

CONCEPT DRAFT, ONLY FOR DISCUSSION – 3rd RAC Meeting, Thursday, 4-21-2022 – Only For Receiving Comments/Input On Draft Concepts Discussed With RAC Members – Not An Indication Of The Final Approved Form Of The Rules – Attorney General To Develop The Final Form Of These Rules

[Chapter 137](#)

[Division 49](#)

[MODEL RULES GENERAL PROVISIONS RELATED TO PUBLIC CONTRACTS FOR CONSTRUCTION SERVICES](#)

137-049-0805

Diesel Engine Requirements

(1) **Non-Road** 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, and the awarded Contract Amount is \$20 million or more, the Public Improvement Contract is subject to the following requirements, except as provided for in sections (2) and (3) of this rule:

(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 **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;

(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 **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;

(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

Commented [UB1]: **NOTE** Capitalized terms are either defined terms from the 137-049-0120 rule, they are defined terms that are capitalized under the protocol described in the introduction to the 137-046-0110 “Definitions for the Model Rules,” from the other defined terms in Division 46 or from the Code, or they involve proper names outside the Code.

Commented [UB2]: **NOTE** See ORS 279C.537(3), where the 3 mandatory scope requirements appear to be located: State Contracting Agencies only; geographic limit to Multnomah, Clackamas and Washington counties; and Public Improvement Contracts of \$20,000,000 or more.

Commented [UB3]: **NOTE** This phrase can now be removed here, since it appears within the definition of “Non-Road Diesel Equipment.”
This same phrase has also been added to the definitions of “On-Road Concrete Mixer Trucks” and “On-Road Dump Trucks,” so this phrase may also be removed from most of the uses of that phrase in sections (6) through (9).
This phrase is still critical, however, to correctly focus these types of equipment/trucks to those “used on the Project Site during the performance of the Public Improvement Contract,” per the key provisions in ORS 279C.537(2).

~~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;

~~(b) Non-Road Diesel Equipment which, if retrofitted with a Verified Diesel Oxidation Catalyst or Verified Diesel Particulate Filter, would obscure the operator's lines of sight or otherwise create an unsafe condition for Contractor personnel, subcontractor personnel or others in the area of operation of the Non-Road Diesel Equipment; or~~

~~(c)~~ 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 or a Small Business 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 or Small Business 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, but then cannot also be listed as exempt under this section (3)(c).

(4) Non-Road Diesel Equipment – Data, Records and Reports. ~~To verify compliance with sections (1), (2) and (3) of this rule, The Contractor must develop, retain and, upon the request of the State Contracting Agency administering the Public Improvement Contract, submit all required or necessary data, records, and reports associated with the Non-Road Diesel Equipment, according to the specifications of the Public Improvement Contract. The data, records and reports the Contractor develops, retains and submits to the State Contracting Agency must include, but not be limited to, an initial detailed report delivered to the State Contracting Agency at the time the Public Improvement Contract is executed, in addition to regular reports to the State Contracting Agency during the Contractor's performance of the Public Improvement Contract at intervals agreed to by the parties, that include the following information:~~

Commented [UB4]: **NOTE** Draft concept, for review and discussion of the RAC.

Commented [UB5]: **NOTE** Draft concept, for review and discussion of the RAC. Designed to address comments from Carrie L. Baxandall, Program Manager, Certification Office for Business Inclusion and Diversity.

Commented [UB6]: **NOTE** This edit is designed to work with the red-lined edits made in section (5)(c), to confirm that the Contractor can't "double-dip" with an exemption and compliant equipment.

(a) For the initial detailed report, a list of the Non-Road Diesel Equipment the Contractor anticipates will be used, whether by the Contractor, a subcontractor of the Contractor, or a provider of Trucking Services;

(b) For regular reports during the performance of the Public Improvement Contract, a list of the Non-Road Diesel Equipment being used, whether by the Contractor, a subcontractor of the Contractor, or a provider of Trucking Services;

(c) For all reports, detailed information associated with the Non-Road Diesel Equipment, including the type of Non-Road Diesel Equipment, as well as the manufacturer, serial number or vehicle identification number, diesel engine manufacturer, diesel engine model year, diesel engine certification or tier rating, horse-power level, and diesel engine serial number;

(d) For all reports, the type of emission-control technology installed on the Non-Road Diesel Equipment, as well as the serial number, make, model, manufacturer, and EPA verification number or level of the emission-control technology;

(e) For all reports, confirmation that any retrofitted Non-Road Diesel Equipment has been adequately maintained and is in standard or better operating condition; and

(f) For all reports, detailed information that establishes the Contractor is entitled to any exemption the Contractor is claiming under sections (3) and (13) of this rule.

(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 not compliant under sections (1) and (2) of this rule, that do qualify for an exemption under sections (3)(a), (3)(b) or (3)(c) of this rule.....= _____;

(d) Subtract the number under section (5)(c) from the number under (5)(b).....= _____; and

(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 (5)(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

Commented [UB7]: **NOTE:** More extensive base record-keeping requirement provisions concept for Non-Road Diesel Equipment, for discussion with the RAC members. The idea is to leave the detailed data/record-keeping/report requirements to the parties to the Contract---but then provide some basic direction for the data/record/report requirements.

