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ARCHIVES DIVISION

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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 731
DEPARTMENT OF TRANSPORTATION

FILED

11/29/2021 10:34 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Restrictions on the Use of Diesel Vehicles and Equipment on Certain Public Improvement Contracts

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 12/21/2021 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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355 Capitol Street NE
Salem, OR 97301

Filed By:
Lauri Kunze
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 12/16/2021

TIME: 10:00 AM

OFFICER: Nick Hererra

ADDRESS: Virtual hearing

This meeting will be recorded.

Salem, OR 97301

SPECIAL INSTRUCTIONS:

Participation Options:

Join via Zoom

URL: <https://us02web.zoom.us/j/85756598663>

Webinar ID: 857 5659 8663

or

Join via phone: +1 346 248 7799 voice only

FOR MEETING ACCESSIBILITY:

For ADA (Americans with Disabilities Act) or Civil Rights Title VI accommodations, translation/interpretation services, or more information call 503-856-2909.

Si desea obtener información sobre este proyecto traducida al español, sírvase llamar al 503-856-2909.

Nu quý v mun thông tin v d án này c dch sang ting Vit, xin gi 503-856-2909.

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NEED FOR THE RULE(S)

Oregon laws 2019, Chapter 645 authorizes ODOT to adopt administrative rules relating to the use of diesel engines on site and in the course of performing a public improvement contract. In the development of administrative rules ODOT is required to, and has, considered minimum standards established by the Oregon Department of Environmental Quality, pursuant to Oregon Laws, Chapter 645.

ODOT needs to adopt OAR 731-005-0430, 731-005-0800, and 731-149-0020 to:

- Establish restrictions for the use of on-road and non-road diesel engines while performing certain public improvement contracts;
- Establish criteria by which projects will be evaluated to determine applicability of these standards;
- Establish processes by which compliance with these standards will be evaluated.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

- Enrolled HB 2007 - <https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/HB2007/Enrolled>
- Manufacturers of Emission Controls Association - <https://olis.oregonlegislature.gov/liz/2019I1/Downloads/CommitteeMeetingDocument/207997>
- Manufacturers of Emission Controls Association - http://www.meca.org/resources/MECA_diesel_retrofit_white_paper_1114_FINAL.pdf
- The Concerns about Diesel Engine Exhaust - <https://www.oregon.gov/deq/FilterDocs/DieselEffectsReport.pdf>
- <https://equipmentwatch.com/>
- <https://catused.cat.com/en>
- <https://www.commercialtrucktrader.com/>
- https://www.oregonlegislature.gov/citizen_engagement/Reports/2019-ODOT-Emerging%20Small%20Business%20Program.pdf
- https://cdn.advocacy.sba.gov/wp-content/uploads/2019/04/23142656/2019-Small-Business-Profiles-OR.pdf?utm_medium=email&utm_source=govdelivery

FISCAL AND ECONOMIC IMPACT:

Introduction

ORS 279C.537 requires that certain state public improvement contracts meet requirements related to the use of on-road and non-road diesel vehicles and equipment. The requirements provided in subsection (2) of the statute state:

(2) Except as provided in subsection (4) of this section, a public improvement contract must require at least 80 percent of the total fleet of motor vehicles that are motor vehicles powered by diesel engines and equipment powered by nonroad diesel engines used on site and in the course of performing the contract to be:

- (a) Motor vehicles powered by model year 2010 or newer diesel engines; and
- (b) Equipment powered by nonroad diesel engines, whether or not capable of being powered by alternative fuel, that meet or exceed United States Environmental Protection Agency Tier 4 exhaust emission standards for nonroad compression ignition engines.

(3) Subsection (2) of this section applies only to a public improvement contract for a public improvement:

- (a) With a value of \$20 million or more;
- (b) For which the contracting agency is a state contracting agency; and
- (c) If the public improvement is located within Multnomah, Clackamas or Washington County.

