



State of Oregon Department of Environmental Quality

# Notice of Proposed Rulemaking

April 27, 2023

Diesel Emissions Identification Program

This package contains the following documents:

- Notice of Rulemaking
- Draft Rules – Division 269 (New Rules)

## Note for Readers:

This package contains multiple documents. If you want to read more than one document at a time, you can open multiple copies of this PDF by downloading the PDF and then opening it in Adobe. You can then either:

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- Click on “New Window”
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- Click on “File” in the top ribbon
- Click on “Open” in the top ribbon
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- A second copy of the PDF will open in a separate tab in the same window

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# Introduction

The Department of Environmental Quality (DEQ) invites public input on the proposed Diesel Emissions Identification Program (DEIP), which is a new program proposed as division 269 of chapter 340 of the Oregon Administrative Rules. The DEIP is a voluntary labeling program for diesel-powered nonroad equipment and certain onroad construction vehicles.

## Request for Other Options

During the public comment period, DEQ invites public comment on whether there are other options for achieving the rules' substantive goals while reducing the rules' negative economic impact on business.

## Overview

In 2019, the Oregon Legislature passed HB 2007, now codified as ORS 468A.813, which directs the Environmental Quality Commission (EQC) to adopt a program, by rule, that would allow for owners and operators of diesel-powered construction equipment to demonstrate the emissions profile of each piece of equipment, and in turn receive emission control labels from DEQ that would reflect those profiles. These labels would be placed on the outside of the equipment, which would make it easier for interested parties to identify key characteristics of the engines inside of the equipment.

The purpose of this rule, once adopted, will be to provide an easy way for owner/operators of diesel-powered construction equipment to identify the emissions profile for each piece of equipment at a construction site. The voluntary emission control labels that this program will generate can be used to demonstrate compliance with state and local agencies that have requirements to limit emissions from construction equipment used on their projects.

# Procedural Summary

## More information

Information about this rulemaking is on this rulemaking's web page: [Diesel Emissions Identification 2023](#)

## Public Hearings

DEQ plans to hold one public hearing by webinar.

### Hearing Details:

**Date:** May 15, 2023

**Start time:** 10:30 a.m.

### Call and web connection information:

[Join online via Zoom.](#)

### Join by phone:

Call-in number: 1-253-215-8782

Toll-free number: 1-877-853-5257

Meeting ID: 883 5541 7032

Passcode: 691747

Instructions on how to join webinar or teleconference: [Instructions](#)

## How to comment on this rulemaking proposal

DEQ is asking for public comment on the proposed program and rules. Anyone can submit comments and questions about this proposed program and 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 May 22, 2023.

### Submit comment(s) by email at:

[DEIP2023@deq.oregon.gov](mailto:DEIP2023@deq.oregon.gov)

### 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: Amina Foster  
700 NE Multnomah St., Room 600  
Portland, OR 97232-4100

## **Sign up for rulemaking notices**

Get email or text updates about this rulemaking by either:

- Signing up through this link: [GovDelivery](#);
- Signing up on the rulemaking web site: [Diesel Emissions Identification 2023](#).

## **What will happen next?**

DEQ will include a written response to comments in a staff report DEQ will submit to the EQC. DEQ may modify the rule proposal based on the comments and considerations about how to make the program effective.

Proposed rules only become effective if the EQC adopts them. DEQ’s intended action is to present the proposed rules to the EQC as soon as possible after the earliest date on which the rules could take effect. DEQ intends to submit the proposed rules to the EQC on or after July 20, 2023.

# Statement of need

## What need would the proposed rule address?

The proposed rules address the need to comply with the requirements of ORS 468A.813 to create a voluntary emission control labeling program for the state of Oregon.

## How would the proposed rule address the need?

Passage of the proposed rules would allow owners and/or operators of diesel-powered nonroad construction equipment to apply for and receive an emission control label for each piece of equipment. The proposed rules would also allow the owners and/or operators of certain onroad diesel-powered construction vehicles to also participate in the program.

## How will DEQ know the rule addressed the need?

DEQ will know that the need for the creation of the voluntary emission control labeling program is addressed once the rules for the Diesel Emissions Identification Program are adopted by the EQC and the program has been implemented.

## Rules Summary

OAR 166-500-0030(1)(e) requires that a summary be provided for each rule proposed for this rulemaking.

## OAR chapter 340, division 269

Rule Number	Rule Title	Summary
0010	Overview	Describes the purpose of the program and gives background information that explains the need for this rulemaking.
0030	Definitions	Defines terms specific to this division of rules.
0060	Acronyms	Defines acronyms used for this division of rules.
0100	Voluntary Participation Requirements	Describes requirements for participating in the voluntary emission control labeling program for diesel-powered nonroad construction equipment and certain onroad construction vehicles.

