

# Final Regulation Order

Effective November 30, 2018

## AIRBORNE TOXIC CONTROL MEASURE FOR DIESEL PARTICULATE MATTER FROM PORTABLE ENGINES RATED AT 50 HORSEPOWER AND GREATER

### 93116 Purpose.

The purpose of this airborne toxic control measure (ATCM) is to reduce diesel particulate matter (PM) emissions from portable diesel-fueled engines having a rated brake horsepower of 50 and greater ( $\geq 50$  bhp).

Authority cited: Sections 39600, 39601, 39650, 39658, 39659, 39666, 41752, 43013 and 43018 Health and Safety Code. Reference: Sections 39650, 39666, 41752 Health and Safety Code.

### § 93116.1 Applicability.

- (a) Except as provided below, all portable engines having a maximum rated horsepower of 50 bhp and greater and fueled with diesel are subject to this ATCM.
- (b) The following portable engines are not subject to this ATCM:
  - (1) Any engine used to propel mobile equipment or a motor vehicle of any kind;
  - (2) Any portable engine using an alternative fuel;
  - (3) Dual-fuel diesel pilot engines that use an alternative fuel or an alternative diesel fuel;
  - (4) Tactical support equipment;
  - (5) Portable diesel-fueled engines operated on either San Clemente or San Nicolas Island;
  - (6) Engines preempted from State regulation under 42 USC §7543(e)(1);
  - (7) Portable diesel-fueled engines used exclusively in agricultural operations, unless owned by a rental business as defined in 13 Cal. Code Regs., section 2452(kk).
  - (8) Engines used exclusively on two-engine cranes as defined in title 13, Cal. Code Regs., section 2449(c) which must meet all applicable requirements in title 13, Cal. Code Regs., commencing with section 2449;

- (9) Engines used exclusively on street sweepers that are not subject to title 13, Cal. Code Regs., section 2022, which must meet all applicable requirements in title 13, Cal. Code Regs., commencing with section 2025;
- (10) Engines used exclusively on two-engine water well drilling rigs as defined in title 13, Cal. Code Regs., section 2449(c), which must meet all applicable requirements in title 13, Cal. Code Regs., commencing with section 2449; and
- (11) Engines used exclusively on dedicated snow removal vehicles as defined in title 13, Cal. Code Regs., section 2449(c);
- (12) Engines use exclusively on two-engine vehicles as defined in title 13 Cal. Code Regs., section 2449(c) and the vehicle meets the criteria listed in title 13 Cal. Code Regs., section 2449(b)(2)(C);
- (13) Engines use exclusively on harbor craft as defined in title 17 Cal. Code Regs., section 93118.5(d) which must meet all applicable requirements in title 17 Cal. Code Regs., commencing with section 93118.5; and
- (14) Engines used exclusively to alleviate the threat to public health and safety during an emergency event.
- (15) Engines approved to operate in Hazardous Locations per title 29 CFR 1910.307 or 1926.407 and that meet Tier 3 emission standards.

NOTE: Authority cited: Sections 39600, 39601, 39650, 39658, 39659, 39666, 41752, 41754, 43013 and 43018, Health and Safety Code. Reference: Sections 39650, 39666, 41752, 41754, Health and Safety Code.

**§ 93116.2 Definitions.**

- (a) For the purposes of this ATCM, the following definitions apply. Any term used in this subchapter that is not defined in this section has the same meaning as those in title 13 section 2452.
  - (1) “*Air Pollution Control Officer or APCO*” means the air pollution control officer of a district, or his/her designee.
  - (2) “*Agricultural Operations*” means the growing and harvesting of crops or the raising of fowl or animals for the primary purpose of making a profit, providing a livelihood, or conducting agricultural research or instruction by an educational institution. Agricultural operations do not include forest operations or activities involving the processing or distribution of crops or fowl.

- (3) “*Alternative Fuel*” means gasoline, natural gas, propane, liquid petroleum gas (LPG), hydrogen, ethanol, or methanol.
- (4) “*Alternative Diesel Fuel*” means any fuel used in a compression ignition (CI) engine that is not, commonly or commercially known, sold or represented by the supplier as diesel fuel No. 1-D or No. 2-D, pursuant to the specifications in ASTM Standard Specification for Diesel Fuel Oils D975-81, or an alternative fuel, and does not require engine or fuel system modifications for the engine to operate, although minor modifications (e.g., recalibration of the engine fuel control) may enhance performance. An emission control strategy using a fuel additive will be treated as an alternative diesel fuel based strategy unless:
  - (A) the additive is supplied to the engine fuel by an on-board dosing mechanism, or
  - (B) the additive is directly mixed into the base fuel inside the fuel tank of the engine, or
  - (C) the additive and base fuel are not mixed until engine fueling commences, and no more additive plus base fuel combination is mixed than required for a single fueling of a single engine.
- (5) “*CARB Diesel Fuel*” means any diesel fuel that is commonly or commercially known, sold, or represented by the supplier as diesel fuel No. 1-D or No. 2-D, pursuant to the specification for Diesel Fuel Oils D975-81, and that meets the specifications defined in title 13 Cal. Code Regs., sections 2281, 2282, and 2284.
- (6) “*Certified Engine*” refers to an engine meeting an applicable engine emission standard as set forth in 40 CFR Part 89, Part 86, Part 1039, or set forth in the equivalent categories in title 13, Cal. Code Regs.
- (7) “*Common ownership or control*” means being owned or managed day to day by the same person, corporation, partnership, or association. Equipment managed by the same directors, officers, or managers, or by corporations controlled by the same majority stockholders are considered to be under common ownership or control even if their title is held by different business entities.
- (8) “*Diesel Fuel*” means any fuel that is commonly or commercially known, sold, or represented by the supplier as diesel fuel, including any mixture of primarily liquid hydrocarbons—organic compounds consisting exclusively of the elements carbon and hydrogen—that is sold or represented as suitable for use in an engine.
- (9) “*Diesel Particulate Matter (PM)*” means the particles found in the exhaust of diesel-fueled engines which may agglomerate and adsorb other species to form structures of complex physical and chemical properties.

