State of Oregon Department of Environmental Quality

# Oregon Environmental Quality Commission meeting

**Jan. 21 – 22, 2021**

**Rulemaking, Action Item D**
Volkswagen Grants 2020

## Table of Contents

# DEQ Recommendation to EQC

DEQ recommends that the Environmental Quality Commission adopt the proposed rules as seen on pages 29 through 42 of this report as Division 255 of Chapter 340 of the Oregon Administrative Rules.

**Proposed motion language:**
*"I move that the Oregon Environmental Quality Commission adopt the rules, seen on pages 29 through 42 of this report, as Division 255 of Chapter 340 of the Oregon Administrative Rules."*

# Overview

The 2019 Oregon Legislature passed House Bill 2007 directing the Oregon Environmental Quality Commission to adopt rules to implement an expanded diesel emissions reduction program with Volkswagen Environmental Mitigation Trust Agreement funds and directing Oregon Department of Environmental Quality 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 a deadline of Oct. 2, 2027.

The rules would establish a new program allowing 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 20 percent 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 on equipment, project, and ownership. Vehicles subject to HB 2007 phase-out deadlines, including nonroad construction equipment subject to new state contracting standards, are a priority for retrofit, repower, and replacement with support from VW funds.

# 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 (NOx ), 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 percent of NOx, 95 percent of PM, and 98 percent 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 estimates 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. 2, 2027, or Oregon risks losing them back to the federal 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
Air Quality 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 establish 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 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.

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 for grant application solicitations, deadlines, and funding availability

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 percent 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 of the 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<br>875 Union Street NE<br>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 Aug. 17, 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 in 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

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 state wide 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:

| Goal | Title |
|---|---|
| 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 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 four times. The committee's web page is located at: https://www.oregon.gov/deq/Regulations/rulemaking/Pages/Rvwgrants2020.aspx

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 Bissonnette | 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

# Public Hearing

DEQ held one public hearing. DEQ received four comments at the hearing. Later sections of this document include a summary of the seventeen comments received during the open public comment period, DEQ's responses, and a list of the commenters. Original comments are on file with DEQ.

## Presiding Officers' Record

### Hearing 1

| | |
|---|---|
| Date | Monday, Oct. 19, 2020 |
| Place | Online |
| Start Time | 10 a.m. |
| End Time | 10:30 a.m. |
| Presiding Officer | Penny Mabie |

The presiding officer convened the hearing, summarized procedures for the hearing, and explained that DEQ was recording the hearing. The presiding officer asked people attending to indicate their intent to present comments, either by phone or through the online platform. The presiding officer advised all attending parties interested in receiving future information about the rulemaking to sign up for GovDelivery email notices.

As Oregon Administrative Rule 137-001-0030 requires, the presiding officer summarized the content of the rulemaking notice.

Twenty people attended by teleconference. Two people commented orally and two people submitted written comments at the hearing.

# Summary of Public Comments and DEQ Responses

## Public comment period

DEQ accepted public comment on the proposed rulemaking from Sept. 30, 2020, until 4 p.m. on Oct. 22, 2020.

For public comments received by the close of the public comment period, the following table organizes comments into 20 categories with cross references to the commenter number. DEQ's response follows the summary. A compilation of all comments received can be found at the end of this staff report.

DEQ did not change the proposed rules in response to comments.

| List of Comments | | |
|---|---|---|
| **Comment #** | **Comment Summary with DEQ Response** | **Commenter Numbers** |
| 1 | **Comment:** Supports new program without changes.<br><br>**DEQ Response:** Thank you for your comments. | 1,2 |
| 2 | **Comment:** Suggests a diesel fuel catalyst to reduce pollution.<br><br>**DEQ Response:** New rules related to the grant program are strictly limited by the Environmental Mitigation Trust Agreement regarding project types that are eligible to receive funding. While alternative fueled vehicles and equipment can be used to reduce diesel emissions Oregon is not allowed to fund projects that only focus on fuel additives. | 3 |
| 3 | **Comment:** Phase out diesel fuel use completely and only fund electric vehicle replacements.<br><br>**DEQ Response:** The scope of this rulemaking is established by ORS 468A.805 and does not provide for phase out of diesel fuel use in Oregon. Electric vehicle replacement are prioritized above other project types with up to 100% of equipment costs reimbursable for successful projects. | 4 |
| 4 | **Comment:** Prioritize funding for freight switchers/locomotives based on emissions profile, location of operation, and population exposure to diesel pollution. | 5 |

| List of Comments | | |
|---|---|---|
| **Comment #** | **Comment Summary with DEQ Response** | **Commenter Numbers** |
| | **DEQ Response:** Prioritization for funding is established primarily by ORS 468A.805 and focuses on medium and heavy duty trucks and equipment that is subject to regulatory phase out deadlines of older engine model years in the Portland metropolitan area. OAR 340-255-0060 prioritizes projects that "reduce diesel emissions in areas of the state with the highest diesel emissions…" which achieves a portion of commenter's request. | |
| 5 | **Comment:** Expand definition of qualifying projects to include ferries, tugs and marine vessels that serve vulnerable populations and prioritize projects in at-risk airsheds.<br><br>**DEQ Response:** These project types are eligible for grant funding under OAR 340-255-0040(4). Projects that serve vulnerable populations exposed to high levels of diesel emissions are prioritized under OAR340-255-0060(2)(i). | 6 |
| 6 | **Comment:** Expand program to include funding for vehicle or trailer mounted refrigeration units.<br><br>**DEQ Response:** These project types are eligible for grant funding under OAR 340-255-0030(2)(b) through the federal Diesel Emission Reduction Act option. | 7 |
| 7 | **Comment:** Supports the expanded rules focus on electric vehicle technologies and the spending allocation over 5 years.<br><br>Agency Response: Thank you for your comments. | 8 |
| 8 | **Comment:** Prioritize funding for heavy duty zero emissions truck projects.<br><br>**DEQ Response:** OAR 340-255-0040(1)(D) provides for a maximum reimbursement of up to 75% of the cost of a new heavy duty zero emission truck project. OAR 340-255-0060(e) establishes priority criteria to benefit owners and operators of heavy-duty trucks under specific circumstances. Based on these rules DEQ believes adequate priority is being provided to this type of project. | 9, 10 |

