



February 9, 2026

California Air Resources Board
1001 I Street
Sacramento, CA 95814

Electronic Submission: <https://carb.commentinput.com/?id=ekNF7gTx2h>

Re: Comments on Proposed Climate Data and Financial Risk Reporting Regulation

To Whom It May Concern:

Thank you for the opportunity to comment on the proposed regulations under Health and Safety Code sections 38532 and 38533. I very much appreciate staff's consideration of the comments I and others previously submitted. My comment is to bring the regulations into conformance with federal law by changing § 96071(b)(1), § 96071(b)(4), and § 96072(a)(8) as follows:

[§ 96071(b)(1)] Non-profit, charitable, or other organizations that are not profit-seeking and are tax-exempt under the Internal Revenue Code;

[§ 96071(b)(4)] A business entity whose only activity within California consists of wholesale electricity transactions, wholesale natural gas transactions, or other transactions that occur in interstate commerce; and

[§ 96072(a)(8)] "Doing business in California" means doing business and meeting either of the criteria set forth in subsections 23101(b)(1) or 23101(b)(2) of the California Revenue and Taxation Code. Wholesale sales of electricity, wholesale sales of natural gas, and other sales that occur in interstate commerce do not count for purposes of determining an entity's sales in California under Revenue and Taxation Code section 23101(b)(2).

With regard to § 96071(b)(1), in addition to non-profit and charitable organizations, there are other organizations (such as not-for-profit organizations) that are not profit-seeking and are tax-exempt under the Internal Revenue Code. All such organizations "do not fall within the legislative intent of corporate disclosures, and would not have reportable revenue according to section 96072(a)(13)."¹ Therefore, all such organizations should be exempted from § 38532 and

¹ California Air Resources Board, Staff Report: Initial Statement of Reasons, Dec. 9, 2025, pg. 6.

§ 38533.

With regard to § 96071(b)(4) and § 96072(a)(8), the US Constitution’s Commerce Clause gives Congress exclusive power to “regulate commerce among the several states.”² Under the “dormant” Commerce Clause, states may not pass laws or regulations that place an “undue burden” on interstate commerce.³ “Interstate Commerce” is defined in the Code of Federal Regulations:

Interstate commerce means trade, traffic, or transportation in the United States— (1) Between a place in a State and a place outside of such State (including a place outside of the United States); (2) Between two places in a State through another State or a place outside of the United States; or (3) Between two places in a State as part of trade, traffic, or transportation originating or terminating outside the State or the United States.⁴

A transaction that involves more than one state in its performance is in interstate commerce. A foreign corporation must pay California income taxes if it is “doing business” in California. The taxes are on amounts earned that are allocated to California activities. Activities a foreign corporation undertakes in interstate commerce are exempt from California taxation.

Wholesale electricity transactions are always in interstate commerce.⁵ So are wholesale natural gas transactions that involve, or commingle with, any gas that flows across state lines.⁶ Half-million dollar annual fines (§ 38532(e)(2)(A)) seem an “undue burden.”

CARB could consider being even more explicit, consistent with the intent of the Wiener and Stern letter,⁷ for example by specifying that injections into, transportation in, and withdrawals from, interstate natural gas pipelines, even if only between injection and withdrawal points wholly within California, are exempt. This is because CARB rulemaking with perceived extraterritorial effects, or that interfere with energy markets, especially fossil fuel energy markets, would likely be met with furious counteractions by the Trump Administration and Republican-dominated states. The US Department of Justice has already sued four U.S. states in response to Executive Order 14260. The threat in the federal enforcement action of the Federal Trade Commission against CARB regarding vehicle emissions could not be more explicit.⁸

These comments are solely my own and are not necessarily the opinions of any client I

² U.S. Constitution Article 1, Clause 8, § 3.

³ *United States v. Lopez*, 514 U.S. 549, 579 (1995) “One element of our dormant Commerce Clause jurisprudence has been the principle that the States may not impose regulations that place an undue burden on interstate commerce, even where those regulations do not discriminate between in-state and out-of-state businesses.”

⁴ 49 C.F.R. § 390.5

⁵ *New York vs. FERC*, 535 U.S. 1 (2002).

⁶ E.g., *Interstate Nat. Gas Co., Inc. v. FPC*, 331 U.S. 682 (1947).

⁷ Wiener, Stern, *re Legislative Intent- SB 253 and SB 251*, Jan. 29, 2024.

⁸ “We are confident that today’s outcome ensures the continued free functioning of competition, including by ensuring that consumers are not harmed by California’s attempts to coopt private businesses to enforce preempted regulations in large swaths of the nation. Going forward, the [FTC] will intervene where, as here, private parties coordinate with a state actor to execute a sub-regulatory scheme to reduce competition, especially where the legal authority to do so is in grave doubt.” Statement of the Federal Trade Commission Regarding The Clean Truck Partnership Investigation (Aug. 12, 2025).

represent or industry group in which I participate.

Yours truly,

A handwritten signature in blue ink, consisting of several fluid, overlapping strokes that form a stylized name.

Jeremy D. Weinstein