- (10) “*District*” means a District as defined in Health and Safety Code section 39025.
- (11) “*Dual-fuel Diesel Pilot Engine*” means a dual-fueled engine that uses diesel fuel as a pilot ignition source at an annual average ratio of less than 5 parts diesel fuel to 100 parts total fuel on an energy equivalent basis.
- (12) “*Emergency*” means providing electrical power or mechanical work during any of the following events and subject to the following conditions:
- (A) the failure or loss of all or part of normal electrical power service or normal natural gas supply to the facility:
    - 1. which is caused by any reason other than the enforcement of a contractual obligation the owner or operator has with a third party or any other party; and
    - 2. which is demonstrated by the owner or operator to the district APCO’s satisfaction to have been beyond the reasonable control of the owner or operator;
  - (B) the failure of a facility’s internal power distribution system:
    - 1. which is caused by any reason other than the enforcement of a contractual obligation the owner or operator has with a third party or any other party; and
    - 2. which is demonstrated by the owner or operator to the district APCO’s satisfaction to have been beyond the reasonable control of the owner or operator;
  - (C) the pumping of water or sewage to prevent or mitigate a flood or sewage overflow;
  - (D) the pumping of water for fire suppression or protection;
  - (E) the pumping of water to maintain pressure in the water distribution system for the following reasons:
    - 1. pipe break; or
    - 2. high demand on water supply system due to high use of water for fire suppression;
  - (F) the breakdown of electric-powered pumping equipment at sewage treatment facilities or water delivery facilities;
  - (G) the training of personnel in the use of portable equipment for emergency purposes.

- (13) “*Emergency Event*” refers to a situation arising from a sudden and reasonably unforeseen natural disaster such as an earthquake, flood, fire, or other unforeseen event that requires the use of portable engines to help alleviate the threat to public health and safety.
- (14) “*Engine*” means any piston-driven internal combustion engine.
- (15) “*Emergency-use Engines*” refer to engines that have been designated by the responsible official on the permit or registration to be used only during an emergency or emergency event, and includes appropriate maintenance and testing.
- (16) “*Executive Officer*” means the Executive Officer of the California Air Resources Board (CARB) or his/her designee.
- (17) “*Fleet*” refers to a portable engine or group of portable engines owned by a person, business, or government agency that are operated within California and meet the applicability listed in 17 Cal. Code Regs., section 93116.1. For engines owned by the U.S. Department of Defense or the U.S. military services, the portable engines at each facility or installation constitute separate fleets.
- (A) For the purposes of this ATCM, a large fleet has a total maximum horsepower over 750 bhp for all portable engines under common ownership and control of a fleet on June 30, 2019.
- (B) For the purposes of this ATCM, a small fleet has a total maximum horsepower of 750 bhp or less for all portable engines under common ownership and control of a fleet on June 30, 2019.
- (18) “*Flexibility engine*” means an engine certified to an emission standard according to the Transition Program for Equipment Manufacturers listed in 40 CFR part 89.102, 40 CFR part 1039.625, or Title 13 Cal. Code Regs., section 2423(d), or an engine that was included in the Averaging, Banking and Trading program and each of the certification emission levels listed on the Executive Order meet the Tier 4 Final emission standards.
- (19) “*Forest Operations*” means either of the following:
- (A) Forest fire prevention activities performed by public agencies, including but not limited to construction and maintenance of roads, fuel breaks, firebreaks, and fire hazard abatement; or
- (B) Cutting or removal or both of timber, other solid wood products, including Christmas trees, and biomass from forestlands for commercial purposes, together with all the work incidental thereto, including but not limited to, construction and maintenance of

roads, fuel breaks, firebreaks, stream crossings, landings, skid trails, beds for falling trees, fire hazard abatement, and site preparation that involves disturbance of soil or burning of vegetation following forest removal activities. Forest operations include the cutting or removal of trees, tops, limbs and or brush which is processed into lumber and other wood products, and or for landscaping materials, or biomass for electrical power generation. Forest operations do not include conversion of forestlands to other land uses such as residential or commercial developments.

