



State of Oregon Department of Environmental Quality

Notice of Proposed Rulemaking

Sept. 30, 2020

Volkswagen Grants 2020

This package contains the following documents:

- Notice of Rulemaking
- Draft Rules

Note for Readers:

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Introduction

DEQ invites public input on the adoption of new rules in chapter 340 of the Oregon Administrative Rules.

Overview

The 2019 Oregon Legislature passed House Bill 2007 authorizing the Oregon Environmental Quality Commission (EQC) to adopt rules to implement an expanded diesel emissions reduction program with Volkswagen Environmental Mitigation Trust Agreement funds and authorizing Oregon Department of Environmental Quality (DEQ) to fully disburse Oregon's remaining Environmental Mitigation funds. The initial allocation to the state of Oregon (based on registration share of VW diesels by state) is approximately \$73 million, which must be spent in 10 years, by the deadline of Oct. 2nd, 2027.

The program would allow grant applicants to upgrade diesel equipment from older and more polluting engines to newer, cleaner technology. DEQ will use the new grant program to award approximately 1/5th of available funding during each of five consecutive calendar years beginning in 2021 and ending in 2025. The rules establish eligible project types and reimbursement amounts based equipment, project, and ownership. Vehicles subject to HB 2007 deadlines, including nonroad construction equipment subject to new state contracting standards, are a priority for retrofit, repower, and replacement with support from VW funds.

DEQ Proposal

DEQ proposes to establish a new diesel emissions mitigation grant program in Oregon, to be adopted as new OAR chapter 340, division 255.

Procedural Summary

More information

More information about this rulemaking is on this rulemaking's web page: [Volkswagen Grants 2020](#)

Public Hearings

DEQ plans to hold one public hearing.

The hearing is by webinar and teleconference only.

Anyone can attend the hearing.

Date: Oct. 19, 2020
Start time: 10 a.m.

Please register for VW Grants 2020 Public Hearing on Oct 19, 2020 10:00 AM PDT at:
<https://attendee.gotowebinar.com/register/5667547444431577612>

After registering, you will receive a confirmation email containing information about joining the webinar.

How to comment on this rulemaking proposal

DEQ is asking for public comment on the proposed rules. Anyone can submit comments and questions about this rulemaking. A person can submit comments by email, regular mail or at the public hearing.

Comment deadline

DEQ will only consider comments on the proposed rules that DEQ receives by 4 p.m., on Oct. 22, 2020.

Submit comment by email

Any person can submit comments by sending an email. Commenters should include “VW Grants 2020” in the email subject line. Submit emails to: VWGrants2020@deq.state.or.us

Note for public university students:

ORS 192.345(29) allows Oregon public university and OHSU students to protect their university email addresses from disclosure under Oregon’s public records law. If you are an Oregon public university or OHSU student, notify DEQ that you wish to keep your email address confidential.

By mail

Oregon DEQ
Attn: Gerik Kransky
700 NE Multnomah St., Room 600
Portland, OR 97232-4100

At hearing

Oct. 19, 2020

Sign up for rulemaking notices

Get email or text updates about this rulemaking by either:

- Signing up through this link: [VW Settlement Fund GovDelivery](#);
- Signing up on the rulemaking web site: [Volkswagen Grants 2020](#).

What will happen next?

DEQ will include a written response to comments in a staff report DEQ will submit to the Environmental Quality Commission. DEQ may modify the rule proposal based on the comments and as DEQ determines appropriate, and within the scope of this proposed rulemaking, to improve the rules before submission to the Commission.

Proposed rules only become effective if the Environmental Quality Commission adopts them. DEQ's intended action is to present the proposed rule changes to the EQC as soon as possible after the earliest date on which the rule changes could take effect. DEQ intends to submit the proposed rule changes to the EQC on or after Jan. 1, 2021.

Statement of need

What need would the proposed rule address?

Diesel exhaust is a complex mixture of pollutants including carbon monoxide, sulfur oxides, nitrogen oxides (NO_x), volatile organic compounds, and very fine particles (particulate matter, or PM) coated with compounds that can cause adverse health effects, including carbon. Older diesel engines emit more pollutants than new engines, built to higher emissions standards. The amount of emission benefits realized by this program to replace older diesel engines with newer ones or alternative fuel vehicles, or with better emission controls, will depend on the selected strategy. Diesel particulate filters can effectively and affordably reduce up to 90% of NO_x, 95% of PM, and 98% of black carbon. Alternate fueled vehicles also provide significant reductions compared to older diesel engines.

The Environmental Protection Agency has estimated, on a national basis, the expected health and welfare benefits that will come from reduced diesel emissions as a result of federal rules requiring lower emitting engines. It has estimated that by 2030 if most of the heavy duty trucks are operating with lower emitting engines, 8,300 premature deaths, more than 9,500 hospitalizations and 1.5 million work days lost per year would be avoided. Similar estimations were made in analyses regarding reduction of emissions from non-road, train and marine engines.

How would the proposed rule address the need?

Oregon Department of Environmental Quality has an opportunity to reduce diesel emissions by allocating Oregon's entire Volkswagen Environmental Mitigation Fund. The 2019 Oregon Legislature's passage of HB 2007 authorizes the creation of a grant program supporting businesses, governments, and equipment owners in replacing older diesel engines with new, cleaner engines and exhaust control retrofits. With approximately \$72.9 million in funding available these draft rules expand the number and type of diesel emission reduction projects DEQ can fund to improve air quality. These funds must be spent by Oct. of 2027 or Oregon risks losing them back to the Environmental Mitigation Trust Fund.

How will DEQ know the rule addressed the need?

The only projects eligible for funding must measurably reduce diesel emissions in Oregon. We will know that the rules creating a new competitive grant application program were successful if all the funds are spent on diesel emissions reduction projects and correspondingly improve Oregon's air quality.