| List of Comments | | |
|---|---|---|
| **Comment #** | **Comment Summary with DEQ Response** | **Commenter Numbers** |
| 9 | **Comment:** Allow awarded fleets, should they choose to do so, scrap the existing diesel vehicle prior to the deployment of the new zero emission vehicle.<br><br>**DEQ Response:** Vehicle and equipment scrappage is allowed at any time within the project period of awarded grants and required prior to completion. | 10 |
| 10 | **Comment:** Recommend that the state remove the current requirement to "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."<br><br>**DEQ Response:** This requirement will remain in place since it is designed to prevent fraud, waste, and abuse. OAR 340-255-0050(5)(a) provides a process to receive a waiver from this requirement for applicants that are unable to solicit at least three competitive bids | 10 |
| 11 | **Comment:** Recommend that documentation and reporting requirements be minimized as much as is possible. This can include developing short form and standardized reporting templates, limiting the number of ongoing reporting requirements, and ensuring the efficient processing of incentive payments to the awardees.<br><br>**DEQ Response:** DEQ agrees and will provide short, standardized reporting templates while seeking to minimize the administrative burden on grant program applicants. | 10 |
| 12 | **Comment:** Draft language includes grant requirements and definitions that contain the language: "included but not limited to." This verbiage reads as open ended and vague, creating uncertainty for potential applicants, which may lead to disincentivizing them from applying to the program.<br><br>**DEQ Response:** DEQ agrees and this phrase only appears once, in the definition of an engine repower project, as required by the Environmental Mitigation Settlement Agreement. | 10 |
| 13 | **Comment:** DTNA recommends that the solicitation include language opening funding up for vehicles | 10 |

| List of Comments | | |
|---|---|---|
| **Comment #** | **Comment Summary with DEQ Response** | **Commenter Numbers** |
| | operated by utilities. Utility service vehicles represent a sizeable portion of medium- and heavy-duty vehicles that are in near-constant operation, and the current guidelines do not explicitly address this segment. Building off the success of DEQ's School Bus Replacement funding, we recommend that publicly owned school buses also be allowed to apply for funding from the Diesel Emissions Mitigation Grant Program.<br><br>**DEQ Response:** These entities are allowed to apply for funding under OAR 340-255-0050. | |
| 14 | **Comment:** Our concern is with the language of "reasonable costs" – [Re: 340-255-0050(5)(a) and (b)] there is no definition as to what reasonable costs are or how they are defined. Without specific guidance, this requirement may cause confusion and deter potential applicants.<br><br>**DEQ Response:** In the event that DEQ provides a waiver of the requirement to solicit three competitive bids for a project's equipment costs this cost-containment measure provides flexibility to ensure that sole-source bids do not result in excessive costs and unreasonable expenditure of limited public resources. | 10 |
| 15 | **Comment:** [The mandate to] 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)" of the requirements. …may be problematic for fleet operators due to the confidential and competitive nature of distribution routes.<br><br>**DEQ Response:** OAR 340-255-0050(7) is required to determine the location of diesel emissions in Oregon and apply geographic-based grant award criteria accordingly. | 10 |
| 16 | **Comment:** Support for airport ground support equipment being included in the grant program.<br><br>**DEQ Response:** Thank you for your comments. | 11 |
| 17 | **Comment:** Edit "Intermodal Rail Yard" to remove the word "drayage" since that typically refers to an over-the-road vehicle, and vehicles other than drayage trucks | 12 |

| List of Comments | | |
|---|---|---|
| **Comment #** | **Comment Summary with DEQ Response** | **Commenter Numbers** |
| | (including yard trucks, typically nonroad operating less than 25 mph) are used at rail intermodal sites to move containers to/from trains.<br><br>**DEQ Response:** Drayage is a logistics term that involves shipping goods a short distance via ground freight. DEQ understands the term to apply broadly to equipment suitable for performing the task and does not agree that removing the word drayage will have a substantive impact on the types of equipment eligible to compete for funding under the new grant program. | |
| 18 | **Comment:** Edit "Port Cargo Handling Equipment" to allow for the widest possible terminal truck usage. The Oregon definition imposes a strict geographic limitation on usage (i.e., only "within ports"). [OAR 340-255-0020(37)]<br><br>**DEQ Response:** DEQ does not agree to remove port operation from the definition of Port Cargo Handling Equipment. This requirement is clear based on the VW Environmental Mitigation Trust Agreement language. | 12 |
| 19 | **Comment:** The current definition of retrofit in the draft rules does not require any certification of the retrofits by EPA or CARB. We request that language be added that would require that retrofits be certified by Environmental Protection Agency (EPA) or California Air Resources Board (CARB).<br><br>**DEQ Response:** DEQ agrees that all diesel exhaust control retrofit projects funded by this program must include equipment that is certified by EPA or CARB. Retrofit projects will only qualify for funding under the federal Diesel Emission Reduction Act (DERA) option based on OAR 340-255-0030(2)(b). The DERA program requires all retrofits be certified by EPA or CARB, hence all retrofits funded in Oregon will include this requirement. | 13 |
| 20 | **Comment:** Strongly supports any additional appropriations to these efforts to continue to provide financial support and incentives for transit providers. Additionally, we support any efforts to broaden | 14 |

