

**Attachment 1 to Executive Order R-23-003**

A. Legal Standards

When considering modifications to a project for which an Environmental Analysis (substitute document equivalent to an EIR or negative declaration) has previously been certified, CARB looks to Public Resources Code section 21166 and CEQA Guidelines section 15162 for guidance on the requirements for subsequent or supplemental environmental review.

CEQA Guidelines section 15162 states:

- (a) When an EIR has been certified or a negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:*
  - (1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;*
  - (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or*
  - (3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:*
    - (A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;*
    - (B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;*
    - (C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one*

*or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or*

*(D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.*

(Cal. Code Regs., tit. 14, § 15162, subd. (a) [Subsequent EIRs and Negative Declarations]; see also Cal. Code Regs., tit. 14, § 15164 [Addendum to an EIR or Negative Declaration].)

## B. Basis for Determination

### 1. Proposed Modifications

CARB has proposed further modifications to the proposed Advanced Clean Fleets Regulation (ACF Regulation), as well as additional documents and reference material for the APA record, through the August 4, 2023 Second Notice of Public Availability of Modified Text and Availability of Additional Documents (“Second 15-day Notice”).<sup>1</sup> The proposed modifications to the regulatory language reflected in the Second 15-day Notice do not change implementation of the ACF Regulation in a way that would affect the determinations made in the *Final Environmental Analysis prepared for the Advanced Clean Fleets Regulation* (Final EA) published on April 17, 2023, and certified on April 27, 2023, when the Board adopted Resolution 23-13. Consequently, none of the conditions described in CEQA Guidelines section 15162 requiring subsequent or supplemental environmental review have occurred, and no changes or additions to the previously certified Final EA are necessary. (See Cal. Code Regs., tit. 14, § 15164, subd. (a); Cal. Code Regs., tit. 17, § 60004.4, subd. (a).)

Furthermore, the added reference materials do not affect the determinations made in the Final EA; rather, they support the information and analysis that was already present in the rulemaking record when the Final EA was certified in April 2023. As stated in the Second 15-day Notice,<sup>2</sup> the added reference materials do not present any information that differs from the corresponding versions of the same reference materials included in either the Initial Statement of Reasons and the associated appendices and attachments, released to the public on August 30, 2022, or the Notice of Public Availability of Modified Text and Availability of Additional Documents and Information, released to the public and available for comment on March 23, 2023; rather the added reference materials merely reflect edits needed because the

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<sup>1</sup> The Second 15-day Notice is available at <https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2022/acf22/ac/2nd15daynotice.pdf>.

<sup>2</sup> Second 15-day notice, p. 8 “Reference Corrections”

original reference documents were subsequently determined to not be complete or accessible, or to more properly reflect the dates CARB staff accessed the documents via internet websites, or to update document publication dates. The edits do not change any of the information contained in the originally cited reference documents, and those original reference documents were incorporated in the ACF rulemaking record before April 27, 2023.

The Second 15-day Notice also added additional documents into the ACF rulemaking record pursuant to Govt. Code section 11347.1. One of those documents is Response to Comment 270-4, which is a part of the Response to Comments on the Draft Environmental Analysis prepared for the Advanced Clean Fleets Regulation (RTC document) previously posted on the rulemaking webpage on April 17, 2023. Response to Comment 270-4 addresses a comment claiming that CARB misrepresented the emissions benefits of the ACF Regulation by failing to conduct a full life-cycle analysis of the greenhouse gas emissions attributable to that regulation. The remaining documents relate to the increasing commercial availability of ZEV trucks as well as some missing references cited in staff's response to comments in the FSOR. None of these documents contain information that affects the Board's determinations made in the Final EA.

The proposed modifications set forth in the Second 15-day Notice consist primarily of minor revisions to the "five-day pass" provision<sup>3</sup> and removing language that sunsetted provisions of the Advanced Clean Trucks (ACT) Regulation at the end of the 2035 model year (the latter of which did not need to be undertaken in this rulemaking action for ACF). The proposed modifications also include minor clarifications to various reporting, recordkeeping, and compliance requirements, and nonsubstantial corrections to grammar and punctuation. The proposed modifications do not alter any of the reasonably foreseeable compliance responses included in the Final EA, all of which were subject to adequate environmental review. Additional details related to the proposed modifications are provided below.