0110	Registration	Describes the registration process for owners and operators of diesel-powered nonroad construction equipment and certain onroad diesel-powered construction vehicles.
0120	Demonstration Approval	Describes the application and approval process for receiving one or more emission control labels.
0130	Labeling	Describes the requirements for using and maintaining emission control labels issued by DEQ to active participants in the program.
0140	Reporting	Describes the fleet reporting requirements that active participants are subject to.
0150	Deactivation	Describes the process of deactivation with the program.

# Rules affected, authorities, supporting documents

## Lead division

Air Quality Division, Headquarters

## Program and activity

Diesel Emissions Identification Program, Clean Construction

## Chapter 340 action

Adopt				
340-269-0010	340-269-0030	340-269-0060	340-269-0100	340-269-0110
340-269-0120	340-269-0130	340-269-0140	340-269-0150	

Statutory Authority - ORS				
468.020	468.035	468A.813		

Statutes Implemented - ORS				
468.035	468A.813			

## Legislation

House Bill 2007 (2019)

## Other authority

ORS 468A.813



## Documents relied on for rulemaking

Document title	Document location
House Bill 2007 (ORS 468A.813)	<a href="https://olis.oregonlegislature.gov/liz/2019R1/Downloads/MeasureDocument/HB2007/Enrolled">https://olis.oregonlegislature.gov/liz/2019R1/Downloads/MeasureDocument/HB2007/Enrolled</a>
U.S. CFR Title 40, Chapter I, Subchapter U, Part 1039 – Control of Emissions from New and In-Use Nonroad Compression-Ignition Engines	<a href="https://www.ecfr.gov/current/title-40/chapter-I/subchapter-U/part-1039">https://www.ecfr.gov/current/title-40/chapter-I/subchapter-U/part-1039</a>
California In-Use Off-Road Diesel-Fueled Fleets Regulation	<a href="https://govt.westlaw.com/calregs/Document/I9AFC56B35A1E11EC8227000D3A7C4BC3?viewType=FullText&amp;originationContext=documenttoc&amp;transitionType=CategoryPageItem&amp;contextData=(sc.Default)">https://govt.westlaw.com/calregs/Document/I9AFC56B35A1E11EC8227000D3A7C4BC3?viewType=FullText&amp;originationContext=documenttoc&amp;transitionType=CategoryPageItem&amp;contextData=(sc.Default)</a>

# Fee Analysis

This rulemaking does not involve fees.

# Statement of fiscal and economic impact

## Fiscal and Economic Impact

In the 2019 session of the Oregon State Legislature, HB 2007 was adopted, and it directed the EQC to establish a voluntary emission control labeling program by rule (a requirement now codified at ORS 468A.813). This voluntary program will allow owners and operators of diesel-powered construction equipment and vehicles, if they choose to participate, to receive a label for each piece of equipment after successfully demonstrating the emissions profile for the engine belonging to that equipment.

The label will give interested parties, such as inspectors or the general public, information on how much pollution might be coming from the equipment. The program is not mandatory. If the owner or operator of diesel-powered construction equipment or vehicles chooses to participate in the program, then they must comply with program specifications in order to be issued emission control labels.