| List of Comments | | |
|---|---|---|
| **Comment #** | **Comment Summary with DEQ Response** | **Commenter Numbers** |
| | opportunities for regulated entities for which vehicle replacement efforts remain cost prohibitive.<br><br>**DEQ Response:** Thank you for your comments. | |
| 21 | **Comment:** Will generator replacement be included?<br><br>**DEQ Response:** Yes, qualifying generators will be eligible under OAR 340-255-0030(2)(b), the DERA Option. | 15 |
| 22 | **Comment:** Is there language in the proposed rules to partner with tribal entities?<br><br>**DEQ Response:** Yes, tribal partnerships are encouraged under OAR 340-255-0050. | 15 |
| 23 | **Comment:** The most cost-effective projects per tons of NOx reduced are from large marine vessels, then large freight switching equipment such as rail car movers and locomotives. These operate in small concentrated areas often in disadvantaged communities, so by replacing an old diesel engine with a Tier 4 or all-electric option you can achieve actual and quantifiable emissions reductions.<br><br>**DEQ Response:** Thank you for your comments. | 16 |

| List of Commenters | | | | |
|---|---|---|---|---|
| **#** | **Name** | **Organization** | **Comment Number** | **Hearing #** |
| 1 | Diane Luck | N/A | 1 | |
| 2 | Sharon Kloepfer | N/A | 1 | |
| 3 | Reg Durham | Systems Data Integration LLC | 2 | |
| 4 | Tauran | N/A | 3 | |

| List of Commenters | | | | |
|---|---|---|---|---|
| # | Name | Organization | Comment Number | Hearing # |
| 5 | Allison Wurtz | Kew Consultants | 4 | |
| 6 | Mark Johnson | Port of Cascade Locks | 5 | 1 |
| 7 | Phil Martin | Foster Farms | 6 | |
| 8 | Patti Best | Idaho Power | 7 | |
| 9 | Joe Annotti | BYD Motors, LLC | 8 | |
| 10 | Sean Waters | Daimler Trucks North America | 8, 9, 10, 11, 12, 13, 14, 15 | |
| 11 | Veronica Bradley | Airlines for America | 16 | |
| 12 | Jason Dake | Orange EV LLC | 17, 18 | |
| 13 | Kirsten Adams | Associated General Contractors – Oregon Columbia Chapter | 19 | |
| 14 | Tiffany Edwards | Lane Transit District | 20 | 1 |
| 15 | Lucita Valiere | U.S. Environmental Protection Agency | 21, 22 | 1 |
| 16 | Allison Wurtz | KEW Grant Services | 23 | 1 |

# Implementation

## Notification

The proposed rules would become effective upon filing, approximately Jan. 22, 2021. DEQ would notify affected parties by:

- GovDelivery subscriber lists
- Email
- Website Update
- Press Release
- Direct Outreach

- Presentation
- Webinar
- Affected parties include:
    - Business Development Organizations
    - Construction Organizations
    - Trucking Associations
    - Minority Contractor Associations
    - Oregon Counties
    - General Contractors
    - Minority Entrepreneurs
    - Oregon Cities
    - Concrete and Aggregate Producers Associations
    - Public Ports Associations
    - Building Trades Associations
    - Oregon's federally recognized Tribes
    - Special Districts of Oregon
    - Chambers of Commerce
    - Local Community Organizations
    - Manufacturers
    - School districts
    - Minority owned businesses
    - Women owned businesses
    - Veteran owned businesses

## Compliance and enforcement

**Affected parties**
Grant program awardees will be required to comply with program requirements.

**DEQ staff**
Grant program staff will enforce compliance of program requirements among awardees.

## Measuring, sampling, monitoring and reporting

**Affected parties**
Grant program awardees will be required to submit reports on program performance.

**DEQ staff**
Grant program staff will monitor program performance and reports.

## Systems

**Website**
DEQ webpages will be updated to reflect program implementation timelines, requirements, and application process.

**Database**
DEQ will create a new grant management database to track program implementation.

**Invoicing**
DEQ staff will use existing invoicing procedures for all grant awards.

## Training

**Affected parties**
DEQ staff will provide webinars, training materials, and technical assistance to grant program applicants.

**DEQ staff**
Existing program staff will provide training as needed for DEQ staff.

# Five-Year Review

## Requirement

Oregon law requires DEQ to review new rules within five years after EQC adopts them. The law also exempts some rules from review. DEQ determined whether the rules described in this report are subject to the five-year review. DEQ based its analysis on the law in effect when EQC adopted these rules.

### Exemption from five-year rule review

None of these proposed rules are exempt from the five-year review under ORS 183.405(4) and 183.405 (5) of the Administrative Procedures Act.