Rules affected, authorities, supporting documents

Lead division

Environmental Solutions Division
Air Quality Planning Section

Program or activity

Diesel Emissions Mitigation Grant Program

Chapter 340 action

Adopt				
340-255-0010	340-255-0030	340-255-0050	340-255-0070	
340-255-0020	340-255-0040	340-255-0060		

Statutory Authority - ORS			
468.020	468A.805	468A.807	

Statutes Implemented - ORS	
468A.805	

Legislation

House Bill 2007 (2019)

Documents relied on for rulemaking

Document title	Document location
DEQ Industry Totals - Small Business	Employment Department 875 Union Street NE Salem OR 97311
ENVIRONMENTAL MITIGATION TRUST AGREEMENT FOR STATE BENEFICIARIES (as modified on May 19, 2020)	https://www.vwenvironmentalmitigationtrust.com/sites/default/files/2020-06/Dkt%2082-1%20Modified%20State%20Trust%20Agreement%20%285.19.2020%29.pdf

Fee Analysis

This rulemaking does not involve fees.

Statement of fiscal and economic impact

Summary

DEQ proposes to develop rules for a Diesel Emissions Mitigation Grant Program under Division 255 of Chapter 340 of the Oregon Administrative Rules. The proposed rules would implement House Bill 2007 (2019), which directs DEQ to develop and implement a grant program for Oregon with available funds from Environmental Mitigation Trust Agreement (VW Settlement). The Diesel Emissions Mitigation Grant Program is designed to retrofit, repower, and replace older diesel vehicles and equipment. By providing grant funding to support the purchase of exhaust control devices, cleaner burning engines, and new, lower emissions technologies this program will reduce harmful diesel emissions in Oregon.

ORS 468A.805 requires DEQ to spend available Environmental Mitigation Trust Agreement funding on at least 450 older diesel school buses and through the new Diesel Emissions Mitigation Grant Program. The new program will include two grant options. One component provides set amounts of grant funding to public and private parties as authorized in the Environmental Mitigation Trust Agreement and detailed in OAR 340-255-0040. A second component provides set amounts of grant funding to public and private parties as authorized by the federal Diesel Emissions Reduction Act under the DERA Option. Both options are available under the proposed rules with statutory guidance regarding how DEQ will award preference to grant applications by project type, location, ownership, and other air quality goals.

DEQ is proposing to establish program requirements including:

- Types of diesel equipment eligible to participate in the program.
- Diesel emissions reduction projects that are eligible for grant funding.
- Maximum grant amounts for the retrofit, repower, and replacement of eligible older diesel vehicles and equipment.
- Application requirements regarding equipment ownership, usage, procurement, and project type.
- Grant award preferences based on air quality and project-specific criteria.
- Review process for DEQ decision making on qualified grant applications.
- Schedule for grant application solicitations, deadlines, and funding availability.

Statement of fiscal and economic impact

The proposed rules are not anticipated to create negative economic impacts for any entity. The grant program would provide a financial benefit to vehicle and equipment dealers and manufacturers because they would see an increase in sales as a result of the grant funding. The rules would also benefit any individual, corporation, and government entity that owns and operates eligible older diesel vehicles and equipment and that receives grant funding support for the purchase of new, cleaner burning, equivalent equipment.

Statement of Cost of Compliance

State agencies

The proposed rules are not anticipated to create negative economic impacts for any entity. The rules establish a program to award grant funds for the upgrade and replacement of eligible older diesel vehicles and equipment and DEQ is the agency responsible for implementing and overseeing the program. Program funding of approximately \$72.9M total is provided through the Environmental Mitigation Trust Agreement for all grant and administrative activities. DEQ's administrative costs, up to 15% of the total fund amount, will be covered by grant program funding.

State agencies would benefit from the grant program and they do not face any fiscal or economic impacts as a result proposed rules. Agencies that own eligible diesel vehicles and equipment and choose to apply for grant funding would incur a small fiscal cost for the time spent preparing and submitting an application.

Local governments

There are no negative fiscal impacts to other state, federal, or local agencies as a result of the proposed rule. Agencies that own eligible diesel vehicles and equipment and choose to apply for grant funding would incur a small fiscal cost for the time spent preparing and submitting an application.

Public

The public would benefit from the proposed rulemaking. People will realize a fiscal benefit from improved health outcomes due to better air quality from grant funded projects. Additionally, under the program rules members of the public would be eligible to apply for grant funding to upgrade or replace eligible diesel vehicles and equipment. People that own eligible diesel vehicles and equipment and choose to apply for grant funding would be responsible for the costs of preparing and submitting an application and covering the cost share amount of the grant project.

Large businesses - businesses with more than 50 employees

Large businesses cost to comply with the proposed rules is identical to costs described under small businesses. Those that choose to participate in the grant program would benefit from the proposed rules. Businesses that manufacture and sell medium and heavy duty trucks and equipment of all fuel types will additionally benefit from the proposed rules due to increased State investment in new, cleaner burning and zero emissions equipment.

Small businesses – businesses with 50 or fewer employees

Small businesses that choose to apply for funding and sell eligible equipment would benefit from the proposed rules. Under the program rules small businesses would be eligible to apply for grant funding to upgrade or replace eligible diesel vehicles and equipment. Businesses that own qualifying diesel vehicles and equipment and choose to apply for grant funding would be responsible for the costs of preparing and submitting an application. Program rules require DEQ to award preference to grant applications submitted by a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business. This requirement will create benefits for small businesses.

Vehicle and equipment dealers and manufacturers would benefit from the proposed rulemaking. Under the Diesel Emissions Mitigation Program individuals could receive grant funding to replace older diesel vehicles and equipment which would provide a benefit in the form of increased sales for businesses that provide this type of equipment.

Under the vehicle replacement and engine repower portions of the program, successful applicants will be required to scrap older diesel engines and equipment to be able to receive grant funds. Incapacitating the engine block to fulfill the scrappage requirement prevents the applicant from being able to resell the vehicles and equipment. However, they would still receive some value for the remaining car components. Vehicle scrappage companies would see a benefit because their business may increase as a result of equipment being required to be scrapped in order for applicants to receive grant funding.

ORS 183.336 Cost of Compliance Effect on Small Businesses

a. Estimated number of small businesses and types of businesses and industries with small businesses subject to proposed rule.