As an alternative to complying with the requirements prescribed in ORS 279C.537(2), ORS 279C.537(4)(b) authorizes the Director of Transportation, Director of the Oregon Department of Administrative Services, and the Attorney General...:

...may adopt rules for contract specifications relating to the use of diesel engines on site and in the course of performing

a public improvement contract by a state contracting agency. In adopting rules under this paragraph, the directors and the Attorney General shall consider the minimum standards established by the Department of Environmental Quality under paragraph (a) of this subsection.

The requirements of ORS 279C.537(2) and ORS 279C.537(4)(b) apply to public improvement contracts advertised or solicited on or after January 1, 2022, or, for public improvement contracts that are not advertised or solicited, public improvements contracts that a contracting agency enters into on or after January 1, 2022. Regardless of the applicability timelines established in the statute, the requirements under ORS 279C.537(2) or ORS 279C.537(4)(b) apply to public improvement contracts for:

- The Interstate 5 Rose Quarter Project;
- The Interstate 205 Abernethy Bridge Project;
- The Interstate 205 Freeway Widening Project;
- The State Highway 217 Northbound Project; and
- The State Highway 217 Southbound Project.

The proposed rules impose the following requirements:

Non-road Diesel Equipment

- Beginning January 1, 2022, public improvement contracts exceeding \$20 million located in Clackamas, Multnomah, or Washington County, must utilize at least 60% non-road diesel equipment that meets Tier 4 emission standards, or is retrofit with a verified diesel particulate filter or diesel oxidation catalyst;
- Beginning January 1, 2025, public improvement contracts exceeding \$15 million located in Clackamas, Multnomah, or Washington County, must utilize at least 70% non-road diesel equipment that meets Tier 4 emission standards, or is retrofit with a verified diesel particulate filter or diesel oxidation catalyst;
- Beginning January 1, 2029, public improvement contracts exceeding \$10 million located in Clackamas, Multnomah, or Washington County, must utilize at least 80% non-road diesel equipment that meets Tier 4 emission standards, or is retrofit with a verified diesel particulate filter or diesel oxidation catalyst;

Notwithstanding the timelines and percentages above, the following projects must utilize 80% non-road diesel equipment that meets Tier 4 emission standards, or is retrofit with a verified diesel particulate filter or diesel oxidation catalyst:

- The Interstate 5 Rose Quarter Project;
- The Interstate 205 Abernethy Bridge Project;
- The Interstate 205 Freeway Widening Project;
- The State Highway 217 Northbound Project; and
- The State Highway 217 Southbound Project.

The following non-road diesel equipment is exempt from these rules:

- Equipment required for an emergency, as determined by the agency employee responsible for administering the contract; and
- For contracts with an advertisement date before January 1, 2029, equipment owned and operated by a COBID-certified firm (compliant COBID equipment may counted toward the Tier 4/retrofit percentage requirements).

On-road Diesel Vehicles

- Beginning January 1, 2022, public improvement contracts exceeding \$20 million located in Clackamas, Multnomah, or Washington County, and the Interstate 5 Rose Quarter Project, the Interstate 205 Abernethy Bridge Project, the Interstate 205 Freeway Widening Project, the State Highway 217 Northbound Project, and the State Highway 217

Southbound Project must utilize 50% concrete mixer trucks and dump trucks that are model year 2010 or newer;
- Beginning January 1, 2025, public improvement contracts exceeding \$15 million located in Clackamas, Multnomah, or Washington County must utilize 75% concrete mixer trucks and dump trucks that are model year 2010 or newer;
- Beginning January 1, 2029, public improvement contracts exceeding \$10 million located in Clackamas, Multnomah, or Washington County must utilize 100% concrete mixer trucks and dump trucks that are model year 2010 or newer;

The on-road diesel vehicle requirements apply to concrete mixer trucks and dump trucks owned or operated by contractors, subcontractors, and those operated under trucking service agreements. The on-road diesel vehicle requirements do not apply to concrete mixer trucks or dump trucks owned and operated by a certified firm (for projects with an advertisement date before January 1, 2029); and concrete mixer trucks and dump trucks owned and operated by suppliers or vendors delivering materials to a project site that are not operated under a trucking service agreement or subcontract.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) ODOT anticipates that certain members of the public, and certain businesses will be economically impacted by the proposed rules. Those potentially impacted include individuals and businesses which contract with ODOT, either as a prime contractor, or a subcontractor, that own or rent qualified on-road and non-road diesel vehicles and equipment.

