CalChamber

August 11, 2026

Clerks' Office
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Submitted Electronically to CARB Comment Portal

Re: CalChamber Comments on 15-Day Changes to the Proposed California Corporate Greenhouse Gas Reporting and Climate-Related Financial Risk Disclosure Initial Regulation

The California Chamber of Commerce (CalChamber)[1] appreciates the opportunity to comment on the California Air Resources Board's (CARB) modifications to the proposed regulations implementing the Climate Corporate Data Accountability Act and the Climate-Related Financial Risk Act (the 15-Day Modifications).

We submit the following comments[2] to identify areas where further revisions to the proposed regulatory package can reduce compliance burden and provide needed clarity.

I. The 15-Day Modifications Do Not Cure the Rulemaking's Failure to Comply with SRIA Requirements

The regulatory package under the 15-Day Modifications remains procedurally deficient because CARB has not prepared the Standardized Regulatory Impact Assessment (SRIA) required for a "major regulation."[3] Under the Administrative Procedure Act (APA), a proposed regulation that will have an economic impact on California businesses and individuals exceeding $50 million in any 12-month period is a major regulation and requires a SRIA economic analysis to be performed and submitted to the Department of Finance.[4]

In responding to the 45-day comments, CARB asserted that the only non-negligible direct costs imposed by this rulemaking are approximately $20.8 million in annual program fees. CARB reasoned that the broader costs of complying with SB 253 and SB 261 arise from the statutes themselves or will result from a future rulemaking addressing post-2026 reporting requirements.[5] The 15-Day Modifications do not revisit that conclusion. Instead, CARB continues to exclude the substantial costs associated with this

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[1] CalChamber represents a broad and diverse cross-section of California employers, including manufacturers, retailers, logistics providers, technology companies, energy producers, and service providers, many of whom would be directly affected by the proposed rule package.
[2] CalChamber is currently a party to a lawsuit filed in federal court challenging the constitutionality of SB 253 and SB 261. As we explain in *Chamber of Commerce of the United States of America et al. v. Randolph*, No. 2:24-cv-00801-ODW-PVC (C.D. Cal.), SB 253 and SB 261 unconstitutionally compel companies to speak on a controversial topic, in clear violation of their First Amendment rights, impermissibly burden interstate commerce, and further violate constitutional and statutory limitations on California's ability to regulate beyond its borders. While these comments do not cure any of the defects at issue in the CalChamber lawsuit, they are provided by the undersigned in the hopes of reducing the burden on reporting entities in the event CARB implements these laws.
[3] See attached Exhibit A for our prior comments on the 45-day package.
[4] See Government Code §§ 11342.548 and 11346.3(c); Cal. Code Regs., tit. 1, § 2000(g).
[5] See CARB, *Final Statement of Reasons, Appendix A—Summary of Comments and Agency Response*, pp. 160–161; *Initial Statement of Reasons*, pp. 19–20.

rulemaking's determinations regarding applicability, reporting, recordkeeping, and compliance requirements.

That exclusion cannot be reconciled with the substance or economic effect of either the initial regulatory package or the 15-Day Modifications. Under the proposed regulations, CARB is making substantive determinations as to who must comply,[6] who is exempt from compliance,[7] how California business activity and revenue must be determined,[8] which corporate relationships qualify for consolidated reporting and fee payment,[9] what supporting records must be retained,[10] the timing and calculation of fees,[11] and when and in what form the first Scope 1 and Scope 2 reports must be submitted.[12] The 15-Day Modifications reinforce and, in several respects, make more specific these regulatory requirements.

The decisions CARB is making establish the regulated universe and determine the compliance paths affected companies must follow. CARB's threshold determinations as to who must comply and who is exempt go well beyond the statutory language.[13] Companies will incur costs in determining whether they have obligations as a reporting entity or covered entity under the proposed regulations. Once they are brought into that universe either through their own determination or a CARB fee determination notice, companies must then devote internal and external resources to analyzing applicability across their corporate structure, interpreting California tax and corporate-control standards used in the regulation, developing or modifying emissions-accounting systems, collecting and reconciling data from global operations, retaining supporting records, obtaining legal and professional assistance as needed, and ultimately preparing public disclosures. While SB 253 and SB 261 establish the requirement to disclose, CARB's proposed regulations supply the critical rules that determine which businesses incur these costs and how extensive those costs will be. The proposed regulations therefore do far more than merely establish an administrative mechanism for collecting fees as suggested by CARB. They directly trigger, define, and shape the compliance expenditures companies must make.

These are the types of regulatory implementation choices the SRIA process is designed to evaluate. Government Code section 11346.3 expressly provides that regulatory analyses are intended to inform agencies and the public of the economic consequences of regulatory choices.[14] Department of Finance regulations similarly define "economic impact" to include all direct, indirect, and induced costs imposed on enterprises located in or doing business in California.[15] CARB cannot, and should not, avoid performing that analysis by merely stating that the compliance costs driven by its decision-making are solely attributable to statute.

While the 15-Day Modifications contain some changes that may alter first-year costs for some regulated entities, they do not eliminate those costs. CARB's own prior analysis at public workshops demonstrates that the omitted costs are more than sufficient to trigger the SRIA requirement. CARB previously

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[6] *Notice of Public Availability of Modified Text*, Appendix A-1: 15-Day Proposed Regulation Text (July 27, 2026) (15-Day Proposed Text) at §§ 96071(a) and 96072.
[7] 15-Day Proposed Text at § 96071(b).
[8] 15-Day Proposed Text at §§ 96072 (a)(7), (8), and (13).
[9] 15-Day Proposed Text at §§ 96072(a)(5), (8), (10), (11), (13), and (16); 96074(b); and 96076(a).
[10] 15-Day Proposed Text at § 96074(d).
[11] 15-Day Proposed Text at § 96074.
[12] 15-Day Proposed Text at § 96076.
[13] Contrast Health and Safety Code §§ 38532(b)(2) and 38533(a)(4) with 15-Day Proposed Text at § 96071(b).
[14] Government Code § 11346.3(e).
[15] Cal. Code Regs., tit. 1, § 2000(e), (g).

estimated that more than 2,000 entities would be subject to SB 253.[16] After accounting for CARB's estimated $20.8 million in annual fees, the $50 million threshold would be crossed if aggregate non-fee economic impacts exceeded $29.2 million. Even considering only the approximately 2,000 SB 253 reporting entities estimated by CARB, and disregarding compliance costs incurred by the larger universe of entities subject to SB 261, that would require non-fee costs of less than approximately $14,600 per SB 253 reporting entity. That amount is less than 18 percent of CARB's own illustrative estimate of $82,278 in average annual Scope 1 and Scope 2 reporting costs per entity identified by CARB at its March 2026 public workshop.[17] Based on CARB's own numbers, which CalChamber believes significantly underestimate the cost of compliance, the proposed regulatory package will easily exceed the SRIA threshold.

The 15-Day Modifications provide some reporting flexibilities that may impact first-year costs for some entities, but CARB has offered no analysis demonstrating that those changes reduce aggregate economic impacts below the SRIA threshold. Nor do those flexibilities eliminate the costs of determining applicability, evaluating compliance pathways, maintaining supporting records, gathering and reviewing emissions data, and preparing a compliant submission. On this record, CARB's determination that the regulation is not major cannot reasonably rest on the assumption that all non-fee compliance costs are zero.

CARB's planned SRIA for a future climate-disclosure rulemaking does not cure the omission in this regulatory package. The economic impacts imposed or shaped by the regulations currently under consideration must be evaluated as part of this rulemaking. Dividing the development of implementing regulations across successive regulatory packages should not allow CARB to exclude costs imposed by the initial package or defer meaningful economic review until after foundational applicability, recordkeeping, fee, and first-year reporting requirements are already in effect. A later SRIA also cannot retroactively provide the public with an opportunity to evaluate less burdensome alternatives before the present requirements take effect.

CARB should therefore refrain from finalizing or resubmitting the modified regulation until it has completed an APA-compliant SRIA that accounts for the full economic impact of the proposed regulations and evaluates less burdensome alternatives. Proceeding without that analysis denies both the agency and the public a meaningful opportunity to evaluate the regulation's economic consequences. This choice leaves the rulemaking procedurally deficient.

