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**TEMPORARY ADMINISTRATIVE ORDER**  
INCLUDING STATEMENT OF NEED & JUSTIFICATION

**DOJ 1-2022**  
CHAPTER 137  
DEPARTMENT OF JUSTICE

**FILED**

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FILING CAPTION: Diesel Engine Requirements

EFFECTIVE DATE: 01/03/2022 THROUGH 07/01/2022

AGENCY APPROVED DATE: 12/31/2021

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Filed By:  
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**NEED FOR THE RULE(S):**

OAR 137-049-0805 is needed to establish the alternative form of diesel engine requirements authorized by ORS 279C.537(4) that will apply to State Contracting Agencies for certain Public Improvement Contracts.

ORS 279C.537 requires state contracting agency public improvement contracts over 20 million dollars for projects in Multnomah, Washington or Clackamas County to require 80 percent of diesel engine powered vehicles and equipment to have diesel engines that meet specific standards. These standards apply to procurements and contracts issued on January 1, 2022, and after or on August 9, 2019 for specified major ODOT projects. However, ORS 279C.537 authorizes the Attorney General to adopt rules establishing alternative standards that consider the minimum standards established by the Oregon Department of Environmental Quality ("DEQ") on April 9, 2021.

OAR 137-049-0805 is the Attorney General's rule establishing alternative diesel engine standards. These alternative standards provide a more gradual phased-in approach for the diesel engine requirements for the subject Public Improvement Contracts within Multnomah County, Washington County or Clackamas County. These alternative standards also limit the application of the diesel engine requirements for motor vehicles to on-road Concrete Mixer Trucks and on-road Dump Trucks, and provide exemptions that include, but are not limited to, exemptions for contractors certified under ORS 200.055 as disadvantaged business enterprises, minority-owned businesses, women-owned businesses, businesses owned by service-disabled veterans or emerging small businesses, as well as emergency circumstances and certain safety exemptions.

**JUSTIFICATION OF TEMPORARY FILING:**

The Temporary Filing for these rules is needed for the following reasons:

(1) Without this 137-049-0805 rule and the amendments to 137-049-0120, contractors, subcontractors and other suppliers would be very adversely impacted and prejudiced by having to meet the more rigid and demanding requirements of the primary statutory diesel engine requirements in ORS 279C.537(2) and (3). Those contractors, subcontractors and suppliers would incur very substantial expense in purchasing compliant non-road diesel equipment, as well as all of the on-road diesel engine powered trucks used by those contractors, subcontractors and suppliers on qualifying public improvement projects---or they might not be able to afford compliant non-road diesel equipment and

on-road diesel engine powered trucks at all, and would thereby not be able to participate in the projects.

(2) The additional costs incurred by contractors, subcontractors and suppliers to meet the basic statutory standard would be passed on to State Contracting Agencies, through the compensation payments being made by State Contracting Agencies under the qualifying public improvement contracts, thereby increasing the cost of the qualifying projects.

(3) Furthermore, without the exemptions included in the rule, contractors that are certified under ORS 200.055, as disadvantaged business enterprises, minority-owned businesses, women-owned businesses, businesses owned by service-disabled veterans or emerging small businesses would be disproportionately impacted and prejudiced by the basic 80% compliance standard of ORS 279C.537(2) and (3).

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DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

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ADOPT: 137-049-0805

RULE TITLE: Diesel Engine Requirements

RULE SUMMARY: OAR 137-049-0805 sets diesel engine requirements for State Contracting Agency Public Improvement Contracts of certain dollar amounts, where the majority of the project location is in Multnomah County, Washington County or Clackamas County, pursuant to ORS 279C.537(4).

RULE TEXT:

(1) Nonroad Diesel Equipment – General Engine Requirements. For a State Contracting Agency Public Improvement Contract where the majority of the Project Site is located within Clackamas County, Multnomah County, or Washington County, the Public Improvement Contract is subject to the following requirements:

(a) For a State Contracting Agency Public Improvement Contract with a Solicitation Document advertisement date on or after January 1, 2022 but before January 1, 2025, when the Public Improvement Contract will have an awarded Contract Amount of \$20 million or more, 60 percent of the total Nonroad Diesel Equipment used on the Project Site during the performance of the Public Improvement Contract must meet or exceed United States Environmental Protection Agency Tier 4 Exhaust Emission Standards for nonroad compression ignition diesel engines or, if not equipped with a Tier 4 compression ignition diesel engine, must be retrofitted with a Verified Diesel Oxidation Catalyst or Verified Diesel Particulate Filter;

(b) For a State Contracting Agency Public Improvement Contract with a Solicitation Document advertisement date on or after January 1, 2025 but before January 1, 2029, when the Public Improvement Contract will have an awarded Contract Amount of \$15 million or more, 70 percent of the total Nonroad Diesel Equipment used on the Project Site during the performance of the Public Improvement Contract must meet or exceed United States Environmental Protection Agency Tier 4 Exhaust Emission Standards for non-road compression ignition diesel engines or, if not equipped with a Tier 4 compression ignition diesel engine, must be retrofitted with a Verified Diesel Oxidation Catalyst or Verified Diesel Particulate Filter;