- (20) “*Fuel Additive*” means any substance designed to be added to fuel or fuel systems or other engine-related systems such that it is present in-cylinder during combustion and has any of the following effects: decreased emissions, improved fuel economy, increased performance of the engine; or assists diesel emission control strategies in decreasing emissions, or improving fuel economy or increasing performance of the engine. Fuel additives used in conjunction with diesel fuel may be treated as an alternative diesel fuel.
- (21) “*Level-3 Verified Technology*” means a technology that has satisfied the requirements of the “Verification Procedure for In-Use Strategies to Control Emissions from Diesel Engines” in title 13, Cal. Code Regs., commencing with section 2700, and has demonstrated a reduction in diesel particulate matter of 85 percent or greater.
- (22) “*Location*” means any single site at a building, structure, facility, or installation.
- (23) “*Low-Use Engines*” refers to portable diesel-fueled engines that have been designated by the responsible official on the permit or registration to operate 200 hours or less in a calendar year.
- (24) “*Maximum Rated Horsepower (brake horsepower (bhp))*” is the maximum brake horsepower rating specified by the portable engine manufacturer and listed on the nameplate or emission control label of the portable engine.
- (25) “*Nonroad Engine*” means:
  - (A) Except as discussed in paragraph (2) of this definition, a nonroad engine is any engine:
    - 1. in or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers); or

2. in or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers); or
3. that, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.

(B) An engine is not a nonroad engine if:

1. the engine is used to propel a motor vehicle or a vehicle used solely for competition, or is subject to standards promulgated under section 202 of the federal Clean Air Act; or
2. the engine is regulated by a federal New Source Performance Standard promulgated under section 111 of the federal Clean Air Act; or
3. the engine otherwise included in paragraph (1)(C) of this definition remains or will remain at a location for more than 12 consecutive months or a shorter period of time for an engine located at a seasonal source. Any engine(s) that replace(s) an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a stationary source that remains in a single location on a permanent basis (at least two years) and that operates at that single location approximately three (or more) months each year.

(26) “*Off-Road Engine*” means the same as nonroad engine.

(27) “*Outer Continental Shelf (OCS)*” shall have the meaning provided by section 2 of the Outer Continental Shelf Lands Act (43 USC Section 1331 et seq.).

(28) “*Permit*” refers to a certificate issued by the Air Pollution Control Officer acknowledging expected compliance with the applicable requirements of the district’s rules and regulations.

(29) “*Portable*” means designed and capable of being carried or moved from one location to another. Indicia of portability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.

For the purposes of this regulation, dredge engines on a boat or barge are considered portable. The engine is not portable if:

- (A) the engine or its replacement is attached to a foundation, or if not so attached, will reside at the same location for more than 12 consecutive months. The period during which the engine is maintained at a storage facility shall be excluded from the residency time determination. Any engine, such as a back-up or stand-by engine, that replace engine(s) at a location, and is intended to perform the same or similar function as the engine(s) being replaced, will be included in calculating the consecutive time period. In that case, the cumulative time of all engine(s), including the time between the removal of the original engine(s) and installation of the replacement engine(s), will be counted toward the consecutive time period; or
  - (B) the engine remains or will reside at a location for less than 12 consecutive months if the engine is located at a seasonal source and operates during the full annual operating period of the seasonal source, where a seasonal source is a stationary source that remains in a single location on a permanent basis (at least two years) and that operates at that single location at least three months each year; or
  - (C) the engine is moved from one location to another in an attempt to circumvent the portable residence time requirements.
- (30) “*Project*” means the use of one or more registered or permitted portable engines or equipment units operated under the same or common ownership or control to perform a single activity.
- (31) “*Registration*” refers to either:
- (A) a certificate issued by the Executive Officer acknowledging expected compliance with the applicable requirements of the Statewide Portable Equipment Registration Program; or
  - (B) a certificate issued by the Air Pollution Control Officer acknowledging expected compliance with the applicable requirements of the district's Portable Equipment Registration Program.
- (32) “*Replacement Engine*” means an engine built according to the requirements of 40 CFR part 1068.240 or Title 13 Cal. Code Regs., section 2423(j), and the engine is equipped with a label containing information that indicates the Tier level of the engine.
- (33) “*Responsible Official*” refers to an individual employed by the company or public agency with the authority to certify that the portable engines in the fleet comply with applicable requirements of this ATCM. A fleet may only have one Responsible Official.



(34) “*Stationary Source*” means any building, structure, facility or installation that emits any air contaminant directly or as a fugitive emission. Building, structure, facility, or installation includes all pollutant emitting activities which:

- (A) are under the same ownership or operation, or which are owned or operated by entities which are under common control; and
- (B) belong to the same industrial grouping either by virtue of falling within the same two-digit standard industrial classification code or by virtue of being part of a common industrial process, manufacturing process, or connected process involving a common raw material; and
- (C) are located on one or more contiguous or adjacent properties.

[Note: For the purposes of this regulation a stationary source and nonroad engine are mutually exclusive.]

(35) “*Stock Engine*” means a certified diesel-fueled engine that has never been placed in service and is part of a supply of engines offered for sale, rent, or lease by a person or company who offers for sale, rent, or lease engines and related equipment for profit.

(36) “*Storage*” means a warehouse, enclosed yard, or other area established for the primary purpose of maintaining portable engines when not in operation.

