



February 6, 2026

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

Submitted Electronically via CARB Internet Comment Form and [climatedisclosure@arb.ca.gov](mailto:climatedisclosure@arb.ca.gov)

Re: Comment Letter in Response to CARB's **Proposed California Corporate Greenhouse Gas Reporting and Climate-Related Financial Risk Disclosure Initial Regulation**

Dear Chair Sanchez:

The Society for Corporate Governance ("Society") submits this letter in response to the California Air Resources Board's ("CARB") request for comments on the proposed California Corporate Greenhouse Gas Reporting and Climate-Related Financial Risk Disclosure Initial Regulation ("Proposed Regulation") to implement California's climate disclosure legislation, Senate Bill 253 ("§ 38532") (codified in Health & Safety Code § 38532) and Senate Bill 261 ("§ 38533") (codified in Health and Safety Code § 38533), as amended by Senate Bill 219 ("SB 219").<sup>1</sup>

We appreciate the opportunity to engage with CARB on outstanding areas of concern regarding Health and Safety Code § 38532 and § 38533. In advance of the February 26, 2026, CARB Board hearing to consider the Proposed Regulation, we hope CARB will update its rulemaking based on our recommendations, which not only advance the stated objectives of the legislation, but also offer constructive solutions to address important areas of misalignment between the Proposed Regulation and the practical realities for reporting companies. We believe that it is crucial for CARB to address these areas to avoid jeopardizing the credibility and implementation of Health and Safety Code § 38532 and § 38533.<sup>2</sup>

In that spirit and in view of the upcoming CARB Board hearing, we have focused this comment letter on items we believe must be resolved in the near term to promote the foregoing objectives:

- CARB's approach for establishing the covered year for GHG emissions reporting under § 38532
- Timing of greenhouse gas (GHG) emissions reporting under § 38532
- Proposed fee structure and timing
- Codification of exemptions to applicability for purposes of 2026 and ongoing reporting
- Codification of relief and reconciliation with text of § 38532 for 2026 reporting
- Concerns related to the rulemaking process

The concerns we have previously expressed to CARB regarding the implementation of § 38532 and § 38533 have encompassed a wider range of issues. We have not reiterated many of these concerns in this

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<sup>1</sup> References to SB 253 and SB 261 are to their amended versions per SB 219. This letter also references California Health & Safety Code § 38532 and § 38533, in which SB 253 and SB 261 are respectively codified.

<sup>2</sup> § 38532 identifies among its stated objectives GHG emissions data transparency, accuracy, comprehensiveness, and consistency, along with minimizing duplication of effort and supporting interoperability for reporting entities.

comment letter in the interest of time, but encourage CARB to review our prior submissions,<sup>3</sup> as many of these issues remain important to our reporting companies. Notably, except as relevant to the discussion about fees in Section IV, this letter does not include a discussion about the definition of “doing business in California” under Health and Safety Code § 38532 and § 38533. However, we remain concerned that the proposed definition fails to provide a clear and sufficient California nexus, and remind CARB of our recommendation that the proposed definition include an additional California-specific revenue threshold beyond those set forth in Revenue and Tax Code § 23101(b) to establish this nexus.<sup>4</sup> We also remain focused on the three central goals underlying our prior communications, namely to: (i) provide companies with predictability, (ii) take a practical approach as to the timing and scope of requirements, and (iii) minimize costs and burdens, particularly in light of the current status of corporate climate reporting and the substantial time, effort, and expense associated with preparing such reporting.

## **Introduction**

Founded in 1946, the Society is a professional membership association of approximately 3,700 corporate and assistant secretaries, in-house counsel, outside counsel, and other governance professionals who serve approximately 1,600 entities, including 1,000 public, private, and nonprofit organizations of almost every size and industry. Our organization has 80 years of experience empowering professionals to shape and advance corporate governance within their organizations, in part through providing the knowledge and tools they need to advise their boards and executive management on corporate governance; regulatory and legal developments; and sustainability issues, including climate-related governance, risk management, and disclosure.

Our members have significant practical experience with governance, risk management, and disclosure, both in general and with respect to climate-related matters. Therefore, we believe that the Society is well-positioned to provide constructive feedback to CARB with respect to the climate-related disclosures required by § 38532 and § 38533. Moreover, the comments we are submitting are informed not only by

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<sup>3</sup> The comments and recommendations in this letter supplement those in prior submissions to CARB and/or CARB staff and policymakers, which consist of the following:

- Society: [Meeting Summary: January 28, 2026, Meeting with CARB Staff](#), January 2026
- Society: [Comment Letter in Response to Draft Reporting Template for Scope 1 and Scope 2 GHG Emissions](#) and [Appendix A](#) | November 2025
- Society: [Key Takeaways from October 22, 2025, Meeting with Senator Stern](#) | October 2025
- [Society Letter to CARB in Response to Request for Comments Following August 21, 2025 Public Workshop](#) | September 2025
- [Society Letter to CARB: Feedback on August 21, 2025 Public Workshop](#) | August 2025
- Society: [Recommendations for CARB's Consideration for August 21, 2025, Public Workshop](#) | ["Doing Business in California" Decision Trees](#) | [Enforcement Relief Table](#) | August 2025
- [Society Comment Letter: Information Solicitation to Inform Implementation of California Climate-Disclosure Legislation: Senate Bills 253 and 261, as amended by Senate Bill 219](#) | March 2025

<sup>4</sup> For entities not domiciled or headquartered in California, or that have operations in many states, this standard in and of itself does not and cannot demonstrate a sufficient nexus with the state of California necessary for required compliance with the extensive and time-consuming GHG emissions and climate-related financial risk reporting under Health and Safety Code § 38532 and § 38533, respectively. Because of the use of unclear terminology (e.g., “commercially domiciled”) and relatively low applicability thresholds, this definition was clearly not intended to be used for laws such as Health and Safety Code § 38532 and § 38533 to establish the necessary substantive nexus. Using Revenue and Tax Code Section 23101(b) could result in a company meeting the requisite definition of “doing business” in California by virtue of having a single California transaction, which would not serve CARB’s legal obligation to establish clear, predictable, and objective standards that are appropriately calibrated to demonstrate a clear and sufficient nexus between potential in-scope companies and the state of California, particularly in light of the significant time, effort, and expense that companies will need to incur to comply with Health and Safety Code § 38532 and § 38533.

that experience, but also by a member survey<sup>5</sup> regarding their companies' GHG emissions disclosure and assurance practices and related timing considerations.

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<sup>5</sup> Society for Corporate Governance Survey: GHG Emissions Reporting Timeline (January/February 2026), hereinafter, Society Survey (on file with author). Respondent demographics consisted of [90%] publicly traded companies, [7%] private companies, and [3%] mutual companies across sizes and industries, with the greatest representation among companies in the following industries: Technology (16%), Financial Services (13%), Insurance (10%), and Oil & Gas (10%).

## I. Summary of Recommendations

| <u>Recommendation</u>                                                                                                                                                                                                                           | <u>Rationale</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | <u>Section</u>                   |
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| <b>Covered Year for GHG Emissions Reporting (Health and Safety Code § 38532)</b>                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                  |
| CARB should permit all companies, regardless of the date of their fiscal year-end, to report their GHG emissions for their fiscal year ending in the previous calendar year, subject to their election to report more currently available data. | <p>Currently proposed § 96076(b) bifurcates companies into two groups based on the date of their fiscal year-end. This particularly disadvantages companies with January 1 – February 1 fiscal year-ends (primarily retailers). It is also inconsistent with companies' typical reporting timelines (and thus the statutory text). As further discussed below, many companies, including mature GHG emissions reporters, do not and are unable to report their GHG emissions data six months after their fiscal year-end, and these challenges are exacerbated for new GHG emissions reporters.</p> <p>The recommended approach not only better reflects the practical realities of corporate climate reporting, but also allows CARB to align with the approach taken by voluntary reporting organizations, such as CDP, to accommodate the practical challenges faced by companies with non-calendar fiscal years.</p> <p>Further, many companies, particularly retail companies, do not have a fixed fiscal year-end date but rather have a formula-driven fiscal year-end (e.g., Saturday or Sunday closest to January 31). Under the Proposed Regulation, these companies would fall into different reporting categories in different years under § 96076(b). This creates unpredictability for both companies and CARB, and will result in arbitrary gaps in the data made available to the public.</p> | Further discussed in Section II  |
| <b>Timing of GHG Emissions Reporting (Health and Safety Code § 38532)</b>                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                  |
| Permit companies to submit their initial Scope 1 and Scope 2 GHG emissions reports from August 10, 2026, through December 31 in 2026 and for subsequent reporting periods.                                                                      | <p>Flexibility for companies to report on a rolling basis through the end of 2026 will alleviate practical challenges (and for some companies, infeasibility of compliance). Additionally, a later submission deadline is consistent with industry practice and CARB's legislative mandate, including the mandate to take into account availability of assurance providers and interoperability.<sup>6</sup></p> <p>Conversely, there are mature GHG reporting companies</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Further discussed in Section III |

<sup>6</sup> Health and Safety Code § 38532(c)(2)(A)(vi) requires that reporting timelines established by CARB's implementing regulations "shall consider industry stakeholder input and shall take into account the timelines by which reporting entities typically receive scope 1 emissions, scope 2 emissions, and scope 3 emissions data, as well as the capacity for an independent assurance engagement to be performed by a third-party assurance provider." Notwithstanding the fact that CARB's informal guidance specifically waived assurance for 2026 § 38532 reporting, as further discussed in Section III, particularly for mature reporting companies, assurance is an established and non-negotiable component of emissions reporting; as a result, assurance is a critical component of these companies' reporting timelines.

| <b><u>Recommendation</u></b>                                                                                                                                                                                                                                                                                                                                                             | <b><u>Rationale</u></b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | <b><u>Section</u></b>            |
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|                                                                                                                                                                                                                                                                                                                                                                                          | with a post-February 1 fiscal year-end that would not want to report more than one-year-old data and that may elect to report their most current data in a post-August 10 submission window if they are in a position to do so.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                  |
| If CARB needs to receive data on the number of reporting companies by August 10 for fee assessment purposes, permit companies that do not report by August 10 to submit a statement that they intend to report on or before December 31. This should also be an option available for subsequent reporting periods if August 10 remains CARB's selected date for fee assessment purposes. | If it is important to CARB to have, by August 10, 2026, final data on the number of § 38532 reports it will receive in 2026 for purposes of calculating and invoicing the fees in a timely manner, we believe that goal would be served while permitting companies to submit § 38532 reports through year-end if CARB gave companies three options, including the two it has already proposed. By August 10, companies in scope of § 38532 submit: (1) a cover note with a § 38532 GHG emissions report, (2) a cover note with a statement on company letterhead stating that "it did not submit a report" and "indicating that in accordance with the Enforcement Notice, [it] was not collecting data or planning to collect data at the time the Notice was issued," or (3) a cover note with a statement on company letterhead stating that it intends to submit a § 38532 GHG report on or before December 31, 2026. | Further discussed in Section III |
| <b>Fee Structure and Timing</b>                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                  |
| Assess filing fees on a per-report basis, with tiered costs based on the FTB-reported California-specific revenue of the entity submitting the report.                                                                                                                                                                                                                                   | <p>Assessing filing fees on a per-report basis addresses some of the challenges associated with identifying in-scope entities given the evolving nature of CARB's guidance on this topic. Additionally, it represents a more proportionate approach to the allocation of filing fees (and aligns with the reality that companies take different approaches on consolidated tax filings to California) than the fairly complicated per-entity approach set forth in the Proposed Regulation.</p> <p>This approach would also facilitate CARB's fee collection efforts, since CARB would already need to verify in-scope entities based on California tax filings. To further facilitate CARB's fee assessment efforts, CARB could include on the cover page boxes for the reporting entity to indicate its fee tier (similar to the cover page to SEC reports).</p>                                                        | Further discussed in Section IV  |

## II. Covered Year for GHG Emissions Reporting (§ 38532)

**Recommendation 1:** Amend § 96076 of the Proposed Regulation to permit all companies, regardless of the date of their fiscal year-end, to report their GHG emissions for their fiscal year ending in the previous calendar year, subject to their election to report more currently available data.