II. The Definition of "Business Entity" Undermines New Concepts for Consolidated Reporting and Payment

We appreciate CARB's efforts in the 15-Day Modifications to clarify the rules for consolidated reporting and fee payments. SB 253 and SB 261 limit the definitions of "reporting entity" and "covered entity" to entities formed under U.S. law.[18] It therefore makes sense for CARB to include that limitation in the corresponding regulatory definitions because those terms determine which entities are directly subject to

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[16] See CARB, *SB 253/261/219 Public Workshop: Regulation Development and Additional Guidance*, slide 19 (Aug. 21, 2025).

[17] See California Air Resources Board, *SB 253 Public Workshop: California Corporate Greenhouse Gas Reporting Program*, March 23, 2026, slides 35–36 (estimating an illustrative average annual Scope 1 and Scope 2 reporting cost of $82,278 per entity), available at https://ww2.arb.ca.gov/sites/default/files/2026-03/SB%20253%20March%202026%20Workshop%20Slides%20Final.pdf.

[18] Health & Saf. Code §§ 38532(b)(2), 38533(a)(4); 15-Day Proposed Text at §§ 96072(a)(5), (11).

the laws. The same limitation does not make sense, however, in the broader definition of "business entity," which CARB also uses to define parent-subsidiary relationships and eligibility for consolidation.

Section 96072(a)(1) defines "business entity" as an entity formed under the laws of a U.S. state, the District of Columbia, or Congress. Sections 96072(a)(10) and (16) then define both "parent company" and "subsidiary" by reference to that term.[19] Read together, these 15-Day Modification provisions mean that a foreign-organized company cannot qualify as a parent company under the regulation. A qualifying U.S. entity it owns therefore may not be treated as its subsidiary for purposes of consolidated reporting or fee payment.

This could create significant problems for multinational companies. A foreign parent may already prepare a global emissions report covering several U.S. subsidiaries. Because the parent is not organized under U.S. law, however, the proposed definitions could prevent those subsidiaries from relying on the consolidated report. The same problem could prevent the foreign parent from making a single consolidated fee payment for its qualifying subsidiaries.

That result is not required by SB 253 or SB 261. The statutes limit which entities are directly subject to their requirements, but they separately allow reports to be consolidated at the parent-company level and do not limit where that parent company may be organized.[20] The U.S.-formation requirement should determine whether an entity is itself a reporting or covered entity. It should not determine whether an in-scope entity may satisfy its obligations through a consolidated report prepared by its parent company.

Preventing consolidation by foreign parents would create unnecessary California-specific reporting and administrative burdens. U.S. subsidiaries could be required to separate their information from an existing global report and prepare additional disclosures solely for California. Multinational groups could also be required to make separate fee payments for each qualifying subsidiary.

CARB can address this issue without expanding the universe of entities subject to SB 253 or SB 261 by providing a definition of "business entity" that does not have a U.S.-formation requirement while preserving U.S.-formation requirements for "reporting entities" and "covered entities."

III. The First-Year SB 253 Reporting Deadline Should Be Extended to December 31, 2026

The original 45-day package's August 10th initial SB 253 reporting deadline was both unrealistic in terms of regulatory process and created the potential for severe compliance bottlenecks by forcing companies to compete for a limited pool of compliance service providers on a very short time frame.[21] In our comments on the 45-day package, we recommended that CARB set a December 31, 2026 deadline to help at least mitigate some of those concerns.[22] The 15-Day Modifications set a November 10, 2026 reporting deadline.[23]

However, because the regulation is not yet final, reporting entities may still have only a few weeks to understand the final requirements and prepare their submissions before the new November 10, 2026, deadline. CARB withdrew the rulemaking package from the Office of Administrative Law on June 23, and the comment period on the 15-Day Modifications does not close until August 11.[24] CARB must then

[19] 15-Day Proposed Text at §§ 96072(a)(1), (10), and (16).
[20] Health and Safety Code §§ 38532(c)(2)(A)(iii) and 38533(b)(2).
[21] See Exhibit A, pp. 2-3.
[22] *Ibid*.
[23] 15-Day Proposed Text at § 96076.
[24] See CARB, *Notice of Public Availability of Modified Text*, pp. 1, 5–6 (July 27, 2026).

respond to comments, determine whether further changes are needed, and resubmit the package for review. Reporting entities therefore do not know when the regulation will become effective or how much time they will have between a final regulation and the November 10 reporting deadline.

Once the regulation is final, companies must apply the revised definitions of "doing business in California" and "revenue," evaluate parent-subsidiary relationships and eligibility for consolidated reporting, identify the applicable fiscal year, and select the appropriate first-year reporting option.[25] This requires factual determinations, internal review, and approval. Companies relying on existing emissions information must determine what information they possessed or were collecting as of December 5, 2024, and then process that data for reporting. Companies submitting a statement instead must confirm that they qualify for that option. These decisions cannot be made with confidence until the regulation is final.

Extending the deadline to December 31, 2026, would provide at least some relief from this unworkable schedule. Health and Safety Code section 38532 requires reporting to begin in 2026 on a date determined by CARB; it does not require an earlier deadline.[26] CARB should therefore replace "November 10, 2026" with "December 31, 2026" in section 96076(a) and (b), while preserving the February 1 cutoff in section 96076(c).

CARB should also make a conforming change to the initial fee-notice date in section 96074(a). The 15-Day Notice explains that CARB moved that date to December 10 to preserve a schedule under which fees are assessed 30 calendar days after the reporting deadline.[27] If the reporting deadline is moved to December 31, the initial fee determination notice should correspondingly be issued by January 30, 2027. Otherwise, the fee notice would precede the reporting deadline and disrupt the sequencing CARB relied upon in selecting December 10. This limited first-year extension would give companies a more reasonable opportunity to understand the final regulation and make an appropriate submission without delaying implementation beyond 2026.

IV. CARB Should Retain the 15-Day Modifications Providing First-Year Reporting Flexibility

CARB should retain the 15-Day Modifications confirming that Scope 3 reporting is not required in 2026, authorizing consolidated reporting and fee payments at the parent-company level, and placing the first-year reporting safe harbor directly in the regulation. Together, these changes help reduce some of the initial reporting year burden being placed on reporting and covered entities.

The consolidated reporting provision implements the statutory direction to allow a subsidiary that qualifies as a reporting or covered entity to submit the parent company's consolidated report.[28] This, along with language that allows fee payments to be consolidated at the parent-company level, helps lessen administrative burdens on the regulated community. As discussed in Section II, CARB should revise the definition of "business entity" to ensure that subsidiaries of foreign parents can use these provisions, but it should retain the underlying consolidation framework.

CARB should also retain proposed section 96076(b). That provision allows a reporting entity to submit Scope 1 and Scope 2 information that it possessed or was collecting as of December 5, 2024, or, if it had no such information, to submit a statement explaining that fact.[29] Including these options in the

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[25] See 15-Day Proposed Text at §§ 96072(a)(8), (10), (13), (16), and 96076(a)-(c).
[26] Health & Safety Code § 38532(c)(2)(A)(i)(I).
[27] See CARB, *Notice of Public Availability of Modified Text*, p. 4 (July 27, 2026).
[28] Health & Safety Code §§ 38532(c)(2)(A)(iii) and 38533(b)(2).
[29] 15-Day Proposed Text at § 96076(b).

regulation provides greater certainty than relying on enforcement discretion alone. It gives companies a defined regulatory pathway for 2026 and ensures that the first-year options cannot be withdrawn or changed without public notice and rulemaking

V. The Payment Period Should Run from Actual Receipt, Not the Date of the Notice

Under the 15-Day Modifications, Section 96074(c) changes the trigger for the payment deadline from "receipt of the fee determination notice" to the "fee determination notice date." That change reduces, rather than improves, certainty for the recipient. A notice may be delayed, directed to the wrong corporate address or even the wrong company, or received by personnel who are not responsible for compliance. This is particularly true in the early years of the program when the universe of reporting and covered entities is not yet truly defined. Measuring the period from a date selected by CARB can consume a material portion of the company's review period before the company has actual notice of the assessment.

This change is particularly concerning because the regulation still does not provide a clear process to challenge an applicability determination or fee calculation. As explained in our 45-day comments, companies may need time to review revenue calculations, corporate relationships, and the basis for CARB's assessment.[30] Starting the clock before a company receives the notice increases the risk that late fees and penalties will begin while the company is still conducting a good-faith review.

CARB should restore receipt as the event that starts the payment period. It should also extend the period to 120 days and suspend late fees and penalties while a company is pursuing a timely, good-faith question or dispute regarding its status or fee calculation.