(37) “*Street Sweeper*” means the same as “Dual-engine Street Sweeper” defined in title 13, Cal. Code Regs., section 2022(b)(2).

(38) “*Tactical Support Equipment (TSE)*” means equipment using a portable engine, including turbines, that meets military specifications, owned by the U.S. Department of Defense and/or the U.S. military services or its allies, and used in combat, combat support, combat service support, tactical or relief operations, or training for such operations. Examples include, but are not limited to, engines associated with portable generators, aircraft start carts, heaters and lighting carts.

(39) “*this ATCM*” means the Airborne Toxic Control Measure for Diesel Particulate Matter from Portable Engines, California Code of Regulations, title 17, sections 93116 - 93116.5.

(40) “*Tier 1 Engine*” means an engine subject to the Tier 1 new engine emission standards in title 13, Cal. Code Regs., section 2423(b)(1)(A) and/or Title 40, CFR, Part 89.112(a). This also includes engines certified under the averaging, banking, and trading program with respect to the Tier 1 Family Emission Limits (FEL) listed in title 13, Cal. Code Regs., section 2423(b)(2)(A) and/or Title 40, CFR, Part 89.112(d).

- (41) “*Tier 2 Engine*” means an engine subject to the Tier 2 new engine emission standards in title 13, Cal. Code Regs., section 2423(b)(1)(A) and/or Title 40, CFR, Part 89.112(a). This also includes engines certified under the averaging, banking, and trading program with respect to the Tier 1 Family Emission Limits (FEL) listed in title 13, Cal. Code Regs., section 2423(b)(2)(A) and/or Title 40, CFR, Part 89.112(d).
- (42) “*Tier 3 Engine*” means an engine subject to the Tier 3 new engine emission standards in title 13, Cal. Code Regs., section 2423(b)(1)(A) and/or Title 40, CFR, Part 89.112(a). This also includes engines certified under the averaging, banking, and trading program with respect to the Tier 1 Family Emission Limits (FEL) listed in title 13, Cal. Code Regs., section 2423(b)(2)(A) and/or Title 40, CFR, Part 89.112(d).
- (43) “*Tier 4 Interim Engine*” means an engine subject to the interim Tier 4 emission standards (also known as transitional) in title 13, Cal. Code Regs., section 2423(b)(1)(B) and/or Title 40, CFR, Part 1039.101. This also includes engines certified under the averaging, banking, and trading program with respect to the Tier 4 FEL listed in title 13, Cal. Code Regs., section 2423(b)(2)(B) and/or Title 40, CFR, Parts 1039.102 and 1039.104(g).
- (44) “*Tier 4 Final Engine*” means an engine subject to the final after-treatment based Tier 4 emission standards in title 13, Cal. Code Regs., section 2423(b)(1)(B) and/or Title 40, CFR, Part 1039.101. This also includes engines certified under the averaging, banking, and trading program with respect to the Tier 4 FEL listed in title 13, Cal. Code Regs., section 2423(b)(2)(B) and/or Title 40, CFR, Part 1039.101.
- (45) “*Verified Emission Control Strategy*” refers to an emission control strategy, designed primarily for the reduction of diesel PM emissions which has been verified pursuant to the “Verification Procedure for In-Use Strategies to Control Emissions from Diesel Engines” in title 13, Cal. Code Regs., commencing with section 2700, and incorporated by reference.
- (46) “*U.S. EPA*” refers to the United States Environmental Protection Agency.

NOTE: Authority cited: Sections 39600, 39601, 39650, 39658, 39659, 39666, 41752, 41754, 43013 and 43018, Health and Safety Code. Reference: Sections 39650, 39666, 41752, 41754, Health and Safety Code.

### § 93116.3 Requirements.

(a) Diesel-fueled portable engines must only use one of the following fuels:

- (1) CARB diesel fuel; or
- (2) alternative diesel fuel that has been verified through the Verification Procedure for In-Use Strategies to Control Emissions from Diesel Engines; or
- (3) CARB diesel fuel utilizing fuel additives that have been verified through the Verification Procedure for In-Use Strategies to Control Emissions from Diesel Engines.

[Note that credit for diesel PM reductions for diesel fuel or CARB diesel fuel blends that use an alternative diesel fuel such as biodiesel, Fischer-Tropsch fuels, or emulsions of water in diesel fuel is available only for fuel blends that have been verified through the Verification Procedure for In-Use Strategies to Control Emissions from Diesel Engines. The credit granted is based upon the verified level approved by the Executive Officer within the Executive Order for the fuel blend.]