### **Rationale: § 96076 of the Proposed Regulation Does Not Align with Corporate Reality or CARB's Statutory Mandate to Take Into Account Corporate Timelines and Maximize Data Access**

The statute mandates that CARB follow two principles in adopting regulations under § 38532, including with respect to deadlines for reporting. The first principle is set out in § 38532(c)(2)(A)(vi), which requires that reporting timelines established by CARB's implementing regulations "shall consider industry stakeholder input and shall take into account the timelines by which reporting entities typically receive Scope 1 emissions, Scope 2 emissions, and Scope 3 emissions data, as well as the capacity for an independent assurance engagement to be performed by a third-party assurance provider." Governor Newsom reinforced that requirement in his signing statement for § 38532, directing CARB to "clarify and streamline" implementation and to ensure that the program does not impose "inconsistent or infeasible compliance obligations."

The second principle is established by § 38532(c)(2)(B), which states that CARB shall ensure that the regulations adopted pursuant to the statute require that "a reporting entity's public disclosure maximizes access for consumers, investors and other stakeholders to comprehensive and detailed greenhouse gas emissions data across Scope 1 emissions, Scope 2 emissions, and Scope 3 emissions [...] and is made in a manner that is easily understandable and accessible."

#### **A. Reporting GHG emissions for a fiscal year six-to-seven months after that fiscal year-end constitutes an "infeasible compliance obligation" for many companies.**

Most companies, including approximately 70% of the Russell 3000, have a fiscal year-end that ends on December 31.<sup>7</sup> For such companies, the August 10 deadline would provide only about seven months to prepare and submit Scope 1 and 2 GHG emissions in 2026. For the companies whose fiscal years end between January 1 and February 1, 2026, the proposed reporting timeframe is an even more compressed six months.

Feedback from our members in the Society Survey (consistent with the member survey we conducted in 2025 and that we used for purposes of informing our March 2025 comment letter<sup>8</sup> on this precise topic) indicates that six-to-seven months does not provide many companies with sufficient time to publish GHG emissions disclosures with accurate data. Preparing and reporting GHG emissions requires substantial time, effort, and expense on an annual basis.

- According to the Society Survey, among companies that currently report Scope 1 and Scope 2 emissions data, nearly half of respondents will require between six and 11 months to publish their GHG emissions data in a regulatory compliance filing such as that required by the Proposed Regulation.

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<sup>7</sup> Data as of February 2026 and derived from Intelligize's compilation of public company filings made through the U.S. Securities and Exchange Commission's Electronic Data Gathering, Analysis, and Retrieval filing ("EDGAR") system.

<sup>8</sup> See Society Comment Letter: Information Solicitation to Inform Implementation of California Climate-Disclosure Legislation: Senate Bills 253 and 261, as amended by Senate Bill 219 (March 2025), available at [https://higherlogicdownload.s3.amazonaws.com/GOVERNANCEPROFESSIONALS/5d47927b-105a-4bc7-9aef-821536f3505b/UploadedImages/Society\\_for\\_Corporate\\_Governance\\_Letter\\_in\\_Response\\_to\\_CARB\\_Information\\_Solicitation\\_March\\_21\\_\\_2025.pdf](https://higherlogicdownload.s3.amazonaws.com/GOVERNANCEPROFESSIONALS/5d47927b-105a-4bc7-9aef-821536f3505b/UploadedImages/Society_for_Corporate_Governance_Letter_in_Response_to_CARB_Information_Solicitation_March_21__2025.pdf).

- *Data Collection.* Many companies take up to six months (with 61% of companies requiring between three and six months, and a minority needing up to approximately ten months) just to gather the Scope 1 and Scope 2 GHG emissions data to begin analysis and development of disclosures.
- *Data Verification.* Following data gathering, companies undertake an internal verification and approval process to ensure accuracy (as large companies typically do with all public disclosures), which takes additional time. Third-party assurance further extends this timeline.

The Society Survey reinforces the examples we shared during our engagements with CARB staff on December 19, 2025,<sup>9</sup> and January 28, 2026<sup>10</sup>—reaffirming the fact that even large, sophisticated, and mature emissions reporting companies with plentiful resources would find a six-to-seven month reporting timeframe infeasible or challenging and inconsistent with their current practices.<sup>11</sup>

In considering this data, CARB should note that mature GHG emissions reporting companies are much more likely to publish assured GHG emissions data than reporting companies that are newer to emissions disclosure, which, as noted above, extends the reporting timeline. This is the case notwithstanding CARB's enforcement relief in the first year, as was discussed in detail by members of mature reporting companies during the aforementioned engagements with CARB staff.

CARB should also note that the timing challenges would be even greater for companies without well-established data gathering and disclosure processes. In our experience, smaller and non-public companies that may not be captured in the Society Survey are much more likely to have immature climate reporting capabilities. Concerns about providing sufficient time to produce accurate and reliable data are even more salient for those companies. While we acknowledge the enforcement discretion that CARB has stated it will exercise with respect to the first year of reporting, gathering and preparing the relevant data (and, in future years, obtaining assurance) is an exercise that will need to be performed annually, and the challenges in doing so will not disappear after initial reports under § 38532 are published.

**Conclusion:** Permitting all companies to report their GHG emissions for their fiscal year ending in the previous calendar year would be more consistent with CARB's mandate to take into account existing practices and timelines because it allows companies to leverage their current processes and practices. Under the recommended approach, companies could also choose to provide more recent data, if available and ready for submission.

## **B. The bifurcated reporting year framework will create inconsistent reporting obligations and disparately impact retailers.**

Not all companies set a particular date for their fiscal year-end. Instead, many companies establish their fiscal year-end based on a formula, such as the Saturday or Sunday closest to a particular date in December or January. This is a common practice for retailers, which commonly use fiscal year ends that allow them to capture sales from the busy holiday season at the end of each calendar year.

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9 On December 19, 2025, Society leadership and members of certain mature reporting companies met with CARB Chair Chief of Staff Emily Wimberger to discuss their practices and processes and associated timing of GHG emissions reporting with reference to the timeline attached to this letter as Exhibit A.

10 On January 28, 2026, Society leadership and members of certain mature reporting companies met with CARB Assistant Division Chief, Industrial Strategies Division Syd Vergis, and Branch Chief, Climate Data & Risk Reporting Branch Jordan Ramalingam, to discuss their practices and processes and associated timing of GHG emissions reporting with reference to the timeline attached to this letter as Exhibit A.

11 See Exhibit A.

Based on publicly available research, a meaningful number of companies establish fiscal year-ends using formula-based conventions rather than a fixed calendar date. An empirical analysis published in *The CPA Journal* found that approximately 8.5% of publicly traded companies used a 52/53-week (weekday-based) fiscal year in 2017, a structure under which the fiscal year ends on a specified weekday nearest to a particular month-end rather than on a fixed date.<sup>12</sup> Applied to the current population of Form 10-K filers, this suggests that several hundred public companies use formula-based fiscal year-ends. In addition, private companies are also permitted to elect such fiscal year-end conventions under applicable tax rules; however, no comprehensive public data exist to estimate the prevalence of these practices among private firms. Accordingly, the total number of affected entities is likely materially higher than the public-company estimate alone.

If the bifurcated reporting year approach in the Proposed Regulation is adopted for years beyond 2026, this group of companies would have a fiscal year-end that periodically falls in and out of the January 1 to February 1 time period. This shifting will create practical challenges for CARB and reporting companies, as illustrated in the following table for a company whose fiscal year ends on the Saturday closest to January 31.

| <i>§ 38532<br/>Reporting Year</i> | <i>Company's Fiscal<br/>Year End Date</i> | <i>Company's Required<br/>Reporting Period</i> |
|-----------------------------------|-------------------------------------------|------------------------------------------------|
| 2026                              | 1/31                                      | FY ending in 2026                              |
| 2027                              | 1/30                                      | FY ending in 2027                              |
| 2028                              | 1/29                                      | FY ending in 2028                              |
| 2029                              | 2/3                                       | FY ending in 2028                              |
| 2030                              | 2/2                                       | FY ending in 2029                              |

In 2028 and 2029, this company would be required to duplicate reporting for the same fiscal year, which is inconsistent with CARB's statutory mandate under § 38532. In addition, this company would have only six months after fiscal year-end to prepare reporting in each of 2026 to 2028, their first three years of reporting to CARB, but would have 18 months to do so in the next two years.

A company whose fiscal year ends the Monday closest to January 31 would be required to report for the fiscal year ending in 2025 this year, but would need to report for the fiscal year ending in 2027 in 2027. This company would have 18 months after fiscal year-end to prepare reporting 2026, but would only have six months in 2027. In addition, CARB would not receive data for this company for the fiscal year ending in 2026.

As these examples show, the practical reality under the proposed § 96076 framework is one with arbitrary outcomes from company to company, and from year to year. Not only would adopting § 96076 as currently proposed reduce predictability for CARB and the companies, it would also create periods in which companies either would submit duplicative data or would not submit data at all because the data was previously submitted.

In contrast, our recommended approach would promote both the timing and accessibility statutory principles described above. Allowing companies to report their GHG emissions for their fiscal year ending in the previous calendar year would facilitate companies' regular reporting cadence, which is consistent with CARB's statutory mandate to "take into account the timelines by which reporting entities typically receive Scope 1 emissions, Scope 2 emissions, and Scope 3 emissions data, as well as the capacity for an independent assurance engagement to be performed by a third-party assurance provider."

<sup>12</sup> The CPA Journal, How Long is a Year?, March 2022, available at <https://www.cpajournal.com/2022/03/16/how-long-is-a-year/>.

By allowing companies to report on a timeline that is both feasible for the company and more consistent with current market practice (including voluntary submissions to organizations such as CDP as further discussed below), our recommended approach would also help CARB meet the second statutory principle of ensuring reporting that “maximizes access for consumers, investors and other stakeholders to comprehensive and detailed greenhouse gas emissions data across Scope 1 emissions, Scope 2 emissions, and Scope 3 emissions” in a comparable and accessible manner.