VI. Calendar-Day Clarifications Reinforce the Need for a Fairer Process

The 15-Day Modifications specify that the payment period consists of 60 "calendar days" and that each "calendar day" of nonpayment may be treated as a separate violation.[31] Although CARB describes these changes as clarifications, they resolve any ambiguity in the strictest possible direction. Every weekend and holiday counts toward the payment deadline, and every calendar day after that deadline may create additional penalty exposure.

The practical consequences are significant. The regulation does not state whether a payment deadline that falls on a weekend or holiday moves to the next business day. It also does not require CARB to provide a past-due notice or an opportunity to cure before penalties begin. A company that discovers a payment problem on a Friday could therefore accumulate several separate violations before the appropriate personnel, banks, or government offices reopen on Monday.

The calendar-day language is particularly concerning because the regulation creates multiple consequences for the same missed payment. Section 96074(c) authorizes a late fee, while section 96075(c) treats each calendar day of nonpayment as a separate violation that may carry an additional penalty. Liability may therefore continue to grow each day even when the missed payment results from a delivery problem, an internal processing delay, or a good-faith dispute over whether the company is covered or the fee was calculated correctly.

The absence of a formal review process makes this structure especially unfair. Determining whether a company is subject to SB 253 or SB 261 may require difficult judgments about California business

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[30] See Exhibit A, pp. 13-14.

[31] 15-Day Proposed Text at §§ 96074(b)-(c), 96075(a), (c).

activity, revenue, exemptions, and corporate relationships. The fee may also depend on whether CARB correctly identified the company and its subsidiaries. Yet the regulation provides no clear way to challenge those determinations, obtain a written decision, or pause the payment deadline while CARB reviews a good-faith dispute.[32] A company must therefore choose between paying an amount it may not owe and allowing potential penalties to accumulate each calendar day while it seeks clarification.

This highlights how daily penalties are poorly suited to an administrative fee obligation. A late payment is a single administrative lapse; it does not cause new harm each day in the same way that an ongoing emissions violation might. Treating every weekend and holiday as an additional offense can quickly produce liability that bears little relationship to the underlying conduct. Even subject to the statutory annual penalty caps, treating each calendar day as a separate violation can produce liability that bears little relationship to the underlying administrative lapse.

CARB should provide that a payment deadline falling on a weekend or holiday moves to the next business day. It should also establish a time-bound review process, require written notice of nonpayment, and provide a reasonable opportunity to cure before daily penalties begin. These protections are consistent with the statutory penalty framework. Health and Safety Code sections 38532 and 38533 require CARB to consider all relevant circumstances when imposing a penalty, including the entity's past and present compliance and whether and when it took good-faith measures to comply.[33] The modified regulation should codify those mandatory factors and provide that a timely, good-faith challenge suspends the payment deadline and any late fees or penalties until CARB issues a reasoned written response. The entity should then receive a reasonable period to pay any amount determined to be due. If CARB retains daily penalties, they should begin only after that cure period expires.

VII. Additional Targeted Revisions Are Needed

A. The Recordkeeping Requirement Should Allow Records Other Than California Tax Records

The 15-Day Modifications require each reporting entity and covered entity to retain California tax records demonstrating that it meets the revenue and doing-business thresholds. Those records must be retained for five years and provided to CARB upon request.[34] The regulation incorrectly assumes that every entity will have separate California tax records containing the required information.

That assumption may not always be correct. Members of a corporate group may satisfy their California filing obligations through a combined report, with the relevant records maintained by a parent or another group member rather than by each entity. Partnerships, LLCs, and other business forms may use different tax returns that do not calculate revenue using CARB's corporate gross-receipts definition.

Because CARB substituted "business entity" for "taxpayer" in the doing-business test,[35] regulatory coverage is already decoupled from tax-filing status.

A reporting or covered entity may therefore have financial statements, sales records, or other reliable business records demonstrating its revenue and California activity, but no separate California tax document containing that information. The regulation should not require an entity to create tax records

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[32] See our prior comments on this issue in Exhibit A, p. 11.
[33] Health & Safety Code §§ 38532(f)(2)(A) and 38533(f)(2).
[34] 15-Day Proposed Text at § 96074(d); CARB, *Notice of Public Availability of Modified Text*, p. 4 (July 27, 2026).
[35] 15-Day Proposed Text at § 96072(a)(8).

that it is not otherwise required to prepare or expose it to a violation because a particular California tax document does not exist.

CARB should eliminate the addition of the phrase "California tax" from section 96074(d) to allow reporting and covered entities to retain and produce any tax, financial, or other business records reasonably sufficient to demonstrate that they meet the applicable revenue and doing-business thresholds. CARB should also clarify that records maintained by a parent company or another affiliate may satisfy the requirement if they are available for the reporting or covered entity. This would give CARB the information needed to verify applicability without imposing a recordkeeping obligation that some entities cannot satisfy.

B. The Intercompany-Transaction Exclusion Should Apply Consistently Across Corporate Structures

The 15-Day Modifications appropriately exclude certain intercompany transactions when determining an entity's revenue. However, the proposed revisions to section 96072(a)(13) limit that exclusion to transactions between "business entities" in the same California combined reporting group.[36] That limitation is too narrow because a California combined reporting group is a tax-defined concept that may not include every affiliated entity under common control or included in the same consolidated financial statements.

The proposed approach may therefore treat economically similar corporate groups differently based solely on their California tax structure. A U.S. entity may conduct transactions with an affiliate that is included in the same consolidated financial statements but not in the same California combined reporting group. Those transactions are generally eliminated from consolidated financial statements prepared under generally accepted accounting principles or International Financial Reporting Standards because they do not represent revenue earned from outside the corporate group. Under the modified regulation, however, they may be counted toward the U.S. entity's revenue and could cause it to exceed the applicable reporting threshold.

The U.S.-formation restriction in the definition of "business entity" creates an additional problem. Section 96072(a)(1) limits that term to entities formed under U.S. law, while section 96072(a)(13) excludes only transactions between "business entities." A transaction involving a foreign-organized affiliate therefore may not qualify for the exclusion, even when the foreign affiliate is included in the same consolidated financial statements or, in some circumstances, the same California combined reporting group. This could artificially increase the revenue attributed to a potential reporting or covered entity merely because another member of its corporate group was formed outside the United States.

CARB should revise section 96072(a)(13) to exclude transactions between entities under common control when those transactions are eliminated from consolidated financial statements prepared under GAAP or IFRS. These changes would prevent internal corporate transactions from distorting the revenue calculation without expanding the universe of entities directly subject to SB 253 or SB 261.

C. CARB Should Conform Reporting with the Greenhouse Gas Protocol and Avoid Developing a California-Specific Standard

Modifications to Section 96076(a) seek to implement SB 253's requirement that reporting entities measure and report their Scope 1 and Scope 2 emissions in conformance with the Greenhouse Gas Protocol standards and guidance.[37] This addition in the 15-Day Modifications should be retained,

[36] 15-Day Proposed Text at § 96072(a)(13).
[37] See Health & Saf. Code §§ 38532(c)(2)(A)(ii) and 38532(c)(2)(D)(i); 15-Day Proposed Text at § 96076(a).

particularly in light of concerning trends in pre-rulemaking activities for the next phase of climate disclosure rulemaking.

CARB's recent workshop materials contemplate mandatory reporting templates beginning in 2027 and identify potential requirements outside the scope of Greenhouse Gas Protocol requirements such as the disaggregation of emissions.[38] If a template requires calculations, organizational boundaries, or levels of detail beyond what is included in the Greenhouse Gas Protocol, it would effectively create even more of a separate California reporting standard. Companies could be required to recalculate emissions, reconfigure existing systems, maintain parallel reporting processes, and reconcile differences between their California disclosures and reports prepared for other jurisdictions. This would increase costs and regulatory burden on reporting entities.

CARB should confirm that companies will continue to be able to satisfy the program by reporting in accordance with the Greenhouse Gas Protocol requirements and can submit reports prepared for other jurisdictions that meet the statutory requirements of SB 253 and SB 261. Any future templates should be optional and should avoid imposing additional California-specific requirements, such as requirements to disclose detailed disaggregation of emissions. Any material change in reporting methodology should also be developed through formal rulemaking, with meaningful stakeholder engagement and sufficient time for companies to update their systems.

VIII. Conclusion

Although the 15-Day Modifications address several first-year implementation concerns, significant issues remain. CARB should not finalize the regulation without completing the required SRIA and accounting for the economic impacts created or shaped by this rulemaking.

CARB should also revise the applicability and intercompany-transaction provisions, extend the initial reporting deadline, preserve alignment with the Greenhouse Gas Protocol, and establish less unfair procedures for fee notices, disputes, late payments, and penalties.