(b) Diesel PM Standards

- (1) Starting January 1, 2010, all portable diesel-fueled engines must be certified to meet a federal or California standard for newly manufactured engines pursuant to 40 CFR Part 89, Part 86, or the equivalent categories in Title 13 of the California Code of Regulations.
- (2) Portable diesel-fueled engines that have not been permitted or registered prior to November 30, 2018, shall not be permitted or registered unless they are certified to the most stringent standard contained in the federal or California emission standards for nonroad engines, with the following exceptions:
  - (A) Engines meeting the definition of portable that have never been permitted or registered may be permitted or registered by a district or registered in the Statewide Portable Equipment Registration Program if they are certified to the on-road emission standards pursuant to 40 CFR Part 86, or the equivalent category in title 13, Cal. Code Regs.;
  - (B) Flexibility engines rated between 50 and 750 bhp that are manufactured to meet Tier 3 or Tier 4 interim emission standards
  - (C) Flexibility engines rated over 750 bhp that are manufactured to meet Tier 2 or Tier 4 interim emission standards;

- (D) Certified engines that lost permit exemption due to a change in district rules; or
- (E) A district may issue a permit or registration for an engine not meeting the most stringent of the federal or California emission standard for nonroad engines if:
1. The engine is certified to meet an emission standard set pursuant to 40 CFR Part 89, Part 1039 or set forth in the equivalent categories of title 13 , Cal. Code Regs.; and
  2. For Tier 1, Tier 2, and Tier 3 engines only, the engine shall have operated in California at any time prior to January 1, 2017. The responsible official shall provide documentation to prove the engine’s operation to the satisfaction of the Air Pollution Control Officer.
- (3) A fleet shall not newly designate an engine to be low-use or emergency-use after the dates listed in the schedule below. The schedule applies to flexibility engines according to the tier level to which the engine was built.

Engine Certification	Engines rated 50 to 750 bhp		Engines rated >750 bhp
	Large Fleet	Small Fleet	
Tier 1	7/1/2019	7/1/2019	7/1/2021
Tier 2 built prior to 1/1/2009	7/1/2021	7/1/2022	7/1/2024
Tier 2 built on or after 1/1/2009	NA	NA	7/1/2026

(c) Fleet Requirements

(1) Except as provided in section 93116.3(c)(2), engines may not operate in California on or after the dates listed in the following schedule:

(A)

Engine Certification	Engines rated 50 to 750 bhp		Engines rated >750 bhp
	Large Fleet	Small Fleet	
Tier 1	1/1/2020	1/1/2020	1/1/2022
Tier 2 built prior to 1/1/2009	1/1/2022	1/1/2023	1/1/2025
Tier 2 built on or after 1/1/2009	NA	NA	1/1/2027
Tier 3 built prior to 1/1/2009	1/1/2025	1/1/2027	NA
Tier 3 built on or after 1/1/2009	1/1/2027	1/1/2029	NA
Tier 1, 2, and 3 flexibility engines	December 31 of the year 17 years after the date of manufacture. This provision shall not apply to any engine operation before the effective date of this regulation.		

(B) Fleets complying with the schedule listed above must include all portable diesel-fueled engines operated in California, including engines registered with the Statewide Portable Equipment Registration Program or permitted by or registered with a district.

(C) For portable engines that are certified to the emission standards in 40 CFR part 86 or the equivalent categories in title 13, Cal. Code Regs., engines built to model year 2006 standards or older must comply with the schedule listed above for Tier 3 engines.

(2) For large fleets that elect not to comply with section 93116.3(c)(1), then the fleet must comply with the following weighted PM emission fleet averages expressed as grams per brake horsepower-hour (g/bhp-hr) by the listed compliance dates:

<i>Compliance Date</i>	<i>Fleet PM Standard (g/bhp-hr)</i>
1/1/2020	0.10
1/1/2023	0.06
1/1/2027	0.03

- (A) Large fleets shall only have the option to comply with the PM emission fleet average requirements of section 93116.3(c)(2) if the following conditions are met:
    - 1. All portable engines in the fleet, including low-use engines and emergency-use engines, must be registered in the Statewide Portable Equipment Registration Program by June 30, 2019;
    - 2. All portable engines added to the fleet on or after June 30, 2019 must be registered with the Statewide Portable Equipment Registration Program; and
    - 3. After June 30, 2019, if any large fleet is found to have unpermitted or unregistered engines rated at 50 bhp or greater, then the fleet must comply with the requirements of section 93116.3(c)(1) immediately upon discovery of such engines.
  
  - (B) In order to comply with fleet average option in section 93116.3(c)(2), the responsible official for a large fleet must submit a written request to the Executive Officer no later than June 30, 2019. At a minimum, the written request will include a listing of each engine in the fleet including registration number, serial number, maximum rated bhp, and engine family name.
  
  - (C) Portable alternative-fueled engines may be included in a fleet for the purposes of complying with the PM emission fleet average if the engine satisfies the requirements in section 93116.3(d)(2)(B).
- (3) The following portable diesel-fueled engines are excluded from the requirements in sections 93116.3(c)(1) and (c)(2):
    - (A) portable diesel-fueled engines operated exclusively outside of California or operated only within the OCS.
    - (B) portable diesel-fueled emergency-use engines.
    - (C) portable diesel-fueled low-use engines.
  
  - (4) Portable diesel-fueled engines equipped with a properly functioning level-3 verified technology are excluded from the requirements in section 93116.3(c)(1).
  
  - (5) Portable diesel-fueled low-use engines that subsequently exceed the allowed hours of operation in a calendar year, or portable diesel-fueled emergency-use engines that subsequently are used in non-emergency applications, become immediately subject to the requirements of section 93116.3(c)(1) or (c)(2) in the year such exceedence or use occurs. The responsible official must submit a request to convert the engine to regular use, subject to the limitations of section 93116.3(c)(6). For low-use engines, the hours of operation used for an

emergency event shall not be counted toward the allowed hours of operation.