**Conclusion:** The bifurcated framework currently proposed under Proposed Regulation § 96076 is inconsistent with statutory mandates, disparately impacts certain companies based solely on the date of their fiscal year-end and will create arbitrary outcomes for companies, CARB, and the public. Permitting companies to report their GHG emissions for their fiscal year ending in the previous calendar year would promote CARB’s statutory mandates.

### **III. Timing of GHG Emissions Reporting (§ 38532)**

**Recommendation 1:** Permit companies to submit their initial Scope 1 and Scope 2 GHG emissions reports from August 10, 2026, through December 31 in 2026, and for subsequent reporting periods.

#### **Rationale: A Rolling Timeline Supports CARB’s Statutory Mandate to Take Into Account Corporate Timelines and Maximize Data Access**

This recommendation is intended to promote the same statutory principles described in Section II above. Under the currently proposed August 10, 2026, § 38532 reporting deadline, many companies will not have sufficient time to collect, verify, and submit quality data as discussed above in Section II.A. As evidenced by the feedback from Society members, which reflects industry stakeholder feedback on the realities of the timelines by which companies typically receive and vet GHG emissions data for public reporting, as required under § 38532(c)(2)(A)(vi), the Proposed Regulation creates a reporting obligation that is at odds with the in-scope reporting company practices. As a result, the August 10 deadline would be challenging or, in some cases, impracticable, for initial reports due in 2026, even without an assurance requirement for the initial year of reporting (for those companies that elect to report unassured data), and would contravene the first statutory principle.

Because the August 10 deadline would create inconsistent or infeasible compliance obligations for many reporting companies, another foreseeable outcome is that some companies may be pressured to publish reduced quality data or data that is subject to significant gaps, caveats, and assumptions, with an increased risk of subsequent restatements or revisions, as further discussed in Section III.A below. This outcome would contravene the second statutory principle of maximizing access for consumers, investors and other stakeholders to comprehensive and detailed GHG emissions data in a manner that is easily understandable and accessible, in addition to posing legal, reputational, and other risks for reporting companies.

For these reasons, we believe that the rolling submission window we recommend is more consistent with both statutory principles.

#### **A. The Proposed Regulation will result in reduced quality or incomplete data.**

Gathering actual, reliable, and assurable data is a complex undertaking that, for larger enterprises, requires obtaining information from a large number of sites and stakeholders and, with respect to Scope 2 information, from utilities that may not provide the necessary data for months after the end of the relevant period. Requiring most companies to report within six-to-seven months of their fiscal year-end, as contemplated by the Proposed Regulation, would have the practical effects of increasing reliance on assumptions rather than actual data (which increases the risk of measurement errors and inaccuracy), increasing costs and imposing a substantial strain on resources that cannot be readily expanded.

Companies go to great lengths to ensure the accuracy and reliability of public disclosure, especially disclosure made in response to regulatory mandates. Prior to making such disclosures, various layers of

approval are often required, including assessment of the controls and processes around the data and systems for collecting it, review by owners of the relevant data and metrics, subject matter experts, disclosure committees that include senior members of management and, in many cases, the boards of directors (or committees thereof).

Truncating a company's review and internal and external controls processes to accommodate an arbitrary fixed filing deadline that is in many cases accelerated relative to current reporting practices is inconsistent with established corporate governance best practices. Among other adverse implications, it puts the accuracy and reliability of corporate disclosures at substantial risk. Companies may also face legal and reputational exposure under US securities laws and the laws of other regimes if they fail to maintain adequate controls over these public disclosures.

**Conclusion:** Providing reporting companies the flexibility to submit data between August 10 and December 31 would enable them to produce disclosure that comports with their internal controls and other practices based on accurate and comprehensive data as statutorily required, giving investors and other stakeholders access to more reliable information while limiting potential legal and reputational risks for companies. Combined with the recommendation in Section II, a rolling submission window would also promote the submission of more currently available data for those companies that are in a position to report GHG emissions for their fiscal year ending in the current calendar year but cannot do so within six-to-seven months after their fiscal year-end.

## **B. The Proposed Regulation is inconsistent with other mandatory and voluntary emission reporting regimes.**

Our recommendations take into account that the Proposed Regulation is establishing reporting periods and a fixed deadline for 2026 submissions, and that CARB has indicated it will follow with a separate rulemaking process for "reporting contents and format, data assurance and more" beyond 2026.<sup>13</sup> However, CARB is not exempted from the statutory principles described above in 2026, which don't support adoption of a unique reporting timeline that is inconsistent with the underlying statute.

As a result, we urge CARB to consider our recommendations and adopt regulations that establish a reporting timeframe for 2026 that allows companies to rely on existing processes and controls while CARB establishes and finalizes the long-term § 38532 reporting requirements, which should be similarly adaptable as CARB recognized in its Staff Report<sup>14</sup> and consistent with current reporting practices as we have proposed in our recommendations.

Many companies have already structured their GHG emissions reporting processes to align with CDP reporting and other voluntary reporting regimes, as well as existing mandatory requirements.

- In 2025, CDP did not require responses to its questionnaire, including GHG emissions data, until November 19, 2025, when the submission portal closed.<sup>15</sup> Companies are permitted to begin submissions earlier, and typically submit between August and November each year.
- The United Kingdom's Streamlined Energy and Carbon Reporting greenhouse gas emissions and TCFD-aligned reporting obligations require disclosures to be submitted within nine months of fiscal year end.
- In California, the Energy Commission's Power Source Disclosure Program requires retail electricity suppliers to file annual reports on the energy sources and GHG emissions associated with their electricity sales by August 10, *and these reports are not verified for accuracy and completeness until October 1* [emphasis added].

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<sup>13</sup> Staff Report at 15.

<sup>14</sup> Staff Report at 15 ("For any future reporting deadlines, staff recognizes the need to manage different fiscal years that may apply across all regulated entities.").

<sup>15</sup> The approach taken by CDP accommodated the practical challenges faced by companies with non-calendar fiscal years, as shared in our first submission to and subsequent conversations with CARB.

CARB's proposed reporting deadline for GHG emissions reports under § 38532 is more stringent than these regimes. This not only disrupts ongoing processes, but also creates risks for those companies that are already required via their internal controls or other regulatory mandates to obtain assurance over their emissions information. According to the Society Survey, approximately 75% of respondents plan to obtain assurance for their Scope 1 and Scope 2 emissions disclosures to be reported in 2026. A substantial number of respondents to the survey indicated that they obtain assurance as a control to affirm accuracy and reliability and/or to satisfy existing reporting obligations in other jurisdictions. For those companies, producing *unassured* data on an expedited timeline for the sole purposes of complying with § 38532 creates a likely risk that data may later need to be revised or restated, posing significant legal and reputational risks.

While some companies are subject to both California's Mandatory Reporting Regulation (MRR) and § 38532, CARB's decision to align the § 38532 deadline to the existing verification deadline for submissions under the MRR, instead of the existing alternatives above, is neither consistent with its statutory mandate nor otherwise appropriate. MRR verification deadlines were adopted and designed to comply with a wholly different regulatory purpose (under the California Global Warming Solutions Act of 2006, to support California's Cap-and-Invest Program, among other goals) and apply to a different, specific group of reporting entities from those covered by § 38532.

The emissions data reported under MRR represents only a limited subset of an MRR reporting company's overall greenhouse gas emissions inventory. It generally captures only specified categories of Scope 1 emissions from covered facilities within California. It does not require enterprise-wide consolidation, nor does it include comprehensive Scope 1 emissions outside the regulated source categories, Scope 2 emissions, or Scope 3 emissions.

By contrast, SB 253 requires companies to prepare and obtain third-party assurance<sup>16</sup> over a comprehensive, enterprise-wide greenhouse gas inventory covering all Scope 1, Scope 2, and Scope 3 emissions across global operations and value chains. This requires aggregation of data from multiple internal systems, international operations, and third-party counterparties, as well as the application and assurance of methodologies that are materially broader and less mature than those used under MRR. Accordingly, the August 10 MRR reporting deadline—reflecting the feasibility of submitting a narrow, facility-level regulatory dataset—does not provide an appropriate or workable proxy for the timing required to prepare and assure the significantly broader disclosures required under SB 253.

**Conclusion:** Consistent with its statutory mandate to consider corporate timelines, CARB should take into account reporting deadlines under standards and frameworks that are more similar to § 38532 (including in terms of goals and types of reporting entities) than MRR. The recommended rolling submission window promotes CARB's alignment with comparable frameworks.

**C. The proposed August 10 § 38532 reporting deadline imposes a reporting deadline that is particularly challenging for many companies given other regulatory obligations.**

GHG emissions reporting is just one element of many companies' public disclosure obligations and functions. At the beginning of the year in particular, companies are tasked with a broad range of disclosure obligations, each associated with discrete controls and procedures. For example, within the first six months of their fiscal year end, US public companies typically prepare fourth quarter results, annual reports on Form 10-K (including audited financial statements), and proxy statements, each of which requires extensive resources that in many cases (particularly in smaller companies) overlap with the personnel (including senior level management and members of the board of directors) needed to gather data, develop disclosure, and undertake assurance for GHG emissions reporting. Companies are also navigating various other constituencies and obligations during the months following their fiscal year-

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<sup>16</sup> As noted elsewhere in this letter, many companies, particularly mature companies will not or are unable to forego third-party assurance on their reported GHG emissions notwithstanding CARB's waiver of the assurance requirement for 2026.

end. For example, historically, approximately 90% of annual shareholder meetings are held in the first half of the calendar year, with the majority being between April and June of each year.

**Conclusion:** The same governance structures required to gather and analyze data and prepare disclosures for, review, assure, and approve § 38532 reports are typically also involved in preparing, reviewing, and approving the disclosures and other materials required to support these other processes. This is especially true and particularly burdensome for smaller and mid-size companies that often have the same staff internally responsible for their SEC reporting/disclosures as their sustainability reporting/disclosures. CARB should account for these practical challenges and the timelines by which companies typically gather, report, and verify GHG emissions data under existing regimes, such as CDP, in 2026 and beyond.

#### **D. CARB is not the only stakeholder that reporting entities will need to consider when disclosing to CARB.**

As detailed by representatives of mature GHG emissions reporting companies in the meetings with CARB staff on December 19, 2025, and January 28, 2026, adopting a reporting timeline for GHG emissions that is accelerated relative to, and thus at odds with, many companies' existing reporting practices is problematic for many US companies. These concerns are exacerbated in the current environment which is characterized by increased scrutiny on corporate disclosures related to carbon emissions and other environmental topics due to the diverging requirements and expectations of diverse stakeholders, including shareholders, customers, and regulators in other jurisdictions in which companies operate. As a result, adhering to internal practices, processes, and other controls in the course of reviewing, approving, and publishing these disclosures is paramount and not negotiable notwithstanding regulatory-imposed timing pressures.

By providing companies with a sufficient reporting period to align their disclosures across their reporting obligations (an especially important consideration for public reporting companies, whose disclosures can impact their pricing, insider trading windows, ability to engage with investors, and other sensitive items), CARB would support companies', boards' and management's ability to exercise applicable fiduciary duties.