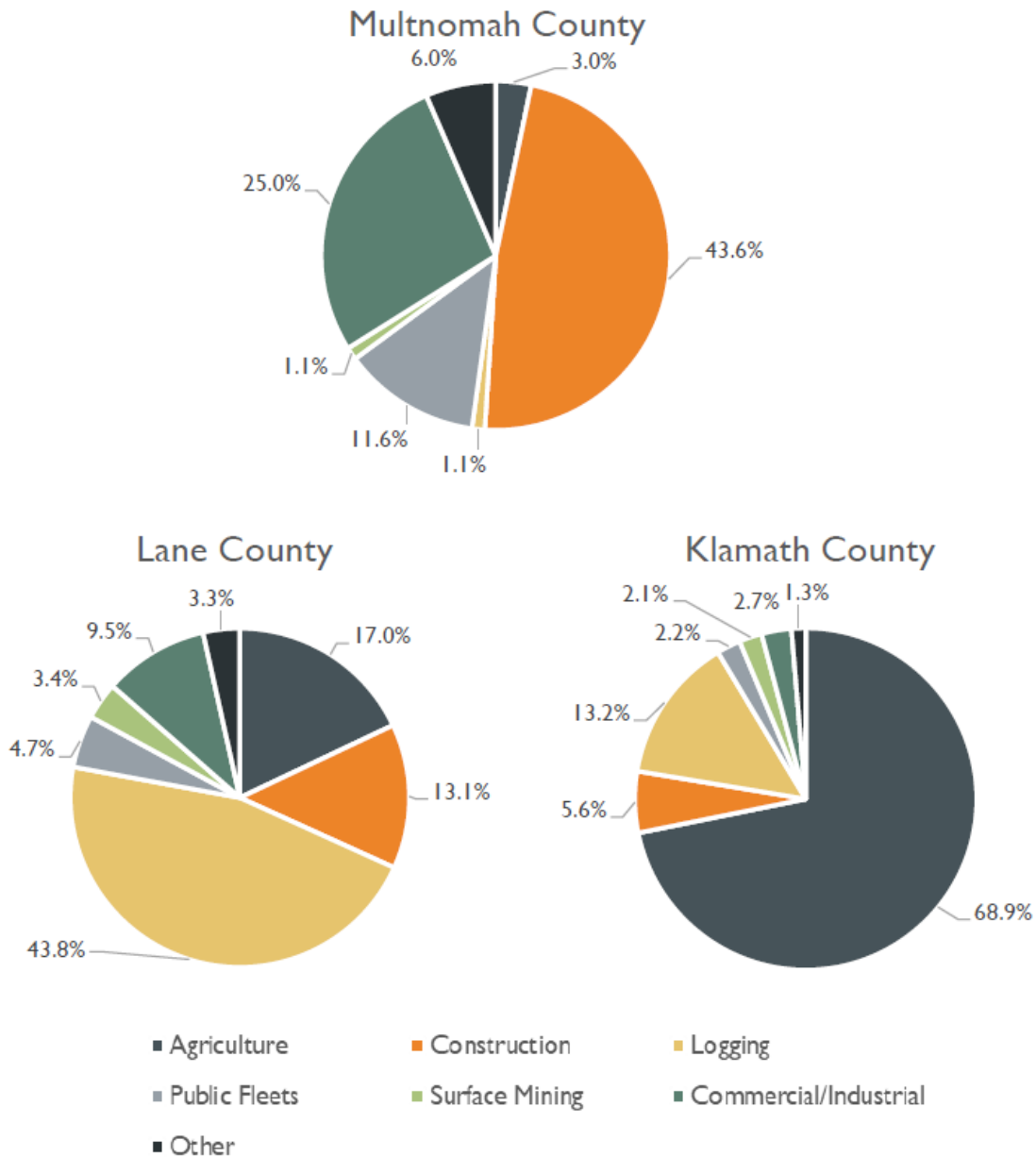
The proposed rules are expected to have relatively minimal or no economic impact. Section 15 of HB 2007, ORS 468A.813, allows DEQ to establish a fee schedule for the labels to be issued by the program. However, through outreach conducted by program staff with interested parties within the construction industry this year, DEQ determined not to propose a per label fee. Instead, DEQ will pay for its staff costs and the cost of the labels from within its operating budget.

## Affected Communities

Diesel emissions coming from construction equipment degrade air in Oregon communities. According to the “Oregon 2017 Non-Road Diesel Engine Inventory Study Report” published in 2020 by the Eastern Research Group, Inc., nearly 15% of statewide emissions of the most harmful form of particulate matter from nonroad diesel exhaust, known as Particulate Matter of a nominal diameter 2.5 microns or less (or PM2.5), came from construction activity throughout the state in 2017.

This study also shows that more than 40% of total PM2.5 emissions in Multnomah County came from construction activities, as seen in the chart below. According to the 2010 Census, and most recently the 2020 Census, approximately one in five Oregonians lives in Multnomah County. In addition to this, the Tri-County region of Multnomah, Clackamas, and Washington Counties remains the highest population area in the state based on the past two census studies.

## Annual PM<sub>2.5</sub> Emissions by Sector – Selected Counties



Construction activity is a mobile source of pollution, with equipment moving from construction site to construction site as the use of the equipment is needed. However, some construction projects can last for years, meaning that emissions at a particular site can become concentrated over an extended period of time.

In 2019, the Oregon Legislature passed HB 2007, aimed at reducing emissions of diesel pollution in the Tri-County area (Multnomah, Clackamas, and Washington County). Among other provisions, the bill required the Departments of Transportation, Justice and Administrative Services to conduct rulemakings to establish standards to reduce diesel

emissions from public improvement contracts, with a goal to reduce emissions from construction equipment over time through upgrading and/or replacing equipment. The bill also directed DEQ to create the DEIP, which can help with assuring compliance with these rulemakings and other efforts through checking and tracking the emissions profile of each piece of equipment reported to the program.

In June of this year, the [Oregon Office of Economic Analysis](#) published an outlook on the Oregon construction market stating:

“Oregon’s construction outlook remains solid in the years ahead. Our office’s employment forecast calls for moderate gains due to the fact the industry is at historic highs today, and the underlying volume of work moving forward should be fairly steady in the big picture.”

All of this means that Oregonians will be exposed to diesel exhaust from construction activity with no real reductions in emissions for the foreseeable future without mitigation efforts taking place to reduce diesel emissions coming from this equipment.

