriers, if any, in the administration of this program and (2) increase participation of employers with over 100 employees at any given worksite. This will help reduce the SOV Drive Rate.

Without these much-needed incentives, Colorado may not be able to achieve the SOV Drive Rate targets in the proposed rule.

LIST OF ISSUES

Weld County requests the Commission resolve the issues described in Sections I and II above, and as further detailed in the attached exhibits. Broadly, Weld County requests that the Commission decline to adopt the proposed rule as drafted. If the Commission adopts the proposed rule, it should revise the rule to reflect the redline revisions in Exhibits 1 and 2.

LIST OF WITNESSES

1. *Jeremy Horne, PhD, Senior Consultant, Ramboll*. Dr. Horne will present facts and policy arguments in support of Weld County's prehearing statement and its position on the proposed rule.
2. *Akshay Ashok, PhD, Managing Consultant, Ramboll*. Dr. Ashok will present facts and policy arguments in support of Weld County's prehearing statement and its position on the proposed rule.

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[59] *See* WeldCo_PHS_EX-039, Electric Vehicle Charging Programs. Accessible at: https://ev.xcelenergy.com/ev-charging-programs.
[60] *See* WeldCo_PHS_EX-040, Electric Vehicle Charging Rebate for your Home. Accessible at: https://www.blackhillsenergy.com/efficiency-and-savings/ready-ev/electric-vehicle-charging-rebate-your-home.
[61] *See* WeldCo_PHS_EX-016.

3. *Elizabeth Relford, Deputy Director, Weld County Public Works*. Ms. Relford will present facts and policy arguments in support of Weld County's prehearing statement and its position on the proposed rule.
4. *Tim Considine, PhD, Professor of Economics, University of Wyoming*. Dr. Considine will present data and policy arguments in support of Weld County's prehearing statement and its position regarding the costs to employers and employees of implementing the proposed rule.

Weld County reserves the right to identify rebuttal witnesses based on issues raised in other parties' prehearing statements. In addition, Weld County is not submitting any written testimony with this prehearing statement but reserves the right to submit written rebuttal testimony in response to other parties' prehearing statements.

CONCLUSION

Weld County appreciates the opportunity to participate in this rulemaking and thanks the Commissioners in advance for their attention to this prehearing statement.

Respectfully submitted this 9th day of July, 2021.

BOARD OF COUNTY COMMISSIONERS
OF WELD COUNTY, COLORADO

/s/ Bruce T. Barker

Bruce T. Barker,
Weld County Attorney

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **PREHEARING STATEMENT OF WELD COUNTY**, upon all parties herein by email this 9th day of July 2021, addressed as follows:

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