(c) For a State Contracting Agency Public Improvement Contract with a Solicitation Document advertisement date on or after January 1, 2029, when the Public Improvement Contract will have an awarded Contract Amount of \$10 million or more, 80 percent of the total Non-Road Diesel Equipment used on the Project Site during the performance of the Public Improvement Contract must meet or exceed United States Environmental Protection Agency Tier 4 Exhaust Emission Standards for non-road compression ignition diesel engines or, if not equipped with a Tier 4 compression ignition diesel engine, must be retrofitted with a Verified Diesel Oxidation Catalyst or Verified Diesel Particulate Filter.

(2) Non-Road Diesel Equipment – Engine Requirements for Specified Projects. Notwithstanding the requirements of section (1) of this rule, 80 percent of the total Non-Road Diesel Equipment used on the Project Site during the performance of the State Contracting Agency Public Improvement Contract must meet or exceed United States Environmental Protection Agency Tier 4 Exhaust Emission Standards for non-road compression ignition diesel engines or, if not equipped with a Tier 4 compression ignition diesel engine, be retrofitted with a Verified Diesel Oxidation

Catalyst or Verified Diesel Particulate Filter, for the Specified Projects.

(3) Non-Road Diesel Equipment – Exemptions. The following categories of Non-Road Diesel Equipment are exempt from sections (1) and (2) of this rule:

(a) Non-Road Diesel Equipment required for an Emergency, as determined by the State Contracting Agency responsible for administering the Public Improvement Contract; or

(b) For a State Contracting Agency Public Improvement Contract with a Solicitation Document advertisement date before January 1, 2029, Non-Road Diesel Equipment owned and operated by a Certified Firm. For a Public Improvement Contract with an advertisement date before January 1, 2029, Non-Road Diesel Equipment that is owned and operated by a Certified Firm and is otherwise compliant with the requirements of sections (1) and (2) of this rule, may be counted as compliant equipment for purposes of the calculation under section (5)(a) of this rule.

(4) Non-Road Diesel Equipment – Data and Records. To verify compliance with sections (1) and (2) of this rule, the Contractor must submit all required or necessary data and records associated with Non-Road Diesel Equipment to the State Contracting Agency, according to the specifications of the Public Improvement Contract.

(5) Non-Road Diesel Equipment – Sample Calculation. Contractor compliance with sections (1) and (2) of this rule will be determined by the following calculation:

(a) Total pieces of Non-Road Diesel Equipment used on the Project Site ..... = \_\_\_\_\_

(b) Multiply the answer to (5)(a) by the required percentage under sections (1) or (2) of this rule (round to the nearest whole number)..... = \_\_\_\_\_

(c) Total pieces of Non-Road Diesel Equipment that qualify for an exemption under sections (3)(a) and (3)(b) of this rule..... = \_\_\_\_\_

(d) Subtract the number under section (5)(c) from the number under (5)(b) = \_\_\_\_\_

(e) Total number of Non-Road Diesel Equipment items used on the Project Site that must meet or exceed United States Environmental Protection Agency Tier 4 Exhaust Emission Standards for non-road compression ignition diesel engines or, if not equipped with a Tier 4 compression ignition diesel engine, be retrofitted with a Verified Diesel Oxidation Catalyst or Verified Diesel Particulate Filter [equal to 5(a) and (d)]..... = \_\_\_\_\_

(6) On-Road Concrete Mixer Trucks and On-Road Dump Trucks – General Engine Requirements. For a State Contracting Agency Public Improvement Contract where the majority of the Project Site is located within Clackamas County, Multnomah County, or Washington County, the Public Improvement Contract is subject to the following requirements:

(a) For a State Contracting Agency Public Improvement Contract with a Solicitation Document advertisement date on or after January 1, 2022 but before January 1, 2025, when the Public Improvement Contract will have an awarded Contract Amount of \$20 million or more, and for the Specified Projects, 50 percent of the total on-road concrete mixer trucks and on-road dump trucks with compression ignition diesel engines used on the Project Site during the performance of the Public Improvement Contract must be powered by a model year 2010 or newer engine;

(b) For a State Contracting Agency Public Improvement Contract with a Solicitation Document advertisement date on or after January 1, 2025 but before January 1, 2029, when the Public Improvement Contract will have an awarded Contract Amount of \$15 million or more, 75 percent of the total on-road concrete mixer trucks and on-road dump trucks with compression ignition diesel engines used on the Project Site during the performance of the Public Improvement Contract must be powered by a model year 2010 or newer engine;

(c) For a State Contracting Agency Public Improvement Contract with a Solicitation Document advertisement date on or after January 1, 2029, when the Public Improvement Contract will have an awarded Contract Amount of \$10 million or more, 100 percent of the total on-road concrete mixer trucks and dump trucks with compression ignition diesel engines used on the Project Site during the performance of the Public Improvement Contract must be powered by a model year 2010 or newer engine.

