These comparison documents show the differences between the ODOT rules (OAR 731-005-0430 (Definitions) and OAR 731-005-0800 (Clean Diesel Construction Standard)) and the DOJ Temporary Rules that were filed with the Secretary of State’s Office (OAR 137-049-0120 (Definitions) and OAR 137-049-0805 (Diesel Engine Requirements)).

To make these comparison documents easier to read, we first developed parallel sets of ODOT vs. DOJ Definitions (taking out any definitions in the ODOT/DOJ Definitions rules that weren’t relevant to our Clean Diesel discussion) and then prepared the 1st comparison document.  Then we developed separate copies of the primary ODOT Clean Diesel rule at OAR 731-005-0800 and the main DOJ Clean Diesel rule at OAR 137-049-0805, and prepared the 2nd comparison document.  ODOT has a separate Clean Diesel rule at OAR 731-149-0020---but that rule is more narrowly focused than the ODOT OAR 731-005-0800 rule, which applies to the 5 big “Specified Projects” in the Portland Metro Area, in addition to other ODOT “heavy highway” projects.

[Chapter 137](https://secure.sos.state.or.us/oard/displayChapterRules.action?selectedChapter=93)

[Division 49MODEL RULES GENERAL PROVISIONS RELATED TO PUBLIC CONTRACTS FOR CONSTRUCTION SERVICES](https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=300)

**137-049-0120**
**Definitions**

(1) “Certified Firm” means a business concern that possesses one or more current, valid certification(s) as a Disadvantaged Business Enterprise, Minority-Owned Business, Woman-Owned Business, Business That Service-Disabled Veterans Own or Emerging Small Business by the Oregon Certification Office for Business Inclusion and Diversity, pursuant to ORS 200.055.

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(4) “Emergency” means, only for purposes of the Diesel Engine Requirements rule OAR 137-049-0805, circumstances that could not have been reasonably foreseen, and that create a substantial risk of loss, damage, interruption of services, or threat to public health or safety with regard to a Public Improvement Contract.

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(6) “Nonroad Diesel Equipment” means equipment used in the course of performing a State Contracting Agency? Public Improvement Contract, powered by a compression ignition diesel engine of 25 horsepower or more that is not designed primarily to propel a motor vehicle on public highways.

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(8) “Project Site” means, only for purposes of the Diesel Engine Requirements rule OAR 137-049-0805, the geographic dimensions of the surface area of the real property on which the Work for a State Contracting Agency? Public Improvement Contract is to be performed, including designated contiguous staging areas.

(9) “Specified Projects” means the following projects and Project Sites formally described and established by the Oregon Department of Transportation: The Interstate 5 Rose Quarter Project, the Interstate 205 Abernathy Bridge Project, the Interstate 205 Freeway Widening Project, the State Highway 217 Northbound Project and the State Highway 217 Southbound Project.

(10) “Tier 4 Exhaust Emission Standards” means the Tier 4 compression ignition diesel engine emission standards established by the United States Environmental Protection Agency in 40 CFR 89.112 for Non-Road Diesel Equipment.

(11) “Verified Diesel Oxidation Catalyst” means a diesel oxidation catalyst verified by the United States Environmental Protection Agency for use on Non-Road Diesel Equipment.

(12) “Verified Diesel Particulate Filter” means a diesel particulate filter verified by the United States Environmental Protection Agency for use on Non-Road Diesel Equipment.

(13) “Work” means the furnishing of all services, materials, equipment, labor and incidentals necessary to successfully complete any individual item or the entire Contract and the carrying out and completion of all duties and obligations imposed by the Contract.

[Chapter 137](https://secure.sos.state.or.us/oard/displayChapterRules.action?selectedChapter=93)

[Division 49MODEL RULES GENERAL PROVISIONS RELATED TO PUBLIC CONTRACTS FOR CONSTRUCTION SERVICES](https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=300)

**137-049-0805**
**Diesel Engine Requirements**

(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.