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April 17, 2026

VIA ELECTRONIC SUBMISSION

Clerk's Office
CALIFORNIA AIR RESOURCES BOARD
1001 "I" Street
Sacramento, CA 95814

Re: Comments on Notice of Public Availability of Modified Text and Availability of Additional Documents and/or Information for Proposed Amendments to the Advanced Clean Fleets and Low Carbon Fuel Standard Regulations

Dear Clerk to the California Air Resources Board:

On behalf of Western States Trucking Association ("WSTA"), I am submitting the following comments on the Notice of Public Availability of Modified Text and Availability of Additional Documents and/or Information ("15-Day Modifications") for Proposed Amendments to the Advanced Clean Fleets and Low Carbon Fuel Standard Regulations ("Proposed Amendments").

I

CALIFORNIA ADMINISTRATIVE PROCEDURE ACT COMMENTS

A. The 15-Day Modifications Include Substantial Changes That Are Not Sufficiently Related to the Proposed Amendments

An agency may not adopt a final regulation that is changed from the proposed regulation made available to the public if the final regulation is not "sufficiently related to the original text" that the public was adequately placed on notice that the change could result from the originally

proposed regulatory action. (Govt. Code, § 11346.8, subd. (c); *Wendz v. State Dept. of Education* (2023) 93 Cal.App.5th 607, 647.) A change is not sufficiently related if the notice of proposed regulatory action "does not provide any specific indication of the change[]" or "if the final rule concerns a different issue altogether." (*Wendz*, *supra*, 93 Cal.App.5th at 647.) If a change does not meet the "sufficiently related" test, the agency must start the rulemaking process over again with a new comment period. (See Govt. Code, § 11346.8, subd. (c).)

The 15-Day Modifications to the definition of "fleet owner" and the addition of the term "waste fleet" are substantial and not sufficiently related to the Proposed Amendments because they impose compliance obligations on private entities, contrary to CARB's statements in the Notice of Proposed Regulatory Action ("NOPA") for the Proposed Amendments.

The NOPA states the Proposed Amendments "would repeal parts of the ACF regulation . . . that would apply to . . . private fleets" and that "[r]epealing those elements subsequent to CARB's withdrawal of its waiver and authorization request provides greater certainty to entities that they are not required to demonstrate compliance with those requirements." (NOPA, pp. 4–5; *id.* at 5 [stating that the Proposed Amendments "would [] repeal the portions of the ACF regulation that would otherwise apply to private . . . fleets"]; Appx A-3, § 2013, subd. (a)(1) ["[T]his article applies to any ***state or local government agency*** with jurisdiction in California that owns, leases, or operates one or more vehicles specified in section 2013(a)(2) in California . . . on or after January 1, 2024."] [emphasis added]; see also Exhibit A.)

The 15-Day Modifications, however, purport to make "the rental or lease business" the "fleet owner" for purposes of the State and Local Government ("SLG") provisions. (Appx A-2, § 2013, subd. (b).) According to the 15-Day Modification, this "change is necessary to prevent a fleet owner from circumventing compliance requirements" because "rental fleets are no longer subject to the ACF High-Priority and Federal Fleets regulation" due to "the repeal of the High Priority Fleet requirements" and therefore "State and local government fleets could potentially avoid all zero-emission vehicle (ZEV) requirements by transferring their compliance obligation to rental or leasing companies who are no longer subject to a similar ZEV purchase requirement." (15-Day Modifications, p. 4.) Likewise, the 15-Day Modifications' addition of the term "waste fleet" purports to impose compliance obligations on private entities that are "contracted with a municipality via franchise agreement or long-term contract." (Appx A-2, § 2013, subd. (b).) According to the 15-Day Modifications, this change is "necessary to be consistent with changes made to the 'fleet owner' definition and to prevent a fleet owner from circumventing compliance requirements due to the repeal of the High Priority Fleets requirement." (15-Day Modifications, p. 6.)

In addition to having the potential to cause significant, unanalyzed environmental impacts, these changes will result in substantial, unanalyzed economic and operational impacts to private entities, including rental/leasing companies and waste hauling contractors. (See Exhibit A.) However, the NOPA did not contain sufficient information to place these groups on notice that they may be subject to the regulation. Nor did it place the interested public on notice of the potential for these changes to cause new or different environmental and economic impacts than

those previously analyzed. Accordingly, these changes cannot be approved on a 15-day notice period. (See Govt. Code, § 11346.8, subd. (c); *Wendz*, *supra*, 93 Cal.App.5th at 647.)