- (6) The responsible official of a fleet may not submit a request to convert a low-use engine or an emergency-use engine to regular use, except for the following:
  - (A) Tier 1 and Tier 2 engines that become subject to the requirements of section 93116.3(c)(5); and
  - (B) Tier 3 engines.
- (7) Beginning on January 1, 2020, the weighted average PM emission rate for a large fleet electing to comply with section 93116.3(c)(2) must not exceed the fleet standard that is in effect, even during the years between and after the fleet standard effective dates. Changes in the fleet, including portable engine additions and deletions, must not result in noncompliance with the standard.
- (8) Any fleet that demonstrates compliance with any of the applicable weighted PM emission fleet averages listed below shall receive benefits upon approval from the Executive Officer. The responsible official must submit a statement of compliance per section 93116.4(d)(2) to the Executive Officer no later than 60 days after November 30, 2018, to request the benefits listed below:

(A)

<i>Engines &lt;175 hp (g/bhp-hr)</i>	<i>Engines 175 to 750 hp (g/bhp-hr)</i>	<i>Engines &gt;750 hp (g/bhp-hr)</i>
0.18	0.08	0.08

- (B) Upon approval from the Executive Officer, one of the following methods may be used to modify compliance with the fleet requirements as specified below:
  1. a fleet may delay the requirements in section 93116.3(c)(1) by two years for the size category of engines for which the fleet average was met; or
  2. a fleet may double count Tier 4 interim engines and Tier 4 final engines when demonstrating compliance with the first two weighted PM emission fleet averages in section 93116.3(c)(2).
- (9) Upon approval from the Executive Officer, a fleet may delay the requirements in section 93116.3(c)(1), if the following conditions are met:
  - (A) For each Tier 1 engine in the fleet removed from service in California after November 30, 2018, but prior to January 1, 2019,

one Tier 3 engine with the same or smaller maximum rated bhp may be operated for one additional year;

- (B) For each Tier 2 engine in the fleet removed from service in California after November 30, 2018, but prior to January 1, 2021, one Tier 3 engine with the same or smaller maximum rated bhp may be operated for one additional year;
- (C) The responsible official must submit a written request specifying which Tier 3 engine will receive the delay at the time the Tier 1 or Tier 2 engine is removed from service; and
- (D) If the Tier 3 engine that received the delay is removed from the fleet prior to the dates specified in subdivision (c)(1), then the responsible official may submit a written request to transfer the delay to a different Tier 3 engine in the fleet.

(d) Fleet Average Calculations

(1) General Provisions

- (A) The average PM emission factor for the fleet is determined by the following formula:

$$\frac{\sum \text{Summation for each portable engine in the fleet (bhp x emission factor)}}{\sum \text{Summation for each portable engine in the fleet (bhp)}}$$

where:

bhp = maximum rated horsepower.

emission factor = diesel PM emission rate, as determined below:

- (B) The following diesel PM emission rates shall be used with the above formula to determine the weighted average fleet emission rate:
  1. for portable diesel-fueled engines certified to a nonroad engine standard, the results of emission measurements submitted to either the U.S. EPA or CARB for the purposes of satisfying the appropriate emission standard; or
  2. for Tier 1 engines less than 175 bhp for which no particulate matter emission standard exists, an emission rate of 0.87 g/bhp-hr shall be used for engines less than 120 bhp and 0.46 shall be used for engines 120 to 174 bhp; or
  3. for replacement engines and flexibility engines that do not have a family name indicated on the engine, the emission standard of the tier level to which the engine was built shall be used; or



4. results from emission measurements from a verified emission control strategy may be used in conjunction with engine emission information.
- (2) The following incentives may be used to revise the fleet average, as outlined below:
- (A) Where a fleet has used or leased electrification in lieu of operating a portable diesel-fueled engine, the fleet may modify the fleet calculation as specified below. To receive credit for electrification in the fleet calculation, the recordkeeping and reporting requirements in section 93116.4(b)(3) shall be satisfied.
1. For equipment that uses grid power for more than 200 hours in lieu of operating a portable diesel-fueled engine for a given project, the time period grid power is used may be used to reduce each affected engine's emission factor. The emission factor for each affected portable engine will be reduced proportionally by the percentage of time the equipment uses grid power.
  2. Where a fleet has chosen to replace an existing portable engine with electrification, the fleet may include the replaced engine in the fleet calculation with an emission factor of zero.
  3. Where a fleet has chosen to install electrification in lieu of adding a diesel powered engine to the fleet, a fleet may include that engine in the fleet calculation with an emission factor of zero.
- (B) Alternative-fueled portable engines
1. Alternative-fueled portable engines operating 100 or more hours may be included toward determining compliance with the applicable fleet emission standards. A diesel PM emission rate of zero shall be used in the fleet calculations for these engines.
  2. Alternative-fueled portable engines operating 100 or more hours per calendar year and added to a fleet prior to January 1, 2009, may be counted twice in the company's fleet average determination toward compliance with the 2020 and 2023 fleet emission standards. The alternative-fueled engine must be certified to meet a federal or California standard for newly manufactured nonroad engines pursuant to 40 CFR Part 89 or title 13, Cal. Code Regs.
- (C) Tier 4 interim engines and Tier 4 final engines rated over 750 bhp that were permitted or registered prior to January 1, 2017, may be counted twice in the fleet average determination toward compliance with the 2020 and 2023 fleet emission standards.