Commented [UB8]: **NOTE:** Edit made to support the idea that Certified Firm/Small Business Firm owned equipment can be compliant or exempt, but not both.

Commented [UB9]: **NOTE:** Edit needed to match the revised number of exemptions listed in section (3).

Commented [UB10]: **NOTE:** General revisions are made to use the new defined terms for "On-Road Concrete Mixer Trucks" and "On-Road Dump Trucks."

Site is located within Clackamas County, Multnomah County, or Washington County ~~and~~, the Public Improvement Contract ~~will have an awarded Contract Amount of \$20,000,000 or more,~~ the Public Improvement Contract is subject to the following requirements for On-Road Concrete Mixer Trucks and On-Road Dump Trucks, except as provided in sections (7) and (8) of this rule:

Commented [UB11]: **NOTE:** Again, see ORS 279C.537(3), where the 3 mandatory scope requirements appear to be located: State Contracting Agencies only; geographic limit to Multnomah, Clackamas and Washington counties; and Public Improvement Contracts of \$20,000,000 or more.

(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, ~~and for the Specified Projects, 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 must be powered by a model year 2010 or newer engine or, if not powered by a model year 2010 or newer engine, must be retrofitted with a Verified Diesel Oxidation Catalyst or Verified Diesel Particulate Filter;

Commented [UB12]: **NOTE:** Special input needed from the RAC re: the accuracy of this retrofitting language, in the context of On-Road Concrete Mixer Trucks and On-Road Dump Trucks that are now added to the requirements in Section (6) of the rule.

(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 must be powered by a model year 2010 or newer engine or, if not powered by a model year 2010 or newer 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,~~ 100 percent of the total On-Road Concrete Mixer Trucks and On-Road Dump Trucks must be powered by a model year 2010 or newer engine or, if not powered by a model year 2010 or newer engine, must be retrofitted with a Verified Diesel Oxidation Catalyst or Verified Diesel Particulate Filter.

(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 that are owned or operated by Contractors, subcontractors ~~and those operated by under trucking services-Trucking Services providers~~ agreements.

(8) On-Road Concrete Mixer Trucks and On-Road Dump Trucks – Exemptions. The following categories of On-Road Concrete Mixer Trucks and On-Road Dump Trucks are exempt from sections (6) and (7) of this rule: ~~The requirements of section (6) of this rule do not apply to the following:~~

(a) On-Road Concrete Mixer Trucks or On-Road Dump Trucks that are required for an Emergency, as determined by the State Contracting Agency responsible for administering the Public Improvement Contract;

(b) On-Road Concrete Mixer Trucks or On-Road Dump Trucks -that are owned and operated by a Certified Firm or a Small Business Firm under a State Contracting Agency Public Improvement Contract with a Solicitation Document advertisement date before January 1, 2029; or

(c) On-Road Concrete Mixer Trucks or On-Road Dump Trucks -that are owned and operated by suppliers, ~~or vendors~~ or other providers ~~suppliers that are only~~ delivering materials to a Project Site, and that are not owned or operated by Contractors, ~~or~~ subcontractors or ~~operated by~~ under a trucking services Trucking Services providers agreement.

(9) On-Road Concrete Mixer Trucks and On-Road Dump Trucks – Data, Records and Reports.
The Contractor must develop, retain and, upon the request of the State Contracting Agency administering the Public Improvement Contract, submit all required or necessary data, records and reports associated with On-Road Concrete Mixer Trucks and On-Road Dump Trucks, according to the specifications of the Public Improvement Contract. The data, records and reports the Contractor develops, retains and submits to the State Contracting Agency must include, but are not limited to, an initial detailed report delivered to the State Contracting Agency at the time the Public Improvement Contract is executed, in addition to regular reports to the State Contracting Agency during the Contractor’s performance of the Public Improvement Contract, at intervals agreed to by the parties, that include the following information:

(a) For the initial detailed report, a list of the On-Road Concrete Mixer Trucks and On-Road Dump Trucks that the Contractor anticipates will be used, whether by the Contractor, a subcontractor of the Contractor or a provider of Trucking Services;

(b) For regular reports during the performance of the Public Improvement Contract, a list of the On-Road Concrete Mixer Trucks and On-Road Dump Trucks being used, whether by the Contractor, a subcontractor of the Contractor or a provider of Trucking Services;

(c) For all reports, detailed information associated with the On-Road Concrete Mixer Trucks and On-Road Dump Trucks, including the truck type, manufacturer, serial number or vehicle identification number, diesel engine manufacturer, diesel engine model year, diesel engine certification or tier rating, horse-power level and diesel engine serial number;

(d) For all reports, the type of emission control technology installed on the On-Road Concrete Mixer Trucks and On-Road Dump Trucks, as well as the serial number, make, model, manufacturer and EPA verification number or level of the emission-control technology;

(e) For all reports, confirmation that any retrofitted On-Road Concrete Mixer Trucks and On-Road Dump Trucks -have been adequately maintained and are in standard or better operating condition; and

(f) For all reports, detailed information that establishes the Contractor is entitled to any exemption the Contractor is claiming under sections (8) and (13) of this rule.