We understand CARB may assert that "waste fleets" have always been part of the SLG requirements. However, any such contention cannot be reconciled with the clear and unambiguous statements included in the NOPA and section 2013, subdivision (a)(1). (See NOPA, pp. 4–5; Appx A-3, § 2013, subd. (a)(1).) Nor could it be reconciled with how CARB has enforced the SLG requirements to date or how regulated agencies have interpreted the relevant provisions. (See Exhibit A; April 17, 2026 Comments on Modified Statement of Reasons for the Advanced Clean Fleets Regulation State and Local Government Fleets (April 2, 2026) submitted by South San Francisco Scavenger et al.)

B. The 15-Day Modifications Purporting to Impose Indirect Compliance Obligations on Private Entities Are Preempted by the Federal Clean Air Act

A local law is preempted "if it directly regulates within a field preempted by Congress, or if it indirectly regulates within a preempted field in such a way that effectively mandates a specific, preempted outcome." (*Metropolitan Taxicab Bd. of Trade v. City of New York* (S.D.N.Y. 2009) 633 F.Supp.2d 83, 95–96, *aff'd* (2d Cir. 2010) 615 F.3d 152.)

The 15-Day Modifications are preempted because they effectively mandate that private entities comply with the SLG provisions in a manner that would otherwise require a preemption waiver under section 209 of the federal Clean Air Act.

According to CARB staff: "When a city, county, or other local agency contracts with a private company to perform public services (e.g., waste collection, street sweeping, or maintenance), the local government remains responsible for ensuring compliance with the SLG requirements for vehicles used to carry out those services. The government agency must include vehicles used under contract when determining its compliance with the ACF regulation, including required ZEV purchases or phase-ins. In such cases, while the private fleet is not itself the regulated entity, the government agency must account for the emissions and vehicle types used under contract and may impose contractual requirements to ensure regulatory compliance." (See Exhibit B.)

By requiring government agencies to "account for" the emissions and vehicle types of their private contractors, the 15-Day Modifications "effectively mandate[] a specific, preempted outcome"—*i.e.*, that private entities contracted with those agencies meet the regulation's ZEV purchase requirements notwithstanding the lack of a section 209 waiver. (*Metropolitan Taxicab*, *supra*, 633 F.Supp.2d at 96.) Faced with the prospect of losing a government contract, these entities have only one real option: To comply with the regulation's ZEV purchase requirements. (See *id.*; see also *Retail Industry Leaders Ass' v. Fielder* (4th Cir. 2007) 475 F.2d 180, 197 [local law preempted where it left employers "no reasonable choices except to" comply].) This is particularly true for private fleets that derive all or a majority of their revenue from government contracts. It is also extremely unfair to private fleets that have made substantial investments in

their fleets to obtain government contracts, as they will be denied their reasonable, investment-backed expectations or forced to make further investments to retain them.[1]

II

CALIFORNIA ENVIRONMENTAL QUALITY ACT COMMENTS

A. CARB Is Engaging in Impermissible Piecemealing of Environmental Review

The "requirements of CEQA cannot be avoided by piecemeal review which results from chopping a large project into many little ones—each with a minimal potential impact on the environment—which cumulatively may have disastrous consequences." (*Envt'l Prot. Info. Ctr. v. Dept. of Forestry & Fire Prot.* (2008) 44 Cal.4th 459, 503; *Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1223.) CEQA thus "forbids piecemeal review of the significant environmental impacts of a project." (*Berkeley Keep Jets Over the Bay Comm. v. Bd. of Port Comm'rs* (2011) 91 Cal.App.4th 1344, 1358 [internal quotations omitted].) Rather, when a lead agency undertakes the environmental review process, the lead agency must review and consider the "whole of [the] action," (CEQA Guidelines, § 15378), and consider "the effects, both individual and collective, of all activities involved in [the] project." (Pub. Res. Code, § 21002.1, subd. (d).) It is only through a complete and accurate "view of the project [that] affected outsiders and public decision-makers [may] balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal . . . and weigh other alternatives in the balance." (*Berkeley Keep Jets*, *supra*, 91 Cal.App.4th at 1358.)

The Proposed Amendments have never been subject to environmental review in accordance with CEQA because, among other things, CARB has chopped one large project—the ACF Regulation—into many little ones, thereby masking its potential to cause significant environmental impacts.