(e) Prohibition of Sale

As of November 30, 2018, no person shall sell or offer for sale to an end user in California a portable diesel-fueled engine under the circumstances listed below. The sale of engines for resale outside of California is not prohibited.

- (1) any engine that is not a certified engine; or
- (2) certified engines shall not be sold after the dates listed in the following schedule:

Engine Certification	Engines rated 50 to 750 bhp	Engines rated >750 bhp
Tier 1	1/1/2020	1/1/2022
Tier 2 built prior to 1/1/2009	1/1/2023	1/1/2025
Tier 2 built on or after 1/1/2009	NA	1/1/2027
Tier 3 built prior to 1/1/2009	1/1/2027	NA
Tier 3 built on or after 1/1/2009	1/1/2029	NA
Tier 1, 2, and 3 flexibility engines	December 31 of the year 17 years after the date of manufacture. This provision shall not apply to any sale of an engine before the effective date of this regulation.	

(f) Disclosure of Applicability

Any person selling a certified engine subject to this regulation in California must provide the following disclosure in writing to the buyer as part of the sales transaction: "When operated in California, any portable diesel engine may be subject to the California Air Resources Board Airborne Toxic Control Measure For Diesel Particulate Matter From Portable Engines Rated At 50 Horsepower And Greater. It therefore could be subject to retrofit or accelerated turnover requirements to reduce emissions of air pollutants. For more information, please visit the California Air Resources Board website at <http://www.arb.ca.gov/portable/portable.htm>."

Authority cited: Sections 39600, 39601, 39650, 39658, 39659, 39666, 41752, 41754, 43013 and 43018 Health and Safety Code. Reference: Sections 39650, 39666, 41752, 41754, Health and Safety Code.

### **§ 93116.3.1 Compliance Flexibility for Diesel PM Standards.**

If the Executive Officer finds, based on verifiable information from the engine manufacturer, distributor, or dealer, that current model year engines meeting the current emission standards are not available or not available in sufficient numbers or in a sufficient range of makes, models, and horsepower ratings, then the Executive Officer may allow the sale, purchase, or installation of a new stock engine meeting the emission standards from the previous model year to meet the emission standards in section 93116.3(b).

Authority cited: Sections 39600, 39601, 39650, 39658, 39659, 39666, 41752, 43013 and 43018 Health and Safety Code. Reference: Sections 39650, 39666, 41752, Health and Safety Code.

### **§ 93116.4 Fleet Recordkeeping and Reporting Requirements.**

- (a) The owner or operator of a fleet is not subject to the requirements of this section if each portable diesel-fueled engine in the fleet satisfies any one of the following requirements:
  - (1) the portable diesel-fueled engine is certified to Tier 4 interim or Tier 4 final emission standards for newly manufactured nonroad engines; or
  - (2) the portable diesel-fueled engine is equipped with a properly functioning level-3 verified technology.
- (b) The Responsible Official of a fleet must:
  - (1) Keep and maintain records for:
    - (A) alternative-fueled portable engines used as part of a company's fleet average, except as provided in section 93116.4(c); and
    - (B) portable diesel-fueled engines affected by the use of electrification; and
    - (C) portable diesel-fueled low-use engines; and
    - (D) portable diesel-fueled emergency-use engines.
  - (2) The Responsible Official, for all portable engines subject to section 93116.4(b)(1), must:
    - (A) install or cause to be installed and properly maintained on each portable engine subject to recordkeeping a non-resettable hour-meter; and

- (B) maintain on a calendar year basis a record of the total hours of operation for each portable engine. If the portable engine is used out-of-state, then the records may account for operation within California only, excluding operation within the OCS; and
  - (C) maintain on a calendar year basis a record of the types of operations for emergency-use engines. The records must include the specific nature of the emergency or emergency event and the dates the emergency or emergency event occurred; and
  - (D) maintain all required records at a central place of business for five years. The records must clearly identify each portable engine subject to the recordkeeping requirement as well as the annual hours of operation. These records are to be made available, upon request for inspection, to local air pollution control district or CARB personnel. The requested records must be provided to the appropriate personnel within ten business days of the request.
- (3) The Responsible Official of a fleet electing to use electrification in determining the fleet average must:
- (A) notify the Executive Officer identifying the dates, location, duration of the project, and a description of the project that will rely on electrification instead of using portable diesel-fueled engines as specified in section 93116.3(d)(2)(A)1. The notification must be provided prior to the start of the project;
  - (B) identify each portable diesel-fueled engine affected by the use of electrification as specified in section 93116.3(d)(2)(A)1., including: make, model, serial number, year of manufacture for each engine, emission factor (g/bhp-hr) and district permit or State/district registration number;
  - (C) must clearly identify the electrification activity as specified in section 93116.3(d)(2)(A)1., including indicating the amount of electricity used and the time period for the project;
  - (D) must retain copies of contracts or other documentation, with the project proponent and/or applicable utility, supporting the use of grid power as specified in section 93116.3(d)(2)(A)1.;
  - (E) For engines replaced by electrification as specified in section 93116.3(d)(2)(A)2., provide the registration number of the engine; and

