June 16, 2026

Dr. Steven Cliff
Executive Officer, California Air Resources Board
1001 I Street
Sacramento, CA 95814

RE: Concerns with the Second Notice of Public Availability of Modified Text to the State and Local Government Advanced Clean Fleets Regulation

Dear Dr. Cliff:

On behalf of the signatories to this letter representing public and private fleet operators, vehicle and engine manufacturers, dairymen, renewable fuel producers, utilities, and fuel providers, we write to express significant concerns with the Second 15-day modifications to the Advanced Clean Fleets (ACF) regulation released on June 1, 2026.

The Second 15-Day Notice states that, "These changes make explicit the existing requirement that vehicles being operated by State and local governments, including those through a contractual arrangement, are part of the government entity's fleet for purposes of the regulation. These proposed amendments remove any apparent ambiguity, as raised in comments on the proposal."

Building on our previously submitted comments concerning the First 15-Day Notice to the State and Local Government ACF Regulation, we do not believe private contracted fleets were included in the adopted and amended regulation, the Board did not intend for these to be included, the Second 15-Day Notice is a creative workaround from a regulatory requirement to an indirect procurement requirement mandate, and it will result in an affordability crisis for local governments. The Second 15-Day Notice basically attempts to fill the gap of perceived ambiguity to make staff-driven policy without subsequent Board input, after the regulation was adopted and Board members provided positions.

These modifications introduce substantial new requirements affecting both contracted service providers and state and local government entities acting as hiring agencies. They also create significant regulatory uncertainty for private fleets that, if implemented, may discourage investment and inadvertently undermine progress toward the state's short-lived climate pollutant (SLCP) goals.

At the CARB Board hearing held on September 25th, 2025 when ACF was amended, it was made clear that private fleets are being excluded (via repeal of certain ACF provisions), and State and Local Government fleet rules will apply only to public agency fleets—not contractors. What the Board hearing transcript states is that applicability is limited to public agency fleets, contractors and private fleets are not covered and the amendments apply only to public agency fleets. Contractors are grouped with private and commercial fleets and thus are not regulated under the State and Local Government fleet provisions.

Even where Board members and stakeholders discussed implementation, exemptions, and feasibility, the framing consistently treated State and Local Government fleets as fleets which are owned and operated by public agencies, while private entities (including contractors) are outside the regulation's scope. This has now changed in the Second 15-Day Notice, especially concerning the new workaround for the requirement to be focused on procurement.

Board member discussion focused heavily on public agency operations (utilities, water agencies, sanitation fleets, emergency response), with concerns centered on reliability of public services, public fleet vehicle availability and ratepayer impacts for public agencies. These concerns by Board members appear to be ignored with what is proposed in the Second 15-Day Notice. There were no concerns raised by Board members about contractors being pulled in, which suggests the scope was understood by all participants as limited to public fleets only.

From the Board hearing transcript:

- State and Local Government fleet rules apply only to fleets owned and operated by public agencies;
- Private fleets—including contractors performing work for public agencies—are excluded; and
- There is no evidence of Board intent to regulate contractors via these provisions.

CARB Board members did not support or even seriously discuss including private "contracted" fleets under the State and Local Government fleet requirements. The discussion and record consistently go the other direction: excluding private fleets and focusing only on public agency fleets themselves.

We believe the record shows that Board members acknowledged the regulation now applies only to government fleets, and staff in framing of the item, made clear that, after the new amendments were adopted that only state and local government fleets remain subject to the rule and private and commercial fleet categories were removed.

This framing was accepted by the Board without challenge, which we believe meant Board members did not push to bring private or contracted fleets back in, nor could they as the CARB settlement disallowed such an inclusion of private or contracted fleets.

When Board members spoke, their comments consistently referred to public agency vehicles and operations; utilities, water districts, sanitation agencies, and emergency response fleets; ratepayer impacts on public agencies; and reliability and service obligations. Even if they would have discussed, hypothetically, including contracted private fleets, those concerns over reliability and service obligations never had the opportunity to be considered. The Second 15-Day Notice threatens these services and goes against the concerns expressed by Board members. This reinforces that the regulation is about agencies' own fleets and not fleets operated by outside contractors.

In fact, several Board members (e.g., Guerra, Pacheco-Werner, Ortiz-Legg, Takvorian) raised concerns about operational feasibility, infrastructure availability, agricultural and public service impacts and coordination with other agencies. None of them suggested expanding the rule to cover contractors and treating private service providers as part of public fleets. There was concern that applying requirements to public agencies alone was seen as challenging. Nor was there any consideration of cost impacts upon state and local governments and the communities they serve, what the impacts might be if state and local government fleets shift the ACF mandate obligations onto the contracted fleet, or what would be the impacts if no contractor offered a proposal to provide service or decided to discontinue critical fleet services under the new conditions, particularly in service areas that are not suitable for ZEV adoption.