Using recent employment data, DEQ identified up to 216 small businesses potentially affected by this rule, primarily Automobile and Other Motor Vehicle Merchant Wholesalers and Construction and Mining (except Oil Well) Machinery and Equipment Merchant Wholesalers. This includes diesel truck and non-road equipment dealers and 8 additional salvage companies who could see an increase in business activity for addressing the scrappage component of the grant program. All of these businesses could see increased sales resulting from proposed rules.

b. Projected reporting, recordkeeping and other administrative activities, including costs of professional services, required for small businesses to comply with the proposed rule.

Small businesses that apply for grant funding under the proposed rule will be required to provide information about the older diesel equipment to be scrapped and replaced. This information includes, but is not limited to, equipment model year, engine model year, engine family name, annual usage, and area of operation. This information should be available without creating additional recordkeeping requirements beyond standard business practices and brief equipment inspections.

c. Projected equipment, supplies, labor and increased administration required for small businesses to comply with the proposed rule.

The proposed rules will not require any additional resources for small businesses to comply.

d. Describe how DEQ involved small businesses in developing this proposed rule.

DEQ included small business representatives on the Diesel Emissions Mitigation Grant Program Rule Advisory Committee that advised DEQ on the cost of compliance for small businesses. DEQ also provided rulemaking notice through the Oregon Trucking Association and the Association of General Contractors. These associations include small businesses as part of their membership.

Documents relied on for fiscal and economic impact

Document title	Document location
DEQ Industry Totals - Small Business	Employment Department 875 Union Street NE Salem OR 97311

Advisory committee fiscal review

DEQ appointed an advisory committee.

As ORS 183.33 requires, DEQ asked for the committee’s recommendations on:

- Whether the proposed rules would have a fiscal impact,
- The extent of the impact, and
- Whether the proposed rules would have a significant adverse impact on small businesses; if so, then how DEQ can comply with ORS 183.540 reduce that impact.

The committee reviewed the draft fiscal and economic impact statement and its findings are stated in the approved minutes dated Aug. 17, 2020.

All committee members present during the discussion on August 17th, 2020 agreed that the rules have no negative fiscal impact. Several noted that the rules would in fact have a positive fiscal impact. The committee determined the proposed rules would not have a significant adverse impact on small businesses in Oregon.

Housing cost

As ORS 183.534 requires, DEQ evaluated whether the proposed rules would have an effect on the development cost of a 6,000-square-foot parcel and construction of a 1,200-square-foot detached, single-family dwelling on that parcel. DEQ determined the proposed rules would have no effect on the development costs because it is a grant program to replace diesel vehicles and equipment

Federal relationship

There is specific statutory direction to the agency (ORS 468A.805) that authorizes the adoption of these rules. The draft rules governing the Diesel Emissions Mitigation Grant Program relate to federal law only by referencing the Environmental Protection Agency's Diesel Emissions Reduction Act program, it does not duplicate or bypass federal regulations in any way.

Land use

DEQ determined that these proposed rules do not affect land use under OAR 340-018-0030 or DEQ's State Agency Coordination Program.

EQC Prior Involvement

DEQ did not present additional information specific to this proposed rule revision.

Advisory Committee

Background

DEQ convened the VW Grants 2020 Rulemaking Advisory Committee. The committee included representatives from community health, diesel equipment owners, environmental organizations, and public agencies and met 4 times. The committee's web page is located at: [Volkswagen Grants 2020](#)

In convening this committee, DEQ selected members that reflect the range of stakeholders the proposed rules affect, both directly and indirectly. Representatives considered the policy, fiscal and economic impact of the proposed rules on the business and organizations they represent.

Advisory Committee Membership		
Name	Affiliation	Representing
Larry Gesher	Association of General Contractors	Construction Companies
Mike Bezner	Association of Oregon Counties	Oregon Counties
Christine Kendrick	City of Portland	City Regulated by HB 2007
Corky Collier	Columbia Corridor Association	Small Fleets
Michael Graham	Columbia Willamette Clean Cities Coalition	Large Fleets and Alternative Fuels
Allen Schaeffer	Diesel Technology Forum	Diesel Equipment and Technology
Tracy Rutten	League of Oregon Cities	Oregon Cities
John Wasiutynski	Multnomah County	County Regulated by HB 2007
Nate McCoy	National Association of Minority Contractors	Minority Contractors
Mary Peveto	Neighbors for Clean Air	Clean Air Community Based Organization
Chris Kroeker	NW Natural Gas	CNG/RNG Vehicles
Rich Angstrom	Oregon Concrete & Aggregate Producers Association	Concrete & Aggregate Business
Morgan Gratz-Weiser	Oregon Environmental Council	Environmental Community Based Org.
Curtis Cude	Oregon Health Authority, OHA	Public Health
Waylon Buchan	Oregon Trucking Association	Private Heavy Duty Fleets
Huy Ong	Organizing People Activating Leaders, OPAL	Impacted Communities, Environmental Justice Community Based Org.
Greg Alderson	PGE	Medium/Heavy Duty Vehicle Electrification

Dr. Patrick O’Herron	Physicians for Social Responsibility	Public Health
David Breen	Port of Portland	Intermodal Freight, Ports, and Drayage
Aaron Deas	TriMet	Transit Providers
Jeff Bissonette	Union of Concerned Scientists	Scientific Community
Tony DeFalco	Verde	Impacted Communities, Environmental Justice Community Based Org.

Meeting notifications

To notify people about the advisory committee’s activities, DEQ:

- Sent GovDelivery bulletins, a free e-mail subscription service, to the following lists:
 - VW Grant Rulemaking
 - DEQ Diesel General Interest
- Added advisory committee announcements to DEQ’s calendar of public meetings at [DEQ Calendar](#).