In section 2015.3(g), the five-day pass provision was modified to clarify the criteria used by CARB's Executive Officer (EO) when approving a fleet owner's request. The changes improve process clarity for when the fleet owner does not receive a response to a request, and set an alternative method if the online system is non-functional. Language was added to clarify a fleet owner can bring a non-compliant vehicle into California for no more than five consecutive days if they do not receive a physical or electronic copy of their five-day pass or response from CARB's online system, TRUCRS, or from CARB's EO after a period of five consecutive days. Language

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<sup>3</sup> The five-day pass provision allows a fleet owner to operate a non-compliant vehicle up to five consecutive days in California one time per calendar year per vehicle.

was added to inform a fleet owner that when the TRUCRS online system is down, they can provide a copy of the email requesting a five-day pass to TRUCRS@arb.ca.gov in lieu of an approved pass to CARB enforcement personnel. Language was added to clarify the required annual reporting information that must be entered into TRUCRS related to this provision, along with indicating the first date the five-day pass will be used in the email if this alternative method is used. Additional criteria were added to let a fleet owner know the vehicle will not be issued a pass if the vehicle has already operated in California and has already been issued a pass for the same calendar year.

Section 2016(a) was removed, which sunsetted the requirements of the ACT Regulation, located in title 13, California Code of Regulations (CCR), sections 1963, 1963.1, 1963.2, 1963.3, 1963.4, and 1963.5, at the end of the 2035 model year. Staff removed the sunset provision for the ACT regulation because it is not necessary to include during this rulemaking and can be revisited during a subsequent rulemaking pertaining to the ACT Regulation.

## 2. Discussion

The Final EA determined that the ACF Regulation could result in: beneficial impacts to air quality (long-term operational-related), energy (long-term operational-related), GHG (long-term operational-related); less than significant impacts, or no impacts, to energy (short-term construction-related), and greenhouse gas (short-term operational-related), land use planning, mineral resources, population and housing, public services, recreation, and wildfire; and potentially significant [indirect/secondary] adverse impacts to aesthetics, agriculture and forestry resources, air quality (short-term construction-related), biological resources, cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, noise, transportation/traffic, tribal cultural resources, and utilities and service systems.

CARB has determined that the proposed modifications do not involve any changes that result in any new significant adverse environmental impacts or a substantial increase in the severity of the significant adverse impacts previously disclosed in the Final EA. Further, there are no changes in circumstances or new information that would otherwise warrant any subsequent or supplemental environmental review pursuant to CEQA Guidelines section 15162.

The modifications described above to section 2015.3(g) (regarding the five-day pass provision) would not affect any of the conclusions in the Final EA. The changes to the five-day pass provision merely help clarify the process for obtaining a pass. They do not alter the eligibility criteria for a five-day pass and would not result in any changes in emissions. Because the changes described above would not alter the five-day pass eligibility criteria, CARB does not expect or foresee any change in the number of

approved pass requests in response to these changes. Thus, CARB does not anticipate that these modifications would result in default approvals of requests that staff have not been able to review. In other words, these modifications are not relevant to any of the impact conclusions in the Final EA because those impact conclusions are based on other factors that remain unchanged by these modifications, and none of the modifications to section 2105.3(g) would result in new emissions that were not previously discussed or analyzed.

The removal of the sunset provision in Section 2016(a) similarly would not affect any of the conclusions in the Final Environmental Analysis. The requirements of Section 2016 of the ACF Regulation, that require 100 percent of regulated vehicle sales to be zero emission starting in the 2036 model year, would apply independently of the proposed sunset provision in Section 2016(a) that would otherwise sunset provisions of the ACT regulation at the end of the 2035 model year. Therefore, it is not necessary to sunset the ACT Regulation's requirements through the ACF Regulation, since the ACF Regulation's provisions will apply regardless. Furthermore, CARB intends to conduct a separate rulemaking in the next few years, well in advance of model year 2036, specific to the ACT Regulation for the purpose of sunseting that provision. In short, removing the ACT Regulation-related sunset provision from the proposed ACF Regulation would have no practical effect; it would simply defer cleaning up the ACT Regulation's text to a future rulemaking to fully reflect that ACT's post-2035 requirements are superseded by ACF's more-stringent 100% zero-emission requirement. None of the environmental analysis and conclusions in the Final EA are based on an assumption that the sunseting of the ACT Regulation in previously-proposed Section 2016(a) would occur.

Therefore, the Final EA adequately addresses the implementation of the ACF Regulation as modified and no additional environmental analysis is required.