As mentioned previously, there are multiple efforts occurring within the state to use contracting standards to require cleaner construction practices from contractors. The Diesel Emissions Identification Program is a way for DEQ to complement the work that is being done to reduce diesel emissions from construction equipment, by making it easier to identify how each piece of equipment is emitting with the labels that this program will provide. This easy identification will help with demonstrating compliance with clean construction contracting standards that a contractor may be subject to.

## **Statement of Cost of Compliance**

In general, costs associated with the owner/operators of diesel-powered construction equipment to voluntarily comply with this program include the cost of time spent filling out forms and providing necessary documentation and information, the cost of time spent adhering the labels to the equipment, and any time spent on miscellaneous follow up and reporting, such as the need for one or more replacement labels due to issues like label damage or a change in engine status. These costs are expected to be minor in relation to the period of time that participation in this program can cover, which can extend up to the full life of the equipment’s use.

### **State agencies**

DEQ does not expect the proposed rules to have a significant fiscal impact on state agencies. State agencies that choose to participate in this voluntary program would likely have costs that are in alignment with those described in the section above. DEQ, as a state agency, would have costs associated with carrying out the program, and currently has FTE costs for the rulemaking process through program startup. The costs associated with carrying out the

program include program staff, emission control labels, information technology support and development in addition to any miscellaneous items that support the program's operation.

DEQ does not anticipate that these costs would exceed 1.5 FTE on an annual basis and will require limited other costs, such as acquiring materials necessary to create labels, and has determined that it would be able to cover those costs under existing program budgets.

## **Local governments**

Similarly, DEQ does not expect the proposed rules to have a significant fiscal impact on local governments. Local governments that choose to participate in this voluntary program would likely have costs that are in alignment with those described in the Statement of Cost of Compliance section above.

## **Public**

DEQ does not expect that the proposed rules would have a direct fiscal impact on the general public. If the labels are used to help with tracking and ensuring compliance with clean construction contracting standards from other agencies, then any potential fiscal impact could be positive due to the lower negative health impacts, and therefore lower medical expense, associated with reduced diesel emissions.

## **Large businesses - businesses with more than 50 employees**

Due to the voluntary nature of the program, there is no cost of compliance for large businesses. However, there would likely be some cost associated with voluntary participation in this program, as previously described.

## **Small businesses – businesses with 50 or fewer employees**

Due to the voluntary nature of this program, there is no cost of compliance for small businesses. However, there will likely be some cost associated with voluntary participation in this program, as previously described.

### **ORS 183.336 - Cost of Compliance for Small Businesses**

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

There are no small businesses within the construction industry, which would typically be subcontractors, that are subject to this rule, because the rule is purely voluntary. However, any business that owns or operates nonroad diesel-powered construction equipment, concrete mixer trucks, or dump trucks, can choose to participate in this program.

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

The proposed rules do not directly require any additional services or activities. If the labels provided by this program are used to demonstrate compliance with contracting standards from another agency, then it is expected that costs associated with obtaining and maintaining labels through this program would be attributed to the cost of complying with those standards. DEQ does not have any data on those associated costs at this time.

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

The proposed rules will not require additional resources for any entity to comply with them, because they are purely voluntary. For small businesses that choose to comply with the program, it may result in a nominal increase in administrative costs related to obtaining and maintaining an active registration with the program.

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

DEQ has included small business representation on the rules advisory committee (RAC) by securing associations from the construction industry that represent a large swath of business interests, including those of small businesses. A small business contractor that is multi-certified by the Oregon Certification Office for Business Inclusion and Diversity (COBID) has also been included in the RAC.

**Documents relied on for fiscal and economic impact**

Document title	Document location
House Bill 2007 (ORS 468A.813)	<a href="https://olis.oregonlegislature.gov/liz/2019R1/Downloads/MeasureDocument/HB2007/Enrolled">https://olis.oregonlegislature.gov/liz/2019R1/Downloads/MeasureDocument/HB2007/Enrolled</a>
Oregon 2017 Non-Road Diesel Engine Inventory Study Findings	<a href="https://www.oregon.gov/deq/aq/Documents/nonroaddiesel.pdf">https://www.oregon.gov/deq/aq/Documents/nonroaddiesel.pdf</a>
2020 Census of the United States	<a href="https://www.census.gov/library/stories/state-by-state/oregon-population-change-between-census-decade.html">https://www.census.gov/library/stories/state-by-state/oregon-population-change-between-census-decade.html</a>
Oregon Construction Outlook, June 2022	<a href="https://oregoneconomicanalysis.com/2022/06/08/oregon-construction-outlook-june-2022/">https://oregoneconomicanalysis.com/2022/06/08/oregon-construction-outlook-june-2022/</a>

## 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 provided feedback and recommendations based on the overall analysis and presentation provided by DEQ. There was a question about quarterly reporting instead of contractors reporting when and if they made a change to their reported fleet. One committee member felt that submitting a full report once every four quarters was too much when they considered the potential expense associated with the staffing required to do the reporting. Multiple committee members cited funding and incentives as necessary to help with turning over old equipment that is more polluting, mentioning that California has substantial incentives for their off-road and on-road equipment and vehicles.