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[1] The email from CARB staff also evidences an invalid underground regulation. It shows CARB has made a generally applicable determination that the regulation requires SLGs to ensure the compliance of ***all*** contracted fleets "perform[ing] public services," including "street sweeping" and "maintenance," even though neither the ACF regulation, the Proposed Amendments, nor the 15-Day Modifications contain any reference to these categories. The APA does not permit CARB staff to amend regulations by administrative fiat without complying with the notice-and-comment requirements for formal rulemakings. (See *California Advocates for Nursing Home Reform v. Bonta* (2003) 106 Cal.App.4th 498, 519–526; *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 571; *Malaga County Water District v. Central Valley Regional Water Quality Control Board* (2020) 58 Cal.App.5th 418, 434; see also Exhibit A; April 17, 2026 Comments on Modified Statement of Reasons for the Advanced Clean Fleets Regulation State and Local Government Fleets (April 2, 2026) submitted by South San Francisco Scavenger et al.)

The environmental analysis for the ACF Regulation purported to analyze the potential impacts of a regulatory scheme very different from the one now proposed and was itself deeply flawed. (See Exhibit C.) CARB then relied on the ACF Regulation's flawed environmental analysis (and the environmental analysis for a completely unrelated project, the Low Carbon Fuel Standard) to satisfy its environmental review obligations for the Proposed Amendments, even though the Proposed Amendments had the potential to cause new and different environmental impacts due to the regulation's drastically modified scope and material changed circumstances with respect to the regulatory environment and the state of ZEV technology. (See Exhibit D.)[2]

Despite this, CARB asserts "no additional environmental analysis is required" for the 15-Day Modifications, claiming they "do not change implementation of the regulation in any way that affects the conclusions of the environmental analysis included in the Staff Report [for the Proposed Amendments] because the proposed modifications primarily consist of structural changes to improve readability and organization of the requirements and standardization of terms to ensure clarity of the proposed amendments" and "better align the regulation's requirements with the current and expected state of the ZEV market." (15-Day Modifications, p. 42.) This does not satisfy CARB's obligations under CEQA.

First, for the reasons explained in WSTA's 45-day comment letter, there was no substantial evidence to support CARB's environmental analysis for the Proposed Amendments and therefore there is no substantial evidence to support CARB's environmental analysis for the 15-Day Modifications. (See Exhibit D.)

Second, while many of the changes in the 15-Day Modifications "consist of structural changes to improve readability and organization" that is entirely beside the point. What matters for purposes of CEQA are the substantive changes included in the 15-Day Modifications that have the potential to cause new or different environmental impacts. (See *supra* at §§ I.A–B.) That the 15-Day Modifications may consist "primarily" of non-substantive changes does not mean the remaining changes are incapable of causing new or different environmental impacts. Yet this is precisely what CARB assumes. Because CARB completely fails to address the substantive changes included in the 15-Day Modifications, there is no substantial evidence to support CARB's conclusion the 15-Day Modifications "do not change implementation of the regulation in any way that affects the conclusions of the environmental analysis" prepared for the Proposed Amendments. (15-Day Modifications, p. 42.)

Third, although CARB asserts the 15-Day Modifications "better align the regulation's requirements with the current and expected state of the ZEV market," it offers no evidence or

[2] CARB alternatively relied on a patchwork of statutory and categorical exemptions to conclude the Proposed Amendments were exempt from CEQA based on conclusory legal analyses, non-existent case law authorities, and speculative factual assumptions. However, none of the cited exemptions were applicable and, even if that were not the case, no substantial evidence supported CARB's conclusion regarding the absence of unusual circumstances and cumulative impacts. (See Exhibit D.)

analysis to support this conclusion, even though it is contradicted by evidence in the CEQA record. (See Exhibit D.)

Perhaps recognizing this, CARB purports to supplement the record with additional documents that appear designed to provide post hoc support for CARB's environmental conclusions, particularly in relation to WSTA's claims. (See, e.g., 15-Day Modifications, p. 43 [documents regarding "California's National Electric Vehicle Infrastructure Formula Program," article titled "Largest California Utility Could Have 3,800 Electric Fleet Vehicles By 2030," "Press Release California Exceeds 200,000 Electric Vehicle Chargers"].) However, these documents are not properly part of the CEQA record because they post-date CARB's approval of the project for purposes of CEQA. (See Resolution No. 25-9.)