### Five-year rule review required

No later than Jan. 23, 2025, DEQ will review the newly adopted rules for which ORS 183.405 (1) requires review to determine whether:

- The rule has had the intended effect
- The anticipated fiscal impact of the rule was underestimated or overestimated
- Subsequent changes in the law require that the rule be repealed or amended
- There is continued need for the rule.

DEQ will use "available information" to comply with the review requirement allowed under ORS 183.405 (2).

DEQ will provide the five-year rule review report to the advisory committee to comply with ORS 183.405 (3).

# Accessibility Information

You may review copies of all documents referenced in this announcement at:
Oregon Department of Environmental Quality
700 NE Multnomah St., Ste. 600
Portland, OR, 97232

To schedule a review of all websites and documents referenced in this announcement, call Gerik Kransky, Portland, OR, 800-452-4011, ext. 5622 toll-free in Oregon.

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.

State of Oregon Department of Environmental Quality

# Draft Rules

Volkswagen Grants 2020 Rulemaking

***Note:*** *These are all new rules so there are no changes to highlight in redline/markup*

## 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 468A.805
**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 isolated[1], 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 468A.805
**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 468A.805
**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 468A.805
**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 468A.805

**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 468A.805
**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 468A.805
**Statutes/Other Implemented:** ORS 468A.805

State of Oregon Department of Environmental Quality

# Full Text of Public Comments

Volkswagen Grants 2020 Rulemaking

Please note, comment numbers in this compliation do not correspond to comment numbers in the report summary above.

**Comment #1**
I am in TOTAL SUPPORT of VW Grants 2020. We need to be doing everything we can to reduce pollution and move to clean energy options.

Thank you.

Sincerely,
Diane Luck

**Comment #2**
Anything that can reduce pollutants would be most beneficial for all of us.

Sharon Kloepfer

**Comment #3**
Immediate diesel emissions mitigation can be had by using ACES diesel fuel catalyst. Reductions up to 60% of particulates, up to 30% of NOx, and it becomes a lubricant upon combustion with diesel to reduce maintenance, extend engine life and reduces fuel consumption between 8%
- 18%.

When there is interest, information on testing, users and the two billion gallons of diesel fuel dosed will be provided upon request.

Regards,
Reg Durham

**Comment #4**
One thing's sure is that VW did an awful thing over the last decades by polluting more than most people can comprehend. My only wishes are for this new VW settlement fund and rule making, is to phase out existing diesel vehicles entirely within city limits by 2030 AND only use this money to replace existing diesel vehicles with new fully electric vehicles. New zero emissions vehicles is the only acceptable way to spend this money. We should not allow production of diesel or gas vehicles anymore.

Tauran

**Comment #5**
I would like to advocate for the inclusion of Tier 4 freight switcher locomotives and all electric-rail car movers to be a priority category for funding. Replacing one unregulated diesel switcher with a Tier 4 or all-electric model can reduce TONS of NOx. These projects are the most cost effective based on cost per ton of NOx reduced, except for some marine applications. The bigger and older the engine - the more emissions it produces, and the greater the need for it to be replaced. A majority of switcher locomotives are vintage or have engines dating back to 1950, 1960 and 1970. There is no incentive for railroads to use cleaner equipment except for THIS funding program. Switchers by nature are almost stationary as they are confined in movement to a small industrial spur or rail yard and therefore the emissions reductions from one of these projects will be measurable and literally quantifiable. They don't move in or out of the state like all on road equipment has the capacity to do, so you are guaranteeing that Oregon funds will be used to clean Oregon's air 100% of the time the project is in operation.

Using this money for freight switchers especially in disadvantaged communities is one of the best ways to realize the goals of this program. I would encourage you to keep funding levels at the levels specified in the Mitigation Trust and that would mean 75% for all-electric freight switchers including charging infrastructure. If we give operators the chance to do the right thing with the right incentives we can accomplish our goals of clean air.

Thank you for the opportunity to share my comment.

Allison Wurtz

**Comment #6**
Members of the VW Grants Rulemaking Advisory Committee,

Thank you for the opportunity to comment on the proposed rules for administering the grant program that targets reducing harmful diesel emissions in Oregon. Thanks to DEQ for the open and transparent rule making process that it has administered. The Port of Cascade Locks would like to make a few comments on the proposed rules that the Port believes will help to strengthen the final product. With the limited nature of the VW Grant resources available to address emissions in Oregon, great care needs to be given to how those resources are administered to insure that the highest number of vulnerable populations and sensitive airsheds in Oregon are served.

1. Consider expanding the definitions of qualifying projects to include ferries, tugs and marine vessels that frequently serve vulnerable populations that meet the age parameters as described in #49, of under 14 and over 64 years of age. The Port wants to emphasize that some marine vessels that operate in Oregon waterways are not primarily transporting cargo, but frequently serve customers in these vulnerable population groups who are accessing scenic, cultural, and educational opportunities.

2. The Port suggests that value be given to grant requests that would impact sensitive environmental areas with airsheds that have been identified as being at risk. A case in point: In 2011 Oregon DEQ and the Southwest Clean Air Agency completed a study that identified strategies for reducing haze in the Columbia River Gorge National Scenic Area. In the report the engines of marine vessels were identified as a controllable source of pollutants within the Scenic Area. DEQ has a successful history of working with tugboat companies that operate on the Columbia River to retrofit antiquated engines with cleaner burning, more efficient ones. The 2011 report details how this action by DEQ resulted in dramatic reductions in NOx and particulates in the Scenic Area airshed and stated that "the environmental benefits are significant for the cost". The Port of Cascade Locks believes that similar benefits to regional public health and environmental protection can result from utilizing a portion of the VW Grant funds to address needs that still remain in sensitive airsheds in the region, and that grant requests targeted to address these concerns should be given consideration.