**Conclusion:** Not only would companies benefit from a reporting timeline that accommodates their typically robust internal control processes, stakeholders would also benefit because they would have access to reliable data that those processes are designed to support.

The recommended approach of an open submission window between August 10 through December 31 would be workable not only in 2026, but also for future years when the reporting requirements under § 38532 will necessarily expand, including with respect to assurance<sup>17</sup> (including reasonable assurance for Scope 1 and Scope 2 emissions data beginning in 2030) and Scope 3 emissions reporting obligations.

**Recommendation 2:** If CARB needs to receive data on the number of reporting companies by August 10 for fee assessment purposes, consider permitting companies that do not report by August 10 to submit a statement that they intend to report on or before December 31.

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<sup>17</sup> Third-party assurance providers are expected to see an overwhelming increase in emissions assurance engagements, and there are a limited number of assurance providers with the experience and sophistication to provide high-quality assurance over reporting by complex enterprises. Even if reporting companies experience delays or challenges obtaining an assurance provider, the proposed window should help companies timely meet their reporting deadline.

Companies that currently obtain limited assurance but want or need to switch providers in advance of mandatory reporting obligations may require more time than in the past, as new firms will need to familiarize themselves with the reporting company and its data-gathering and control environment, and may employ different procedures. Fluctuations in the process from year-to-year could be accommodated by the proposed window more readily than a fixed deadline.

## **Rationale: Allow CARB to Adopt More Realistic Reporting Timelines While Having and Providing Certainty on Fees**

If it is important for CARB to have final data on the number of § 38532 reports it will receive in 2026 for purposes of calculating and invoicing the fees in a timely manner by a deadline similar to the MRR deadline of August 10, we believe that goal would be served while permitting companies to submit § 38532 reports through calendar year-end if the final regulations provide companies three options, including the two CARB has already proposed.

As currently contemplated by the Proposed Regulation, by August 10, companies in scope of § 38532 would be required to submit (1) a cover note with a § 38532 report, or (2) a cover note with a statement on company letterhead stating that “it did not submit a report” and “indicating that in accordance with the Enforcement Notice, [it] was not collecting data or planning to collect data at the time the Notice was issued.” We suggest CARB provide a third option: submission of a cover note with a statement on company letterhead stating that the company intends to submit a § 38532 report on or before December 31, 2026.

**Conclusion:** This recommendation should not meaningfully change CARB’s currently contemplated processes, and would enable CARB to adopt the more realistic submission window described under Recommendation 1 above while receiving data on the number of reporting companies by August 10 for fee assessment purposes. This option should also be available for subsequent reporting periods if August 10 remains CARB’s selected date for fee assessment purposes.

## **IV. Fee Structure and Timing**

**Recommendation 1:** Assess filing fees on a per-report basis, with tiered costs based on the Franchise Tax Board-reported California-specific revenue (which CARB would already use to assess “doing business”) of the entity submitting the report.

**Rationale:** Ensuring Clear and Predictable Fee Process for Both CARB and Companies, Making Fees More Proportionate

The Proposed Regulation establishes a Total Required Revenue (TRR) framework and annual invoicing process that depend on CARB identifying the covered populations (N38532, or Number of reporting entities, and N38533, Number of covered entities, respectively) and other fee calculation inputs. The core formulas set Required Revenue (RR) and TRR annually, then allocate TRR into separate fee rates for § 38532 and § 38533 based on staffing allocation percentages (i.e., authorized staff positions assigned to each, referred to in the Proposed Regulation as P38532 and P38533, respectively).<sup>18</sup>

At the same time, the Proposed Regulation and Staff Report leave unresolved practical questions that are necessary to ensure fees remain tied to “actual and reasonable costs” and are administered in a predictable and dispute-resilient manner.<sup>19</sup>

### **A. A per-report fee structure best serves CARB’s stated administrative and predictability goals**

CARB’s Staff Report explains that a flat fee is intended to reduce administrative burden and improve predictability, and that a variable fee based on emissions or revenue was considered but rejected.<sup>20</sup>

That rationale is best served by assessing a single fee per consolidated disclosure report filed, rather than per legal entity within a corporate group. The statutes expressly permit consolidated reporting at the parent-company level.<sup>21</sup>

<sup>18</sup> Proposed Regulation § 96073(a)-(d), pp. 5-6.

<sup>19</sup> HSC § 38532(c)(2)(G)(ii)-(iv); HSC § 38533(c)(2)(B)(i)-(ii); Staff Report at 11-12.

<sup>20</sup> Staff Report at 12.

<sup>21</sup> HSC § 38532(c)(2)(A)(iii); HSC § 38533(b)(2).

A structure-driven per-entity approach risks arbitrary outcomes (different fee burdens based solely on how a single enterprise's organizational structure may have evolved for historical, legal, or tax reasons) and invites disputes over how to count covered entities for N38532/N38533.<sup>22</sup> As discussed in one of our prior comment letters,<sup>23</sup> the per-entity fee structure also fails to acknowledge the challenges that both CARB and in-scope companies may experience with identifying in-scope entities, particularly considering some of the remaining ambiguities that we and other commenters have raised. These challenges will be exacerbated for CARB because many companies measure and report GHG emissions on a consolidated level at the parent level, and will likely do so under § 38532 regardless of whether that parent is itself in-scope. As a result, it would be complicated for both companies and CARB to calculate their fees each year under the per-entity approach, since the California-based revenues being examined for purposes of "doing business in California" may fluctuate from year to year as set forth in the Proposed Regulation.

In contrast, both companies and CARB can take advantage of a more streamlined process for budgeting and calculating fees if the final regulation provides for payment of a fee for each unique § 38532 report, whether prepared on a consolidated or non-consolidated basis, rather than a fluctuating and potentially uncertain amount of fees based on the number of entities ultimately determined to be in scope each year.

To further increase certainty and predictability, we recommend that the fee be tiered based on the size of a single line item (the "FTB Line Item") in the Franchise Tax Board tax filing for the reporting parent entity (or if that entity is not itself in scope of § 38532, the largest in-scope subsidiary)—with the FTB Line Item being the same line as the one companies and CARB will need to verify for purposes of the "doing business in California" definition. A clear advantage of this approach is that, to the extent that CARB will be using the FTB Line Item to verify whether an entity is "doing business in California", CARB would also be able to use the FTB Line Item to verify whether the entity has paid the correct amount of fees.

Further, as CARB stated during its August workshop (when it proposed a similar fee structure as set forth in the Proposed Regulation), a goal for the fee structure is to ensure that enterprises with more California contact shoulder a greater proportion of the state's overall administration costs for the climate reporting programs under § 38532 and § 38533. We believe that a more well-tailored and practical method for promoting proportionality between the degree of an enterprise's California contacts and the amount of filing fees paid by such enterprise is to require enterprises to pay tiered filing fees based on the FTB Line Item (which CARB itself has identified in the "doing business" definition as an indicator of California contacts), rather than the number of affiliated entities that may be in-scope. For example, if an entity reports California franchise taxes on a consolidated basis and its FTB Line Item was barely above the threshold for "doing business in California," that company should logically be assessed a lower filing fee as compared to another company that reports California franchise taxes on a consolidated basis and has a much higher FTB Line Item.<sup>24</sup>

In addition, since CARB is permitting consolidated reporting, which is expected to be the approach used by many reporting companies, a per-report fee structure is also more proportionate with respect to CARB's burdens and costs under § 38532.

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<sup>22</sup> Proposed Reg. Text § 96073(c)-(d), pp. 5-6.

<sup>23</sup> See Society Comment Letter [in Response to Request for Comments Following August 21, 2025 Public Workshop](https://higherlogicdownload.s3.amazonaws.com/GOVERNANCEPROFESSIONALS/5d47927b-105a-4bc7-9aef-821536f3505b/UploadedImages/Society_for_Corporate_Governance_Comment_Letter_Post-August_21__2025_Workshop__9-11-25_.pdf) (September 2025), available at [https://higherlogicdownload.s3.amazonaws.com/GOVERNANCEPROFESSIONALS/5d47927b-105a-4bc7-9aef-821536f3505b/UploadedImages/Society\\_for\\_Corporate\\_Governance\\_Comment\\_Letter\\_Post-August\\_21\\_\\_2025\\_Workshop\\_\\_9-11-25\\_.pdf](https://higherlogicdownload.s3.amazonaws.com/GOVERNANCEPROFESSIONALS/5d47927b-105a-4bc7-9aef-821536f3505b/UploadedImages/Society_for_Corporate_Governance_Comment_Letter_Post-August_21__2025_Workshop__9-11-25_.pdf).

<sup>24</sup> A tiered fee approach based on tax filing line item is consistent with current practices under California law. For example, California currently requires limited liability companies ("LLCs") to pay an annual fee based on their total income "from all sources derived from or attributable to California" under Revenue and Tax Code § 17942. When then file their Form 568 each year, LLCs would pay \$900 (if total income is between \$250,000-\$499,999), \$2,500 (if total income is between \$500,000-\$999,000), \$6,000 (if total income is between \$1,000,000-\$4,999,999,000), and \$11,790 (if total income is over \$5 million). See [FTB Pub. 3556: Limited Liability Company Filing Information | Forms and Publications | FTB.ca.gov](https://ftb.ca.gov/forms-and-publications/).

**Conclusion:** A per-report filing fee for each unique § 38532 report based the same FTB Line Item used to verify whether a company is “doing business in California” would increase clarity and predictability for companies (particularly the many that are likely to submit a consolidated report as contemplated by § 38532), while also facilitating CARB’s fee assessment and collection efforts.

**B. A per-entity fee structure will not provide companies with clarity and predictability and will likely increase CARB’s exposure to fee disputes.**

The proposed per-entity fee model presupposes that CARB can determine (1) the population of “reporting entities” and “covered entities” (the denominators N38532 and N38533) and (2) which entities are “affected” and thus will receive fee determination notices.<sup>25</sup>

Yet the Proposed Regulation does not specify the data sources, decision rules, or administrative process CARB will use to identify ‘affected entities’ in time for the proposed September 10 notice date, particularly where corporate groups contain multiple potentially in-scope legal entities.<sup>26</sup>

Because the statutes require fees to be adequate to cover costs but not exceed “actual and reasonable” costs, the population denominator is not a minor implementation detail: it directly drives fee levels for all entities (F38532 and F38533).<sup>27</sup> Lack of a clearly defined process for identifying in-scope entities also undercuts the predictability rationale CARB cites for the September 10 timeline and the flat fee approach.<sup>28</sup>

CARB states that the September 10 assessment date “ensures predictability” and aligns with the state’s fiscal cycle.<sup>29</sup> But predictability depends on entities receiving advance clarity on whether they will be treated as “affected entities” for the incoming fee year.<sup>30</sup> Without having proposed and adopted any timeline or procedure for producing a list of “affected entities” in advance of the September 10 proposed fee assessment date, companies will not have predictability on their fees. There is currently no clarity on how CARB is generating its list of “affected entities” for purposes of the fee calculation, and which companies will be ultimately included on that list.

