



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),<sup>1</sup> 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<sup>2</sup> 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.<sup>3</sup> A “major regulation” is defined as having an economic impact on California business enterprises and individuals exceeding \$50 million in any 12-month period.<sup>4</sup> The ISOR incorrectly characterizes this rulemaking as "not major," claiming the highest annual cost is approximately \$20.8 million.<sup>5</sup> 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.**

<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> See Government Code § 11346.3(c).

<sup>4</sup> See Government Code §11346.3(c) and Cal. Code Regs. Tit. 1, § 2000.

<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> For individual entities, these costs are expected to reach hundreds of thousands of dollars per year.<sup>8</sup> 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.<sup>9</sup> 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).<sup>10</sup> The ISOR justifies the August 10th deadline by claiming that aligning with the MRR will streamline greenhouse gas reporting for

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<sup>6</sup> 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.”)

<sup>7</sup> 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).

<sup>8</sup> 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).

<sup>9</sup> 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).

<sup>10</sup> ISOR, at p. 15.

entities that must comply with both.<sup>11</sup> 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.

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<sup>11</sup> *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.<sup>12</sup> 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.<sup>13</sup>

#### 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.<sup>14</sup> 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.<sup>15</sup> Failure to meet this condition means a charge is a tax regardless of how an agency labels it.

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<sup>12</sup> See Government Code Sections 11342.1 and 11342.2.

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

<sup>14</sup> Cal. Const., art. XIII A, § 3(b)(3).

<sup>15</sup> 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.<sup>16</sup> 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.<sup>17</sup>

First, the regulation imposes a mandatory 10 percent contingency adjustment to Total Required Revenue to account for speculative “unforeseen costs.”<sup>18</sup> 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.<sup>19</sup>

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.<sup>20</sup>

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.<sup>21</sup> 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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<sup>16</sup> See, e.g., *Sinclair Paint*, 15 Cal.4th at 874–878.

<sup>17</sup> Cal. Const., art. XIII A, § 3(d).

<sup>18</sup> ISOR, at p. 12.

<sup>19</sup> *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.

<sup>20</sup> *Ibid.*

<sup>21</sup> 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.<sup>22</sup> 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.<sup>23</sup>

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.<sup>24</sup>

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.<sup>25</sup>

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

<sup>23</sup> *United States v. United Foods, Inc.* (2001) 533 U.S. 405, 410–414.

<sup>24</sup> 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.

<sup>25</sup> *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.<sup>26</sup>

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.<sup>27</sup> 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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<sup>26</sup> See *Keller v. State Bar of California* (1990) 496 U.S. 1, 13–14.

<sup>27</sup> 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.<sup>28</sup>

##### **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.<sup>29</sup> A penalty scheme that allows liability to grow exponentially based

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<sup>28</sup> 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>).

<sup>29</sup> See, e.g., *United States v.ajakajian* (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.<sup>30</sup> 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

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<sup>30</sup> 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.<sup>31</sup> 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,<sup>32</sup> which permit interagency sharing only where the Legislature has expressly authorized it.<sup>33</sup> 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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<sup>31</sup> See § 96075(a) of the proposed regulation.

<sup>32</sup> See Rev. & Tax Code § 19542.

<sup>33</sup> 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](mailto: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

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