There was some concern about small businesses having the financial capacity to fill out forms and with performing other tasks associated with participating in the program without having funding and incentives to help them. There was also a desire for this program to help small businesses with the ability to afford retrofit upgrades to equipment, which would in turn lead to having a more desirable label, as several committee members requested having the tier number listed on the emission control labels. One committee member representing Associated General Contractors stated that having the tier numbers listed on labels will help with identifying the phase-out period for each piece of equipment that may be subject to clean construction contracting standards.

The same committee member stated that they estimated \$250 per piece of equipment to cover the cost of initially participating in the program. This estimate was based on having a fleet manager that is remote from the fleet where travel would be necessary to label the equipment and for other tasks. Companies that have local yards and onsite offices where fleets are held are estimated to have a lower expense per piece of equipment for initial setup with the program, however no dollar amount was estimated for this.

Overall, the committee determined the proposed rules would not have a significant adverse impact on small businesses in Oregon due to the voluntary nature of the program. However, there was belief that this would change if the use of this program became required and there was no financial help provided by this program for small businesses to be able to participate.



## **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 impact on the development costs due to the voluntary nature of the program.

# Racial Equity & Environmental Justice

ORS 183.335(2)(a)(F) requires state agencies to provide a statement identifying how adoption of this rule will affect racial equity in this state, and ORS 182.545 requires natural resource agencies to consider the effects of their actions on environmental justice issues. DEQ considered these effects by looking into the demographics of the state and where population groups were concentrated in relation to where the highest concentrations of diesel emissions from the construction industry were found. Multiple community organizations dedicated to environmental justice graciously participated on a rules advisory committee for this rulemaking to provide feedback and insight from an environmental justice lens. DEQ will hold a public hearing in the first quarter of 2023 to receive feedback from the general public as well.

Communities of color historically and currently experience exposure to disproportionate levels of pollution. In particular, the various pollutants that come from diesel-powered equipment, vehicles, and other modes of transportation, pose a significant health burden to communities of color and vulnerable populations that live near areas of high traffic, such as the Interstate 5, which runs through nine of the state's 36 counties. These counties are:

- Clackamas
- Douglas
- Jackson
- Josephine
- Lane
- Linn
- Marion
- Multnomah
- Washington

According to the 2020 Census, these counties hold about 79% of the state's BIPOC population and about 72% of the state's white population. A majority of each racial group lives along I-5, with the highest majorities found within the state's Black population at 91% and Asian population at 90%. The lowest majority was found with Native Americans at 61%, while the Latino population was at 75%.

In 2017, DEQ contracted with Eastern Research Group, Inc., to conduct a statewide inventory study for nonroad diesel engines. In its findings, published in 2020, the highest concentrations of Particulate Matter of a nominal diameter 2.5 microns or less (or PM2.5) pollution were found in the Portland metro area and Willamette Valley regions. These concentrations of PM2.5 pollution accounted for nearly 40% of statewide emissions. The study also found that more than 200 tons of PM2.5 emissions were attributable to the construction and mining sector in 2017, which was second only to the agricultural sector by a small margin.

This is a cause of concern for the health of Oregonians, especially when diesel emissions from construction equipment are a mobile source, meaning that they move from place to place, and are found all over the state. With construction showing no sign of slowing down,

it is important that owners and operators of diesel-powered construction equipment and certain onroad construction vehicles have the option to use this voluntary labeling program to aid in displaying their dedication to a healthier environment, one piece of equipment at a time. This display can help with identifying cleaner equipment to be used and maintained for construction projects, particularly those in the counties along the I-5 and for the various bridges, highways, and other areas of high traffic around the state.

## **Federal relationship**

ORS 183.332, 468A.327 and OAR 340-011-0029 require DEQ to attempt to adopt rules that correspond with existing equivalent federal laws and rules unless there are reasons not to do so, and to explain whether proposed rules impose requirements different from federal rules.

The proposed rules do not correspond with existing federal laws because there are no federal requirements that require labeling similar to that authorized in the proposed rules, nor is there a federal program to authorize voluntary labeling. The proposed rules do not impose any requirements, because they are voluntary, and so there is no issue with whether they impose requirements different from federal rules. But as noted, there are no parallel federal rules for voluntary labeling, so to that extent these rules do authorize a program that is different from federal rules. DEQ is proposing rules for the voluntary labeling program as required under HB 2007 (2019).