On-road and Non-road Retrofits --

To comply with the proposed rules, affected individuals and businesses may be required to install verified retrofit devices on non-road diesel equipment, posing an economic impact to those individuals and businesses. The Manufacturers of Emission Controls Association (MECA), estimates costs associated with retrofit technologies as:

Retrofit Technology and Cost Range (per piece of equipment)

Diesel Oxidation Catalyst	\$500 - \$2,000
Passive Diesel Particulate Filter	\$8,000 - \$20,000
Active Diesel Particulate Filter	\$12,000 - \$30,000

Specific fiscal impacts to individual businesses cannot be calculated, as this is dependent upon the existing makeup of each firm's off-road diesel equipment fleet, which may vary significantly between businesses.

The proposed rules are not expected to impact other state agencies, units of local government, or individual members of the public not performing work on an ODOT public improvement project.

On-road and Non-road Replacements --

Specific cost impacts to individuals and businesses cannot be calculated, as this is dependent upon the existing makeup of each firm's on-road and non-road diesel fleet, and subsequent purchasing decisions. Market research indicates that the cost of replacing non-road diesel equipment can vary widely depending on the specific equipment type, manufacturing year, make, model, and other factors. ODOT has provided a table below with high-level cost estimates for both new and used Tier 4 non-road, and 2010 or new on-road, equipment and concrete mixer trucks and dump trucks. Information regarding the cost of replacements was obtained from sources generally available to the public. Cost information provided is approximate. For those vehicles and equipment with no Used values listed, ODOT was unable to locate cost information.

Type; New; Used

Non-road:

Small Excavator; \$90,000; \$94,000 – \$245,000

Medium Excavator; \$300,000

Large Excavator; \$1,000,000

Paver; \$400,000; \$50,000 – \$350,000

Vibratory Compactor; \$170,000; \$80,000

Small off-road Haul Truck; \$500,000

Large off-road Haul Truck; \$800,000

Small Dozer; \$130,000; \$50,000 – \$1,300,000

Large Dozer; \$1,300,000

Small Grader; \$300,000; \$90,000 – \$500,000

Large Grader; \$600,000

Small Backhoe; \$90,000; \$50,000 – \$95,000

Large Backhoe; \$180,000

On-road:

Concrete Mixer Truck; \$165,000 – \$125,000; \$40,000 – \$80,000

Dump Truck; \$50,000 – \$200,000; \$20,000 – \$200,000

Members of ODOT's Rules Advisory Committee provided the following information regarding costs to replace non-road diesel vehicles, based on the vehicle's horsepower rating, according to the Construction Industry Air Quality Coalition (December 2018).

Estimated Average Cost Power Category (HP)

\$1,800,000 >750+

\$1,000,000 600 – 750

\$750,000 300 – 559

\$300,000 175 – 299

\$160,000 100 – 174

\$125,000 75 – 99

\$100,000 50 – 74

\$55,000 25 – 49

Potential Cost Savings Due to Diesel Emission Reductions --

Specific emission reductions caused by the proposed rules are unknown. However, ODOT anticipates diesel emission reductions to be achieved on qualifying projects, which is anticipated to result in reductions in health costs related to diesel emissions. The Oregon Department of Environmental Quality estimates that emissions from an Excavator account for \$24,575 per year in health-related costs associated with diesel emissions. ODOT anticipates these health-related costs to be avoided with implementation of this rule.

2. An estimate of the number of small businesses subject to the proposed rule --

ODOT does not have precise information on the number of small businesses that may be impacted by this proposed rule. The U.S. Small Business Administration reports total small construction firms in Oregon to total roughly 11,000 firms. This estimate includes all construction firms with fewer than 20 employees (including non-civil construction firms, such as residential construction). ODOT's Office of Civil Rights' biennial Emerging Small Business (ESB) report, published in December 2019, indicates that 1,874 firms were certified as ESBs during the 2017-19 biennium, with

1,091 firms being awarded work on an ODOT project.

