



# Draft Rules

Diesel Emissions Identification Program 2023

## Division 269

### DIESEL EMISSIONS IDENTIFICATION PROGRAM

#### 340-269-0010

##### Overview

(1) Purpose. The purpose of this division is to establish the Diesel Emissions Identification Program, which is a voluntary labeling program, and participation requirements for owners and operators of nonroad diesel-powered construction equipment in Oregon.

(2) Background. The 2019 Legislature adopted House Bill 2007, which directs DEQ to establish a voluntary emissions control label program for nonroad diesel-powered construction equipment in Oregon.

(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.813

**Statutes/Other Implemented:** ORS 468A.813

#### 340-269-0030

##### Definitions

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

(1) “Construction Equipment” or “Equipment” means equipment that is powered by a nonroad diesel engine and that is used primarily for construction work.

(2) “Diesel Emissions Identification Program” or “Program” means the emission control labeling program described in this division.

(3) “Emission Control Label” or “ECL” means the label DEQ assigns to a particular piece of equipment that provides information about the engine located inside of the equipment.

(4) “Emissions Profile” means a summary or indication of air pollutants coming from the exhaust of a nonroad diesel engine.

(5) “Engine Identification Number” means the unique identifier located on a nonroad diesel engine as described in 1039.135(a) and that was described in the previously applicable 40 CFR § 89.110(d) (July 28, 2021 version).

(6) “Engine Tier” “means the applicable EPA classification of exhaust emission standards applicable to engines as defined in 40 CFR § 1039.801, and also includes engines that meet the definition of “Tier 0 Engine” in this rule.

(7) “Equipment Registration Number” or “ERN” means the unique identifier assigned by DEQ to a particular piece of construction equipment owned or operated by a voluntary participant of this program.

(8) “Fleet Identification Number” means the unique identifier assigned by DEQ for a particular grouping of equipment owned or operated by a voluntary participant of this program.

(9) “Manufacturer’s Engine Label” or “MEL” means the emission control information label placed directly on the engine by the manufacturer, as applicable and as described in 40 CFR § 1039.135 (b) through (g) and that was described in the previously applicable 40 CFR § 89.110 (July 28, 2021 version).

(10) “Nonroad Diesel Engine” means a compression ignition engine of 25 horsepower or more that is not designed primarily to propel a motor vehicle on public highways.

(11) “Operator” means a person or entity that has legal possession of equipment, as determined by DEQ, and uses that equipment for construction activity.

(12) “Public Highway” has the meaning given that term in ORS 825.005.

(13) “Tier 0 Engine” means an engine not subject to the requirements in 40 CFR Part 1039 and that was not subject to previous requirements in 40 CFR Part 89 (July 28, 2021 version).

(14) "Voluntary Participant" means a person that voluntarily applies for an ECL under this division.

**Statutory/Other Authority:** ORS 468A.813

**Statutes/Other Implemented:** ORS 468A.813

## **340-269-0060**

### **Acronyms**

The following acronyms apply to this division:

(1) “CFR” means Code of Federal Regulations and, notwithstanding OAR 340-200-0035 and except as otherwise identified, refers to the edition in effect on the date the EQC approves these rules.

(2) “DEQ” means Oregon Department of Environmental Quality.

- (3) "ECL" means emission control label.
- (4) "EPA" means Environmental Protection Agency.
- (5) "ERN" means equipment registration number.
- (6) "MEL" means manufacturer's engine label.
- (7) "ODOT" means Oregon Department of Transportation

**Statutory/Other Authority:** ORS 468A.813

**Statutes/Other Implemented:** ORS 468A.813

### **340-269-0100**

#### **Voluntary Participation Requirements**

The voluntary participation in this program by any person shall conclusively establish consent to be subject to the jurisdiction of the State of Oregon, its courts, and the administrative authority of DEQ to implement this program. If a person does not consent to such jurisdiction, then that person may not participate in the program.

### **340-269-0110**

#### **Registration**

(1) A person that wishes to voluntarily participate in this program must successfully complete a registration process to be considered active in the program, which requires:

(a) Completing and submitting either a DEQ supplied registration form or another form that may be used for registration with the program as provided in section (2) of this rule.

(b) Providing detailed documentation of the emissions profile of each nonroad diesel engine to be registered with the program. Such documentation must include, without limitation, a photo of the manufacturer's engine label.

(c) Providing an attestation statement signed and submitted by the owner or operator of the equipment, along with any documentation or information DEQ may require to support the attestation statement.