There wasn't a discussion of "contracted fleets" being included in the staff presentation, Board questions and Board deliberation. Based on the staff presentation portion in the transcript, staff did not mention that contracted fleets are included in the State and Local Government fleet category and instead focused on "State and local government agency fleets," vehicle classes, purchasing requirements, and compliance pathways, and exemptions (ZEV purchase, daily use, mutual aid). But there is not any reference to contracted fleets, third-party service providers, or outsourced and contracted operations being included in that definition during the presentation.

What staff clearly stated is that the rule applies to state and local government fleets themselves, compliance options tied to those fleets (ZEV purchase schedule or milestone option), and operational and exemption considerations for those public agencies. There wasn't clarification that "contracted fleets" are covered, there wasn't a definition expanding the category beyond government-owned/operated fleets, and there wasn't any mention of procurement-based inclusion (e.g., contractors performing services). The presentation omits any discussion of contracted fleets altogether, so it neither confirms nor clarifies whether they are included.

There is not any statement suggesting that a private fleet becomes regulated if it contracts with a public entity and that contractors should be treated as State and Local Government fleets. This absence is important because the Board debated many detailed technical issues (mutual aid, exemptions, RNG, etc.) but never raised contractor inclusion. Board discussion focused on reducing burdens on those public fleets, not expanding the scope or suggesting that the burden could potentially be relieved via contract.

In addition to the lack of Board approval, per our previous letter, the Second 15-Day Notice is nonresponsive as it fails to address the serious concerns we raised in our comments. In the wake of a narrowed state regulatory scope and the current federal approach to ZEVs, a key question arises: will a ZEV market exist solely to serve California's state and local government agency fleets? We believe the answer is no.

There continues to be the problems of:

- **Immediate and disruptive impacts on existing contracts**: The Second 15-day modifications introduce new compliance conditions on local government that were not contemplated at contract formation and cannot reasonably be integrated into existing agreements without renegotiation, service disruption, or legal conflict;

- **An unfunded mandate on local governments**: Public agencies need to have access to vehicles capable of performing essential functions while helping achieve the state's NOx and climate goals. ZEVs available today are not functionally equivalent to traditional vehicles and come at a much higher cost to ratepayers;

- **Absence of implementation and feasibility analysis**: Because these provisions were introduced exclusively through 15-day modifications, stakeholders have not had time to meaningfully assess:

  - Feasibility within existing contractual frameworks;
  - Availability of compliant fleets across affected service sectors;
  - Impacts on procurement timelines and competitive bidding;
  - Potential and likely cost increases to municipal collection rates; and
  - Legal exposure for public agencies and contractors.

  The APA's notice-and-comment framework is intended to ensure these issues are evaluated before regulations are finalized—not after.[7]

- **Federal preemption and Clean Air Act concerns**: CARB may argue that the State and Local Government Fleets provision does not require a waiver from EPA as it may fall within the "market participant" exception. However, that doctrine is narrowly construed and does not apply where the government uses contracting authority to impose regulatory mandates. To the extent CARB intends to expand the ACF regulation for state and local governments to encompass privately owned contractor fleets in this manner, such an expansion would require explicit authorization under a Clean Air Act waiver. Absent such approval, the interpretation is preempted and unenforceable.

- **Captive biofuel Use Exemption conditions do not reflect real-world operations:** the revised conditions applied to the Captive Biofuel Use Exemptions in the First 15-day Notice depart significantly from the exemption's original intent. While the exemption was designed to protect fleets hauling, transferring, or processing in-state organic waste, it was never contemplated that municipal contracts with private fleets not engaged in such activities would be swept into the regulation. And it should not disqualify wastewater treatment plants from accessing low NOx vehicles.

  Moreover, not all waste or wastewater treatment facilities may produce renewable biofuel and not all the ones that do have surplus renewable biofuel capable of powering fleet operations due to size, age, or other economic factors. Conditioning exemption eligibility on the ability to produce excess renewable biofuel is a new interpretation that was not vetted through the public process and may not reflect all operational realities. This approach unnecessarily penalizes entities that have heavily invested in the production of renewable biofuel or in the cleanest available internal combustion engine technologies to help advance the state's clean air and climate goals. Creating additional barriers for other state projects, such as dairies, who are capturing biomethane to support the state's SB 1383 goals, for example, is counterproductive.