If there are ultimately valid differences between CARB’s list and a company’s own scoping assessment as to itself and its subsidiaries, CARB is likely to be exposed to fee disputes, particularly since § 96075(c) would, as currently proposed, impose a daily payment violation for each day or portion thereof that a fee remains unpaid after the due date.<sup>31</sup> In addition, § 96074(c) also authorizes a late fee to cover administrative costs caused by late payment,<sup>32</sup> but does not describe any administrative process for resolving disputes, including those that result from a valid disagreement with CARB on whether an entity is in-scope.<sup>33</sup> The possibility of such a disagreement is likely to be higher with respect to smaller entities, which may have greater fluctuation on the FTB Line Item from year to year. Therefore, by looking at the FTB Line Item of the reporting parent entity (or if that entity is not in scope, then its largest in-scope subsidiary), CARB can reduce the likelihood of a fee dispute and decrease the costs and complexity of its administration of § 38532 and § 38533.

**Conclusion:** We appreciate CARB’s efforts to establish a fee structure that supports effective administration and enforcement. We believe adopting a per-report fee structure—rather than per-entity

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<sup>25</sup> Proposed Reg. Text § 96073(c)-(d) and § 96074(a), pp. 5-7.

<sup>26</sup> Proposed Reg. Text § 96074(a), pp. 6-7.

<sup>27</sup> HSC § 38532(c)(2)(G)(ii); HSC § 38533(c)(2)(B)(i).

<sup>28</sup> Staff Report at 12.

<sup>29</sup> Staff Report at 12.

<sup>30</sup> Proposed Regulation § 96074(a), pp. 6-7.

<sup>31</sup> Proposed Regulation § 96075(c), p. 7.

<sup>32</sup> Proposed Regulation § 96074(c), p. 7.

<sup>33</sup> Proposed Regulation § 96075(d), p. 7.

fees—would best align with CARB's stated goals of reducing administrative burden and improving predictability.

**Recommendation 2:** Ensure separate program allocations and transparent explanations for § 38532 and § 38533.

**Rationale:** Ensuring Clear and Predictable Fee Process for Both CARB and Companies, Making Fees More Proportionate

§ 96073 already separates the fee calculations for Health and Safety Code § 38532 and § 38533 using distinct allocation percentages (P38532 and P38533) and denominators (N38532 and N38533).<sup>34</sup>

The Staff Report similarly states costs for the two statutes must be calculated individually (even if invoiced together) and that allocation is based on the share of program resources dedicated to each statute.<sup>35</sup>

**Conclusion:** To avoid opacity or perceived cross-subsidies, CARB should further explain how P38532 and P38533 are determined and how they may change year-to-year and should explain how CARB will use companies' annual fees to fund its administration of § 38533 in non-reporting years.<sup>36</sup>

## V. Exemptions

**Recommendation 1:** In the final regulatory text, explicitly state the exemptions from § 38532 obligations provided under prior CARB guidance for (a) companies that were not collecting data or planning to collect data at the time the December 2024 Enforcement Notice was issued, (b) insurance companies, and (c) assurance requirements in 2026.

**Rationale:** Provide Greater Certainty for Companies Intending to Rely on CARB's Guidance

**A. Without explicit reference in the regulatory text, some companies may not be willing or able to rely on CARB's intended exemption for companies that were not collecting data (or planning to collect data) in December 2024.**

The stated exemptions from applicability in the Proposed Regulation at § 96071 do not include the exemption proposed during the November 18, 2025, workshop<sup>37</sup> for companies that were not collecting data or planning to collect data at the time the December 2024 Enforcement Notice<sup>38</sup> was issued, and as set forth in the "Staff Report: Initial Statement of Reasons" (hereinafter, "Staff Report") accompanying the Proposed Regulation.<sup>39</sup> We recommend including the following or similar language in the Proposed Regulation:

"Reporting entities that were not collecting GHG emissions data or were not planning to collect GHG emissions data at the time that The Climate Corporate Data Accountability Act Enforcement Notice (Enforcement Notice) was issued (i.e., December 5, 2024) are not expected or required to submit Scope 1 and Scope 2 reporting data in 2026. Any such reporting entity that does not submit Scope 1 and Scope 2 reporting data on or before the first year reporting deadline (as set forth in § 96076) must submit a statement on entity letterhead to CARB, stating that the entity did

<sup>34</sup> Proposed Regulation § 96073(c)-(d), pp. 5-6.

<sup>35</sup> Staff Report at 11.

<sup>36</sup> Staff Report at 11-12; HSC § 38533(c)(2)(A)-(B).

<sup>37</sup> <https://content.govdelivery.com/accounts/CARB/bulletins/3fa6191>

<sup>38</sup> CARB, The Climate Corporate Data Accountability Act Enforcement Notice, December 5, 2024. at <https://www2.arb.ca.gov/sites/default/files/2024-12/The%20Climate%20Corporate%20Data%20Accountability%20Act%20Enforcement%20Notice%20Dec%202024.pdf>.

<sup>39</sup> CARB, Staff Report: Initial Statement of Reasons, December 9, 2025, at 14-15, <https://www2.arb.ca.gov/sites/default/files/barcu/regact/2025/sb253-261/isor.pdf>.

not and will not submit a report in 2026 disclosing the entity's Scope 1 and Scope 2 emissions, and stating that, in accordance with the Enforcement Notice, the entity was not collecting Scope 1 and Scope 2 greenhouse gas emissions data or planning to collect such data at the time the Notice was issued."

The foregoing is consistent with the Staff Report, which provides:

"To support initial implementation and reduce uncertainty, CARB issued an Enforcement Notice in December 2024. In this Enforcement Notice, CARB recognized that some reporting entities may require lead time to develop or refine their data collection processes to ensure complete and accurate reporting of Scope 1 and Scope 2 emissions. Accordingly, CARB has indicated that it will exercise enforcement discretion for the first report due in 2026, allowing reporting entities to submit Scope 1 and Scope 2 emissions for their prior fiscal year based on information they already have or were collecting when that Notice was issued. Entities that were not collecting data or were not planning to collect data, at the time the Enforcement Notice was issued, are not expected to submit Scope 1 and Scope 2 reporting data for this first reporting cycle (see below). This approach is intended to support companies as they transition into complying with these new reporting requirements." (footnotes omitted)

**B. Adding an explicit reference in the regulatory text to the exemption CARB intended to provide for entities in the business of insurance under § 38532, together with a definition of such term, would enhance clarity for companies intending to rely on CARB such exemption.**

The stated exemptions from applicability in the Proposed Regulation include "[a] business entity that is subject to regulation by the Department of Insurance in this state, or that is in the business of insurance in any other state" (§ 96071(b)(2)). The exemption is reflected in the statutory text of § 38533 in the exclusion from the definition of "Covered Entity" set forth in the Proposed Regulation at § 96072(a)(5), and the exclusion from the definition of "Covered Entity" set forth in Health and Safety Code § 38533(a)(4).<sup>40</sup> As respects § 38532 and § 38533, apart from this definitional difference specific to insurance entities and the different dollar thresholds for reporting, the definitions of "Covered Entity" under § 38533 and "Reporting Entity" under § 38532 are substantively identical.

Based on the above, we recommend including in the Proposed Regulation a definition of "in the business of insurance" to provide certainty regarding the applicability of the exemption to business entities that are not subject to regulation by the Department of Insurance in California. This definition could track the definition of "business of insurance" as set forth in the California Code of Regulations Title 10, § 2175.2(e) (and 18 U.S.C. § 1033(f)(1)), as follows:

"The "business of insurance" means (1) the writing of insurance, or (2) the reinsuring of risks, by an insurer, including all acts necessary or incidental to such writing or reinsurance and the activities of persons who act as, or are, officers, directors, agents, or employees of insurers or who are other persons authorized to act on behalf of such persons."

We also recommend explicitly stating that entities "in the business of insurance" are exempted from the definition of "Reporting Entity" in § 96072(a)(11). We recommend this change to make it clear that the insurance-related exemption applies to emissions reports that would otherwise be required under § 38532. This should ensure that Proposed Regulation § 96071(b) is not (inadvertently) narrowly interpreted to only apply to entities that are exempt pursuant to Health and Safety Code § 38533. As so amended, the definition of "Reporting Entity" would read as follows:

"Reporting entity" means a partnership, corporation, limited liability company, or other business entity formed under the laws of this state, the laws of any other state of the United States or the District of Columbia, or under an act of the Congress of the United States with total annual revenues in excess of one billion United States dollars (\$1,000,000,000) and that does business

<sup>40</sup> Health and Safety Code § 38533(a)(4); Proposed Regulation § 96072(a)(5). "'Covered entity' does not include a business entity that is subject to regulation by the Department of Insurance in this state, or that is in the business of insurance in any other state."

in California. The entity's revenue amount shall be determined by the lesser of the entity's two previous fiscal years of revenue. "Reporting entity" does not include a business entity that is subject to regulation by the Department of Insurance in this state, or that is in the business of insurance in any other state.

**C. Without explicit reference in the regulatory text, some companies may not be willing or able to rely on CARB's intended waiver of the assurance requirement in 2026.**

The Proposed Regulation does not currently address assurance, which is expressly required under the text of Health and Safety Code § 38532, but was specifically waived for 2026 reporting pursuant to November 18, 2025, public workshop slides<sup>41</sup> and associated discussion.

The slides at page 12 provide:

- Is data assurance required for 2026 reporting?
- For 2026 reporting, limited assurance is not required for data submission.

Consistent with this notion, the Staff Report accompanying the Proposed Regulation provides that assurance requirements are forthcoming in a future regulation.<sup>42</sup>

The Proposed Regulation should explicitly provide that assurance is not required for § 38532 reports in 2026. Because the statute appears clear that assurance is required, companies may be unable or reluctant to rely solely on the public workshop slides or the mere omission of a discussion of assurance requirements in the Staff Report, and will face the timing and resource constraints further described above in Sections II and III.

In addition, there is uncertainty regarding CARB's authority to selectively determine which aspects of § 38532 it can temporarily waive in the face of an explicit mandate to attain an assurance engagement at a limited assurance level beginning in 2026. The regulatory text should therefore also note CARB's authority to permit reporting in a manner contrary to the text of Health and Safety Code § 38532.

**Conclusion:** In the case of each of the exemptions described above, without including in the final regulations text that explicitly waives assurance, companies that may elect to rely on the exemption (based on their inability to obtain adequate data or limited assurance for their 2026 reporting or otherwise) would need to assume meaningful legal and reputational risks.

A statement of enforcement discretion alone is an inadequate policy-making tool, as it leaves the regulated community technically out of compliance (and thus unable to, for example, support affirmation with "compliance with laws" provisions in contracts and other arrangements) and subject to additional guidance updates as and when they might be issued.

Certain companies also may have compliance policies that prohibit them from relying on informal agency guidance when that guidance is not codified in, and may be interpreted as being contrary to, later-adopted formal agency guidance (and clear statutory text in the case of assurance).