If you have any questions or would like to discuss the above comments, please feel free to reach out to me at jonathan.kendrick@calchamber.com.

Sincerely,

Jon Kendrick
Policy Advocate
California Chamber of Commerce

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[38] See CARB, *SB 253 Public Workshop: California Corporate Greenhouse Gas Reporting Program*, slide 13 (Mar. 23, 2026).

EXHIBIT A

CalChamber Comments on the 45-Day Package

[15 Pages Follow]

February 9, 2026

Lauren Sanchez
Chair
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Re: Comments on Proposed California Corporate Greenhouse Gas Reporting and Climate-Related Financial Risk Disclosure Initial Regulation

Ms. Sanchez:

The California Chamber of Commerce (CalChamber),[1] and the undersigned, appreciate the opportunity to comment on the California Air Resources Board's (CARB) proposed regulations implementing the Climate Corporate Data Accountability Act (SB 253) and the Climate-Related Financial Risk Act (SB 261).

We submit the following comments[2] to identify areas where revisions to the regulatory package can help to at least reduce compliance burden and provide needed clarity.

I. This Regulatory Package Triggers SRIA Requirements Under the APA

The current regulatory proposal is procedurally deficient because CARB has improperly bypassed the requirement to conduct a Standardized Regulatory Impact Assessment (SRIA). Under the Administrative Procedure Act and Government Code Section 11346.3(c), any "major regulation" must be preceded by a SRIA submitted to the Department of Finance.[3] A "major regulation" is defined as having an economic impact on California business enterprises and individuals exceeding $50 million in any 12-month period.[4] The ISOR incorrectly characterizes this rulemaking as "not major," claiming the highest annual cost is approximately $20.8 million.[5] This figure is fundamentally flawed because it primarily accounts only for the administrative fees expected to be collected under the regulation. **It entirely ignores the substantial and unavoidable direct compliance costs that will be borne by the entities this rulemaking determines must comply with SB 253 and SB 261**.

[1] CalChamber represents a broad and diverse cross-section of California employers, including manufacturers, retailers, logistics providers, technology companies, energy producers, and service providers, many of whom would be directly affected by the proposed rule package.
[2] CalChamber is currently a party to a lawsuit filed in federal court challenging the constitutionality of SB 253 and SB 261. As we explain in *Chamber of Commerce of the United States of America et al. v. Randolph, No. 2:24-cv-00801- ODW-PVC (C.D. Cal.),* SB 253 and SB 261 unconstitutionally compel companies to speak on a controversial topic, in clear violation of their First Amendment rights, impermissibly burden interstate commerce, and further violate constitutional and statutory limitations on California's ability to regulate beyond its borders. While these comments do not cure any of the defects at issue in the CalChamber lawsuit, they are provided by the undersigned in the hopes of reducing the burden on reporting entities in the event CARB implements these laws.
[3] See Government Code § 11346.3(c).
[4] See Government Code §11346.3(c) and Cal. Code Regs. Tit. 1, § 2000.
[5] Initial Statement of Reasons (ISOR) at pp. 19-20.

As the ISOR repeatedly notes, defining terms such as "doing business in California," "revenue," "parent," and "subsidiary" establishes the universe of who must comply with SB 253 and SB 261 and who is excluded.[6] Such determinations control the scale and economic impact of these disclosure programs.

The economic reality of the proposed regulation far exceeds the $50 million threshold of a "major regulation." CARB has acknowledged that thousands of entities will be subject to SB 253 and SB 261.[7] For individual entities, these costs are expected to reach hundreds of thousands of dollars per year.[8] Across the thousands of reporting and covered entities, the cumulative impact of data collection, internal hiring and systems upgrades, external consultants and legal review, and the procurement of third-party assurance will reach hundreds of millions of dollars annually. By failing to quantify these direct costs to the California economy, CARB has not performed the rigorous macroeconomic analysis required by law, including the impact on job creation, business elimination, and the state's overall competitive disadvantage.

It is therefore concerning that CARB has advanced this rulemaking without preparation of a SRIA. As the Legislative Analyst's Office and Cal/OSHA have both observed, the SRIA process improves the quality of regulatory analysis and helps surface implementation challenges early.[9] Given the significant economic impacts associated with the proposal, this rule should not be finalized without a SRIA.

To remedy this procedural error, CARB should suspend the current rulemaking and conduct a formal SRIA, as mandated by Government Code Section 11346.3, that reflects the actual compliance burden and economic impact of the proposed rulemaking and evaluates cost-effective alternatives. Proceeding without this data denies the public and the regulated community a meaningful opportunity to comment on the true economic consequences of the proposal and leaves the regulation vulnerable to challenge.

II. Need for SB 253 Reporting Flexibility and Recognition of Increasing Data Complexity

The proposed regulation establishes an initial August 10th reporting deadline for all reporting entities to submit the emissions data required under SB 253. CARB proposed this deadline for consistency with the verification deadline under CARB's Mandatory Reporting Regulation (MRR).[10] The ISOR justifies the August 10th deadline by claiming that aligning with the MRR will streamline greenhouse gas reporting for

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[6] See, e.g., ISOR at p. 5 ("This section's purpose is to define the scope of applicability for the Proposed Regulation by identifying which business entities are subject to the regulation and to establish which entities are exempted, even if they may otherwise meet the applicability criteria"); See also, ISOR at p. 7 ("Health and Safety Code sections 38532 and 38533 do not provide a definition for 'doing business in California', which is needed to establish which entities are subject to the fee"), ISOR at p. 8 ("Health and Safety Code sections 38532 and 38533 do not provide a definition for 'revenue', which is also needed to establish which entities are subject to this fee regulation"), ISOR at p. 9 ("A clear definition of 'doing business in California' is necessary to determine which entities fall within the scope of the fee regulation authorized by Health and Safety Code sections 38532 and 38533"), and ISOR at p. 11 ("The inclusion of the terms 'Parent' and 'Subsidiary' is necessary to establish the scope of corporate relationships relevant to reporting obligations under the regulation and ensures consistent identification of entities within corporate structures.")
[7] See, e.g., "SB 253/261/219 Public Workshop: Regulation Development and Additional Guidance," August 21, 2025, at slide 19 (providing initial estimates of over 4,000 covered entities under SB 261 and over 2,000 covered entities under SB 253).
[8] See, e.g., SEC File No S7-10-22, "The Enhancement and Standardization of Climate-Related Disclosures for Investors" (estimating ranges of hundreds of thousands of dollars of compliance costs for each reporting entity for a rule that did not even include the notoriously difficult reporting required for Scope 3).
[9] See Legislative Analyst's Office, "Improving California's Regulatory Analysis," at p. 12 (February 3, 2017) and Cal/OSHA "Initial Statement of Reasons, Public Hearing," at p. 56 (September 15, 2016).
[10] ISOR, at p. 15.

entities that must comply with both.[11] However, the deadline provides very little in the way of streamlining. SB 253 requires reporting for the ***prior fiscal year*** of entity-level global emissions. In contrast, MRR requires reporting for the ***prior calendar year*** and is focused on facility-specific emissions, emissions associated with imported electricity, and emissions associated with the combustion of fuels sold in California. SB 253 and MRR collect very different data sets measured over different periods of time.

Alignment in name only does not constitute streamlining and the effect of an August 10th reporting deadline creates an artificial compliance bottleneck. Forcing thousands of companies to compete for the currently limited pool of compliance service providers simultaneously will lead to severe capacity constraints and inflated costs without improving data quality. ***CARB should give the maximum amount of time in the calendar year for entities to perform their 2026 reporting by setting an initial reporting deadline of December 31, 2026, while preserving the February 1st cutoff date proposed in the regulatory package for determining which fiscal year to apply.***

After 2026, an August 10th reporting deadline will become a greater problem as assurance requirements transition from "limited" to "reasonable" assurance, a much more rigorous and time-consuming process. Furthermore, the technical and administrative burden of these disclosures is expected to grow as reporting and assurance standards evolve. Revisions to the GHG Protocol's treatment of Scope 2 emissions reporting are currently under consideration and may make Scope 2 reporting increasingly complex. This burden will be compounded significantly when Scope 3 reporting requirements join the mandate. Scope 3 disclosure requires the collection and verification of data from an entity's entire upstream and downstream value chain which is information often outside the reporting entity's direct control and notoriously difficult to quantify. As these even more complex reporting layers are phased in, the time required to gather, verify, and assure this data will necessarily increase. In future years, a rigid August deadline fails to account for the prolonged data-collection cycles required for these expansive indirect emission reporting requirements.

