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PERMANENT ADMINISTRATIVE ORDER

DEQ 7-2023

CHAPTER 340
DEPARTMENT OF ENVIRONMENTAL QUALITY

FILED

07/20/2023 1:31 PM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Diesel Emissions Identification Program 2023

EFFECTIVE DATE: 08/01/2023

AGENCY APPROVED DATE: 07/20/2023

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RULES:

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

ADOPT: 340-269-0010

RULE TITLE: Overview

NOTICE FILED DATE: 04/26/2023

RULE SUMMARY: New Overview rule for division 269.

RULE TEXT:

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

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

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

STATUTORY/OTHER AUTHORITY: ORS 468.020, ORS 468.035, 468A.813

STATUTES/OTHER IMPLEMENTED: ORS 468.035, 468A.813

ADOPT: 340-269-0030

RULE TITLE: Definitions

NOTICE FILED DATE: 04/26/2023

RULE SUMMARY: New Definitions rule for division 269.

RULE TEXT:

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

- (1) "Active participant" means a person who has voluntarily chosen to participate in the Diesel Emissions Identification Program, has been issued one or more ECLs under OAR 340-269-0130, and has not been deactivated under OAR 340-269-0150.
- (2) "Concrete Mixer Truck" means a truck with a GVWR greater than 26,000 lbs. that is designed to transport a concrete mixture from a central supply source to a construction site.
- (3) "Construction Equipment" or "Equipment" means equipment that is powered by a nonroad diesel engine and that is used primarily for construction work.
- (4) "Diesel Emissions Identification Program" or "Program" means the emission control labelling program described in this division.
- (5) "Diesel Engine" means a compression ignition engine.
- (6) "Diesel Oxidation Catalyst" or "DOC" means an emission control device that helps to reduce the emission of hydrocarbons, carbon monoxide and particulates by facilitating their break down into less harmful chemicals.
- (7) "Diesel Particulate Filter" or "DPF" means an emission control device that reduces particulate emissions by trapping exhaust particles, or soot, in a flow filter substrate.
- (8) "Dump Truck" means a truck with a GVWR greater than 26,000 lbs. that is designed to transport construction materials such as dirt, asphalt, rock or construction debris including a transfer truck, or a tractor trailer combination used exclusively to pull bottom dump, end dump or side dump trailers.
- (9) "Emission Control Label" or "ECL" means the label DEQ assigns to a particular piece of equipment or vehicle that provides information about the engine located inside of the equipment or vehicle.
- (10) "Emissions Profile" means a summary or indication of air pollutants coming from the exhaust of a diesel engine.
- (11) "Engine Identification Number" means the unique identifier located on a nonroad diesel engine as described in 40 C.F.R. § 1039.135(a) and that was described in the previously applicable 40 C.F.R. § 89.110(d).
- (12) "Engine Profile" means a summary or indication of certain key characteristics of a diesel engine and can contain an emissions profile.
- (13) "Engine Tier" means the applicable EPA classification of exhaust emission standards for engines as defined in 40 C.F.R. § 1039.801, and also includes engines that meet the definition of "Tier 0 Engine" in this rule.
- (14) "Equipment Registration Number" or "ERN" means the unique identifier assigned by DEQ to a particular piece of construction equipment or vehicle owned or operated by a voluntary participant of this program.
- (15) "Fleet Identification Number" means the unique identifier assigned by DEQ for a particular grouping of equipment and/or vehicles owned or operated by a voluntary participant of this program.
- (16) "Manufacturer's Engine Label" or "MEL" means the emission control information label placed directly on the engine by the manufacturer, as applicable and as described in 40 C.F.R. § 1039.135 (b) through (g) and that was described in the previously applicable 40 C.F.R. § 89.110.
- (17) "Nonroad Diesel Engine" means a compression ignition engine of 25 horsepower or more that is not designed primarily to propel a motor vehicle on public highways.
- (18) "Operator" means a person or entity that has legal possession of equipment or vehicles, as determined by DEQ, and uses the equipment or vehicles for construction activity.
- (19) "Public Highway" has the meaning given that term in ORS 825.005.
- (20) "Tier 0 Engine" means an engine not subject to the requirements in 40 C.F.R. Part 1039 and that was not subject to

previous requirements in 40 C.F.R. Part 89.