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<sup>41</sup> SB 253/261/219 Public Workshop: Update on California Corporate Greenhouse Gas Reporting and Climate-Related Financial Risk Disclosure Programs, November 18, 2025, <https://ww2.arb.ca.gov/sites/default/files/classic/SB%20253%20261%20Nov%20Workshop%20slides%20%28Update%29.pdf>

<sup>42</sup> Staff Report at 5 ("Establishing this reporting deadline provides clarity for first-year reporting. Other program requirements, including but not limited to reporting and assurance requirements and enforcement provisions, will be developed and adopted through a subsequent rulemaking") and 15 ("CARB will undertake a second rulemaking to establish future reporting dates beyond 2026 and to provide additional details for reporting contents and format, data assurance, and more"). <https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2025/sb253-261/isor.pdf>

Without adopting final regulations that explicitly waive assurance requirements in 2026 and clearly explain CARB's regulatory authority for doing so, many companies may be unwilling or unable to take advantage of the relief CARB is seeking to provide.

## **VI. Recordkeeping Compliance Considerations**

**Recommendation:** Remove currently proposed record-keeping requirements in favor of one of the more narrowly tailored options suggested below.

**Rationale:** § 96074(d) Would Impose Onerous Requirements Unmoored From Any Commensurate Benefit

The Proposed Regulation at § 96074(d) requires every entity “subject to this article” to (1) maintain records demonstrating that it meets the revenue and “doing business in California” thresholds, (2) retain those records for five years, and (3) provide them to CARB upon request. We respectfully submit this provision:

- Imposes an administrative burden on regulated entities that is disproportionate to the regulatory benefit;
- Duplicates information already available to CARB through existing state agency data-sharing mechanisms;
- Creates an asymmetry between CARB's role in determining applicability and fee amounts versus the entity's burden to prove or disprove its own coverage; and
- Provides limited incremental value for entities that are already complying with reporting and fee payment obligations.

A. **The recordkeeping requirement in § 96074(d) is duplicative and burdensome for limited value.**

§ 96075(d) of the Proposed Regulation expressly authorizes the Executive Officer to “contract with or consult with outside entities, including, but not limited to, the Board of Equalization or the California Franchise Tax Board, to obtain data or services needed to audit the fee remittances provided by fee payers.”

Further, the Staff Report acknowledges that the key applicability criteria—“doing business in California” and “revenue”—are defined by reference to California Revenue and Taxation Code provisions and are “verifiable via tax documents available from the FTB.” Specifically:

- (a) The Staff Report states that “the applicability of entities subject to the fee regulation as defined by the California Revenue and Taxation Code § 23101 is verifiable via tax documents available from the FTB.”<sup>43</sup>
- (b) The Staff Report also notes that “this definition of annual revenue is verifiable for all public and private businesses through FTB tax filings.”<sup>44</sup>

In light of these stated premises, § 96074(d) appears inconsistent. CARB simultaneously asserts that state tax records provide verifiability and reduced burden, yet requires entities to maintain and produce their own records as though that infrastructure did not exist. The more coherent approach is for CARB to rely primarily on the same FTB-based sources it cites as the backbone for enforceable applicability determinations and only request incremental documentation in exceptional cases.

In practice, because CARB has already made an applicability determination (at least preliminarily) before any recordkeeping request arises, a universal five-year record retention mandate on every invoiced entity is duplicative: it requires companies to build and maintain a parallel “applicability file” for CARB's

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<sup>43</sup> Staff Report at 9-10.

<sup>44</sup> Staff Report at 10.

determination—often assembling records that already exist in government systems. Requiring entities to maintain duplicative records imposes unnecessary administrative costs. This is particularly true for entities that are already filing reports and paying fees—because CARB already has an active compliance channel with those entities and can validate coverage using the same objective state records that CARB cites as verifiable through FTB filings, the incremental value of a universal five-year applicability file is limited while the administrative burden is substantial.

**B. The recordkeeping requirement creates an inappropriate asymmetry in regulatory responsibility.**

Under the proposed regulatory framework, CARB—not the regulated entity—makes the initial determination of which entities are covered and calculates the fee amounts due. Specifically:

- (a) § 96074(a) provides that “on or by September 10, the Executive Officer shall provide a written fee determination notice to each affected entity of the amount due.”
- (b) The fee calculation formulas in proposed § 96073 require CARB to determine the number of reporting entities (N38532) and covered entities (N38533) as inputs to the fee calculation.

This framework places CARB in the position of determining which entities are in scope and what fees are owed, yet the recordkeeping provision shifts the burden of maintaining applicability documentation to the entities themselves. If CARB is making these determinations—presumably based on data it already possesses or can obtain through FTB coordination—it is more appropriate for CARB to maintain the underlying applicability records rather than requiring each entity to do so independently.

The Staff Report rationale for this provision is minimal, stating only that “retention of records related to the eligibility thresholds of the Proposed Regulation allows Staff to follow up with entities to verify information when there are questions about coverage.”<sup>45</sup> This rationale does not explain why entities should bear the cost of maintaining records that CARB can obtain through existing interagency mechanisms, particularly when CARB is the party making applicability determinations in the first instance.

The burden imposed by § 96074(d) is not theoretical. In practice, it will require companies to create and maintain duplicative documentation packages for CARB, even where state records already exist and where CARB can independently verify coverage:

- **Data mismatch / mistaken invoicing scenario:** A company receives a fee determination notice due to an upstream data error or corporate name/structure mismatch. To prepare for a potential CARB request, the company must assemble and retain multi-year “doing business” analyses, revenue workpapers, and internal sourcing data—often requiring significant legal and finance resources—despite CARB being able to validate the underlying criteria through tax documents and its audit authority.
- **M&A / reorganization scenario:** Following an acquisition, entities may need sensitive, transaction-related analyses to determine revenue and California nexus across consolidated structures. A blanket retention rule incentivizes over-collection and retention of confidential deal materials and internal workpapers far beyond what is needed to confirm basic coverage thresholds.
- **Threshold “cycling” scenario:** Entities near the threshold may shift in and out of coverage year-to-year. If § 96074(d) remains broad and undefined, companies will be compelled to preserve evolving internal analyses for five years even when the determination is ultimately based on objective, standardized tax concepts.

These examples illustrate why a universal recordkeeping mandate is likely to produce over-retention, overproduction, and compliance friction without meaningfully improving CARB’s ability to administer the program.

1. The Recordkeeping Requirement is vague and invites inconsistent, costly compliance behavior

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<sup>45</sup> Staff Report at 13.

§ 96074(d) does not specify:

- what constitutes “records demonstrating” the thresholds (e.g., full returns, worksheets, apportionment schedules, board minutes, intercompany transaction data, corporate structure charts);
- whether summaries or certifications are sufficient;
- how to treat complex structures (parents/subsidiaries, reorganizations);
- how confidentiality will be handled when records include sensitive tax and commercial information.

This vagueness will predictably lead companies—especially those with limited in-house compliance teams—to over-retain, over-collect, and over-escalate to counsel to avoid enforcement risk. That is a real burden even for large entities, and it is particularly acute for private companies and organizations with complex corporate structures.

A blanket five-year retention requirement encourages creating a comprehensive, litigation-ready set of documents for every transaction—documents that are far broader than what is needed to validate fee applicability.

## 2. The enforcement structure in § 96075 amplifies the burden of the recordkeeping requirement

The recordkeeping burden under § 96074(d) must be read in conjunction with the enforcement provisions in § 96075. Under § 96075(c), “[t]he failure to pay the full amount of any fee required by this subarticle shall constitute a single, separate violation of this subarticle for each day or portion thereof that the fee has not been paid after the date the fee is due.”

This creates a problematic dynamic: an entity that in good faith believes it is not covered by the regulation has no safe harbor in the proposed text and faces per-day penalties while it disputes CARB’s applicability determination. In this context, the recordkeeping burden becomes more consequential as entities must maintain comprehensive “applicability files” as defensive protection against enforcement action, even if they are confident they fall outside the regulation’s scope.

**Conclusion:** We appreciate CARB’s efforts to develop a workable regulatory framework for implementing §§ 38532 and 38533. However, the recordkeeping provision in § 96074(d) imposes administrative burdens that are not justified by the regulatory benefits, particularly given CARB’s existing access to the relevant data through state tax authorities. In light of these considerations, we urge CARB to consider and adopt one of the following options instead:

### **Option 1 (preferred): Remove § 96074(d) and rely on CARB-maintained applicability records**

Delete § 96074(d) in its entirety. CARB should maintain (internally) the data sources and decision logic used to identify “affected” entities for invoicing—consistent with CARB’s stated reliance on verifiable FTB tax documents and state infrastructure.

### **Option 2: Replace with a targeted, dispute-based record submission process**

Replace § 96074(d) with language that:

- requires an entity to provide documentation only if it affirmatively claims it is not covered, disputes a fee notice, or seeks an exemption; and
- allows submission of a short certification plus specifically enumerated supporting items (e.g., a relevant excerpt of an FTB filing or a standardized apportionment/sales factor summary).

This approach aligns record submission with actual need, rather than imposing a universal retention regime.

### **Option 3: Narrow and clarify § 96074(d) to reduce burden and protect sensitive information**

If CARB retains a recordkeeping requirement, CARB should (i) define a clear minimum safe harbor set of records (e.g., a short certification plus an excerpt or summary derived from relevant California tax filings), (ii) confirm that where CARB can verify annual revenue and California nexus from FTB filings or other state records, CARB will not require duplicative production absent a specific discrepancy, (iii) limit record requests to disputes or anomalies, and (iv) clarify confidentiality handling for tax-return and proprietary commercial information.

## **VII. Rulemaking Process and Consultation for Proposed Regulation**

We appreciate CARB's stakeholder engagement efforts over the past year and share its goal that § 38532 produce accurate, comparable, and decision-useful disclosures that interoperate with global regimes. The Proposed Regulation has the potential to set a leading standard for climate-related disclosures, but the abbreviated and disjointed rulemaking procedure threatens its quality, clarity, and effectiveness. The rulemaking process, including the agency's various notices, FAQs, webinars, and accompanying materials provided prior to the issuance of the Proposed Regulation and the Staff Report, has proceeded on an accelerated and fragmented basis, with limited consultation of key stakeholders, creating a challenging and uncertain compliance planning environment for potentially regulated entities.

### **1. Abbreviated timeline for finalization of regulation**

The current consultation timeline is positioned to meet only the minimum requirements under the California Administrative Procedure Act ("APA") (Government Code §§ 11340, *et seq.*). This approach is detrimental to the clarity, quality, and effectiveness of the Proposed Regulation. The rulemaking timeline does not permit meaningful amendments to the Proposed Regulation, as is expected to be warranted from the responsive comments provided. As such, we recommend CARB build in additional time for public consultation.

We appreciate that CARB published the Proposed Regulation on December 9, 2025, to provide additional review time in advance of opening the public comment period December 26. Nonetheless, the formal publication established a 45-day comment period running through the holiday period, resulting in a 30-business-day comment period. This timeline is tight and, given its overlap with the holiday period, inopportune for soliciting full participation and consultation from all stakeholders. Further, with only 13 business days between the close of the comment period and the board consultation, there is very little time for CARB staff to meaningfully review, analyze, vet, and prepare well-considered recommendations for the Board based on the public feedback.

Among other things, CARB should bear in mind that to accommodate substantial changes, the agency would be required to provide a second 15-day comment period in compliance with the APA. Additionally, to the extent that CARB decides not to incorporate changes based upon the comment period, staff must address the comments and provide justifications for declining recommended changes.