We recommend that CARB adopt one of the following two alternative reporting structures after 2026:

Alternative 1: Rolling Deadline Based on Fiscal Year End

Under this approach, CARB adopts a "rolling" submission schedule where reports are due exactly twelve months following the close of an entity's individual fiscal year. This model provides the greatest degree of equity, ensuring that every reporting entity has an identical window of time to finalize and assure its data regardless of its accounting cycle. This "rolling" approach would distribute the demand for specialized technical and assurance services throughout the calendar year, lowering costs and ensuring that each report reflects the most recent and accurate data available for that specific enterprise. Given the impending complexity of Scope 2 updates and the addition of Scope 3, providing deadline flexibility is essential.

Alternative 2: Unified December 31 Deadline with Fiscal Year Cutoff

This approach preserves the existing framework in Section 96076(b), which uses a February 1st cutoff to determine the applicable reporting year, but replaces the August 10th submission date with a uniform December 31st deadline. Under this method, companies with fiscal years ending on or before February 1st would report data from that most recently completed fiscal year, while those ending after February 1st would report from the fiscal year ending in the prior calendar year. Using a December 31st deadline is more consistent with how emissions data are typically reviewed and assured in practice and gives reporting entities more time to report as the requirements become more onerous. Increasing the time period between the February 1st cutoff and the reporting deadline also helps space out demand for technical and assurance services.

[11] *Ibid*.

III. The Proposed Fee Structure Exceeds CARB's Statutory Authority Under Health and Safety Code Sections 38532 and 38533 and Raises Serious Constitutional Concerns

The methodology for calculating and assessing implementation fees in Subarticle 2 of the proposed regulations raises substantial legal concerns. As designed, the fee framework exceeds CARB's fee authority under Health and Safety Code sections 38532 and 38533 and exhibits the characteristics of an unauthorized tax under Article XIII A of the California Constitution and a compelled subsidy of government advocacy and restraint on petition, in violation of the First Amendment to the United States Constitution.

A. Inclusion of Legal Defense Costs Exceeds CARB's Fee Authority Under Health and Safety Code Sections 38532 and 38533

Health and Safety Code sections 38532 and 38533 authorize CARB to assess fees solely for the purpose of recovering the reasonable costs of implementing and administering the statutory greenhouse gas reporting and disclosure programs. Nothing in these provisions authorizes CARB to recover the costs of defending regulations against judicial challenge.

The statutory scheme is narrowly focused on program implementation, such as establishing reporting requirements, collecting and reviewing disclosures, and administering compliance mechanisms. By contrast, defending the validity of a regulation in court is a general governmental function that serves the interests of the State as sovereign, not a cost of administering a reporting program attributable to regulated entities.

By defining "Required Revenue" to include the "legal defense of this article," CARB exceeds the fee authority delegated to it by the Legislature. Agencies may not expand their fee authority by regulation beyond the limits established in statute.[12] Where a statute authorizes fees to recover implementation and administration costs, the agency may not use that authority to shift unrelated governmental expenses, such as litigation defense, onto regulated parties.[13]

B. The Fee Structure Also Likely Constitutes an Unauthorized Tax Under Proposition 26

The proposed implementation fee exceeds the constitutional limits on regulatory fees and likely constitutes an unauthorized tax under Article XIII A, section 3(b) of the California Constitution, as amended by Proposition 26.

1. Proposition 26 Presumes State-Imposed Charges Are Taxes Unless a Narrow Exception Is Satisfied

Proposition 26 establishes a broad constitutional presumption: ***any levy, charge, or exaction imposed by the State is a "tax" unless the government affirmatively demonstrates that the charge falls within a narrow exception***. One such exception allows charges imposed solely to recover the reasonable costs of regulation, including costs incident to issuing permits, conducting inspections and audits, and administrative enforcement and adjudication.[14] An agency has the burden of demonstrating that the costs are administrative in nature and the charge recovers no more than the reasonable costs of regulatory activity.[15] Failure to meet this condition means a charge is a tax regardless of how an agency labels it.

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[12] See Government Code Sections 11342.1 and 11342.2.

[13] See, e.g., *Sinclair Paint Co. v. State Bd. of Equalization* (1997) (*Sinclair Paint*), 15 Cal.4th 866, 875–876.

[14] Cal. Const., art. XIII A, § 3(b)(3).

[15] Cal. Const., art. XIII A, § 3(d).

The proposed regulation defines "Required Revenue" to include the "legal defense of this article." Legal defense of a regulation is not an administrative regulatory activity; it is adversarial litigation undertaken on behalf of the State as sovereign. Proposition 26's exception for administrative adjudication does not extend to defending regulations in court.

California courts have held that a regulatory fee is valid only if it is imposed to mitigate or defray the costs of the regulatory program itself, not to fund general governmental functions.[16] Defending the legality of a regulation is a general governmental responsibility that benefits the State broadly and cannot be attributed to the specific costs of administering the regulatory program itself. By incorporating litigation defense of the regulatory package into the fee base, the proposed regulation severs the required reasonable nexus between the charge and permissible regulatory costs, effectively rendering the charge a tax.

2. The Fee Is Not "No More Than Necessary" to Cover Regulatory Costs

Even apart from litigation defense, the structure of the fee fails Proposition 26's requirement that charges be no more than necessary to recover reasonable regulatory costs.[17]

First, the regulation imposes a mandatory 10 percent contingency adjustment to Total Required Revenue to account for speculative "unforeseen costs."[18] This preemptive surcharge is not tied to documented expenses and is imposed regardless of whether such costs materialize and effectively builds a surplus into the fee structure. "Fee" structures that include speculative buffers or built-in surpluses untethered to actual costs run the risk of becoming a tax.[19]

Second, Section 96073(b) requires that any excess revenue be rolled forward indefinitely, with no mechanism for refunding overcollections to the entities that paid them. Sustained overcollection without refunds is a hallmark of a tax, not a fee. Where revenues materially exceed actual regulatory costs, the charge loses its "fee" character.[20]

Together, the contingency surcharge and mandatory roll-over are likely to ensure that the program will routinely collect more than its actual costs and retain those funds permanently. That outcome is incompatible with Proposition 26's requirement that regulatory fees be limited to actual and reasonable costs.

Because the proposed charge exceeds the regulatory-cost exception, it is a tax under Article XIII A. CARB, as an administrative agency, lacks authority to impose a tax by regulation. Taxes may be imposed only by the Legislature (or the electorate), subject to constitutional voting requirements.[21] An agency cannot cure this defect by characterizing a tax as a "fee." Nor can the agency rely on its general regulatory authority to expand fee recovery beyond what the Constitution and enabling statutes permit. Where a charge functions as a tax, it is invalid regardless of policy justification.

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[16] See, e.g., *Sinclair Paint,* 15 Cal.4th at 874–878.
[17] Cal. Const., art. XIII A, § 3(d).
[18] ISOR, at p. 12.
[19] *California Farm Bureau Fed'n v. State Water Resources Control Bd.* (2011) 51 Cal.4th 421, 441; See also *Sinclair Paint*, 15 Cal. 4th at 878.
[20] *Ibid*.
[21] Cal. Const., art. XIII A, § 3(a); *Sinclair Paint*, 15 Cal. 4th at 872-873;

C. Compelled Funding of the State's Legal Defense of this Regulation Raises First Amendment Concerns

1. Compelled Subsidization of Government Advocacy

In addition to exceeding CARB's statutory fee authority and the constitutional limits on regulatory fees, the requirement that regulated entities fund the State's legal defense of this regulation raises serious and independent concerns under the First Amendment to the United States Constitution.

The First Amendment protects not only the right to speak, but also the right to refrain from speaking and from being compelled to subsidize speech with which one disagrees.[22] The Supreme Court has repeatedly held that compelled financial support for expressive activity, particularly advocacy on contested legal or policy issues, implicates core First Amendment interests.[23]

Defending a regulation in court is inherently expressive and adversarial. It involves advancing legal and policy arguments intended to persuade a judicial audience regarding the legality and constitutionality of the State's regulatory choices. When the State requires regulated entities to finance that advocacy through mandatory fees, it compels those entities to subsidize speech that may directly conflict with their own views, interests, and legal positions. This concern is particularly acute where the regulated entities funding the State's legal defense may themselves be challenging the regulation or supporting challenges brought by others. In such circumstances, entities are forced to bankroll arguments deployed against their own claims in court.