Commented [UB13]: **NOTE:** Small Business Firm concept added to this Certified Firm exemption---parallel with the same “Small Business Firm” exemption added to Section 3 above. For discussion with the RAC.

Commented [UB14]: **NOTE:** More extensive base record-keeping requirement provisions concept for the On-Road Concrete Mixer Trucks and On-Road Dump Trucks, for discussion with the RAC members. The idea is to leave the detailed data/record-keeping/report requirements to the parties to the Contract---but provide some basic direction for the data/record/report requirements.

(10) 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.

(11) Idling Requirements - Non-Road Diesel Equipment; On-Road Concrete Mixer Trucks and On-Road Dump Trucks. Where the majority of the Project Site is located within Clackamas, Multnomah, or Washington County, the Contracting Agency for a Public Improvement Contract is a State Public Contracting Agency and the Public Improvement Contract will have an awarded amount of \$20,000,000 or more, the specifications of the Public Improvement Contract must require the Contractor to meet the following engine idling requirements regarding Non-Road Diesel Equipment, On-Road Concrete Mixer Trucks, and On-Road Dump Trucks, in order to reduce unnecessary diesel exhaust emissions, except as provided in section (12) of this rule:

(a) The Contractor must shut down all ~~All~~ Non-Road Diesel Equipment, On-Road Concrete Mixer Trucks and On-Road Dump Trucks ~~must shut down~~ after five (5) minutes of inactivity;

(b) The Contractor ~~All Non-Road Diesel Equipment, On-Road Concrete Mixer Trucks and On-Road Dump Trucks~~ must have signs or decals on all ~~the~~ Non-Road Diesel Equipment, On-Road Concrete Mixer Trucks and On-Road Dump Trucks ~~-that are~~ visible to the operators, to remind them to shut down the Non-Road Diesel Equipment, On-Road Concrete Mixer Trucks and On-Road Dump Trucks after five (5) minutes of inactivity;

(c) ~~The Contractor~~ Contractors must post "Five Minute Limit" signs in high foot-traffic areas of the Project Site that are visible to workers, stating that the Non-Road Diesel Equipment, On-Road Concrete Mixer Trucks and On-Road Dump Trucks must be shut down after five (5) minutes of inactivity;

(d) ~~Contractors~~ The Contractor must otherwise instruct all operators of Non-Road Diesel Equipment, On-Road Concrete Mixer Trucks and On-Road Dump Trucks in writing of the requirement that all Non-Road Diesel Equipment, On-Road Concrete Mixer Trucks ~~on-road concrete mixer trucks~~ and On-Road Dump Trucks must be shut down after five (5) minutes of inactivity.

(12) Idling Requirements – Exemptions. In the following circumstances, Non-Road Diesel Equipment, On-Road Concrete Mixer Trucks, and On-Road Dump Trucks are exempt from the idling requirements of section (11) of this rule:

(a) When the Non-Road Diesel Equipment, On-Road Concrete Mixer Trucks and On-Road Dump Trucks ~~are~~ is required for an Emergency, as determined by the State Contracting Agency responsible for administering the Public Improvement Contract;

Commented [UB15]: **NOTE:** The idling requirements have been expanded to apply to On-Road Concrete Mixer Trucks and On-Road Dump Trucks, in addition to the Non-Road Diesel Equipment.
The DEQ standards for idling only applied to Non-Road Diesel Equipment. However, the ODOT Specs apply to Non-Road Diesel Equipment, as well as On-Road Concrete Mixer Trucks and On-Road Dump Trucks used at the Project Site and during performance of the Contract.
So, for purposes of discussion with the RAC, the main "Idling Requirements" provisions in section (11) of the rule have been expanded to apply to On-Road Concrete Mixer Trucks and On-Road Dump Trucks.

(b) When the safety of Contractors, subcontractors, ~~and~~ their employees and others in the vicinity may be compromised if Non-Road Diesel Equipment, On-Road Concrete Mixer Trucks and On-Road Dump Trucks are not allowed to continue to run when the engine is idling, which may include, but not be limited to, circumstances when employees are working in a trench;

(c) When the Non-Road Diesel Equipment, On-Road Concrete Mixer Trucks and On-Road Dump Trucks ~~Non-Road Diesel Equipment~~ involved meet-meets the most stringent EPA emissions standards or have~~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, thereby reducing the effectiveness of that exhaust control system by lowering the exhaust temperature; or

(e) When the Non-Road Diesel Equipment, On-Road Concrete Mixer Trucks and On-Road Dump Trucks require ~~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

History:

[DOJ 1-2022, temporary adopt filed 01/03/2022, effective 01/03/2022 through 07/01/2022](#)

Commented [UB16]: **NOTE:** Again, we need discussion and any corrections/updates to these retrofitting requirements, if required to address retrofitting for the On-Road Concrete Mixer Trucks and On-Road Dump Trucks.