Committee discussions

In addition to the recommendations described under the Statement of Fiscal and Economic Impact section above, the committee helped specify grant application requirements, project selection criteria, and other elements of the new rule and associated program. The committee helped produce guidelines for the administration of diesel emission reduction grants including:

- Clarifying and interpreting the grant program as designed in HB 2007
- Making recommendation on basic program design
- Considering eligibility and project selection criteria
- Thinking about project solicitation processes and timing
- Advising on what should go into rule versus program guidance

Public Engagement

Public notice

DEQ provided notice of the proposed rulemaking and rulemaking hearing by:

- On Sept. 30, 2020 Filing notice with the Oregon Secretary of State for publication in the October 2020 Oregon Bulletin;
- Notifying the EPA by mail;
- Posting the Notice, Invitation to Comment and Draft Rules on the web page for this rulemaking, located at: [Volkswagen Grants 2020](#);
- Emailing approximately 17,473 interested parties on the following DEQ lists through GovDelivery:
 - DEQ Public Notices
 - Rulemaking
 - VW Settlement Fund
 - Diesel and Biodiesel
 - DEQ Retrofit Compliance
 - Truck Efficiency/Reduced Idling
- Emailing the following key legislators required under [ORS 183.335](#):
 - Senate President Peter Courtney
 - Senator Jeff Golden
 - State Representative Karen Power
 - House Speaker Tina Kotek
- Emailing advisory committee members,
- Posting on the DEQ event calendar: [DEQ Calendar](#)

How to comment on this rulemaking proposal

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Oregon DEQ
Attn: Gerik Kransky
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Portland, OR 97232-4100

At hearing

Oct. 22, 2020

Public Hearing

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After registering, you will receive a confirmation email containing information about joining the webinar.

DEQ will consider all comments and testimony received before the closing date. DEQ will summarize all comments and respond to comments in the Environmental Quality Commission staff report.

Accessibility Information

DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email deqinfo@deq.state.or.us.

Supporting documents

[Environmental Mitigation Trust Agreement for State Beneficiaries](#)



Draft Rules

Note: These are all new rules so there are no changes to highlight.

Division 255

Diesel Emissions Mitigation Grant Program

340-255-0010

Overview

(1) Purpose. The purpose of this division is to establish the Diesel Emissions Mitigation Grant Program, a grant program and eligibility requirements for owners and operators of diesel engines to retrofit, repower or replace diesel vehicles and equipment to reduce diesel emissions in Oregon, using funds from the Environmental Mitigation Trust Agreement.

(2) Background. The 2017 Oregon Legislature adopted Senate Bill 1008 that authorizes DEQ to establish a grant program to reduce diesel emissions from at least 450 school buses in Oregon. The 2019 Oregon Legislature adopted House Bill 2007, which authorizes DEQ to establish a grant program to reduce diesel emissions and preferences for projects. These bills are now codified as part of ORS 468A.795 through 468A.810.

(3) Administration. DEQ administers this division in all areas in the State of Oregon, including the areas of the state subject to the jurisdiction of the Lane County Regional Air Protection Agency.

Statutory/Other Authority: ORS 468.020, 468A.805, 468A.807

Statutes/Other Implemented: ORS 468A.805

340-255-0020

Definitions

The definitions in OAR 340-200-0020 and this rule apply to this division. If the same term is defined in the following definitions in this rule and in OAR 340-200-0020, the definition in this rule applies to this division:

(1) “Airport Ground Support Equipment” means vehicles and equipment used at an airport to service aircraft between flights.

(2) “All-Electric” means powered exclusively by electricity provided by a battery, fuel cell, or the grid.

- (3) “Alternative fuel” means biofuels, biogas, natural gas, liquefied petroleum gas, hydrogen and electricity.
- (4) “Alternate Fueled” means an engine, or a vehicle or piece of equipment that is powered by an engine, which uses a fuel different from or in addition to gasoline fuel or diesel fuel (e.g., CNG, propane, diesel-electric hybrid).
- (5) “Beneficiaries” means Oregon Department of Environmental Quality.
- (6) “Certified Remanufacture System or Verified Engine Upgrade” means engine upgrades certified or verified by EPA or CARB to achieve a reduction in emissions.
- (7) “CFR” means the Code of Federal Regulations in effect on November 15th, 2020, or the edition of the CFR referenced in OAR 340-200-0035, whichever is more current.
- (8) “CNG” means Compressed Natural Gas.
- (9) “Cost-effectiveness threshold” means the cost, in dollars, per ton of diesel particulate matter reduced, as established under OAR 340-259-0025.
- (10) "DERA" means the Diesel Emission Reduction Act, Title VII, Subtitle G, of the Energy Policy Act of 2005 (codified at 42 U.S.C. §§ 16131-16139).
- (11) “Diesel engine” means a compression ignition engine.
- (12) “Drayage Trucks” means trucks primarily engaged in hauling cargo to and from ports and intermodal rail yards.
- (13) “Eligible Airport Ground Support Equipment” means vehicles and equipment used at an airport to service aircraft between flights that is powered by a Tier 0, Tier 1, or Tier 2 diesel engine or by a spark ignition engine that is uncertified or is certified to three grams per brake horsepower-hour or higher emissions.
- (14) “Eligible Buses” means 2009 engine model year or older vehicles with a Class 4-8 GVWR greater than 14,001 pounds used for transporting people.
- (15) “Eligible Equipment” means equipment that is in one of the following categories: eligible large trucks, eligible buses, eligible freight switchers, eligible ferries and tugs, eligible medium trucks, eligible airport ground support equipment, eligible forklifts, or eligible port cargo handling equipment.
- (16) “Eligible Ferries and Tugs” means vessels with unregulated, Tier 1, or Tier 2 engines.
- (17) “Eligible Forklifts” means forklifts with greater than 8000 pounds lift capacity.
- (18) “Eligible Freight Switchers” means pre-Tier 4 freight switchers that operate 1000 or more hours per year.
- (19) “Eligible Large Trucks” means 1992-2009 engine model year trucks with a Class 8

GVWR greater than 33,001 pounds used for one or more of port drayage, freight delivery or cargo delivery (including waste haulers, dump trucks and concrete mixers).

(20) “Eligible Marine Shorepower” means power provided for ocean-going vessels while at berth using systems that (a) enable a compatible vessel’s main and auxiliary engines to remain off while the vessel is at berth, (b) comply with international shore power design standards (ISO/IEC/IEEE 80005-1-2012 High Voltage Shore Connection Systems or the IEC/PAS 80005-3:2014 Low Voltage Shore Connection Systems), and (c) are supplied with power sourced from the local utility grid.