Additionally, because CARB is claiming "no additional environmental analysis is required" for the 15-Day Modifications, CARB cannot rely on the additional documents included in the 15-Day Modifications to support its CEQA determinations for the Proposed Amendments. Those documents have never been presented to CARB's decisionmaking body and could not have been relied upon to approve the Proposed Amendments for purposes of CEQA. (See Resolution No. 25-9, p. 6 [stating that "no additional environmental review is required" for the Proposed Amendments "because the ***record evidence*** shows that the amendments will not result in new significant adverse environmental impacts or a substantial increase in severity of previously identified significant adverse impacts"] [emphasis added].)

Notably, while it is plainly improper for CARB staff to backfill the CEQA record after its governing board has approved a project, this is not the first time the agency has engaged in this sort of conduct. (See Exhibit E.) To the extent CARB contends it may augment the CEQA record after project approval, the public should be afforded an opportunity to add substantive environmental comments and evidence to the record as well. To this end, WSTA submits new evidence further demonstrating that the Advanced Clean Fleets Regulation, as amended by the Proposed Amendments, will have profound negative consequences for the environment as well as California residents and businesses. (See Exhibit A, nn. 6–7.)

B. CARB Is Engaging in Imperssible Post Hoc Environmental Review

"A fundamental purpose of an EIR is to provide decision makers with information they can use in deciding whether to approve a proposed project, not to inform them of the environmental effects of projects that they have already approved. If post-approval environmental review were allowed, EIRs would likely become nothing more than post hoc rationalizations to support action already taken." (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 394; see *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 79; CEQA Guidelines, § 15004, subd. (a).) This timing requirement "applies to the environmental review documents prepared by [C]ARB . . . in lieu of an EIR." (*POET, LLC v. State Air Resources Bd.* (2013) 218 Cal.App.4th 681, 716.)

Resolution No. 25-9 purportedly delegates to the Executive Officer "the authority to both (a) either approve or disapprove proposed changes in regulatory language under Government Code

section 11346.8(c), and (2) conduct any appropriate ***further environmental review*** associated with such changes . . . for those sufficiently-related substantial modifications." (Resolution No. 25-9, p. 9 [emphasis added].) However, if CARB's Executive Officer performs "further environmental review" associated with the 15-Day Modifications ***after*** CARB's decisionmaking body has already approved the proposed project, CARB's Executive Officer engages in post hoc environmental review, contrary to CEQA. (See *John R. Lawson Rock & Oil, Inc. v. State Air Resources Bd.* (2018) 20 Cal.App.5th 77, 96 [CEQA compliant documents like [CARB's] staff report [must] 'be considered *before project approval*.'"] [quoting *POET*, *supra*, 218 Cal.App.4th at 717].)[3]

Additionally, to the extent CARB is relying on the additional documents included in the 15-Day Modifications to support its CEQA determination for the Proposed Amendments, this likewise constitutes post hoc environmental review. The environmental review process must be complete before CARB's decisionmaking body approves a regulation. (See 17 Cal. Code Regs., § 60004.1, subd. (c); see also *id.* at § 60004.2, subd. (c); *id.* at § 60004.4, subd. (d).) If CARB failed to conclude the environmental review process before the final hearing on the Proposed Amendments, it has failed to satisfy its obligations under CEQA and its certified regulatory program. (See *POET*, *supra*, 218 Cal.App.4th at 716; *Lawson*, *supra*, 20 Cal.App.5th at 96–102.)

C. CARB's Executive Officer Cannot Approve the 15-Day Modifications Consistent with CEQA and CARB's Certified Regulatory Program

Delegation to the Executive Officer is improper if the Executive Officer lacks the authority to approve or disapprove the project. In *POET, LLC v. State Air Resources Bd.* (2013) 218 Cal.App.4th 681, the Fifth District explained:

> [T]he principle that prohibits the delegation of authority to a person or entity that is not a decisionmaking body includes a corollary proposition that CEQA is violated when the authority to approve or disapprove the project is separated from the responsibility to complete the environmental review. This conclusion is based on a fundamental policy of CEQA. For an environmental review document to serve CEQA's basic purpose of informing governmental decision makers about environmental issues, that document must be reviewed and considered by the same person or group of persons who make the decision to approve or disapprove the project at issue. In other words, the separation of the approval function from the review and consideration of the environmental assessment is inconsistent with the purpose served by an environmental assessment as it insulates the person or group approving the project from public awareness and the possible

[3] Resolution 25-9 does not even purport to authorize the Executive Officer to approve substantial modifications that are ***not*** sufficiently-related to the Proposed Amendments. Thus, any attempt by the Executive Officer to approve the 15-Day Modifications would be ultra vires and void. (See *supra* at § I.A.)