In light of the significant interest in the Proposed Regulation, which we understand has thus far exceeded CARB's records for stakeholder attendance and participation, we strongly recommend that CARB delay the planned Board hearing by at least 30 days to provide time for CARB staff to carefully digest and address input from stakeholders, and to accommodate the APA's additional 15-day period for stakeholder review of needed subsequent changes to the regulation.

### **2. Insufficient stakeholder consultation**

We appreciate that CARB staff have held several lengthy public meetings,<sup>46</sup> received many written comments, and endeavoured to have an open door. However, the rulemaking record and proposal do not

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<sup>46</sup> Note that while the three public workshops in 2025 were lengthy, based on the number of commenters seeking to speak, comments were limited to two minutes, which for many participants, was not sufficient to meaningfully provide feedback or express concerns.

clearly reflect the nature and substance of statutorily required consultation. The statute requires CARB to consult with all of the following: “(A) the Attorney General; (B) other government stakeholders, including, but not limited to, experts in climate science and corporate carbon emissions accounting and reporting; (C) investors; (D) stakeholders representing consumer and environmental justice interests; and (E) reporting entities that have demonstrated leadership in full-scope greenhouse gas emissions accounting and public disclosure and greenhouse gas emissions reductions.”<sup>47</sup> Beyond broad references to stakeholder consultations, the record of consultation does not discuss how CARB has met its requirement to meaningfully engage with these stakeholders. Had stakeholder consultations been given due weight, we would expect the Staff Report to reflect such input; however, no specific stakeholder input is discussed in the Staff Report with any substantive specificity. Indeed, the only place where the Staff Report addresses stakeholder input in any practical way is in connection with reporting deadline commentary and even there, the discussion is cursory and generalized and does not reflect the Society’s repeated feedback—provided through multiple written submissions and direct engagements with CARB staff— as to the timing of reporting.

By way of example, the Society has repeatedly expressed concerns about the § 38532 reporting deadline in the context of data that show that companies typically publish their sustainability reports, including GHG emissions disclosures, between six to nine months (on average, within a much broader range) after the end of their fiscal year and we have encouraged CARB to solicit additional feedback on this topic. Yet the Staff Report references only six months and implies that six months will accommodate all reporting companies without regard to data and written and oral feedback that is inconsistent with that conclusion.<sup>48</sup> As noted above in Section III.B., the Staff Report further inappropriately references CARB’s existing and unrelated MRR program verification deadline<sup>49</sup> as a basis for the Health and Safety Code § 38532 reporting deadline without regard to the typical timelines by which companies typically disclose their GHG emissions and the fact that the MRR program verification deadline is not an appropriate benchmark for § 38532 reporting. As noted previously, § 38532 (c)(2)(A)(vi) provides: “The reporting timelines shall consider industry stakeholder input and shall take into account the timelines by which reporting entities typically receive scope 1, scope 2, and scope 3 emissions data, as well as the capacity for an independent assurance engagement to be performed by a third-party assurance provider.” CARB should be responsive to data on current timing practices and the Staff Report should use that data to support the § 38532 reporting deadline included in the Proposed Regulation.

Both the stakeholder community and CARB stand to benefit from meaningful engagement and consideration by CARB. If the stakeholder community agrees that CARB succeeded in the drafting of the Proposed Regulation, the regulation as adopted is likely to serve as a top standard for climate-related disclosure regulation. This will encourage stakeholders to advocate for other jurisdictions to follow the model established by CARB, solidifying CARB’s leadership as a standard-setter in climate-related disclosures. On the other hand, if the stakeholder community perceives that it has not meaningfully engaged in the process, that its perspectives were not sufficiently considered, or that the adopted regulation is substantively problematic, this risks other jurisdictions steering away from the CARB’s approach and leading to a fragmented regulatory framework nationally and globally that poorly serves the public interest.

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<sup>47</sup> Health and Safety Code §38532(c)(4).

<sup>48</sup> Staff Report at 15 (“Staff received feedback from stakeholders regarding a future first year reporting deadline. Two of the main themes communicated in this feedback were, 1) reporting entities requested six months after the end of their fiscal year to gather data, verify the accuracy of the data, and report to CARB, and ...This approach guarantees at least six months of time between fiscal year end and the proposed reporting deadline, to provide additional flexibility and accommodate the wide range of fiscal year timelines.”)

<sup>49</sup> Staff Report at 15 (“The proposed first reporting deadline of August 10, 2026, matches the verification deadline under CARB’s existing MRR program, with the goal of streamlining GHG reporting responsibilities and timing for entities reporting under Health and Safety Code section 38532 and MRR.”)

As noted in the preamble of and throughout this comment letter, at present, many concerns and considerations remain unaddressed in the Proposed Regulation and Staff Report, warranting greater stakeholder input before the adoption of the Proposed Regulation.

Further, stakeholder companies expect that their disclosure reports prepared in compliance with the Proposed Regulation will be read and relied upon by a much broader audience than just CARB. For example, § 38532(c)(2)(B) contemplates that consumers, investors, and other stakeholders will use these reports. The consultation process should account for the reality of the broad use cases and audiences for disclosure reports made in compliance with the Proposed Regulation to promote the disclosure of meaningful and practical information for that broader audience consistent with the statutory purpose. This consultation will be an important foundation for CARB's further substantive § 38532 rulemaking to ensure that the data and any format established for reporting is a net benefit to users of the information and maximally interoperable with other global reporting standards and schemes.

### 3. Fragmented and informal regulatory approach

We find the fragmented rulemaking approach adopted by CARB to be quite challenging from a stakeholder input and compliance planning standpoint. By establishing essential definitions and applicability for the fee scheme before the substantive reporting requirements have been developed, stakeholders lack clarity regarding how important concepts, such as parent-subsidary relationships, will ultimately influence their responsibilities under the law. Likewise, from a compliance standpoint, it puts regulated entities in the position of having legal obligations imposed on them through the applicability provisions that are not yet substantively fleshed out.

We appreciate that CARB is exercising enforcement discretion for first year reports to relieve assurance obligations and accept reports based on available data. However, as discussed in Section V above, aside from the fact that many mature reporting companies in particular are unable to benefit from this relief due to internal controls, regulatory, or other requirements to report only complete and assured data (as discussed in Sections II and III), for those companies are able and elect to take advantage of the relief, we believe that this approach should be spelled out clearly in the Proposed Regulation to provide clarity on the obligations triggered by the proposed definitions and to ensure that regulated entities can reasonably understand and rely on the scope of their obligations during initial implementation.

Further to and expanding on the concerns described in Section V above regarding various ad-hoc exemptions not included in the Proposed Regulation, we recommend that CARB amend the Proposed Regulation to expressly include the transition relief announced during its November workshop and in related FAQ updates. In particular, we believe the Proposed Regulation should expressly (1) as noted above, waive the assurance requirement for year one, (2) incorporate CARB's FAQ advice regarding waiver procedure for entities that were not yet collecting data as of the date of the December 2024 Enforcement Notice (December 5, 2024), and (3) incorporate CARB's FAQ advice confirming that entities may submit data in any format, including existing reporting, provided it includes the statutorily required Scope 1 and Scope 2 data reported under the Greenhouse Gas (GHG) Protocol.

As this is a critical compliance framework that is not self-executing under the statute, we believe these requirements should be codified subject to notice and comment rulemaking that allows stakeholders to weigh in and enjoy the reliance benefit of a clear rule. Taken together, we encourage CARB to consider delaying finalization of a fee-only rule and instead incorporate these definitions into a complete rule that would provide stakeholders with clarity and opportunity to weigh in on the full picture of the reporting proposal.

### **Adherence to APA – Health and Safety Code § 38533**

Health and Safety Code § 38533 requires a covered entity to make its climate-related financial risk report publicly available “on its own internet website.”<sup>50</sup> The statute does not require submission of the report, or a link to the report, to a CARB-hosted docket as a condition of compliance.

Recent CARB guidance materials, website content, and related compliance documents repeatedly state that covered entities “must” submit a public link to their climate-related financial risk reports to a CARB-hosted docket. Although CARB has characterized current docket participation as voluntary, this posture reflects the existence of a court-ordered injunction<sup>51</sup> rather than a determination that docket posting is optional under § 38533. CARB has otherwise indicated, through published guidance and enforcement materials,<sup>52</sup> that submission of a report link to the CARB docket<sup>53</sup> is expected for compliance once enforcement resumes, creating significant uncertainty for covered entities, particularly because CARB’s guidance consistently presents docket submission as a mandatory compliance step despite the absence of statutory or regulatory authority for that obligation.

Any requirement that covered entities submit report links to a CARB docket would impose an obligation beyond the express terms of § 38533 and is not included in CARB’s proposed regulatory text. Under the California Administrative Procedure Act, compliance obligations must be established through statute or duly adopted regulations.<sup>54</sup>

We therefore urge CARB to clarify in its final regulations implementing § 38533 that a covered entity satisfies the reporting requirement by making its climate-related financial risk report publicly available on its own internet website by the applicable deadline, and that no additional posting or submission to a CARB-hosted docket is required.

### **Regulatory Assumptions Affecting Both Fee Calibration and Disclosure Quality**

To achieve CARB’s goals, including generating data that is decision-useful and interoperable with other global regimes, we respectfully highlight key assumptions underlying the Proposed Regulation and Staff Report that could be more fully supported or recalibrated to reflect more realistic implementation dynamics and data. Doing so will enhance the usefulness of reported information for investors and other users, reduce avoidable friction for reporting entities, and support California’s aspiration to set a practicable model other jurisdictions can follow.

#### **1. Minimal Compliance Costs for the Proposed Fee Regulation**

In its Staff Report, CARB asserts the estimated compliance costs for its proposed fee regulation “are minimal and not anticipated to influence employment levels [in California]” (page 18). It also asserts “[t]he

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<sup>50</sup> Health & Safety Code § 38533(c)(1). Likewise, Health & Safety Code § 38533(f)(2) directs CARB to adopt regulations that authorize the imposition of penalties if a covered entity fails to make the disclosure report “**publicly available on its internet website**” or publishes an inadequate or insufficient report (emphasis added).

<sup>51</sup> See, e.g., CARB’s November 18, 2025 presentation slides “SB 253/261/219 Public Workshop: Update on California Corporate Greenhouse Gas Reporting and Climate-Related Financial Risk Disclosure Programs,” p. 34, available at <https://ww2.arb.ca.gov/sites/default/files/classic/SB%20253%20261%20Nov%20Workshop%20slides%20%28Update%29.pdf>.

<sup>52</sup> See *Enforcement Advisory: Climate-Related Financial Risk Reporting (SB 261)*, December 1, 2025, available at <https://ww2.arb.ca.gov/sites/default/files/2025-12/Dec%201%20SB%20261%20Enforcement%20Advisory.pdf>.

<sup>53</sup> CARB’s public docket is available at <https://ww2.arb.ca.gov/public-comments/climate-related-financial-risk-reports-sb-261-docket>.