(21) “Eligible Medium Trucks” means 1992-2009 engine model year trucks with a Class 4-7 GVWR between 14,001 and 33,000 pounds and that are trucks, including commercial trucks, used to deliver cargo and freight (for example, courier services, delivery trucks, box trucks moving freight, waste haulers, dump trucks and concrete mixers).

(22) "Eligible Mitigation Action" means any of the actions listed in Appendix D-2 of the Environmental Mitigation Trust Agreement.

(23) “Eligible Port Cargo Handling Equipment” means diesel-powered port cargo handling equipment that operates 1000 or more hours per year.

(24) “Environmental Mitigation Trust Agreement” means the fully executed Environmental Mitigation Trust Agreement for State Beneficiaries effective October 2, 2017, and issued pursuant to Paragraph 17 of the Volkswagen “Clean Diesel” Marketing, Sales Practices and Products Liability Litigation partial consent decree dated October 25, 2016.

(25) “Equivalent equipment” means a piece of equipment that performs the same function and has the equivalent horsepower to a piece of equipment subject to a replacement.

(26) “Equivalent motor vehicle” means a motor vehicle that performs the same function and is in the same weight class as a motor vehicle subject to a replacement.

(27) “Forklift” means nonroad equipment used to lift and move materials short distances, generally using tines to lift objects, including reach stackers, side loaders, and top loaders.

(28) “Freight Switcher” means a locomotive that moves rail cars around a rail yard as compared to a line-haul engine that moves freight long distances.

(29) “Generator Set” means a switcher locomotive equipped with multiple engines that can turn off one or more engines to reduce emissions and save fuel depending on the load it is moving.

(30) “Gross vehicle weight rating” or “GVWR” means the value specified by the manufacturer as the maximum loaded weight of a single or a combination vehicle. Class 1: < 6000 lb. Class 2: 6001-10,000 lb. Class 3: 10,001-14,000 lb. Class 4: 14,001-16,000 lb. Class 5: 16,001-19,500 lb. Class 6: 19,501-26,000 lb. Class 7: 26,001-33,000 lb. Class 8: > 33,001 lb.

- (31) “Heavy-duty truck” means a motor vehicle or combination of vehicles operated as a unit that has a gross vehicle weight rating that is greater than 26,000 pounds.
- (32) “Hybrid” means a vehicle that combines an internal combustion engine with a battery and electric motor.
- (33) “Infrastructure” means the equipment used to enable the use of electric powered vehicles (for example, electric vehicle charging station).
- (34) “Intermodal Rail Yard” means a rail facility in which cargo is transferred from drayage truck to train or vice-versa.
- (35) “Motor vehicle” has the meaning given that term in ORS 825.005.
- (36) “Nonroad diesel engine” means a diesel engine of 25 horsepower or more that is not designed primarily to propel a motor vehicle on public highways.
- (37) “Port Cargo Handling Equipment” means equipment that operates within ports and are rubber-tired gantry cranes, straddle carriers, shuttle carriers, terminal tractors, yard hostlers or yard tractors.
- (38) “Plug-in Hybrid Electric Vehicle (PHEV)” means a vehicle that is similar to a Hybrid but is equipped with a larger, more advanced battery that allows the vehicle to be plugged in and recharged in addition to refueling with gasoline. This larger battery allows the car to be driven on a combination of electric and gasoline fuels.
- (39) “Public highway” has the meaning given that term in ORS 825.005.
- (40) “Replacement” or “Replace” means to scrap a motor vehicle powered by a diesel engine and replace the motor vehicle with an equivalent motor vehicle, or to scrap a piece of equipment powered by a nonroad diesel engine and replace the equipment with equivalent equipment. “Replacement” does not include ordinary maintenance, repair or replacement of a diesel engine.
- (41) “Repower” means to replace an existing engine with a newer, cleaner engine or power source that is certified by EPA and, if applicable, CARB, to meet a more stringent set of engine emission standards. Repower includes, but is not limited to, diesel engine replacement with an engine certified for use with diesel or a clean alternate fuel, diesel engine replacement with an electric power source (e.g., grid, battery), diesel engine replacement with a fuel cell, diesel engine replacement with an electric generator(s) (genset), diesel engine upgrades in Ferries/Tugs with an EPA Certified Remanufacture System, and/or diesel engine upgrades in Ferries/Tugs with an EPA Verified Engine Upgrade. All-electric and fuel cell Repowers do not require EPA or CARB certification.
- (42) “Retrofit” means to equip a diesel engine with new emissions-reducing parts or technology after the manufacture of the original engine or to convert the diesel engine into an engine capable of being powered by alternative fuel. A retrofit must use the greatest degree of emissions reduction available for the particular application of the equipment

retrofitted that meets the cost-effectiveness threshold.

(43) “School Bus” means a Class 4-8 bus sold or introduced into interstate commerce for purposes that include carrying students to and from school or related events. This includes any school bus type, A-D, as defined under OAR 581-053-003.

(44) “Scrap” means to destroy, render inoperable by cutting a 3-inch hole in the engine block, and make available for recycle. For Eligible Vehicles or Equipment being replaced, “scrap” includes rendering it inoperable by cutting its chassis frame rails completely in half.

(45) “Small fleet” means fleet size of 9 or fewer heavy and medium duty diesel vehicles.

(46) “Tier 0, 1, 2, 3, 4” shall refer to corresponding EPA engine emission classifications for, as applicable, nonroad engines (see 40 CFR §§ 86 Subpart A and 89.2), locomotives (see 40 CFR § 1033.101), and marine engines (see 40 CFR §§ 89.104 and 1042.101).

(47) “Truck” means a motor vehicle or combination of vehicles operated as a unit that has a gross vehicle weight rating that is greater than 14,000 pounds.

(48) “Tugs” means dedicated vessels that push or pull other vessels in ports, harbors, and inland waterways (for example, tugboats and towboats).

(49) “Vulnerable Population” means people under the age of 14 and over the age of 64, Black, indigenous, and people of color, people with a household income that is less than or equal to twice the federal poverty level, people who are linguistically isolated¹, and people age 25 or older who have not earned a high school diploma or passed a General Educational Equivalent (GED) test.