# Land use

## Land-use considerations

In adopting new or amended rules, ORS 197.180 and OAR 340-018-0070 require DEQ to determine whether the proposed rules significantly affect land use. If so, DEQ must explain how the proposed rules comply with statewide land-use planning goals and local acknowledged comprehensive plans.

Under OAR 660-030-0005 and OAR 340 Division 18, DEQ considers that rules affect land use if:

- The statewide land use planning goals specifically refer to the rule or program, or
- The rule or program is reasonably expected to have significant effects on:
  - Resources, objects, or areas identified in the statewide planning goals, or
  - Present or future land uses identified in acknowledge comprehensive plans

DEQ determined whether the proposed rules involve programs or actions that affect land use by reviewing its Statewide Agency Coordination plan. The plan describes the programs that DEQ determined significantly affect land use. DEQ considers that its programs specifically relate to the following statewide goals:

<b>Goal</b>	<b>Title</b>
5	Natural Resources, Scenic and Historic Areas, and Open Spaces
6	Air, Water and Land Resources Quality
11	Public Facilities and Services
16	Estuarine Resources
19	Ocean Resources

Statewide goals also specifically reference the following DEQ programs:

- Nonpoint source discharge water quality program – Goal 16
- Water quality and sewage disposal systems – Goal 16
- Water quality permits and oil spill regulations – Goal 19

## Determination

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 has not presented additional information to the EQC specific to these proposed rules.

# Advisory Committee

## Background

DEQ convened the Diesel Emissions Identification 2023 rulemaking advisory committee for one meeting on November 15, 2022. The committee included representatives from the construction industry, advocacy groups representing impacted communities, and government. The committee's web page is located at: [Diesel Emissions Identification 2023](#).

The committee members were:

<b>Rulemaking Advisory Committee</b>	
<b>Name</b>	<b>Representing</b>
Angela Smith	Minority Construction Group, LLC
Brent Kerr	Kerr Contractors
Celeste Meiffren-Swango	Environment Oregon
Larry Gescher	Associated General Contractors
Mary Peveto	Neighbors for Clean Air
Rich Angstrom	Oregon Concrete and Aggregate Producers Association
Taren Evans	Coalition of Communities of Color
TJ Landis	Northwest Utility Contractors Association
<b>Government Advisors</b>	
<b>Name</b>	<b>Representing</b>
David Farrer	Oregon Health Authority
Farrah Fatemi	Clean Air Construction Program
Jay Jackson	Department of Administrative Services
Summer Guthrie	Oregon Department of Transportation

## 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:
  - Rulemaking
  - DEQ Public Notices
  - Diesel and Biodiesel
- 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, multiple committee members expressed a desire to be able to label an entire fleet, which could include onroad concrete mixer trucks and dump trucks. DEQ responded to this feedback by adding the ability to label concrete mixer trucks and dump trucks to the proposed rules under the agency's existing authority.

There was some concern for the safety of passersby wanting to enter a construction site as a way to inspect emission control labels on equipment. This concern was addressed by DEQ adding to the proposed rules the ability for an owner/operator to use a DEQ issued template to create a sign that could be placed on the outside fencing of a construction site. This would give passersby information about the reported fleet used at the construction site without them needing to enter the site.



# Public Engagement

## Public notice

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

- On April 27, 2023, filing notice with the Oregon Secretary of State for publication in the May 2023 Oregon Bulletin;
- Posting the Notice, Invitation to Comment and Draft Rules on the web page for this rulemaking, located at: [Diesel Emissions Identification 2023](#);
- Emailing approximately 24,426 interested parties on the following DEQ lists through GovDelivery:
  - Rulemaking
  - DEQ Public Notices
  - Diesel and Biodiesel
- Emailing the following key legislators required under [ORS 183.335](#):
  - Senator Janeen Sollman, Chair, Senate Committee on Energy and Environment
  - Representative Pam Marsh, Chair, House Committee on Climate Energy and Environment
- Emailing advisory committee members,
- Posting on the DEQ event calendar: [DEQ Calendar](#)

## How to comment on this rulemaking proposal

DEQ is asking for public comment on the proposed program and 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 May 22, 2023.

### Submit comment via email:

[DEIP2023@deq.oregon.gov](mailto:DEIP2023@deq.oregon.gov)

### 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, please notify DEQ that you wish to keep your email address confidential.

## **By mail**

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

## **At hearing**

# **Public Hearing**

DEQ plans to hold one public hearing.

**The public hearing is online and by teleconference only.**

Anyone can attend a hearing by webinar or teleconference.

**Date:** May 15, 2023

**Start time:** 10:30 a.m.

### **Call and web connection information:**

[Join online via Zoom.](#)

### **Join by phone:**

Call-in number: 1-253-215-8782

Toll-free number: 1-877-853-5257

Meeting ID: 883 5541 7032

Passcode: 691747

Instructions on how to join webinar or teleconference: [Instructions](#)

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](mailto:deqinfo@deq.state.or.us).