2. Burden on the Right to Petition

The First Amendment separately protects the right "to petition the Government for a redress of grievances," including through access to the courts. Government actions that impose financial burdens on the exercise of this right are subject to heightened constitutional scrutiny.[24]

The statutory overreach of the fee structure is compounded by serious First Amendment concerns. By requiring covered and reporting entities to fund the State's legal defense of this regulation, CARB compels regulated parties to subsidize governmental advocacy in proceedings where those same parties may be exercising their constitutional right to petition the courts for redress of grievances.

By embedding judicial defense costs of the regulation into the fee base, the proposed regulation effectively inhibits regulated entities from seeking judicial review. Regulated entities must challenge the regulation knowing that they are simultaneously funding the State's efforts to defeat those challenges. This structure creates a built-in disincentive to petition the courts and risks chilling meritorious claims. Courts have repeatedly held that government actions that penalize, retaliate against, or impose unjustified burdens on the exercise of the right to petition, whether directly or indirectly, raise serious First Amendment concerns and are subject to heightened constitutional scrutiny.[25]

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[22] See *Janus v. AFSCME* (2018) 585 U.S. 878, 892; see also *Knox v. SEIU* (2012) 567 U.S. 298, 309.

[23] *United States v. United Foods, Inc.* (2001) 533 U.S. 405, 410–414.

[24] *See BE&K Construction Co. v. NLRB* (2002) 536 U.S. 516, 524–525*; California Motor Transport Co. v. Trucking Unlimited (1972)* 404 U.S. 508, 510–511.

[25] *California Motor Transport Co. v. Trucking Unlimited* (1972) 404 U.S. 508, 510–511; *BE & K Construction Co. v. NLRB* (2002) 536 U.S. 516, 524-526, 530.

3. Lack of Germaneness to Permissible Regulatory Purposes

Even in contexts where compelled fees are permitted, the Supreme Court has required that funded activities be *germane* to the regulatory purpose that justifies the fee.[26]

Administrative implementation, compliance review, and agency-level enforcement may satisfy that germaneness requirement. Judicial defense of the regulation itself does not. Litigation defending the validity of a regulation does not advance day-to-day program administration. Instead, it serves the State's institutional interest in preserving its regulatory authority. That interest, however, should not be financed through compelled contributions from regulated entities who may oppose the regulation or seek judicial review of its legality.

Taken together, the fee structure risks creating a systemic chilling effect on judicial review. Judicial challenges play a critical role in testing the legality and constitutionality of administrative regulations. A regulatory scheme that requires challengers to fund the government's defense undermines that role and threatens to insulate agency action from meaningful scrutiny.[27] The words "including legal defense of this article" should be stricken from the proposed regulation.

D. The Fee Structure Creates a Substantial Risk of Overcollection

The proposed fee framework also includes an automatic annual adjustment tied to the Consumer Price Index (CPI). That inflation indexing, layered on top of a ten percent contingency adjustment, operates independently of actual program costs and therefore risks systematic overcollection in violation of both statutory fee authority and the constitutional limits on regulatory fees.

Regulatory fees must be calibrated to the agency's reasonable administrative costs. CARB's implementation costs for SB 253 and SB 261 are likely to be disproportionately high in the initial years as internal systems are developed, but those costs do not inherently track CPI over time. As systems mature and processes are standardized, many costs may remain flat or decline. An automatic CPI escalator applied to a prior year's revenue estimate, without reconciliation to actual cost experience, introduces a built-in upward ratchet disconnected from CARB's real expenditures.

That risk is magnified because CPI indexing is not the only upward pressure in the fee formula. When layered on top of mandatory contingency adjustments and a roll-forward mechanism that permanently retains excess revenue, the CPI adjustment functions as an automatic revenue escalator rather than a cost-recovery tool. The absence of any mandatory true-up or refund mechanism exacerbates this ratchet effect, effectively ensuring that overcollections are retained rather than corrected.

Article XIII A of the California Constitution, as amended by Proposition 26, requires that regulatory fees be no more than necessary to cover reasonable costs. An automatic CPI adjustment that is not reconciled to actual expenditures fails that standard. As the nexus between the charged fee and the agency's real regulatory costs erodes over time, the charge ceases to function as a lawful cost-recovery fee and instead takes on the characteristics of a revenue-raising tax.

The constitutional defect created by CPI indexing in this context is compounded by the absence of any mechanism to return excess collections to fee payors. Even where CPI-based increases result in revenues that materially exceed actual costs, the regulation provides no way to reconcile those overcollections. Instead, surplus funds are retained and carried forward, placing the entire risk of

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[26] See *Keller v. State Bar of California* (1990) 496 U.S. 1, 13–14.

[27] See *City of Lakewood v. Plain Dealer Publishing Co.* (1988) 486 U.S. 750, 757–758 (laws that chill First Amendment activity are constitutionally suspect even absent proof of actual suppression).

forecasting errors on regulated entities, contrary to the settled principle that regulatory fees must reflect costs actually incurred by the agency.

To at least partially address the many statutory and constitutional requirements, CARB should:

- Limit any CPI adjustments to situations where CARB can demonstrate corresponding increases in actual program costs, rather than applying a generalized inflation index disconnected from the agency's actual reasonable costs;
- Pair any inflation adjustment with a mandatory reconciliation to actual expenditures, to ensure that fee levels remain calibrated to reasonable regulatory costs; and
- Provide for pro-rata refunds or credits where collections exceed costs, consistent with the requirement that fees recover no more than the reasonable costs of regulation.

As drafted, the CPI adjustment mechanism contributes to a fee structure that is not reliably tied to actual and reasonable regulatory costs and therefore further supports the conclusion that the proposed charge is likely to function as an unauthorized tax rather than a lawful regulatory fee.

IV. The Enforcement and Penalty Provisions Are Inconsistent With the Disclosure-Based Nature of SB 253 and SB 261

The proposed enforcement and penalty framework raises serious concerns regarding proportionality, due process, and consistency with CARB's delegated authority. As drafted, the provisions expose regulated entities to excessive and unpredictable liability for technical or administrative violations, even in the absence of harm, intent, or repeated noncompliance. These defects undermine fairness and unnecessarily increase compliance burden for reporting structures that even state agencies have struggled to implement.[28]

A. Compounding Daily Penalties Are Disproportionate to the Underlying Violations

The regulation provides that "each day during any portion of which a violation occurs is a separate offense," including for payment and reporting violations. Applied to fee payment obligations, this structure means that a single missed or disputed payment can result in daily, compounding penalties until the issue is resolved.

This approach is disproportionate to the nature of the underlying conduct. Late payment or administrative error do not cause incremental harm on a day-by-day basis. Treating each day of nonpayment as a separate violation converts a single administrative lapse into potentially massive liability that bears no reasonable relationship to the severity of the violation.

Administrative penalties must be reasonably related to the gravity of the offense, the regulated entity's culpability, and the harm addressed.[29] A penalty scheme that allows liability to grow exponentially based

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[28] Even an agency as well-resourced as the California State Teachers' Retirement System (CalSTRS) has warned that its past efforts at reporting Scope 3 emissions were inaccurate after it discovered a colossal climate data error. If even CalSTRS struggles with Scope 3, we must expect covered entities to struggle as well. See, e.g., Politico, "Why CalSTRS can't count", May 7, 2024, available at https://www.politico.com/newsletters/the-long-game/2024/05/07/theres-a-climate-accounting-problem-00156501).

[29] See, e.g., *United States v. Bajakajian* (1998) 524 U.S. 321, 334 ("The touchstone of the constitutional inquiry under the Excessive Fines Clause is the principle of proportionality: The amount of the forfeiture must bear some relationship to the gravity of the offense that it is designed to punish.")

solely on the passage of time, without regard to intent, materiality, or actual harm, raises serious concerns under principles of proportionality and due process.

B. Penalties Are Not Meaningfully Tied to Intent, Materiality, or Good-Faith Compliance

The proposed enforcement provisions do not meaningfully distinguish between willful misconduct and good-faith error, material violations and minor technical deficiencies, or first-time and repeat violations.

Absent clear mitigation standards, regulated entities face the same penalty exposure whether a violation results from intentional noncompliance or from reasonable disagreement, evolving guidance, or administrative oversight. This lack of differentiation discourages cooperative engagement with CARB, particularly during the early years of a complex, first-of-its-kind reporting regime. CARB's focus should be on helping entities come into compliance. Effective enforcement frameworks typically incorporate graduated penalties, safe harbors, cure periods, and explicit mitigation factors. The absence of these features here increases the risk of arbitrary outcomes and inconsistent enforcement.