Based on the above information, ODOT estimates that up to 2,000 small businesses may be impacted by this rule, as proposed exemptions for certified firms expire.

Identification of the types of businesses and industries with small businesses subject to the rule --

The proposed rule will impact individuals and businesses in the construction industry.

A brief description of the projected reporting, recordkeeping and other administrative activities required for compliance with the proposed rule, including cost of professional services --

The proposed rules will require contractors to maintain all appropriate records related to the use of diesel equipment and vehicles on qualifying projects. These recordkeeping and reporting requirements include:

- Maintaining records of all on-road and non-road diesel vehicles and equipment used on site and in the execution of the qualifying project;
- Maintaining records relating to any available exemptions applied to subject vehicles and equipment;
- Submission of all records to ODOT for inspection as required (this reporting requirement will likely be on a monthly basis).

Specific reporting requirements will be detailed in ODOT contract specifications, but is likely to include the following information:

- Equipment owner
- Equipment type
- Manufacturer
- Model number
- Engine model year
- Serial number
- Horse power
- Engine Tier rating
- Whether the engine has been retrofit (include type of device, serial number, make, model, manufacturer)
- Whether the equipment is owned and operated by a certified firm
- Whether the equipment qualifies for an exemption

An identification of equipment, supplies, labor and increased administration required for compliance with the proposed rule --

ODOT anticipates additional equipment and supplies required of affected individuals and businesses to comply with the proposed rule. Affected individuals and businesses may be required to retrofit, or replace, otherwise non-compliant equipment in order to be eligible to bid on ODOT construction projects. Cost estimates related to retrofits can be found above.

The proposed rule will likely require increased labor and administrative costs in order to comply. Specific labor and administrative costs are unknown, however ODOT anticipates increased labor and administrative costs to be minimal, relative to the dollar value of a contract. ODOT estimates increased labor and administrative costs to be approximately \$1,000 per million contracted, based on the following assumptions for a \$20 million project:

Loaded Hourly Rate of a Project Inspector - \$76/hour

Typical hours billed per \$20 million project - 2,500 hours

Total Inspector cost - \$190,000

Estimated 10% additional time required by proposed rules - 250 hours

Estimated additional costs by proposed rules - \$19,000

Additional cost per million contracted (\$20 million project) - \$1,053

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

One member of ODOT's Rules Advisory Committee is a certified firm, and participated in the RAC to represent the interests of small business.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

731-005-0430, 731-005-0800, 731-149-0020

AMEND: 731-005-0430

RULE SUMMARY: Added definitions for:

Certified Firm

Emergency

Non-road Diesel Equipment

Project Site

Tier 4 Exhaust Emission Standard

Verified Diesel Oxidation Catalyst

Verified Diesel Particulate Filter

CHANGES TO RULE:

731-005-0430

Definitions ¶¶

All capitalized terms have the meanings set forth below, unless otherwise defined in the chapter 731, division 005 rules.¶¶

(1) Addendum or Addenda: An addition or deletion to, a material change in, or general interest explanation of the Solicitation Document. Addenda shall be labeled as such and distributed to all interested entities in accordance with these rules.¶¶

(2) Bid: A competitive Offer, binding on the Bidder and submitted in response to an Invitation to Bid.¶¶

(a) Lump Sum Bid: A Bid that is the total completed project price;¶¶

(b) Unit Price Bid: A Bid that provides unit prices based upon estimated quantities.¶¶

(3) Bidder: An Entity that submits a Bid in response to an Invitation to Bid.¶¶

(4) Closing: The date and time announced in the Solicitation Document as the deadline for submitting Offers.¶¶

(5) Certified Firm: A company that possess one or more current, valid certification(s) from the Oregon Certification Office for Business Inclusion and Diversity.¶¶