Statutory/Other Authority: ORS 468.020, 468A.805, 468A.807

Statutes/Other Implemented: ORS 468A.805

340-255-0030

Projects Eligible for Grant Funding

To be eligible for a grant using funds from the Diesel Emissions Mitigation Grant Program a project must:

(1) Qualify as an Eligible Mitigation Action;

(2) Be either:

(a) A project to retrofit, replace or repower eligible equipment; or

¹ Environmental Protection Agency’s Overview of Demographic Indicators in EJSCREEN. “Percent of people in a block group living in linguistically isolated households. A household in which all members age 14 years and over speak a non-English language and also speak English less than “very well” (have difficulty with English) is linguistically isolated.” <https://www.epa.gov/ejscreen/overview-demographic-indicators-ejscreen>

- (b) A project that otherwise qualifies for funding under the DERA grant program; and
- (3) Ensure that all equipment and engines being repowered or replaced be scrapped.

Statutory/Other Authority: ORS 468.020, 468A.805, 468A.807

Statutes/Other Implemented: ORS 468A.805

340-255-0040

Eligible Grant Amounts

(1) Eligible large trucks that are repowered with any new diesel or alternate fueled engine or all-electric engine or that are replaced with any new diesel or alternate fueled or all-electric vehicle, and using an engine model year in which the repowering or replacement occurs or one engine model year prior, are eligible for the following amounts of grant funding:

(a) For non-government owned eligible large trucks that are not drayage trucks, approved applications may receive a maximum reimbursement in the amount of:

(A) Up to 40% of the cost of a repower with a new diesel or alternate fueled (for example, CNG, propane, hybrid) engine, including the costs of installation of such engine.

(B) Up to 25% of the cost of a new diesel or alternate fueled (for example, CNG, propane, hybrid) vehicle.

(C) Up to 75% of the cost of a repower with a new all-electric engine, including the costs of installation of such engine, and charging infrastructure associated with the new all-electric engine.

(D) Up to 75% of the cost of a new all-electric vehicle, including charging infrastructure associated with the new all-electric vehicle.

(b) For non-government owned eligible large trucks that are drayage trucks, approved applications may receive a maximum reimbursement in the amount of:

(A) Up to 40% of the cost of a repower with a new diesel or alternate fueled (for example, CNG, propane, hybrid) engine, including the costs of installation of such engine.

(B) Up to 50% of the cost of a new diesel or alternate fueled (for example, CNG, propane, hybrid) vehicle.

(C) Up to 75% of the cost of a repower with a new all-electric engine, including the costs of installation of such engine, and charging infrastructure associated with the new all-electric engine.

(D) Up to 75% of the cost of a new all-electric vehicle, including charging infrastructure associated with the new all-electric vehicle.

(c) For government owned eligible large trucks, approved applications may receive a maximum reimbursement in the amount of:

(A) Up to 100% of the cost of a repower with a new diesel or alternate fueled (for example, CNG, propane, hybrid) engine, including the costs of installation of such engine.

(B) Up to 100% of the cost of a new diesel or alternate fueled (for example, CNG, propane, hybrid) vehicle.

(C) Up to 100% of the cost of a repower with a new all-electric engine, including the costs of installation of such engine, and charging infrastructure associated with the new all-electric engine.

(D) Up to 100% of the cost of a new all-electric vehicle, including charging infrastructure associated with the new all-electric vehicle.

(2) Eligible buses that are repowered with any new diesel or alternate fueled or all-electric engine or that are replaced with any new diesel or alternate fueled or all-electric vehicle, and using an engine model year in which the repowering or replacement occurs or one engine model year prior, are eligible for the following amounts of grant funding:

(a) For non-government owned eligible buses that are not privately owned school buses under contract with a public school district, approved applications may receive a maximum reimbursement in the amount of:

(A) Up to 40% of the cost of a repower with a new diesel or alternate fueled (for example, CNG, propane, hybrid) engine, including the costs of installation of such engine.

(B) Up to 25% of the cost of a new diesel or alternate fueled (for example, CNG, propane, hybrid) vehicle.

(C) Up to 75% of the cost of a repower with a new all-electric engine, including the costs of installation of such engine, and charging infrastructure associated with the new all-electric engine.

(D) Up to 75% of the cost of a new all-electric vehicle, including charging infrastructure associated with the new all-electric vehicle.

(b) For government owned eligible buses and eligible buses that are privately owned school buses under contract with a public school district, approved applications may receive a maximum reimbursement in the amount of:

(A) Up to 100% of the cost of a repower with a new diesel or alternate fueled (for example, CNG, propane, hybrid) engine, including the costs of installation of such engine.

(B) Up to 100% of the cost of a new diesel or alternate fueled (for example, CNG, propane, hybrid) vehicle.

(C) Up to 100% of the cost of a repower with a new all-electric engine, including the costs of installation of such engine, and charging infrastructure associated with the new all-electric engine.

(D) Up to 100% of the cost of a new all-electric vehicle, including charging infrastructure associated with the new all-electric vehicle.

(3) Eligible freight switchers that are repowered with any new diesel or alternate fueled or all-electric engine(s) (including generator sets) or that are replaced with any new diesel or alternate fueled or all-electric (including generator sets) freight switcher, and where the repowering or replacement is with an engine certified to meet the applicable EPA emissions standards, as published in the 40 CFR Part 1033, for the engine model year in which the eligible freight switcher mitigation action occurs, are eligible for the following amounts of grant funding:

(a) For non-government owned eligible freight switchers, approved applications may receive a maximum reimbursement in the amount of:

(A) Up to 40% of the cost of a repower with a new diesel or alternate fueled (for example, CNG, propane, hybrid) engine(s) or generator sets, including the costs of installation of such engine(s).

(B) Up to 25% of the cost of a new diesel or alternate fueled (for example, CNG, propane, hybrid) freight switcher.

(C) Up to 75% of the cost of a repower with a new all-electric engine(s), including the costs of installation of such engine(s), and charging infrastructure associated with the new all-electric engine(s).

(D) Up to 75% of the cost of a new all-electric freight switcher, including charging infrastructure associated with the new all-electric freight switcher.