Thanks again to DEQ for the opportunity to comment on the draft rules. We look forward to the completion of the process and for the grant process to follow.

Sincerely,
Mark Johnson
Government Relations Director
Port of Cascade Locks

**Comment #7**
Would like to see that the eligibility for grant open to industry as well as

Who is eligible to apply? • Regional, state and local governments • Tribal governments, intertribal consortia and native villages • Port Authorities • Nonprofit organizations

If funds were available to help offset the cost of purchasing a newer vehicle or trailer mounted refrigeration unit more companies might be enticed to update their fleets.

Phil Martin, CDS
FOSTER FARMS

**Comment #8**
Thank you for the opportunity to comment on Oregon DEQ's rules to implement an expanded diesel emissions reduction program with the Volkswagen Mitigation Trust Agreement funds. Idaho Power supports the expanded rules focus on electric vehicle technologies and the spending allocation over 5 years.

Idaho Power is an investor-owned electric utility serving 19,000 customers in eastern Oregon. The service area has a total population of about 45,000 with one larger city, Ontario (population 11,000), surrounded by smaller towns separated by large distances. In addition, many residents in this area are low-income. Idaho Power is interested in helping our customers adopt electric transportation technologies and realize the associated benefits

including more stable transportation fuel pricing and cleaner air. Replacing diesel vehicles with electric alternatives supports these goals.

Idaho Power recognizes the wide range of applications that would benefit from electrification. Distributing the funds over 5 years will allow more electric vehicle applications (heavy duty trucks, sanitation trucks, buses, shuttles, and agricultural equipment) to come to market.

We appreciate the opportunity to comment and look forward to advancing transportation electrification in eastern Oregon.

Sincerely,

Patti Best
Electric Vehicle Program Specialist
Idaho Power

**Comment #9**
BYD Motors, LLC ("BYD") appreciates the opportunity to submit the following comments regarding Oregon's VW draft Beneficiary Mitigation Plan. BYD supports the department's goal of facilitating widespread emissions reductions and improving air quality for the state's citizens.

BYD's unique technology development approach is revolutionizing every aspect of clean transportation. Our commitment to "solve the whole problem" has made BYD an industry pioneer within the transportation sector, providing zero-emission solutions for buses, medium- and heavy duty trucks, and off-road equipment. We have made great strides to become one of the world's largest producers of rechargeable batteries, driving innovation by reinvesting billions into research and development.

Prioritize Funding for Heavy-Duty Zero-Emission Truck Projects
The current draft VW draft Beneficiary Mitigation Plan allocates the entirety of the remaining Environmental Mitigation funds toward the creation of a Diesel Emissions Mitigation Grant Program, which presents a unique opportunity for Oregon to drastically reduce emissions, improve air quality, and provide optimal public health benefits to the greatest number of citizens. BYD would like to show our strong support for the reimbursement rates for purchasing a new all-electric vehicle, including charging infrastructure, which are up to 75% of cost for non-government entities and up to 100% of cost for government entities.

Designating funding for heavy-duty on-road truck replacements, with priority given to zero emission projects, is a wise use of funds. Taking diesel-fueled trucks off the road and replacing them with true zero-emission all-electric vehicles will yield immediate and significant reductions in tailpipe emissions for the state. According to a recent report from your Air Quality Division, heavy duty diesel vehicles account for 36% of the Portland region's annual NOx emissions

1. BYD agrees that this sector should be a primary focus for emissions reductions and commends the Oregon DEQ for addressing this by making all-electric vehicle replacements a top priority.

Improve Air Quality for Vulnerable Populations
Incentivizing heavy-duty diesel truck replacement with electric trucks, is a direct pathway for the state to secure an emissions free transportation sector while protecting and preserving public health. By virtue of standard truck operations and the pervasive nature of tailpipe emissions, heavy-duty trucks can affect various facets of community life. Throughout a single route, toxic diesel emissions are released throughout local communities affecting local healthcare facilities, senior centers, and schools, all of which are home to vulnerable populations of the sick, elderly, and young children. These populations are more susceptible to the health impacts associated with diesel emissions including asthma, emphysema, and other respiratory ailments.

Zero-Emission Technologies Create Jobs and Boost the Economy
In tandem to the clean air benefits, the agency's plan will support and incentivize projects that move the state toward an advanced transportation future. The electrification of heavy-duty trucks will greatly improve the health of operators and local communities without disruptions to routes or daily operations. This presents a tremendous opportunity to significantly improve the state's air quality while also driving the market toward widespread adoption of zero-emission vehicle solutions and job creation.
For example, installation of new charging infrastructure will be a vital component to supporting the expansion of zero-emission trucks throughout the state. Furthermore, increased use and demand of ZEVs will expand the local workforce by generating increased needs for drivers, trainers, and workers with technical background capable of servicing electrical systems. In this way, agency investment into zero-emission vehicles also places a great investment into the state's economy.