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

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

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

STATUTORY/OTHER AUTHORITY: ORS 468.020, ORS 468.035, 468A.813

STATUTES/OTHER IMPLEMENTED: ORS 468.035, 468A.813

ADOPT: 340-269-0060

RULE TITLE: Acronyms

NOTICE FILED DATE: 04/26/2023

RULE SUMMARY: New Acronyms rule for division 269.

RULE TEXT:

The following acronyms apply to this division:

- (1) "C.F.R." means Code of Federal Regulations and, notwithstanding OAR 340-200-0035 and except as otherwise identified, refers to the edition in effect on the date the EQC approves these rules.
- (2) "DEQ" means Oregon Department of Environmental Quality.
- (3) "DOC" means diesel oxidation catalyst.
- (4) "DPF" means diesel particulate filter.
- (5) "ECL" means emission control label.
- (6) "EPA" means the federal Environmental Protection Agency.
- (7) "ERN" means equipment registration number.
- (8) "GVWR" means gross vehicle weight rating.
- (9) "MEL" means manufacturer's engine label.
- (10) "ODOT" means Oregon Department of Transportation.
- (11) "ZEE" means zero-emission equipment.
- (12) "ZEV" means zero-emission vehicle.

STATUTORY/OTHER AUTHORITY: ORS 468.020, ORS 468A.813

STATUTES/OTHER IMPLEMENTED: ORS 468A.813

ADOPT: 340-269-0100

RULE TITLE: Voluntary Participation Requirements

NOTICE FILED DATE: 04/26/2023

RULE SUMMARY: New Voluntary Participation Requirements rule for division 269.

RULE TEXT:

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

STATUTORY/OTHER AUTHORITY: ORS 468.020, ORS 468.035, 468A.813

STATUTES/OTHER IMPLEMENTED: ORS 468.035, 468A.813

ADOPT: 340-269-0110

RULE TITLE: Registration

NOTICE FILED DATE: 04/26/2023

RULE SUMMARY: New Registration rule for division 269.

RULE TEXT:

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

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

(b) Providing detailed documentation of the emissions profile of each nonroad diesel engine to be registered with the program, in addition to detailed documentation for the engine profile for onroad concrete mixer trucks and dump trucks. Such documentation must include, without limitation, a photo of the manufacturer's engine label.

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

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

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

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

STATUTORY/OTHER AUTHORITY: ORS 468.020, ORS 468.035, 468A.813

STATUTES/OTHER IMPLEMENTED: ORS 468.035, 468A.813

ADOPT: 340-269-0120

RULE TITLE: Demonstration Approval

NOTICE FILED DATE: 04/26/2023

RULE SUMMARY: New Demonstration Approval rule for division 269.

RULE TEXT:

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

STATUTORY/OTHER AUTHORITY: ORS 468.020, ORS 468.035, 468A.813

STATUTES/OTHER IMPLEMENTED: ORS 468.035, 468A.813

ADOPT: 340-269-0130

RULE TITLE: Labeling

NOTICE FILED DATE: 04/26/2023

RULE SUMMARY: New Labeling rule for division 269.

RULE TEXT:

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

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

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

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

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

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

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

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

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

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

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

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

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

STATUTORY/OTHER AUTHORITY: ORS 468.020, ORS 468.035, 468A.813

STATUTES/OTHER IMPLEMENTED: ORS 468.035, 468A.813

ADOPT: 340-269-0140

RULE TITLE: Reporting

NOTICE FILED DATE: 04/26/2023

RULE SUMMARY: New Reporting rule for division 269.

RULE TEXT:

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

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

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

STATUTORY/OTHER AUTHORITY: ORS 468.020, ORS 468.035, 468A.813

STATUTES/OTHER IMPLEMENTED: ORS 468.035, 468A.813

ADOPT: 340-269-0150

RULE TITLE: Deactivation

NOTICE FILED DATE: 04/26/2023

RULE SUMMARY: New Deactivation rule for division 269.

RULE TEXT:

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

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

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

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

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

STATUTORY/OTHER AUTHORITY: ORS 468.020, ORS 468.035, 468A.813

STATUTES/OTHER IMPLEMENTED: ORS 468.035, 468A.813