(b) For government owned eligible freight switchers, approved applications may receive a maximum reimbursement in the amount of:

(A) Up to 100% of the cost of a repower with a new diesel or alternate fueled (for example, CNG, propane, hybrid) engine(s) or generator sets, including the costs of installation of such engine(s).

(B) Up to 100% of the cost of a new diesel or alternate fueled (for example, CNG, propane, hybrid) freight switcher.

(C) Up to 100% of the cost of a repower with a new all-electric engine(s), including the costs of installation of such engine(s), and charging infrastructure associated with the new all-electric engine(s).

(D) Up to 100% of the cost of a new all-electric freight switcher, including charging infrastructure associated with the new all-electric freight switcher.

(4) Eligible ferries and tugs that are repowered with any new tier 3 or tier 4 diesel or alternate fueled engines, with all-electric engines, with an EPA Certified Remanufacture System, or with an EPA Verified Engine Upgrade, are eligible for the following amounts of grant funding:

(a) For non-government owned eligible ferries and tugs, approved applications may only receive a maximum reimbursement in the amount of:

(A) Up to 40% of the cost of a repower with a new diesel or alternate fueled (for example, CNG, propane, hybrid) engine(s), including the costs of installation of such engine(s).

(B) Up to 75% of the cost of a repower with a new all-electric engine(s), including the costs of installation of such engine(s), and charging infrastructure associated with the new all-electric engine(s).

(b) For government owned eligible ferries and tugs, approved applications may receive a maximum reimbursement in the amount of:

(A) Up to 100% of the cost of a repower with a new diesel or alternate fueled (for example, CNG, propane, hybrid) engine(s), including the costs of installation of such engine(s).

(B) Up to 100% of the cost of a repower with a new all-electric engine(s), including the costs of installation of such engine(s), and charging infrastructure associated with the new all-electric engine(s).

(5) Eligible marine shorepower projects are eligible for the following amounts of grant funding:

(a) For non-government owned eligible marine shorepower, approved applications may receive a maximum reimbursement in the amount of up to 25% for the costs associated with the shore-side system, including cables, cable management systems, shore power coupler systems, distribution control systems, installation, and power distribution components.

(b) For government owned eligible marine shorepower, approved applications may only receive a maximum reimbursement in the amount of up to 100% for the costs associated with the shore-side system, including cables, cable management systems, shore power coupler systems, distribution control systems, installation, and power distribution components.

(6) Eligible medium trucks that are repowered with any new diesel or alternate fueled or all-electric engine or that are replaced with any new diesel or alternate fueled or all-electric vehicle, with the engine model year in which the repowering or replacement occurs or one engine model year prior, are eligible for the following amounts of grant funding:

(a) For non-government owned eligible medium trucks, approved applications may receive a maximum reimbursement in the amount of:

(A) Up to 40% of the cost of a repower with a new diesel or alternate fueled (for example, CNG, propane, hybrid) engine, including the costs of installation of such engine.

(B) Up to 25% of the cost of a new diesel or alternate fueled (for example, CNG, propane, hybrid) vehicle.

(C) Up to 75% of the cost of a repower with a new all-electric engine, including the costs of installation of such engine, and charging infrastructure associated with the new all-electric engine.

(D) Up to 75% of the cost of a new all-electric vehicle, including charging infrastructure associated with the new all-electric vehicle.

(b) For government owned eligible medium trucks, approved applications may receive a maximum reimbursement in the amount of:

(A) Up to 100% of the cost of a repower with a new diesel or alternate fueled (for example, CNG, propane, hybrid) engine, including the costs of installation of such engine.

(B) Up to 100% of the cost of a new diesel or alternate fueled (for example, CNG, propane, hybrid) vehicle.

(C) Up to 100% of the cost of a repower with a new all-electric engine, including the costs of installation of such engine, and charging infrastructure associated with the new all-electric engine.

(D) Up to 100% of the cost of a new all-electric vehicle, including charging infrastructure associated with the new all-electric vehicle.

(7) Eligible airport ground support equipment that is repowered with an all-electric engine or that is replaced with the same airport ground support equipment in an all-electric form, is eligible for the following amounts of grant funding:

(a) For non-government owned eligible airport ground support equipment, approved applications may receive a maximum reimbursement in the amount of:

(A) Up to 75% of the cost of a repower with a new all-electric engine, including costs of installation of such engine, and charging infrastructure associated with such new all-electric engine.

(B) Up to 75% of the cost of a new all-electric airport ground support equipment, including charging infrastructure associated with such new all-electric airport ground support equipment.

(b) For government owned eligible airport ground support equipment, approved applications may receive a maximum reimbursement in the amount of:

(A) Up to 100% of the cost of a repower with a new all-electric engine, including costs of installation of such engine, and charging infrastructure associated with such new all-electric engine.

(B) Up to 100% of the cost of a new all-electric airport ground support equipment, including charging infrastructure associated with such new all-electric airport ground support equipment.

(8) Eligible forklifts and eligible port cargo handling equipment that is repowered with an all-electric engine or that is replaced with the same equipment in an all-electric form, is eligible for the following amounts of grant funding:

(a) For non-government owned eligible forklifts and eligible port cargo handling equipment, approved applications may receive a maximum reimbursement in the amount of:

(A) Up to 75% of the cost of a repower with a new all-electric engine, including costs of installation of such engine, and charging infrastructure associated with such new all-electric engine.

(B) Up to 75% of the cost of a new all-electric forklift or port cargo handling equipment, including charging infrastructure associated with such new all-electric forklift or port cargo handling equipment.

(b) For government owned eligible forklifts and eligible port cargo handling equipment, approved applications may receive a maximum reimbursement in the amount of:

(A) Up to 100% of the cost of a repower with a new all-electric engine, including costs of installation of such engine, and charging infrastructure associated with such new all-electric engine.

(B) Up to 100% of the cost of a new all-electric forklift or port cargo handling equipment, including charging infrastructure associated with such new all-electric forklift or port cargo handling equipment.