Closing Remarks
Early-market incentive funding is critical to stimulate sales and production volumes with the goal of driving economies of scale to achieve cost-competitive purchase prices. We have committed to and successfully delivered substantial price reductions from our first generation of products. We hope to continue this progress in Oregon and are honored to support the state in addressing a broad range of environmental and social issues. BYD thanks the Oregon DEQ for the opportunity to submit these recommendations. We look forward to future collaboration that will help the state meet its environmental, fiscal, and social justice goals.

Sincerely,
Aaron Gillmore, Vice President
BYD Motors, LLC

**Comment #10**
Daimler Trucks North America (DTNA) appreciates the opportunity to submit the following information regarding Oregon's VW draft Beneficiary Mitigation Plan and, more

specifically, the Diesel Emissions Mitigation Grant Program. We appreciate the state's efforts to advance clean transportation technologies and commend the Oregon Department of Environmental Quality (DEQ) for allocating the remaining Environmental Mitigation funds toward the Diesel Emissions Mitigation Grant Program. Older heavy-duty diesel trucks emit a disproportionate amount of criteria pollutants that cause poor air quality negatively impacting the health and wellbeing of Oregonians; therefore, the state should strive to remove these vehicles from roadways as quickly as possible. While we appreciate the menu of options available to the state under the Environmental Mitigation Trust, we urge you to dedicate funds exclusively to zero emission medium and heavy duty trucks and buses, based on the recommendations outlined below.

DTNA is part of a thoroughly qualified global truck manufacturing company with unsurpassed personnel and infrastructure resources and a long history of innovative engineering. DTNA has over 70 years of experience engineering advanced truck solutions and invests $1.45 billion annually on research and development. The eMobility engineering expertise at DTNA is significant and our brands have developed a number of medium- and heavy-duty products, including the Class 8 Freightliner eCascadia, the Class 6 Freightliner eM2, the Jouley electric school bus from Thomas Built buses, and the walk-in van MT50e from Freightliner Custom Chassis Corporation (FCCC). Furthermore, DTNA has significant experience overseeing the procurement and installation of electric vehicle supply equipment (EVSE).

Focus on Advanced Innovation in Medium and Heavy-Duty Trucks

We recommend that the state focus its funding on projects that will replace medium- and heavy-duty vehicles with zero-emission options. While we appreciate the role that retrofits and repowers play, the best path to truly mitigating diesel emissions is through zero-emission vehicle replacements. Additionally, medium- and heavy-duty vehicles contribute a significant share of emissions compared to other eligible vehicle types under the Environmental Mitigation Trust. To ensure the highest quality applications are submitted, we further recommend that the state require applicants submit a letter of support from the relevant utility. This will show that the applicant has committed to and already engaged the electricity provider, which will serve to ensure a more successful implementation of the project.

Provide Flexible Scrappage Timelines

We recommend that the Diesel Emissions Mitigation Grant Program allow awarded fleets, should they choose to do so, scrap the existing diesel vehicle prior to the deployment of the new zero emission vehicle. DTNA appreciates that not all fleets have the ability to remove an existing vehicle without a replacement; however, for fleets capable of doing so, this strategy will allow for greater emissions reductions as those oldest diesel vehicles are more quickly removed from operations.

Remove Barriers to Entry

We have designed the following recommendations to help the state ensure a successful response to the grant program that will allow all interested parties to participate and remove polluting vehicles as quickly as possible. First, we recommend that the state remove the

current requirement to "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." This requirement is unnecessarily onerous on participating fleets and does not reflect real-world fleet purchasing considerations. We would suggest that this rule be amended or removed. To mitigate the barriers and cost for fleet operators to apply to the program, we would recommend that documentation and reporting requirements be minimized as much as is possible. This can include developing short form and standardized reporting templates, limiting the number of ongoing reporting requirements, and ensuring the efficient processing of incentive payments to the awardees. Additionally, if there are any restrictions based on fleet size within the solicitation, we would recommend that those be removed to allow for maximum availability to the customer pool.

Finally, we noted that the draft language includes grant requirements and definitions that contain the language: "included but not limited to." This verbiage reads as open ended and vague, creating uncertainty for potential applicants, which may lead to disincentivizing them from applying to the program.

Provide Clarifying Language

DTNA recommends that the solicitation include language opening funding up for vehicles operated by utilities. Utility service vehicles represent a sizeable portion of medium- and heavy-duty vehicles that are in near-constant operation, and the current guidelines do not explicitly address this segment. Building off the success of DEQ's School Bus Replacement funding, we recommend that publicly owned school buses also be allowed to apply for funding from the Diesel Emissions Mitigation Grant Program.

In items 5a&b of the application requirements, the draft language states that "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 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." Our concern is with the language of "reasonable costs" – there is no definition as to what reasonable costs are or how they are defined. Without specific guidance, this requirement may cause confusion and deter potential applicants.

Finally, in item 7 of the application requirements, it states that applicants must "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)" of the requirements. This mandate may be problematic for fleet operators due to the confidential and competitive nature of distribution routes. DTNA has experienced significant issues on other grant funded opportunities and rebate programs due to fleet operators being unwilling or unable to satisfy this requirement, and we would recommend its elimination if possible.

Conclusion

DTNA is ideally positioned to bring medium- and heavy-duty high efficiency and zero emission vehicles to the market, stemming directly from the trust and customer loyalty that it has developed with fleet operators. Our development fleets of eCascadias and eM2s have now logged nearly 500,000 commercial miles in real-word operations with fleets in southern California. As the world's largest truck original equipment manufacturer, DTNA's commitment to vehicle efficiency and electrification will have transformative effects on fleets' truck replacement plans by increasing fleet operator confidence in low or zero-emission technology and providing service and training required to support these trucks for years to come.