(7) On-Road Concrete Mixer Trucks and On-Road Dump Trucks – Scope of Engine Requirements. The requirements of section (6) of this rule apply to on-road concrete mixer trucks and on-road dump trucks with compression ignition diesel

engines that are owned or operated by Contractors, subcontractors, and those operated under trucking services agreements.

(8) On-Road Concrete Mixer Trucks and On-Road Dump Trucks – Exemptions. The requirements of section (6) of this rule do not apply to the following:

(a) Concrete mixer trucks or dump trucks that are required for an Emergency, as determined by the State Contracting Agency responsible for administering the Public Improvement Contract;

(b) Concrete mixer trucks or dump trucks with compression ignition diesel engines that are owned and operated by a Certified Firm under a State Contracting Agency Public Improvement Contract with a Solicitation Document advertisement date before January 1, 2029; or

(c) Concrete mixer trucks or dump trucks with compression ignition diesel engines that are owned and operated by suppliers or vendors delivering materials to a Project Site, that are not operated by Contractors or subcontractors or operated under a trucking services agreement.

(9) Timing of Engine Requirements. For purposes of this rule, a Contract does not become a Public Improvement Contract until construction work is described, specified, authorized and agreed upon by the parties to the Contract. A Contract that has not yet become a Public Improvement Contract includes, but is not limited to, a Contract for Construction Manager/General Contractor Services which only includes preconstruction services to be provided by the Contractor, or a progressive design-build Contract that only includes preliminary design services to be provided by the Contractor.

(10) Idling Requirements. Where the majority of the Project Site is located within Clackamas, Multnomah, or Washington County, all Non-Road Diesel Equipment used on a Project Site during the performance of the State Contracting Agency Public Improvement Contracts listed in section (11) of this rule, must meet the following engine idling requirements, in order to reduce unnecessary diesel exhaust emissions:

(a) All Non-Road Diesel Equipment must shut down after five (5) minutes of inactivity;

(b) All Non-Road Diesel Equipment must have signs or decals on the Non-Road Diesel Equipment visible to the operators to remind them to shut down the Non-Road Diesel Equipment after five (5) minutes of inactivity;

(c) Contractors must post “Five Minute Limit” signs in high foot-traffic areas of the Project Site that are visible to workers stating that Non-Road Diesel Equipment must be shut down after five (5) minutes of inactivity;

(d) Contractors must otherwise instruct all Non-Road Diesel Equipment operators in writing of the requirement that all Non-Road Diesel Equipment must be shut down after five (5) minutes of inactivity.

(11) Idling Requirements – Contracts Affected. The idling requirements for Non-Road Diesel Equipment in section (10) of this rule apply only to the following State Contracting Agency Public Improvement Contracts:

(a) For a State Contracting Agency Public Improvement Contract with a Solicitation Document advertisement date on or after January 1, 2022 but before January 1, 2025, when the Public Improvement Contract will have an awarded Contract Amount of \$20 million or more, and for the Specified Projects;

(b) For a State Contracting Agency Public Improvement Contract with a Solicitation Document advertisement date on or after January 1, 2025 but before January 1, 2029, when the Public Improvement Contract will have an awarded Contract Amount of \$15 million or more; and,

(c) For a State Contracting Agency Public Improvement Contract with a Solicitation Document advertisement date on or after January 1, 2029, when the Public Improvement Contract will have an awarded Contract Amount of \$10 million or more.

(12) Idling Requirements – Exemptions. Each State Contracting Agency Public Improvement Contract subject to the idling requirements for Non-Road Diesel Equipment in sections (10) and (11) of this rule shall include provisions exempting Contractors from these idling requirements in the following circumstances:

(a) When the Non-Road Diesel Equipment is required for an Emergency, as determined by the State Contracting Agency responsible for administering the Public Improvement Contract;

(b) When the safety of Contractors, subcontractors and their employees may be compromised if Non-Road Diesel Equipment is turned off, which may include, but not be limited to, circumstances when employees are working in a

trench;

- (c) When the Non-Road Diesel Equipment involved meets the most stringent EPA emissions standards or has been retrofitted with a Verified Diesel Oxidation Catalyst or Verified Diesel Particulate Filter;
- (d) When frequent shutdowns may be detrimental to the exhaust control system of the Non-Road Diesel Equipment, thereby reducing the effectiveness of that exhaust control system by lowering the exhaust temperature; or
- (e) When the Non-Road Diesel Equipment requires testing, servicing, inspection, or repairs.

STATUTORY/OTHER AUTHORITY: ORS 279A.065, ORS 279C.537

STATUTES/OTHER IMPLEMENTED: ORS 279C.537