DEQ does not discriminate on the basis of race, color, national origin, disability, age or sex in administration of its programs or activities. Visit DEQ's [Civil Rights and Environmental Justice page](#).

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# Draft Rules – Division 269

**Note:** These are all new rules which means there are no changes to highlight.

## **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 diesel-powered nonroad construction equipment and onroad concrete mixer trucks and dump trucks in Oregon.

(2) Background. The 2019 Legislature adopted House Bill 2007, which directs DEQ to establish a voluntary emission control label program for nonroad diesel-powered construction equipment in Oregon. In addition, diesel-powered onroad concrete mixer trucks and dump trucks are added under DEQ’s existing authority.

(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, 468.035 and 468A.813

**Statutes/Other Implemented:** ORS 468.035 and 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) “Active participant” means a person who has voluntarily chosen to participate in the Diesel Emissions Identification Program, has been issued one or more ECLs under OAR 340-269-0130, and has not been deactivated under OAR 340-269-0150.

(2) “Concrete Mixer Truck” means a truck with a GVWR greater than 26,000 lbs. that is designed to transport a concrete mixture from a central supply source to a construction site.

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

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

- (5) “Diesel Engine” means a compression ignition engine.
- (6) “Diesel Oxidation Catalyst” or “DOC” means an emission control device that helps to reduce the emission of hydrocarbons, carbon monoxide and particulates by facilitating their break down into less harmful chemicals.
- (7) “Diesel Particulate Filter” or “DPF” means an emission control device that reduces particulate emissions by trapping exhaust particles, or soot, in a flow filter substrate.
- (8) “Dump Truck” means a truck with a GVWR greater than 26,000 lbs. that is designed to transport construction materials such as dirt, asphalt, rock or construction debris including a transfer truck, or a tractor trailer combination used exclusively to pull bottom dump, end dump or side dump trailers.
- (9) “Emission Control Label” or “ECL” means the label DEQ assigns to a particular piece of equipment or vehicle that provides information about the engine located inside of the equipment or vehicle.
- (10) “Emissions Profile” means a summary or indication of air pollutants coming from the exhaust of a diesel engine.
- (11) “Engine Identification Number” means the unique identifier located on a nonroad diesel engine as described in 40 C.F.R § 1039.135(a) and that was described in the previously applicable 40 CFR § 89.110(d).
- (12) “Engine Profile” means a summary or indication of certain key characteristics of a diesel engine and can contain an emissions profile.
- (13) “Engine Tier” means the applicable EPA classification of exhaust emission standards applicable to engines as defined in 40 C.F.R § 1039.801, and also includes engines that meet the definition of “Tier 0 Engine” in this rule.
- (14) “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.
- (15) “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.
- (16) “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 C.F.R § 1039.135 (b) through (g) and that was described in the previously applicable 40 C.F.R § 89.110.
- (17) “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.

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

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

(20) “Tier 0 Engine” means an engine not subject to the requirements in 40 C.F.R Part 1039 and that was not subject to previous requirements in 40 C.F.R Part 89.

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

(22) “Zero-Emission Equipment” or “ZEE” means any piece of equipment that is certified to produce zero emissions of any greenhouse gas or any criteria or precursor pollutants under all possible operating modes and conditions.

(23) “Zero-Emission Vehicle” or “ZEV” means any vehicle that is certified to produce zero emissions of any greenhouse gas or any criteria or precursor pollutants under all possible operating modes and conditions.

**Statutory/Other Authority:** ORS 468.020, 468.035 and 468A.813

**Statutes/Other Implemented:** ORS 468.035 and 468A.813

### **340-269-0060**

#### **Acronyms**

The following acronyms apply to this division:

(1) “C.F.R” 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) “DOC” means diesel oxidation catalyst.

(4) “DPF” means diesel particulate filter.

(5) "ECL" means emission control label.

(6) “EPA” means the federal Environmental Protection Agency.

(7) "ERN" means equipment registration number.

(8) “GVWR” means gross vehicle weight rating.

(9) “MEL” means manufacturer’s engine label.

(10) “ODOT” means Oregon Department of Transportation.

(11) “ZEE” means zero-emission equipment.

(12) “ZEV” means zero-emission vehicle.

**Statutory/Other Authority:** ORS 468.020 and 468A.813

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

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

#### **Voluntary Participation Requirements**

The voluntary participation in this program by any person conclusively establishes 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.

**Statutory/Other Authority:** ORS 468.020, 468.035 and 468A.813

**Statutes/Other Implemented:** ORS 468.035 and 468A.813

### **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, in addition to detailed documentation for the engine profile for onroad concrete mixer trucks and dump trucks. Such documentation must include, without limitation, a photo of the manufacturer’s engine label.