DTNA's efforts will enable a transformative market change through the deployment of emission reducing low or zero-emission vehicles. As the point of contact for any questions regarding DTNA's electrification efforts, please reach out directly to me at the information provided below. We again thank you for the opportunity to support Oregon's Diesel Emissions Mitigation Grant Program.

Sincerely,
Sean Waters
Daimler Trucks North America

**Comment #11**
Airlines for America® (A4A)1 would like to thank the Department of Environmental Quality (DEQ) for the opportunity to comment on the proposed rulemaking under OAR chapter 340, division 255, on the Diesel Emissions Mitigation Grant Program. A4A and its members are committed to environmental progress and view the Diesel Emissions Mitigation Grant Program as a unique opportunity to accelerate those efforts, particularly in disproportionately impacted communities. With this in mind, we support DEQ's inclusion of projects that replace or repower airport ground support equipment with all-electric forms (GSE projects) as projects eligible for grant funding in the proposed rule.

As noted in previous submittals to DEQ on the State's Volkswagen Environmental Mitigation Plan which underlies this grant program, GSE projects will not only target the geographic areas DEQ is focused on, but it will bring about cost-effective benefits as well. GSE projects are often located in areas that receive a disproportionate quantity of air pollution from diesel fleets simply because airports are major hubs of economic activity. In addition, as we understand it, vulnerable Oregonians live near airports in the State, at least as far as Portland International Airport is concerned. As such, GSE projects would be considered preferential according to OAR § 340-255-0060(2) because they "[r]educe diesel emissions in areas of the state with the highest diesel emissions, highest vulnerable populations, and the highest population density." Because GSE are only operated on airport grounds, the State will have peace of mind knowing that when it funds GSE projects the emissions benefits will be realized in the specific locality the State decided to prioritize.

Furthermore, GSE projects are preferential as they "[r]educe diesel emissions in Oregon with the most cost-effective projects." In fact, both Ohio3 and Utah4 have noted just how cost effective GSE projects are. For each year Ohio has been funding similar grants, GSE projects

have come in as among the top ten most cost-effective projects. Our members will propose equally cost-effective GSE projects in Oregon.

Based on its project preferences, we commend DEQ for including GSE projects as eligible projects in the proposed rule and suggest DEQ finalize the rule as proposed.

* * * * *
Thank you for your consideration. Please let us know if you have any questions regarding our comments.

Sincerely,
Veronica Bradley
Director
Environmental Affairs
Airlines for America

**Comment #12**
This email is a supplement to the detailed comments submitted by Orange EV on June 2, 2020 (below). We would request that the Oregon rules for the Diesel Emissions Mitigation Grant Program and its included definitions be written in a manner to allow for the widest possible terminal truck usage. The VW Consent Decree was crafted to provide categories of equipment that would be eligible for funding and was not an attempt to dictate the usage of that equipment which qualifies for funding. Due to specific language choices in both Beneficiary Mitigation Plans and subsequent requests for proposals, many states have made the vast majority of all-electric terminal truck projects ineligible, though the Trustee has, through their funding actions, deemed them eligible. Based upon Trustee actions, Orange EV requests that Oregon craft the Diesel Emissions Grant Program to reach the greatest number of heavily polluting pieces of equipment as reasonably allowed.

Jason Dake
Vice President, Legal and Regulatory Affairs
Orange EV LLC

From: Julie Brooks

Thank you for the opportunity to comment on Oregon's draft rules for the Diesel Emissions Mitigation Grant Program. Please consider the following changes to the Definitions section (340-255-0020):

Edit "Intermodal Rail Yard"
The current definition in the OR draft rule:
"Intermodal Rail Yard" means a rail facility in which cargo is transferred from drayage truck to train or vice versa. Remove the word "drayage" since that typically refers to an over-the-road vehicle, and vehicles other than drayage trucks (including yard trucks, typically nonroad operating less than 25 mph) are used at rail intermodal sites to move containers to/from

trains. Orange EV pure-electric yard trucks are currently commercially deployed into intermodal rail operations in California, Illinois, and New York.
Proposed definition:
"Intermodal Rail Yard" means a rail facility in which cargo is transferred from truck to train or vice versa.

Edit "Port Cargo Handling Equipment "
The current definition in the OR draft rule substantially changes the definition provided in the Consent Decree.
The Consent Decree definition reads: “Port Cargo Handling Equipment” shall mean rubber-tired gantry cranes, straddle carriers, shuttle carriers, and terminal tractors, including yard hostlers and yard tractors that operate within ports.
The OR draft rule definition reads: “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.
The OR definition imposes a strict geographic limitation on usage (i.e., only “within ports”). The Consent Decree definition is a means to identify Port Cargo Handling Equipment and is not meant as a geographic limitation on usage. Note that terminal tractors (aka terminal trucks, yard trucks, hostlers, spotters) are used in rail intermodal, manufacturing, distribution centers, port operations, waste management, warehouse, and other container handling operations.
The Trustee validated this lack of geographic restraint on yard trucks operating outside of “ports” (often thought of as traditional seaports) when they approved a yard truck project in a New Jersey distribution center under the Port Cargo Handling Equipment category.
To acknowledge that the Trustee considers eligibility to refer to the type of equipment rather than location of use, please consider using the following definition from the Texas Commission on Environmental Quality:
“Port Cargo Handling Equipment” means rubber-tired gantry cranes, straddle carriers, shuttle carriers, and terminal tractors, including on-road and non-road yard hostlers and yard tractors (i.e., yard trucks) that generally operate within ports, but may also be used at cargo and materials distribution facilities and similar locations.
Alternatively, consider adding an updated definition of “Port”. For example, the definition used by the Missouri Department of Natural Resources:
“Port” means a hub or node in the goods movement supply chain with freight activity that facilitates the distribution of goods by any mode of transportation across marine, air, rail, and truck.