(6) Competitive Range: The number of Proposers within a given scoring range ODOT will negotiate with if ODOT intends to negotiate in accordance with OAR 731-005-0650. The Competitive Range must be stated in the Solicitation Document, but will be decreased if the number of Proposers that submit Proposals is less than the specified number, or may be increased by ODOT in accordance with OAR 731-005-0650.¶¶

(7) Conduct Disqualification: A Disqualification pursuant to ORS 279C.440.¶¶

(8) Contract: The Written agreement, resulting from the Solicitation Document that defines the Work to be completed and sets forth the rights and obligations of the parties.¶¶

(9) Contract Amount: Sum of the amounts computed by multiplying the Bid item quantities by the unit price in the schedule of Contract prices of the Contract as awarded.¶¶

(10) Contract Price: The total of the awarded Bid or Proposal amount, including any approved alternates, and any fully executed change orders or amendments.¶¶

(11) Contract Review Authority: The Director of the Oregon Department of Transportation.¶¶

(12) Contractor: The Entity awarded the Contract in response to the Solicitation Document.¶¶

(123) DAS: Oregon Department of Administrative Services.¶

(134) Days: Calendar days unless otherwise specified by these rules.¶

(145) DBE Disqualification: A Disqualification pursuant to ORS 200.065, 200.075 or 279A.110.¶

(156) Descriptive Literature: The Offeror's materials submitted to provide information concerning the products and/or services available in response to the Solicitation Document.¶

(167) Disqualification: The preclusion of an Entity from contracting with ODOT for a period of time. Disqualification may be a Conduct Disqualification as defined above, performance disqualification for failure to meet standards listed in OAR 734-010-0290(4), DBE Disqualification or disqualification for lack of specific demonstrated experience (special prequalification as described in OAR 731-007-0030). ODOT is authorized to disqualify an Entity in accordance with OAR 731-005-0710.¶

(178) Electronic Advertisement: ODOT's Solicitation Document, or other document inviting participation in ODOT's procurements made available over the Internet via:¶

(a) The World Wide Web or some other Internet protocol; or¶

(b) ODOT's Electronic Procurement System.¶

(189) Electronic Data Interchange Operating Agreement or EDI Operating Agreement: A series of standards that provide computer to computer exchange of business documents between organizations over telephone lines or computer networks. An EDI document is a document that has been transmitted pursuant to an EDI Operating Agreement.¶

(1920) Electronic Offer: A response to ODOT's Solicitation Document submitted to ODOT via:¶

(a) The World Wide Web or some other Internet protocol; or¶

(b) ODOT's Electronic Procurement System.¶

(201) Electronic Procurement System or Electronic Procurement: An information system that persons may access through the Internet using the World Wide Web or some other Internet protocol or that persons may otherwise remotely access using a computer, that enables persons to send Electronic Offers and ODOT to post Electronic Advertisements, receive Electronic Offers, and conduct other activities related to a procurement.¶

(242) Emergency: Circumstances that could not have been reasonably foreseen that create a substantial risk of loss, damage, interruption of services, or threat to public health or safety with regard to a public improvement project.¶

(23) Entity: A natural person capable of being legally bound, sole proprietorship, limited liability company, corporation, partnership, limited liability partnership, limited partnership, profit and nonprofit unincorporated association, business trust, two or more persons having a joint or common economic interest, or any other person with legal capacity to contract, or a government or governmental subdivision.¶

(224) Facsimile: A document that has been transmitted to and received by ODOT in a format that is capable of being received via a device commonly known as a Facsimile machine (e.g. a Facsimile Bid). A Facsimile machine allows hard copy documents (Written, typed or drawn material) to be sent over telephone lines and printed in another location.¶

(235) Invitation to Bid or ITB: A notice to Contractors disseminating information pertaining to bidding of Public Improvement projects including availability of Solicitation Documents.¶

(246) Non-Resident Contractor: A Contractor that is not domiciled in or registered to do business in the State of Oregon. See OAR 731-005-0750.¶

(257) Non-road Diesel Equipment: Equipment used in the course of performing a 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.¶