- **Affordability**: Regulatory uncertainty disrupts commercial relationships, increases costs and slows progress in reducing SLCP emissions. This can create conflicts between existing contractual obligations and newly imposed requirements, forces renegotiation of lawfully executed contracts, increases collection costs for municipal residents and businesses; and exposes municipalities, public agencies and contractors to legal disputes, performance risks, sole responsibility for increasing collection rates and cost escalation.

These pressures destabilize service delivery systems that depend on continuity and reliability, and impact projected revenue estimates after having already taken this into account before signing long-term contracts. And when compliance obligations are unclear or subject to change, municipalities also face higher procurement costs as bidders price in regulatory risk, reduced competition, and increased administrative and legal burdens. Ultimately, these costs are borne by taxpayers and ratepayers, without corresponding environmental benefits. Also, municipalities simply cannot abandon existing assets to comply with a new regulation. This approach does not pass asset management standards to which municipalities are held.

We would also like to address additional key points:

- CARB is concerned that there is no time to pursue a 3rd 15-day package because the one-year deadline for approval by the Office of Administrative Law (OAL) is fast approaching (45-day package was posted on July 29, 2025.

  However, we believe CARB doesn't have to send the 2nd 15-day language with the final package. CARB can certainly express that "we received significant comments …" and then only send to OAL the September and April amendments, thus finalizing the delay and other utility focused amendments. We believe there are other options for CARB administratively.

- If it was so clear that private contractor fleets were always intended to be included under the state and local government provision then why was it not mentioned in the ISOR or at the Board discussion? And why was there not any enforcement or implementation of such supposed "clear rules" up to this point? Perhaps the original rule intended to include contracted fleets but certainly the removal of the private fleet obligation undid this requirement.

- **We are concerned this is an underground regulation**. The Second 15-Day Notice is not clarity but rather an expansion of what was previously adopted. This violates the Administrative Procedure Act. Underground regulations are a rule or guideline issued by a state agency that has not been formally adopted through the required administrative procedures, making it unenforceable. State agencies are specifically prohibited by statute from issuing, using, or enforcing underground regulations regardless of whether they are hidden from the public or broadly disseminated (Government Code section 11340.5(a).)

  An underground regulation has no legal effect. Issuance or use of it is prohibited by statute, and consequently, except in very limited circumstances, a court will not enforce an underground regulation. Furthermore, if an underground regulation is found to be a state mandated local program, it may create a duty for the state to reimburse local government for costs attributable to it.

- We do not believe a potential guidance document is approved policy post-OAL approval. Public companies can't rely on guidance to attest to being in compliance, especially because guidance can change over time. Certainty is needed.

- We understand the focus of the initial guidance document could be on reporting only, not enforcement. This is NOT in the regulation. Any suggestion otherwise is disingenuous and an attempt to minimize the aforementioned legitimate concerns over the proposed language.
- The guidance document could require State and local governments to provide good-faith reporting and receive flexibility and leniency. However, from precedent, "good faith" has also appeared for SB 253, the Low Carbon Fuel Standard and other areas. This leaves all the discretion to CARB. Stakeholders will not know if they are in compliance until CARB makes a decision.
- If CARB, post-OAL approval, plans to encourage stakeholders to engage directly with CARB staff to discuss their specific situations, this is problematic and should have been originally addressed in the regulation.
- The Board expressed interest in learning more about how low NOx trucks can help the state meet its emissions reduction goals. This has not occurred and we eagerly await this to be scheduled very soon.
- CARB will likely contemplate future similar rulemakings that could include consideration of feasibility, affordability, diversified fuel/technology mix and exploring a more realistic view of what can be achieved. Consideration of these issues post-OAL adoption is too late – this analysis should have been done during this rulemaking process to prevent negative economic impacts.

Conclusion and Request

The First and Second 15-Day Notices are not technical refinements, and they do not represent the direction provided by the Board at the September 2025 Board meeting. They represent a fundamental restructuring of the ACF regulatory framework, introduced at the final stage of rulemaking in a manner inconsistent with the APA's notice and logical-outgrowth requirements.

Given the scope and significance of these changes, the undersigned organizations respectfully request that CARB remove the provisions expanding applicability to privately contracted fleets and obligations on hiring entities from the current rulemaking. CARB should provide clear confirmation that ACF compliance obligations will not be imposed through contractual or procurement-based mechanisms.

We remain committed to working constructively with CARB to ensure ACF implementation is transparent, legally sound, and operationally achievable.

Sincerely,

Michael Boccadoro, Agriculture Energy Consumers Association (AECA)
Todd Campbell, Clean Energy
Dan Gage, The Transport Project
Julia Levin, Bioenergy Association of California
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