(9) Grant funding may also be awarded to provide technical assistance for a project in support of Disadvantaged, Minority, Women, or Emerging Small Business (DMWESB) or Service Disabled Veteran Business (SDVB) applicants as certified by the State of Oregon Certification Office for Business Inclusion and Diversity, based on a request and a statement of need. However, such an award will not exceed 15% of total maximum reimbursement amount available for project costs and may be less, at DEQ's discretion, subject to overall program administrative expenditure limits.

(10) Other projects that are eligible for grant funding under OAR 340-255-0030, and are not described in sections (1) through (8) of this rule, are eligible for the amount of grant funding as authorized under the DERA grant program.

Statutory/Other Authority: ORS 468.020, 468A.805, 468A.807

Statutes/Other Implemented: ORS 468A.805

340-255-0050

Application Requirements

To apply for funding under this division, a person (as defined in OAR 340-200-0020, including individuals, corporations and government entities) or one of Oregon's federally recognized tribes must submit a completed grant application form provided by DEQ and submit it to DEQ prior to a grant funding deadline announced by DEQ. Such an applicant must:

- (1) Own equipment that is eligible for a grant under OAR 340-255-0030 that is based in Oregon and currently operating in Oregon or apply on behalf of the owner with their express written permission;
- (2) Provide proof of ownership of such equipment and proof that such equipment has been operating in Oregon for the previous three years;
- (3) Provide proof of annual equipment usage that meets the requirements under OAR 340-255-0030, as applicable;
- (4) Propose a qualifying retrofit, repower or replacement project that reduces diesel emissions and that is eligible for grant funding under OAR 340-255-0030;
- (5) Provide proof of solicitation of at least three competitive bids for project expenses as well as low-cost or best-value rationale for selected bid. If an applicant cannot solicit three competitive bids for project expenses DEQ will provide the following waiver process:
 - (a) DEQ will make a waiver-request form available to applicants that are unable to solicit at least three competitive bids. DEQ will grant waivers of the three competitive bid requirement at its sole discretion, based on DEQ's assessment of whether the costs are reasonable and generally consistent with prices for similar work from other applications and previously funded projects; and
 - (b) DEQ reserves the right to deny applications if the quoted project costs exceed the average prices for similar work from other applications and previously funded projects. DEQ also reserves the right to contact bid providers to clarify project and associated costs;
- (6) Describe and provide appropriate documentation to demonstrate that the proposed project meets one or more of the preferred project categories described in OAR 340-255-0060(2);
- (7) Provide supplemental application information such as letters of support, photos, route maps and documentation of areas of operation to satisfy the requirements of sections (2) through (6), above;
- (8) If applicable, provide any additional information necessary to satisfy the requirements of the DERA grant program; and

(9) Provide any additional information and documentation as determined necessary and requested by DEQ to evaluate an application.

Statutory/Other Authority: ORS 468.020, 468A.805, 468A.807

Statutes/Other Implemented: ORS 468A.805

340-255-0060

Application review process

(1) DEQ will review applications and supporting materials, will determine which applications are for projects that are eligible for funding under this division, and will determine which applications to approve for grant funding, at DEQ's discretion, based on DEQ's determination of the projects that will best achieve the emission reduction and other goals of this program.

(2) Among proposed projects that are eligible for funding, DEQ will give preference to projects that will:

(a) Support compliance with ORS 803.591 or with contract specifications or preferences related to emissions standards for diesel engines established by a public body, as defined in ORS 174.109;

(b) Be carried out by a grant applicant that is a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business, as those terms are defined in ORS 200.005;

(c) Involve the replacement, repower or retrofit of one or more motor vehicles or pieces of equipment that have at least three years of remaining useful life at the time that the grant agreement is executed;

(d) Support the utilization of fuels for which regulated parties may generate credits under the clean fuels program under OAR chapter 340, division 253;

(e) Benefit owners and operators of heavy-duty trucks, if the fleet of the owner or operator includes only one heavy-duty truck and the heavy-duty truck is registered in Multnomah, Clackamas or Washington County;

(f) Benefit small fleets;

(g) Involve the retrofit of concrete mixer trucks or trucks that are used for the transportation of aggregate;

(h) Reduce diesel emissions in Oregon with the most cost effective projects; and

(i) Reduce diesel emissions in areas of the state with the highest diesel emissions, highest vulnerable populations, and the highest population density.

Statutory/Other Authority: ORS 468.020, 468A.805, 468A.807
Statutes/Other Implemented: ORS 468A.805

340-255-0070

Grant Application Schedules and Grant Awards

(1) DEQ may reduce the maximum eligible amount of grant awards at any time at DEQ's discretion based on availability of funding. DEQ intends to award the maximum eligible amount of grant awards, unless it has announced before a grant application deadline that it may award grants at a lower level.

(2) DEQ will announce annual schedules to submit applications for grants beginning in 2021 and ending when all funds available to Oregon under the Environmental Mitigation Trust Agreement have been spent.

(a) Annual grant application schedules will be announced in the first quarter of each applicable calendar year.

(b) Application schedules will allow for grant applications to be submitted, reviewed and awarded up to four times per year, as determined by DEQ, to achieve the spending goals under section (3).

(c) DEQ will notify applicants of funding decisions based on annual schedules and will publish notification of grant awards as required by the Environmental Mitigation Trust Agreement.

(3) DEQ will announce annual Diesel Emissions Mitigation Grant Program funding availability to make approximately 1/5 of Oregon's allocated share of funds available, under the Environmental Mitigation Trust Agreement, for diesel emission reduction grants per year for at least five years beginning in 2021. Funds that are not reserved for authorized administrative expenses, used as authorized to satisfy Oregon's non-federal match under the DERA grant program, or allocated to grants under this division will be made available for additional diesel emission reduction grants under this division.

(4) DEQ will conduct a review of the Diesel Emission Mitigation Grant Program two years after implementation. The review will include an assessment of emissions reductions, program investments addressing diesel equipment, potential adjustments to improve performance, and will provide an opportunity for community involvement.

(5) DEQ will allocate all available grant funds under this division towards eligible mitigation actions and eligible mitigation action administrative expenditures.

Statutory/Other Authority: ORS 468.020, 468A.805, 468A.807
Statutes/Other Implemented: ORS 468A.805