(28) ODOT: The Oregon Department of Transportation.¶

(269) Offer: A Bid or Proposal as applicable.¶

(2730) Offeror: A Bidder or Proposer as applicable.¶

(2831) Opening: The date, time and place announced in the Solicitation Document for the public Opening of Written sealed Offers or Electronic Offers.¶

(329) Product Sample: A representative specimen of the item offered by the Offeror in response to the Solicitation Document. Unless otherwise provided in the Solicitation Document, the Product Sample shall be the exact product or a representative portion of that product offered by the Offeror.¶

(303) Project Site: The geographic dimensions of the real property on which the Work is to be performed, including designated contiguous staging areas.¶

(34) Proposal: A competitive Offer, binding on the Proposer and submitted in response to a Request for Proposals. See Offer.¶

(315) Proposer: An Entity that submits a Proposal in response to a Request for Proposals. See Offeror.¶

(326) Public Improvement: Projects relating to maintenance or construction of highways, bridges, parks or other transportation facilities by or for ODOT. "Public improvement" does not include emergency Work, minor alteration, ordinary repair or maintenance necessary in order to preserve a Public Improvement.¶

- (337) Request for Proposals or RFP: A Solicitation Document calling for Proposals.¶
- (348) Responsible Offeror (also, Responsible Bidder or Responsible Proposer, as applicable): Is an Entity that has submitted an Offer and meets the standards set forth in OAR 731-005-0670(1)(c)(H) and that has not been disqualified by ODOT under OAR 731-005-0710.¶
- (359) Responsive Offer (also, Responsive Bid or Responsive Proposal, as applicable): An Offer that substantially complies with applicable solicitation procedures and requirements and the Solicitation Document.¶
- (3640) Signed or Signature: Any mark, word or symbol executed or adopted by an Entity evidencing intent to be bound, which may include electronic or digital signature.¶
- (3741) Solicitation Document: Documents that define the procurement of a Public Improvement project including but not limited to Bid or Proposal booklet, plans, Specifications, requirements, provisions and includes all documents incorporated by reference.¶
- (3842) Specification: Any description of the physical or functional characteristics, or of the nature of a supply, service or construction item, including any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery and the quantities or qualities of materials to be furnished under the Contract. Specifications generally will state the result to be obtained and may, on occasion, describe the method and manner of doing the Work to be performed.¶
- (439) Tie Offers: Tie Offers shall have the meaning set forth in OAR 731-005-0660.¶
- (404) Tier 4 Exhaust Emission Standard: The Tier 4 engine emission standard established by the United States Environmental Protection Agency in 40 CFR 89.112.¶
- (45) Verified Diesel Oxidation Catalyst: A diesel oxidation catalyst verified by the United States Environmental Protection Agency for use on Non-road Diesel Equipment.¶
- (46) Verified Diesel Particulate Filter: A diesel particulate filter verified by the United States Environmental Protection Agency for use on Non-road Diesel Equipment.¶
- (47) Work: The furnishing of all materials, equipment, labor, and incidentals necessary to successfully complete any individual item or the entire Contract and the successful completion of all duties and obligations imposed by the Contract.¶
- (418) Written or Writing: Conventional paper documents either manuscript or printed, in contrast to spoken words. It includes electronic transmissions if the Solicitation Document or Contract permits.
Statutory/Other Authority: ORS 184.619, 279A.050, 279A.065
Statutes/Other Implemented: ORS 279A, 279C

RULE SUMMARY: Establishing a new rule concerning the use of non-road and on-road diesel equipment and vehicles on certain public improvement contracts, pursuant to ORS 279C.537.