<sup>54</sup> See Cal. Gov. Code § 11340.5 (a); Cal. Gov. Code § 11342.600; 1 CCR § 250(1)(a). Rules not written into regulations or otherwise legislatively authorized are invalid “underground” regulations and cannot be enforced. See, e.g., *Donaldson v Dep’t of Real Estate* (2005) 134 Cal.App. 4th 948, 966; *Tidewater Marine W., Inc. v Bradshaw* (1996) 14 Cal. 4th 557, 563. This includes requirements characterized as policies as well. See, e.g., *Morillion v Royal Packing Co.* (2000) 22 Cal.4th 575, 570.

estimated compliance costs for each regulated entity are minimal and therefore are not anticipated to affect the expansion of businesses currently doing business within the State of California.”<sup>55</sup>

Beyond the proposed fee structure, CARB proposes in the Staff Report definitions for “business entity,” “covered entity,” “reporting entity,” “doing business,” “doing business in California,” “revenue,” “parent company” and “subsidiary.” Each of these definitions bear on the potential fee amount covered entities would pay under the proposed regulation.

Contrary to CARB’s assertion of “minimal” compliance costs, covered entities, or potentially covered entities, will incur significant costs to evaluate the scope and terms of the above definitions (the challenges of which are covered above) for the purpose, as relevant here, of calculating what fee amount, if any, they may be required to pay to CARB. Particularly for non-California entities that generate some revenues in the State and have complex organizational structures, joint or similar ventures, and/or global or multi-state operations, the internal and external accounting, legal, and tax resources, and related costs, required to determine threshold applicability of the fee regulation, develop or refine data systems and workflows, organize reporting on a consolidated or company-by-company basis, and ensure ongoing compliance—including establishing appropriate internal controls and record retention procedures—will be a substantial undertaking.

In a 2025 survey used to inform our March 2025 comment letter to CARB, Society members estimated compliance costs with § 38532 would range in the hundreds of thousands of dollars and up to \$1 million.<sup>56</sup> While the respondents at that time were uncertain of the scope of the proposed regulation outside of the express statutory text and thus were asked to provide expected costs based on their initial assessment, the estimated amounts well exceed a “minimal” cost.

## 2. No Job Creation or Elimination Expected Due to Minimal Costs

Further to the above, in the Staff Report Economic Impacts Assessment,<sup>57</sup> CARB concludes that the proposed regulation “is not expected to directly affect the creation or elimination of jobs within the state,” because “the estimated compliance costs for this regulation are minimal.” As noted, this will be far more than a minimal undertaking for many companies. As such, we respectfully recommend CARB to re-evaluate this assumption and conduct a more detailed economic impact analysis. Given the scale of preparatory work described by stakeholders, we suggest that CARB further evaluate whether assurance readiness, data collection and controls, increased disclosure, and multi-jurisdiction alignment have already led to or will in the future lead to increased hiring or outsourcing and update the record accordingly to avoid understating impacts in compliance with the APA.

## 3. Assumption that Higher Sales Imply Larger GHG Footprint

The Proposed Regulation defines revenue using the same meaning as “gross receipts” under California Revenue and Taxation Code § 25120(f)(2). This definition emphasizes sales and “does not deduct operating costs” because, according to the Staff Report, “sales is a more appropriate metric for identifying companies that may potentially have large operations and associated carbon footprints.”<sup>58</sup> We urge CARB

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<sup>55</sup> Staff Report at 19.

<sup>56</sup> Society for Corporate Governance Survey: Emissions Disclosure, Assurance & Climate Risk Reporting (February/March 2025) (on file with author), referenced in [Society Comment Letter: Information Solicitation to Inform Implementation of California Climate-Disclosure Legislation: Senate Bills 253 and 261, as amended by Senate Bill 219](#) (March 2025) at 8 note 6 (‘Question: Based on your company’s initial assessment of SB 253, what do you expect your company’s initial and ongoing annual total costs will be to comply with the law, inclusive of development, expansion, and/or refinement of processes and procedures; technology; internal and outsourced staffing; consultants; and other resources? Please exclude attestation providers or specifically note that your costs include attestation.’).

<sup>57</sup> Staff Report at 18.

<sup>58</sup> Staff Report at 10.

not to equate larger revenue with higher emissions, as this assumption is not uniformly valid across diverse sectors and business models. For example, retailers with high pass-through sales, firms with limited direct emissions, and holding companies with multiple legal entities, can be large in revenue but modest in emissions. As discussed elsewhere in this letter, we recommend CARB reassess the fee structure for different reasons. In addition, we believe CARB should acknowledge that the Staff Report assumption or inference is unfounded and revise its justifications for using this metric to more accurately represent corporate realities.

#### 4. Assumption of No Costs for Small Businesses

The Staff Report states that due to the relatively high revenue thresholds of the Proposed Regulation, it is not expected to have direct costs on “small businesses,” as defined by California Government Code § 11346.3.<sup>59</sup> We recommend CARB conduct further analysis to assess the effects on small businesses, considering factors like supply chain dependencies, contractual obligations with larger entities, and potential shifts in market dynamics. This would allow for a fuller picture of how the regulation might be more equitable and not inadvertently disadvantage smaller entities.

#### 5. Anticipated Benefit of Increased Reporting

The Staff Report outlines anticipated benefits from its regulation, including that it will “support a program that involves further quantification and reporting of regulated entities’ GHG emissions.”<sup>60</sup> CARB expects this additional reporting to “ultimately result in beneficial reductions in GHG emissions following improved accounting,” although “the extent of any such GHG reductions is not quantifiable at this time.”<sup>61</sup> It is understandable that the emissions reduction piece is not quantifiable at this time; however, the statement that the program will lead to more reporting is also unquantified and unsupported.

We recommend that if this purported benefit is to be included in the record, CARB provide support and details on how much net new decision-useful information will be reported under § 38532 and § 38533, particularly as many of the public companies and mature reporters that the regulation captures already report in accordance with global frameworks and there is a statutory obligation for CARB to consider interoperability and reduced duplication, particularly with the GHG Protocol. As stated in the Society’s prior submission on November 21, 2025,<sup>62</sup> deviating from this framework or mandating granular California-specific templates would substantially increase complexity and cost, especially for entities already reporting under international frameworks, contrary to § 38532(c)(2)(D)(i).

#### 6. Actual and Reasonable Costs

As discussed above in Section IV, the Staff Report explains that fees must be set “in an amount sufficient to cover the actual and reasonable costs to administer and implement these programs.” It then defines the Total Required Revenue (TRR) as an inflation-adjusted Required Revenue (“RR”) figure, “which reflects (1) personnel salaries and benefits of staffing needs required to implement, administer, and

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<sup>59</sup> Staff Report at 20.

<sup>60</sup> Staff Report at 16.

<sup>61</sup> Id.

<sup>62</sup> Society Comment Letter in Response to Draft Reporting Template for Scope 1 and Scope 2 Greenhouse Gas Emissions Pursuant to Health and Safety Code § 38532 and Accompanying Memo (November 2025), available at [https://higherlogicdownload.s3.amazonaws.com/GOVERNANCEPROFESSIONALS/5d47927b-105a-4bc7-9aef-821536f3505b/UploadedImages/Society\\_for\\_Corporate\\_Governance\\_Comment\\_CARB\\_Comment\\_Letter\\_Scope\\_1\\_and\\_2\\_Template\\_Memo\\_November\\_21\\_2025.pdf](https://higherlogicdownload.s3.amazonaws.com/GOVERNANCEPROFESSIONALS/5d47927b-105a-4bc7-9aef-821536f3505b/UploadedImages/Society_for_Corporate_Governance_Comment_CARB_Comment_Letter_Scope_1_and_2_Template_Memo_November_21_2025.pdf) and [https://higherlogicdownload.s3.amazonaws.com/GOVERNANCEPROFESSIONALS/5d47927b-105a-4bc7-9aef-821536f3505b/UploadedImages/Society\\_for\\_Corporate\\_Governance\\_Appendix\\_A\\_Annotated\\_SB253\\_Draft\\_Scope1\\_2\\_GHG\\_Template\\_November\\_21\\_2025.xlsx](https://higherlogicdownload.s3.amazonaws.com/GOVERNANCEPROFESSIONALS/5d47927b-105a-4bc7-9aef-821536f3505b/UploadedImages/Society_for_Corporate_Governance_Appendix_A_Annotated_SB253_Draft_Scope1_2_GHG_Template_November_21_2025.xlsx).

enforce the regulation, (2) legal defense costs to support the State's ability to defend the regulation in court, and (3) contracting expenses to account for specialized technical, administrative, or outreach services that may be necessary to support implementation, consistent with fiscal responsibility and state budgeting practices."

In addition to the issues and recommendations set forth in Section IV, we respectfully raise two concerns regarding this revenue – and therefore, the fee – calculation:

- A) *TRR Calculation Cannot Be Finalized Without Clarity on Covered Entities*: As noted earlier, the scope of coverage – specifically, how many companies will be subject to these fees – remains unclear. Without knowing the total number of regulated entities, it is not possible to accurately calculate the per-entity fee or even the aggregate TRR. Any attempt to finalize fees now risks either overestimating or underestimating costs, leading to inequitable outcomes. We urge CARB to first establish clear parameters on coverage before setting fees.
- B) *Inclusion of Legal Defense Costs Is Neither Appropriate Nor Consistent with Statutory Intent*: The TRR definition includes "legal defense costs to support the State's ability to defend the regulation in court." We do not believe it is appropriate to require regulated entities to fund litigation expenses – particularly when such litigation may challenge processes or concerns with the proposed regulation that go beyond the administrative and implementation costs foreseen by the legislature when regulation was adopted. The statute states that "The total amount of fees collected shall not exceed the state board's actual and reasonable costs to administer and implement this section." Litigation costs, by their nature, are unpredictable and not directly tied to program administration or implementation. Including them in fee calculations stretches the meaning of "actual and reasonable costs" beyond what the statute allows. We respectfully request that CARB exclude legal defense costs from the TRR to ensure compliance with legislative intent and fairness to regulated parties.

## **Conclusion**

As noted above, we appreciate our constructive engagement with CARB thus far, and welcome the opportunity to discuss these comments with CARB staff and to provide any additional information that would be helpful.

## **Appendix**

Exhibit A: Exemplar CA SB 253 Reporting Timeline for Mature Reporting Companies

Respectfully submitted,

A handwritten signature in blue ink, consisting of a stylized 'R' followed by a horizontal line.

Randi Val Morrison  
General Counsel & Chief Knowledge Officer  
Society for Corporate Governance

A handwritten signature in black ink, featuring a stylized 'P' and 'W'.

Paul F. Washington  
President & Chief Executive Officer  
Society for Corporate Governance

Exhibit A

## Exemplar CA SB 253 Reporting Timeline for Mature Reporting Companies



- Even assuming certain steps above occur contemporaneously, CARB's proposed deadline of August 10 (or approximately six months following FYE) is not aligned or consistent with most companies' GHG emissions reporting practices and poses significant compliance challenges even to mature reporting companies. These challenges are exacerbated in the context of other reporting and filing undertakings, including SEC filings, CDP submissions, voluntary sustainability report publications, and CSRD/CSDDD reporting, among others.