C. Broad Discretion Without Clear Standards Raises Due Process Concerns

Several enforcement provisions vest broad discretion in CARB, including authority to determine when violations occur, assess daily penalties, impose late fees "sufficient" to cover additional costs, and determine whether and how penalties are mitigated.

While agencies necessarily exercise discretion in enforcement, due process requires that regulated entities have clear notice of the conduct that triggers penalties and the magnitude of potential liability. Open-ended standards and undefined penalty ranges prevent businesses from assessing compliance risk and create the appearance, and risk, of arbitrary enforcement.

Clear standards are especially important where penalties can accumulate rapidly and where the underlying obligations involve complex reporting judgments rather than bright-line conduct.

D. Enforcement Provisions Are Inconsistent With the Nature of the Program

SB 253 and SB 261 establish a corporate disclosure regime, not an emissions control or environmental harm program. The Legislature recognized this distinction and therefore expressly excluded Health and Safety Code section 38580, CARB's general administrative penalty provision for AB 32, from applying to these statutes.[30] That exclusion reflects a deliberate legislative judgment that traditional environmental penalty structures are ill-suited to the nature of the obligations created by SB 253 and SB 261.

Notwithstanding this clear statutory direction, the proposed regulations adopt an enforcement framework that mirrors the penalty regimes used for environmental harm and emissions violations. Concepts such as treating "each day" of noncompliance as a separate violation, allowing penalties to accrue continuously over time, and imposing escalating liabilities untethered to materiality or harm are hallmarks of statutes designed to deter ongoing pollution or physical environmental impacts. In those contexts, daily penalties serve a clear purpose: they reflect the fact that each day of excess emissions causes incremental environmental harm.

By contrast, the obligations imposed by SB 253 and SB 261 involve the preparation and submission of disclosures. A failure to disclose information on a given date does not create new or compounding environmental harm with each passing day. Applying a per-day, compounding penalty structure to disclosure violations therefore bears no reasonable relationship to the nature of the underlying conduct. Instead, it transforms a technical or administrative lapse into an open-ended liability exposure that

[30] Health and Safety Code §§ 38532(f) and 38533(f).

escalates solely by operation of time. The Legislature's decision to make section 38580 inapplicable to SB 253 and SB 261 reflects an understanding that disclosure violations should be addressed through measured, compliance-oriented remedies rather than punitive, harm-based penalties. CARB should not override that legislative judgment by importing environmental enforcement concepts through regulation.

The proposed regulatory package, however, expressly relies upon Section 38580 for the assessment of penalties.[31] Where the Legislature has affirmatively excluded a penalty statute, CARB has no discretion to revive that authority through regulatory cross-references or generalized enforcement language. The proposed enforcement framework therefore exceeds CARB's delegated authority and is inconsistent with the express terms and structure of SB 253 and SB 261. The proposed penalty regime materially alters the balance struck by the Legislature by treating failures to disclose as if they were ongoing emissions violations. The proposed regulation should be revised to align penalties with the nature of the obligations imposed rather than relying on enforcement tools designed for environmental harm and expressly excluded by the Legislature.

We recommend that CARB revise the enforcement and penalty provisions to:

- Establish explicit cure periods for first-time or non-material violations;
- Incorporate mitigation factors that account for good-faith efforts, reliance on guidance, and prompt corrective action;
- Define clear limits or ranges for late fees and penalties to reduce uncertainty; and
- Align enforcement severity with actual harm, intent, and materiality.

These changes would reduce the risk of unintended or inequitable consequences.

V. The Proposed Auditing Provision Exceeds CARB's Statutory Authority and Raises Confidentiality and Due Process Concerns

The proposed auditing provision authorizes CARB's Executive Officer to contract with or consult outside entities, including the Franchise Tax Board (FTB) and the California Department of Tax and Fee Administration (formerly the Board of Equalization), to obtain data or services needed to audit fee remittances or unpaid fees, and to fund those auditing activities using fee revenues. As drafted, this provision exceeds CARB's delegated authority and lacks the necessary statutory and procedural guardrails.

First, while CARB may verify whether required fees have been accurately calculated and remitted, neither SB 253 nor SB 261 authorizes CARB to obtain or use confidential taxpayer information held by the Franchise Tax Board or the California Department of Tax and Fee Administration. Disclosure and use of tax return information are governed by strict confidentiality provisions in the Revenue and Taxation Code,[32] which permit interagency sharing only where the Legislature has expressly authorized it.[33] Nothing in SB 253 or SB 261 provides such authorization. An administrative regulation cannot create access to confidential tax data where the Legislature has not done so.

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[31] See § 96075(a) of the proposed regulation.

[32] See Rev. & Tax Code § 19542.

[33] In California, when the Legislature wants one agency to have access to another agency's tax data, it writes a specific "interagency sharing" provision (See Rev. & Tax. Code §§ 19551 – 19570). Here the statutes authorized CARB to collect "fees" and "reports," but they are silent on tax records. It is unclear what statutory authority exists, for CARB to collect tax records.

Second, the proposed language is overbroad in scope. It does not limit auditing activities to information reasonably necessary to verify fee applicability or fee amounts, nor does it define the permissible data sources, audit methods, or boundaries of inquiry. Absent clear limits, the provision could be read to authorize expansive financial audits or inquiries into unrelated business operations, which would exceed the narrow purpose of fee verification and raise due process concerns. Regulatory audits must be no more intrusive than necessary to administer the authorized program, and regulated entities are entitled to clear notice of the scope and basis of any audit.

For these reasons, the auditing provision should be revised to: (1) expressly limit audits to verification of fee remittances using information lawfully provided by the fee payer or otherwise publicly available; and (2) clarify that nothing in the regulation authorizes access to confidential tax information held by FTB or CDTFA absent express statutory authorization.

VI. The Regulations Should Provide a Clear and Fair Process for Entities to Challenge Covered-Entity Determinations

The proposed regulations do not provide a clear mechanism for companies to challenge CARB's determination that they are "covered entities" subject to the requirements and fees of SB 253 and SB 261. Given the significant compliance obligations, ongoing fee liability, and potential penalties associated with covered-entity status, the absence of a defined process to contest applicability raises serious due process and fairness concerns.

Determining whether an entity is covered under SB 253 or SB 261 involves complex legal and factual questions, including interpretation of "doing business in California," application of revenue thresholds, treatment of affiliated entities, application of exemptions under the proposed rule, and classification of parent–subsidiary relationships. Reasonable disputes are inevitable, particularly for companies with limited physical presence in California, unusual corporate structures, or non-recurring revenue events. Without a formal avenue to seek review or clarification, companies may be forced either to comply under protest, incurring substantial and potentially unrecoverable costs, or to risk enforcement actions and penalties while disputing their status.

Fundamental principles of administrative due process require that regulated entities have a meaningful opportunity to challenge threshold determinations that trigger regulatory obligations. Absent a review mechanism, CARB's initial applicability determinations function as unreviewable, de facto adjudications, despite the lack of any formal adjudicatory process. Providing a clear path to contest covered or reporting entity status would improve accuracy, reduce unnecessary compliance costs, and encourage cooperative engagement with CARB.

Accordingly, we recommend that CARB amend the regulations to establish a transparent, time-bound process allowing entities to challenge or seek confirmation of covered-entity determinations prior to the imposition of fees, reporting obligations, or penalties. At a minimum, the regulations should:

- Allow entities to submit a written challenge or request for determination regarding covered-entity status;
- Require CARB to provide a reasoned written response within a defined timeframe;
- Suspend fee and reporting obligations while a good-faith challenge is pending; and
- Provide clarity regarding whether and how determinations may be revisited in subsequent reporting years.

Incorporating such a process would enhance procedural fairness and reduce the risk of erroneous coverage determinations.

VII. Applicability Definitions Warrant Further Refinement to Avoid Overbreadth and Unintended Consequences

The proposed regulations adopt definitions of "doing business in California" and "revenue" that will determine which entities are subject to the requirements of SB 253 and SB 261. These threshold determinations are among the most consequential aspects of the rule package, as they define the scope of the regulated universe and drive both compliance obligations and fee liability. We believe these definitions would benefit from further refinement.

With respect to the definition of "doing business in California," the proposed reliance on sales-based thresholds may sweep in entities with limited operational presence in the state. Companies that have no facilities, employees, or physical operations in California may nonetheless exceed sales thresholds based on national or global distribution patterns.