(2) Other Reporting Forms. DEQ will supply the necessary reporting forms and templates to each voluntary participant, however, other forms may be used as follows:

(a) A person may use a reporting form approved by DEQ that is either from another agency, such as ODOT, or that is from a collaborative program recognized by DEQ. If any such forms are to be accepted by DEQ at the voluntary participant's request, then the voluntary participant agrees that DEQ may engage with the other agency or collaborative program to receive and verify the forms, supporting documentation, and other information as needed and on an ongoing basis.

(b) If DEQ is unable to receive or verify, to a satisfactory extent, documents or information from another agency or collaborative program, then the voluntary participant must supply the documentation and information requested by DEQ. This may include submitting information using a DEQ issued form.

### **340-269-0120**

#### **Demonstration Approval**

Emissions Profile. DEQ will review each application and determine whether the applicant has provided sufficient information to document the emission profile of each nonroad diesel engine proposed to be registered. If DEQ determines the information is not sufficient, DEQ will notify the applicant and identify the additional information needed for DEQ to approve the application for each nonroad diesel engine to receive an ECL.

### **340-269-0130**

#### **Labeling**

(1) Issuance. Upon successful demonstration of the emissions profile of a piece of equipment as described in OAR 340-269-0120, DEQ will issue the emission control label(s) to the voluntary participant.

(2) Placement. Any ECL(s) received for any piece of equipment must be affixed to the equipment within 30 days of issuance.

(a) Prominence. Each ECL should be affixed prominently on the outside of the equipment approved by DEQ for labeling. For initial issuance, two ECLs will be provided for each piece of equipment and must be affixed on opposing sides of the equipment. ECLs must be maintained in such a way that at least one ECL is easily, clearly, and entirely visible while the equipment is in use or on a construction site. DEQ will issue one or more replacement ECLs upon request, if the voluntary participant has documented that it needs such replacement ECLs in order to comply with this subsection.

(b) Permanence. Once an ECL has been issued for a piece of equipment, it shall be placed on the equipment for the duration of participation in the program, and it will not be removed until and unless the voluntary participant has complied with OAR 340-269-0150(1).

(3) Transfers. Transferring an ECL or set of ECLs from one piece of equipment to another is prohibited. Each ECL will only be used for the piece of equipment that it was issued for, and it will be used for no purpose other than to label the equipment.

### **340-269-0140**

#### **Reporting**

Quarterly Reports. Voluntary participants must submit quarterly reports to DEQ that provide updates on the equipment and changes made to the fleet to maintain an active registration with the program.

(1) If there are no updates to report, then the voluntary participant may submit a form provided by DEQ attesting that there is no pertinent information to update since the last report. A voluntary participant may make this “no pertinent information” attestation for no more than three consecutive quarters. After thrice submitting such attestation, in the following quarter the voluntary participant must submit a full quarterly report.

(2) DEQ may accept quarterly report submittals, or their equivalent, in accordance with OAR 340-269-0110(2).

### **340-269-0150 Deactivation**

(1) Notifications. DEQ may deactivate a voluntary participant’s participation in the program and place the voluntary participant in a suspended status if it is determined that there is noncompliance with any portion of this rule. DEQ will notify the voluntary participant of this determination in writing and will explain the reason for DEQ’s decision to deactivate. The suspended status will become an inactive status 60 days after DEQ provides such notice.

(a) A voluntary participant must notify DEQ as soon as it is aware that any registered equipment no longer has a legible and scannable ECL, including ECLs that no longer adhere to the equipment or that are missing or damaged. If a voluntary participant fails to provide such notification, then DEQ may deactivate the voluntary participant’s participation if there is not a legible or scannable ECL on registered equipment.

(b) A voluntary participant may request to have participation deactivated and to be placed in an inactive status with the program. This request must be made in writing or using a DEQ issued form and signed by a verified owner or operator of the voluntary participant.

(2) ECL Return. When participation in the program has been deactivated, the voluntary participant must return any ECLs that were issued by DEQ. If a voluntary participant appeals a deactivation decision as provided in section (3), the label return requirement will be suspended until the appeals process is completed. Should the voluntary participant have significant difficulty in removing the ECL, the voluntary participant can work with DEQ to find a suitable alternative to the ECL’s removal.

(3) Appeals. A voluntary participant may appeal a DEQ deactivation decision by filing a petition for reconsideration with DEQ. A voluntary participant may also appeal a DEQ deactivation decision by seeking review of the decision as an order in other than a contested case, as provided in ORS 183.484, which may be filed either after filing petition for reconsideration or without filing a petition for reconsideration.

**Statutory/Other Authority:** ORS 468A.813

**Statutes/Other Implemented:** ORS 468A.813