Thank you for your consideration and partnership in the mission to deploy emission-free technologies. Orange EV’s 100% electric Class 8 trucks have been chosen by more than 60 fleets for commercially deployment across 14 states and Canada. From these deployments, we have gathered a wealth of experience and data. Please consider us a resource and contact us if we can be of assistance.

Thank you,
-Julie

Julie Brooks
Orange EV, Pure Electric Terminal Trucks

**Comment #13**
Associated General Contractors – Oregon Columbia Chapter represents a broad cross-section of the commercial construction industry, including rural and metro, union and open, highway and building contractors. Most of our members are small, homegrown businesses. Our members use diesel equipment in their day-to-day operations. Often, the diesel equipment owned by these companies is their main asset. Given the cost of diesel equipment, grants like those provided from the VW settlement are hugely helpful to facilitate the modernization of diesel fleets in the construction industry.

AGC appreciates the opportunity to comment on these draft rules. Our overall position is that these grants should be concentrated where HB 2007(2019) puts new diesel regulations in place. In California, incentives were provided before diesel regulations were put into place. In Oregon, the regulations have been enacted before there have been incentives to help fleet owners modernize their equipment, which we believe is a backwards approach. Since Oregon has enacted diesel regulations in the Tri-County area, the grants should be concentrated in that area. This would include ensuring that there are DERA funds available for off-road equipment that will be regulated under HB 2007(2019). This would include equipment that is used on public projects. Starting in 2022, clean diesel requirements will apply to state public projects in the Tri-County area that have a value of $20M or more. As our members prepare to comply with these regulations, DERA grants will help them modernize their fleets and allow more of them to compete on these public projects.

There are several portions that we would like to offer our support to. First is the requirement that equipment operate in Oregon for the previous three years. This is important to ensure that the money furnished to Oregon in the VW Settlement is being used for improvements to fleets in Oregon.

We also support the requirement that any repower must be certified by the EPA and CARB (OAR 340-255-0020(41)). It is critical that any repowers that are done be certified by the EPA and CARB. These certifications provide certainty to the safety and effectiveness of the repowers, and ensures that they will be safe and appropriate for use on the equipment and will be making the promised emission reductions.

This language should also be extended to the “retrofit” definition (OAR 340-255-0020(42)). The current definition of retrofit in the draft rules does not require any certification of the retrofits by EPA or CARB. We request that language be added that would require that retrofits be certified by EPA or CARB. This will ensure the safety and efficacy of the retrofits, and that the grants are being used to actually reduce emissions. If such language is not included, there is an opportunity for less effective retrofit mechanisms to be used, which benefits neither the equipment owner nor the environment. Also, there have been issues with the safety of certain retrofits. Some decrease visibility for the operator of the equipment, which can lead to dangerous situations on the jobsite. By requiring certification by EPA or

CARB and installations compliant with OSHA visibility and safety standards, we can hopefully avoid any such dangers.

Thank you again for the opportunity to provide written testimony. Should you have any questions or wish to discuss further, please reach out to either of us.

Best Regards,
John Rakowitz - Kirsten Adams
Director of Public Affairs - Public Affairs Counsel

**Comment #14**
Lane Transit District (LTD) provides transit and paratransit services in the cities of Eugene and Springfield as well as transportation services to connect rural communities in Lane County. This year, our board passed a Climate Action Plan to reduce greenhouse gas emissions to address climate change and contribute to our regional, state, and local sustainability goals. We know that transportation fuels comprise the largest source of emissions, so any reductions to fleet emissions will have a significant positive impact. Fleet emissions represent 94% of emissions that LTD has control over. As part of our efforts, we plan to procure 25 electric buses in the next three years and are well on our way to accomplish that goal. This will significantly decrease our greenhouse gas emissions.

However, replacing diesel buses with cleaner, electric buses would be cost prohibitive without grant funding that LTD has received. LTD strongly supports any additional appropriations to these efforts to continue to provide financial support and incentives for transit providers. Additionally, we support any efforts to broaden opportunities for regulated entities for which vehicle replacement efforts remain cost prohibitive. Please consider approving amendments to establish a diesel emissions grant program to put $73 million towards this impactful and important initiative.

Tiffany Edwards, Lane Transit District

**Comment #15**
Will generator replacement be included? Is there language in the proposed rules to partner with tribal entities?

Lucita Valiere, U.S. Environmental Protection Agency

**Comment #16**
The most cost-effective projects per tons of NOx reduced are from large marine vessels, then large freight switching equipment such as rail car movers and locomotives. These operate in small concentrated areas often in disadvantaged communities, so by replacing an old diesel engine with a Tier 4 or all-electric option you can achieve actual and quantifiable emissions reductions.

Allison Wurtz, KEW Grant Services