CHANGES TO RULE:

731-005-0800

Clean Diesel Construction Standard

(1) For public improvement contracts where the majority of the project site is located within Clackamas, Multnomah, or Washington County, the public improvement is subject to the following requirements:

(a) For contracts with an advertisement date on or after January 1, 2022, when the contract will have an awarded contract amount of \$20 million or more, 60 percent of the total non-road diesel equipment used on the project site during the performance of the contract must meet or exceed United States Environmental Protection Agency Tier 4 exhaust emission standards for non-road compression ignition engines; or if not equipped with a Tier 4 engine, must be retrofit with a verified diesel oxidation catalyst or verified diesel particulate filter;

(b) For contracts with an advertisement date on or after January 1, 2025, when the contract will have an awarded contract amount of \$15 million or more, 70 percent of the total non-road diesel equipment used on the project site during the performance of the contract must meet or exceed United States Environmental Protection Agency Tier 4 exhaust emission standards for non-road compression ignition engines; or if not equipped with a Tier 4 engine, must be retrofit with a verified diesel oxidation catalyst or verified diesel particulate filter;

(c) For contracts with an advertisement date on or after January 1, 2029, when the 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 contract must meet or exceed United States Environmental Protection Agency Tier 4 exhaust emission standards for non-road compression ignition engines; or if not equipped with a Tier 4 engine, must be retrofit with a verified diesel oxidation catalyst or verified diesel particulate filter.

(2) 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 contract must meet or exceed United States Environmental Protection Agency Tier 4 exhaust emission standards for non-road compression ignition engines; or if not equipment with a Tier 4 engine, be retrofit with a verified diesel oxidation catalyst or diesel particulate filter, for the following projects:

(a) The Interstate 5 Rose Quarter Project;

(b) The Interstate 205 Abernethy Bridge Project;

(c) The Interstate 205 Freeway Widening Project;

(d) The State Highway 217 Northbound Project; and

(e) The State Highway 217 Southbound Project.

(3) The following 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 agency employee responsible for administering the contract; and

(b) For contracts with an advertisement date before January 1, 2029, non-road diesel equipment owned and operated by a certified firm. For contracts 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 (4)(e).

(4) To verify compliance with sections (1) and (2) of this rule, contractor shall submit all required data to the agency, according to contract specifications. 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 (4)(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 (4)(c) from the number under (4)(b) &&.....&& = _____

(e) Total number of non-road diesel equipment 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 engines; or if not equipped with a Tier 4 engine, be retrofit with a verified diesel oxidation catalyst or verified diesel particulate filter (equal to 4(d)) &&&&.....&&.. = _____

(5) For public improvement contracts where the majority of the project site is located within Clackamas,

Multnomah, or Washington County, the public improvement is subject to the following requirements:¶

(a) For contracts with an advertisement date on or after January 1, 2022, when the contract will have an awarded contract amount of \$20 million or more, and for the Interstate 5 Rose Quarter Project, the Interstate 205 Abernethy Bridge Project, the Interstate 205 Freeway Widening Project, the State Highway 217 Northbound Project, and the State Highway 217 Southbound Project; 50 percent of the total on-road concrete mixer trucks and on-road dump trucks used on the project site during the performance of the contract must be powered by a model year 2010 or newer engine.¶

(b) For contracts with an advertisement date on or after January 1, 2025, when the 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 used on the project site during the performance of the contract must be powered by a model year 2010 or newer engine.¶

(c) For contracts with an advertisement date on or after January 1, 2029, when the contract will have an awarded contract amount of \$10 million or more, 100 percent of the total concrete mixer trucks and dump trucks used on the project site during the performance of the contract must be powered by a model year 2010 or newer engine.¶

(6) The requirements of section (5) of this rule apply to on-road concrete mixer trucks and on-road dump trucks owned or operated by contractors, subcontractors, and those operated under trucking services agreements. ¶

(7) The requirements of section (5) of this rule do not apply to:¶

(a) Concrete mixer trucks or dump trucks owned and operated by a certified firm on projects with an advertisement date before January 1, 2029; and¶

(b) Concrete mixer trucks or dump trucks owned and operated by suppliers or vendors delivering materials to a project site, that are not operated under a trucking service agreement or subcontract.

Statutory/Other Authority: ORS 184.619, ORS 279C

Statutes/Other Implemented: ORS 279C

RULE SUMMARY: Establishing a new rule concerning the use of non-road and on-road diesel equipment and vehicles on certain public improvement contracts, pursuant to ORS 279C.537.