(c) Providing a sworn statement that information submitted to the program is true and correct, to the signer’s knowledge and information, signed and submitted by the owner or operator of the equipment and/or vehicles, along with any documentation or information DEQ may require to support the sworn 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.

**Statutory/Other Authority:** ORS 468.020, 468.035 and 468A.813

**Statutes/Other Implemented:** ORS 468.035 and 468A.813

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

#### **Demonstration Approval**

Emissions Profile. DEQ will review each application and determine whether the applicant has provided sufficient information to document the emissions profile of each nonroad diesel engine, in addition to the engine profile for each concrete mixer truck and dump truck 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 and onroad diesel engine to receive an ECL.

**Statutory/Other Authority:** ORS 468.020, 468.035 and 468A.813

**Statutes/Other Implemented:** ORS 468.035 and 468A.813

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

#### **Labeling**

(1) Issuance. Upon successful demonstration of the emissions profile of a piece of equipment and/or the engine profile for each vehicle 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 and/or each vehicle must be affixed to the equipment or vehicle within 30 days of issuance.

(a) Prominence. Each ECL must be affixed prominently on the outside of the equipment or vehicle 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 or vehicle, it must be placed on the equipment or vehicle 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 or vehicle to another is prohibited. Each ECL will only be used for the piece of equipment or vehicle that it was issued for, and it will be used for no purpose other than to label the equipment or vehicle.



(4) Optional Fleet Designations. Each active participant in the program also may elect to request a fleet designation from DEQ.

(a) General fleet designation standards are listed as follows:

(A) Bronze Standard. This standard is met when 60% of the reported fleet equipment either meets or exceeds engine tier 4 standards or is equipped with a DOC or DPF, and when 60% of the reported fleet vehicles have model year engines that are year 2010 or newer.

(B) Silver Standard. This standard is met when 70% of the reported fleet equipment either meets or exceeds engine tier 4 standards or is equipped with a DOC or DPF, and when 70% of the reported fleet vehicles have model year engines that are year 2010 or newer.

(C) Gold Standard. This standard is met when 80% of the reported fleet equipment either meets or exceeds engine tier 4 standards or is equipped with a DOC or DPF, and when 90% of the reported fleet vehicles have model year engines that are year 2010 or newer.

(b) ODOT Compliance. Demonstration of compliance with OAR 731-005-0800 or 731-149-0020 (ODOT rules), as determined by DEQ, may be used to show compliance with the general fleet designation standards listed in this rule.

(c) Fleet Signage. If the reported fleet is either a project fleet used exclusively by the active participant on a project, or if it is the total operating fleet used by an active participant, then the active participant may construct a sign using a template provided by DEQ that lists that participant's fleet designation status. The sign may be used at the site of a project or at the active participant's place of business.

(d) Exemptions. An active participant may request emergency use exemption status for a piece of equipment or vehicle that needs to be used as a part of their reported fleet. Emergency use status will be determined by DEQ on a case-by-case basis.

**Statutory/Other Authority:** ORS 468.020, 468.035 and 468A.813

**Statutes/Other Implemented:** ORS 468.035 and 468A.813

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

#### **Reporting**

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

(1) If there are no updates to report, then the active participant may submit a sworn statement, on a form provided by DEQ, confirming that there is no pertinent information to update since the last report. An active participant may make this "no pertinent information" statement for no more than three consecutive quarters. After submitting three such statements, the active participant must submit a full quarterly report in the following quarter.

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

**Statutory/Other Authority:** ORS 468.020, 468.035 and 468A.813

**Statutes/Other Implemented:** ORS 468.035 and 468A.813

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

#### **Deactivation**

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

(a) An active participant must notify DEQ as soon as they are aware that any registered piece of equipment or any registered vehicle no longer has a legible or scannable ECL, including ECLs that no longer adhere to the equipment or that are missing or damaged. If an active participant fails to provide such notification, then DEQ may deactivate the person's participation if there is not a legible or scannable ECL on registered equipment.

(b) An active participant may request to have their 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 active participant.

(2) ECL Return. When participation in the program has been deactivated, the person must return any ECLs that were issued by DEQ. If an active participant appeals a deactivation decision as provided in section (3), the label return requirement will be suspended until the appeals process is completed. After deactivation, if the person has significant difficulty in removing an ECL from any equipment or vehicles, the person may work with DEQ to find a suitable alternative to the ECL's removal.

(3) Appeals. An active participant may appeal a DEQ deactivation decision by filing a petition for reconsideration with DEQ. An active 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 a petition for reconsideration or without filing a petition for reconsideration.

**Statutory/Other Authority:** ORS 468.020, 468.035 and 468A.813

**Statutes/Other Implemented:** ORS 468.035 and 468A.813