The proposed approach to determining whether an entity meets the statutory revenue threshold also raises concerns. Reliance on gross receipts, without regard to margins or extraordinary, non-recurring transactions, may disproportionately affect high-volume, low-margin industries such as retail, logistics, and wholesale trade. In these sectors, revenue is often a poor proxy for emissions profile, climate risk, or capacity to absorb new regulatory costs. Clarifying how one-time transactions or anomalous revenue spikes are treated would improve predictability and fairness.

Finally, the proposed regulations currently define the terms "parent" and "subsidiary," but do not provide clear guidance on how reporting obligations are to be applied in practice across parent–subsidiary corporate structures. Absent such guidance, reporting entities lack a workable framework for determining whether and how disclosures should be made on a consolidated basis, at the subsidiary level, or both.

Without clear rules addressing how consolidated reporting is to be achieved, the proposed approach risks inconsistent interpretation, duplicative reporting, and unnecessary administrative burden. Clarifying parent–subsidiary applicability and reporting mechanics at the outset is essential to ensure consistent implementation and workable compliance as the program moves forward.

VIII. Implementation Would Benefit from Clear, Codified Safe Harbors

Given the novelty, scale, and complexity of the disclosure obligations under SB 253 and SB 261, the proposed regulations should include clear and enforceable safe harbors to protect good-faith actors and to avoid penalizing entities for circumstances beyond their reasonable control. Safe harbors are particularly appropriate where compliance depends on third-party data, evolving methodologies, and professional judgment rather than bright-line conduct.

Well-designed safe harbors do not undermine the integrity of the program. To the contrary, they promote more accurate reporting and encourage early and transparent engagement with CARB. Without such protections, the program risks punishing good-faith actors with unnecessary enforcement actions.

A. Safe Harbor for Good-Faith Use of Accepted Methodologies and Standards

The regulations should provide a safe harbor for entities that calculate and disclose emissions and climate-related financial risk using recognized, widely accepted methodologies employed to satisfy other national and international reporting requirements, including accepted versions of the GHG Protocol and other referenced frameworks. To preserve flexibility and minimize unnecessary duplication, CARB should avoid requiring the use of prescriptive reporting templates or mandating adherence to a single methodology where multiple credible standards are already in widespread use.

Where an entity can demonstrate that it relied in good faith on CARB-approved or widely accepted methodologies, applied those methodologies consistently, and documented its assumptions and calculation methods, the entity should not be subject to penalties solely because CARB later revises its interpretive guidance or adopts updated standards or reporting formats. This protection is particularly important given the accepted versions of the GHG protocol at the time the laws were passed, the likelihood of future changes to Scope 2 accounting rules, the anticipated expansion to Scope 3 disclosures, and the use of differing global warming potential values across regulatory regimes.

A safe harbor of this kind is also consistent with the statutory directive to minimize duplication of effort by allowing reporting and covered entities to rely on disclosures prepared for other jurisdictions. That objective would be undermined by rigid templates or inflexible standard-setting that forces entities to re-map, re-calculate, or re-format substantively equivalent information solely to satisfy California-specific presentation requirements.

B. Safe Harbor for Reasonable Estimates and Data Gaps Outside the Entity's Control

Especially for Scope 2 and Scope 3 emissions and climate-related financial risk disclosures, reporting entities will often be required to rely on estimates, proxy data, and information provided by third parties across complex value chains. The regulations should include a safe harbor for reasonable estimates where primary data are unavailable despite good-faith efforts to obtain them.

That safe harbor should apply where an entity makes reasonable efforts to obtain accurate data, uses appropriate estimation techniques where direct data are unavailable or difficult to obtain, and transparently discloses the use of estimates and associated uncertainty. The regulations should also exempt information that may be prohibited from disclosure under applicable law, due to external confidentiality restrictions or obligations, or on national security grounds.

Critically, reporting entities should not be subject to penalties for inaccuracies that are attributable to incomplete, inconsistent, or unreliable third-party data, or to reasonable estimates derived from such data, where the entity does not control the underlying information and has complied with the applicable disclosure and documentation requirements.

C. Safe Harbor for Reliance on Qualified Third-Party Assurance Providers

The regulations should include a safe harbor for entities that rely on qualified, independent third-party assurance providers to review disclosures. Where an entity engages an assurance provider that meets CARB's qualification requirements and follows the provider's professional recommendations in good faith, the entity should not be exposed to penalties based on later disagreements over methodological interpretation.

Absent such a safe harbor, entities are placed in the untenable position of being second-guessed for relying on professional experts whose services the regulations themselves effectively require.

D. Safe Harbor for Early-Year Reporting

The initial reporting years under SB 253 and SB 261 will involve significant learning curves for both reporting entities and regulators. The regulations should include an explicit safe harbor, beyond the one-year flexibility provided by guidance for 2026, for early-year reporting errors that are promptly corrected upon identification. A limited, time-bound safe harbor would recognize the complexity of initial implementation and encourage transparency rather than discouraging disclosure out of fear of penalties.

Additionally, CARB has provided several enforcement notices and guidance documents. CARB should expressly include a safe harbor that prevents reporting and covered entities from being penalized for following such enforcement notice and guidance documents.

E. Safe Harbor and Extended Timeframe for Fee Payment

Finally, the proposed regulations require reporting and covered entities to remit program fees within 60 days, after which daily penalties may begin to accrue. Given the complexity of the applicability determinations, the magnitude of the fees, and the absence of a clear process to challenge reporting or covered-entity status or fee calculations, a 60-day payment window is unreasonably short and creates unnecessary risk of penalties for good-faith entities.

Determining the correct fee amount may require internal review of revenue calculations, corporate structure, and parent–subsidiary relationships. In some cases, CARB may not deliver the fee notice to the proper channel to ensure timely payment. In many cases, companies must also coordinate with outside counsel, accountants, or assurance providers to confirm that the fee assessment is accurate and consistent with the regulations.

A rigid 60-day deadline, combined with compounding daily penalties, effectively forces companies to pay under protest to avoid enforcement exposure even where there are legitimate disputes regarding applicability or fee calculation. That outcome undermines due process and discourages the careful review necessary to ensure accurate fee remittance.

We therefore recommend that CARB establish a safe harbor for fee payment that allows additional time for good-faith review and dispute resolution. The regulations should: (1) extend the initial fee payment deadline to at least 120 days from the date of invoicing or notice of assessment; (2) provide an automatic safe harbor from penalties where a covered entity is engaged in a good-faith review or challenge of its covered-entity status or fee calculation; (3) suspend accrual of penalties during the pendency of a timely, good-faith dispute or clarification request; and (4) allow entities to remit payment without penalty upon resolution of the dispute within a reasonable period.

Extending the payment window and incorporating a safe harbor would not impede CARB's ability to administer the program or collect fees. Instead, it would reduce unnecessary disputes, prevent inadvertent noncompliance, and align the fee collection process with the disclosure-oriented nature of SB 253 and SB 261. A more flexible approach would also improve fairness and compliance outcomes while reducing the likelihood of avoidable enforcement actions.

IX. Conclusion

We appreciate the opportunity to comment on CARB's proposed regulations implementing SB 253 and SB 261.

We urge CARB to revise the proposal before proceeding. At a minimum, CARB should complete the SRIA required for major regulations using a realistic accounting of direct compliance costs, adopt reporting timelines that reflect fiscal-year variability and growing data complexity, and ensure fees remain strictly limited to actual and reasonable implementation and administration costs authorized by Health and Safety Code sections 38532 and 38533. CARB should also narrow and clarify the enforcement, penalty, and audit provisions to align with the disclosure-based nature of these statutes and applicable statutory limits. Finally, CARB should add codified safe harbors for good-faith compliance (including a longer fee-payment window and tolling during good-faith disputes). Thank you for your consideration of these comments.

If you have any questions or would like to discuss the above comments, please feel free to reach out to me at jonathan.kendrick@calchamber.com.

Sincerely,

Jon Kendrick
Policy Advocate
California Chamber of Commerce

And on Behalf of the Following Organizations

African American Farmers of California
Agricultural Council of California
American Chemistry Council
Dairy Institute of California
Energy Infrastructure Council
California Chamber of Commerce
California Construction and Industrial Materials Association
California Cotton Ginners and Growers Association
California Dates Commission
California Grocers Association
California Hospital Association
California Independent Petroleum Association
California League of Food Producers
California Retailers Association
California Strawberry Commission
California Tomato Growers Association
Nisei Farmers League
Plumbing Manufacturers International
Specialty Equipment Market Association
Western Growers Association
Western Plant Health Association
Western Tree Nut Association
Wine Institute

JK:nr