- (F) For electrification in lieu of installing a diesel engine as specified in section 93116.3(d)(2)(A)3., provide the manufacturer, model, and brake horsepower rating of the engine that was not installed.
- (c) Effective January 1, 2008, for alternative-fueled engines added to a fleet prior to January 1, 2009, the Responsible Official must:
- (1) install or cause to be installed and properly maintained on each portable engine subject to recordkeeping a non-resettable hour-meter; and
  - (2) maintain on a calendar year basis a record of the total hours of operation for each portable engine. If the portable engine is used out-of-state, then the records may account for operation within California only, excluding operation within the OCS; and
  - (3) maintain all required records at a central place of business for five years. The records must clearly identify each portable engine subject to the recordkeeping requirement as well as the annual hours of operation. These records are to be made available, upon request for inspection, to local air pollution control district or CARB personnel. The requested records must be provided to the appropriate personnel within ten business days of the request.
- (d) The Responsible Official of the fleet must provide the following reports to the Executive Officer:
- (1) For low-use engines in the fleet, the responsible official must submit a report by March 1 of each calendar year indicating the following:
    - (A) The permit or registration number of each low-use engine; and
    - (B) The hour meter readings taken at the beginning and end of the previous calendar year for each low-use engine.
  - (2) For large fleets subject to the requirements of section 93116.3(c)(2), a statement of compliance signed by the Responsible Official that the fleet standards are being achieved and a summary that identifies each portable engine in the fleet and the associated emission rate (g/bhp-hr). Portable engines included in the fleet are those that are part of the fleet at the time the fleet standard became effective. The engine identification must include, at a minimum, registration number, bhp rating, engine family name, serial number, and year of manufacture for each engine. Alternative-fueled engines must be identified by fuel

type. The statements of compliance are due to the Executive Officer at the following times:

- (A) Upon application to add an engine to the fleet for any Tier 1 engine, Tier 2 engine, Tier 3 engine, including flexibility engines built to those standards.
  - (B) Upon a request to remove a Tier 4 interim engine or a Tier 4 final engine from a fleet, except for engine dealers and rental businesses.
  - (C) March 1, 2020, for the fleet standards that become effective January 1, 2020; and
  - (D) March 1, 2023, for the fleet standards that become effective January 1, 2023; and
  - (E) March 1, 2027 for the fleet standards that become effective January 1, 2027.
- (3) The Responsible Official must identify to the Executive Officer, as part of each compliance report required by section 93116.4(d)(2), the specific portable diesel-fueled engines, if any, used exclusively in emergency applications. The list must include the registration number for each portable diesel-fueled engine.
- (4) The Responsible Official must identify to the Executive Officer, as part of each compliance report required by section 93116.4(d)(2), the specific portable diesel-fueled engines, if any, excluded from the fleet because the portable diesel-fueled engine operated exclusively outside of California or operated only within the OCS. The list must include for each portable diesel-fueled engine: the serial number, year of manufacture, and district permit or registration number for each engine.
- (5) If compliance with the fleet average includes the use of electrification, the Responsible Official must provide documentation supporting the credit claimed for electrification.
- (6) As part of each compliance report required by section 93116.4(d)(2), the Responsible Official must, if applicable, certify the following:
- (A) all portable alternative-fueled engines included in the fleet average operated at least 100 hours during the previous 12 months prior to the fleet emission standard becoming effective.

- (B) for all portable diesel-fueled emergency-use engines, the engines were used only for emergency applications.
- (7) After March 1, 2020, the APCO or the Executive Officer may require the submittal of additional information demonstrating compliance with the applicable fleet standard. Upon receiving the request, the Responsible Official must provide the requested information within 30 days.
- (e) For fleets that are exempted from the requirements of section 93116.4 pursuant to section 93116.4 (a), the Responsible Official must certify that all portable diesel-fueled engines in the fleet satisfy the requirements of section 93116.4(a). The Responsible Official must provide the certification statement and a list of the portable diesel-fueled engines in the fleet to the Executive Officer when the fleet initially satisfies the requirements of section 93116.4(a). The list of engines must identify the serial number, and district permit or State/district registration number for each engine.

#### **§ 93116.5 Enforcement of Fleet Requirements.**

- (a) Both the Executive Officer and the APCO have the authority to review or seek enforcement action for violation of the fleet emission standard.
- (b) The CARB will make available to the districts the information the Responsible Official has provided to CARB to demonstrate compliance with the fleet standard.

Authority cited: Sections 39600, 39601, 39650, 39658, 39659, 39666, 41752, 41754, 43013 and 43018 Health and Safety Code. Reference: Sections 39650, 39666, 41752, 41754 Health and Safety Code.

*This document reflects nonsubstantive grammatical corrections that will be submitted to the Office of Administrative Law for official publication. The official publication of this regulation is in the California Code of Regulations and may be obtained from the Office of Administrative Law at the following link:*

<https://govt.westlaw.com/calregs/Index?transitionType=Default&contextData=%28sc.Default%29>