CHANGES TO RULE:

731-149-0020

Clean Diesel Construction Standard

(1) The definitions provided in OAR 731-005-0430 apply to sections (2) through (7) of this rule.

(2) For public improvement contracts where the majority of the project site is located within Clackamas, Multnomah, or Washington County, the public improvement is subject to the following requirements:

(a) For contracts with an advertisement date on or after January 1, 2022, when the contract will have an awarded contract amount of \$20 million or more, 60 percent of the total non-road diesel equipment used on the project site during the performance of the contract must meet or exceed United States Environmental Protection Agency Tier 4 exhaust emission standards for non-road compression ignition engines; or if not equipped with a Tier 4 engine, must be retrofit with a verified diesel oxidation catalyst or verified diesel particulate filter;

(b) For contracts with an advertisement date on or after January 1, 2025, when the contract will have an awarded contract amount of \$15 million or more, 70 percent of the total non-road diesel equipment used on the project site during the performance of the contract must meet or exceed United States Environmental Protection Agency Tier 4 exhaust emission standards for non-road compression ignition engines; or if not equipped with a Tier 4 engine, must be retrofit with a verified diesel oxidation catalyst or verified diesel particulate filter;

(c) For contracts with an advertisement date on or after January 1, 2029, when the 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 contract must meet or exceed United States Environmental Protection Agency Tier 4 exhaust emission standards for non-road compression ignition engines; or if not equipped with a Tier 4 engine, must be retrofit with a verified diesel oxidation catalyst or verified diesel particulate filter.

(3) The following non-road diesel equipment are exempt from sections (2) of this rule:

(a) Non-road diesel equipment required for an emergency, as determined by the agency employee responsible for administering the contract; and

(b) For contracts with an advertisement date before January 1, 2029, non-road diesel equipment owned and operated by a certified firm. For contracts 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 section (3) of this rule, may be counted as compliant equipment for purposes of the calculation under section (4)(e).

(4) To verify compliance with section (2) of this rule, contractor shall submit all required data to the agency, according to contract specifications. Compliance with section (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 (4)(a) by the required percentage under section (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 (4)(c) from the number under (4)(b).....=

(e) Total number of non-road diesel equipment 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 engines; or if not equipped with a Tier 4 engine, be retrofit with a verified diesel oxidation catalyst or diesel particulate filter (equal to (4)(d)).....=

(5) For public improvement contracts where the majority of the project site is located within Clackamas, Multnomah, or Washington County, the public improvement is subject to the following requirements:

(a) For contracts with an advertisement date on or after January 1, 2022, when the contract will have an awarded contract amount of \$20 million or more, and for the Interstate 5 Rose Quarter Project, the Interstate 205 Abernethy Bridge Project, the Interstate 205 Freeway Widening Project, the State Highway 217 Northbound Project, and the State Highway 217 Southbound Project, 50 percent of the total on-road concrete mixer trucks and on-road dump trucks used on the project site during the performance of the contract must be powered by a model year 2010 or newer engine;

(b) For contracts with an advertisement date on or after January 1, 2025, when the 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 used on the project site during the performance of the contract must be powered by a model year 2010 or newer engine.¶

(c) For contracts with an advertisement date on or after January 1, 2029, when the contract will have an awarded contract amount of \$10 million or more, 100 percent of the total concrete mixer trucks and dump trucks used on the project site during the performance of the contract must be powered by a model year 2010 or newer engine.¶

(6) The requirements of section (6) of this rule apply to on-road concrete mixer trucks and on-road dump trucks owned or operated by contractors, subcontractors, and those operated under trucking service agreements.¶

(7) The requirements of section (6) of this rule do not apply to:¶

(a) Concrete mixer trucks or dump trucks owned and operated by a certified firm on projects with an advertisement date before January 1, 2029; and¶

(b) Concrete mixer trucks or dump trucks owned and operated by suppliers or vendors delivering materials to a project site, that are not operated under a trucking service agreement or subcontract.

Statutory/Other Authority: ORS 184.619, ORS 279C

Statutes/Other Implemented: ORS 279C