> reaction to the individual members' environmental and economic values.

(*POET*, *supra*, 218 Cal.App.4th at 731 [quoting *Kleist v. City of Glendale* (1976) 56 Cal.App.3d 770, 779] [citation modified].)

The term "'[p]roject' means 'the whole of the action'" that otherwise qualifies as a "project" under CEQA. (*Concerned McCloud Citizens v. McCloud Community Servs. Dist.* (2007) 147 Cal.App.4th 181, 192 [quoting CEQA Guidelines, § 15378(a)]; see also Pub. Resources Code, § 21002.1(d) ["The lead agency shall be responsible for considering the effects . . . of all activities involved in a project."] [emphasis added].) It "'does not mean each separate governmental approval.'" (*Id.* [quoting CEQA Guidelines, § 15378(c)].)

CARB's certified regulatory program purports to authorize its decisionmaking body to delegate to the Executive Officer authority to approve or disapprove the 15-Day Modifications. But it does not—and cannot—delegate to the Executive Officer authority to approve or disapprove the CEQA project, since that decision has already been made by CARB's decisionmaking body. Consequently, "the authority to approve or disapprove the project [is] separated from the responsibility to complete the environmental review." (*POET*, *supra*, 218 Cal.App.4th at 731 [emphasis added].) "For an environmental review document to serve CEQA's basic purpose of informing governmental decision makers about environmental issues, that document must be reviewed and considered by the same person or group of persons who make the decision to approve or disapprove the project at issue." (*Id.* [emphasis added].)

By purporting to delegate authority to the Executive Officer to approve the 15-Day Modifications and any associated environmental review, CARB is "insulat[ing] the person or group approving the project"—i.e., the CARB decisionmaking body—"'from public awareness and the possible reaction'" regarding the 15-Day Modifications and their potential to cause environmental impacts. (*Id.* [quoting *Kleist*, *supra*, 56 Cal.App.3d at 779].) As such, the Executive Officer cannot approve the 15-Day Modifications consistent with CEQA. Instead, the 15-Day Modifications must be brought back to CARB's decisionmaking body for approval.

Additionally, CARB's certified regulatory program requires an environmental analysis finding no impacts to be subject to a public review period "of at least 30 days." (17 Cal. Code Regs., § 60004.1, subd. (b).) However, the public review period for the 15-Day Modifications was only 15 days. Consequently, CARB cannot approve the 15-Day Modifications consistent with the requirements of its certified regulatory program.

Finally, changes to the environmental analysis cannot occur under CARB's certified regulatory program without conducting another hearing. Although CARB previously conducted a hearing and purportedly delegated the Executive Officer authority to perform "further environmental review," CARB's certified regulatory program makes plain that in such circumstances, there must be a subsequent hearing before the state board. (See 17 Cal. Code Regs., § 60004.2, subd. (b)(6) ["[T]he state board may vote on a resolution that directs staff to make direct changes or prepare written responses to environmental comments, and in such case ***shall*** direct

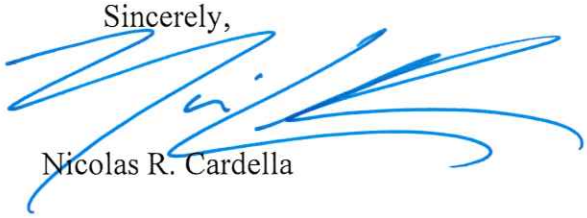
staff to ***schedule a subsequent hearing*** for the state board's consideration of the final proposal for approval."] [emphasis added].)

III

CONCLUSION

In light of the foregoing, the Executive Officer should not approve the 15-Day Modifications. Instead, the Executive Officer should seek direction from the CARB decisionmaking body to repeal the SLG requirements in their entirety. Alternatively, CARB should suspend the rulemaking for the Proposed Amendments pending completion of a full environmental review in accordance with CEQA or, if necessary to ensure compliance with Government Code section 11346.4, subdivision (b), terminate the rulemaking and issue a new Notice of Proposed Regulatory Action to ensure the agency has sufficient time to make the necessary changes. At a minimum, to satisfy the requirements of its certified regulatory program, CARB must re-notice the 15-Day Modifications for a public comment period of at least 30 days and present the 15-Day Modifications along with any associated environmental review to the CARB decisionmaking body for final approval.

Sincerely,



Nicolas R. Cardella

Enclosures