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May 4, 2026

Lauren Sanchez, Chair  
California Air Resources Board  
Attn: Clerks' Office  
1001 I Street  
Sacramento, CA 95814

**Re: Comments on the 15-Day Amendments to the Proposed Cap-and-Invest Regulation**

Dear Chair Sanchez:

We write on behalf of our client, the Regulatory Flexibility Group (“RFG”)<sup>1</sup>, to comment on the 15-day amendments (the “15-Day Amendments”) to the California Air Resources Board’s (“CARB”) proposed 2026 amendments (the “Proposal”) to the Cap-and-Invest Regulation (the “Regulation”), released on April 14, 2026.

RFG shares CARB’s commitment to cost-effective reduction of greenhouse gas (“GHG”) emissions and addressing climate change, and we strongly support CARB’s leadership in developing comprehensive climate policy. RFG recognizes and appreciates that CARB included several modifications in the Proposal responsive to concerns raised during the 45-day comment period, including increased cap adjustment factors (“CAFs”) for industrial sectors, expansion of the Manufacturing Decarbonization Incentive (“MDI”) allocation to petroleum refineries, and a 30% set-aside of natural gas supplier allowances for low-income ratepayers. RFG expressly supports these changes and urges CARB to retain them if any further modifications are made to the rulemaking. However, while these modifications are directionally constructive, they do not adequately address critical statutory mandates and continue to threaten both the environmental integrity of the Cap-and-Invest Program (the “Program”) and California’s economic and energy security. RFG respectfully requests that CARB further revise the Proposal to address the concerns outlined below before final adoption.

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<sup>1</sup> RFG is an industry coalition of companies in the refining, utility, and aerospace sectors with facilities across California. RFG is dedicated to advocating for a regulatory environment that balances important air quality goals with regional economic considerations. To further this mission, RFG regularly engages with regulators during rulemakings that affect coalition members.

## I. THE PROPOSAL REQUIRES FURTHER REFINEMENT TO PRESERVE AFFORDABILITY

The Health and Safety Code states that CARB must design regulations in a manner that “seeks to minimize costs and maximize the total benefits to California,”<sup>2</sup> “[c]onsider[s]” “benefits to the economy,”<sup>3</sup> and “do[es] not disproportionately impact low-income communities.”<sup>4</sup> It also establishes that California policy is to achieve GHG reductions “in a manner that minimizes costs and maximizes benefits for California’s economy.”<sup>5</sup> But the Proposal fails to meet these statutory obligations with respect to both utilities and industry.

### *Utilities*

AB 1207 directs CARB to “[d]esign the regulations, including distribution of emissions allowances *where appropriate*, in a manner that transitions support from gas corporations to electrical distribution utilities...to minimize ratepayer impacts.”<sup>6</sup> This statutory language is significant: it permits the transition of allowances only “where appropriate,” and requires that any such transition “minimize ratepayer impacts.”<sup>7</sup> Furthermore, existing Health and Safety Code Section 38562(b)(2) requires CARB to “ensure that activities undertake[n] to comply with the regulations do not disproportionately impact low-income communities.”<sup>8</sup> These provisions, read together, establish that a transfer of allowances is only “appropriate” if it both minimizes ratepayer impacts and ensures that it does not disproportionately impact disadvantaged communities. If a proposed allowance transfer fails either test, it runs counter to the legislative mandate and therefore is not “appropriate” under the statute.

The Proposal purports to implement this directive by shifting natural gas supplier (“NGS”) allocations to electrical distribution utilities (“EDUs”) beginning with 17.5% of allowances in 2028 and increasing to 70% in 2031. RFG supports CARB’s decision to reserve 30% of NGS allowances (calculated prior to transferring any allowances to EDUs) to primarily benefit low-income residential ratepayers, aligned with the estimated proportion of natural gas IOU residential ratepayers enrolled in the CARE program. This modification represents a positive step that RFG endorses, as it demonstrates CARB’s responsiveness to its obligation to protect vulnerable ratepayers. There is still some uncertainty, however, regarding how many allowances will be retained for low-income customers post-2031. CARB should add language to Table 9-6A that clearly indicates that the 70 percent transfer does not increase after 2031. CARB should revise it to say “2031 and beyond,” which mirrors the language CARB originally used in the 45-day amendments.

Additionally, the Proposal still does not in practice “minimize ratepayer impacts” as required by AB 1207, because it continues to redistribute compliance costs rather than reducing them, and this

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<sup>2</sup> Cal. HSC § 38562(b)(1)(A).

<sup>3</sup> Cal. HSC § 38562(b)(6).

<sup>4</sup> Cal. HSC § 38562(b)(2).

<sup>5</sup> Cal. HSC § 38501.

<sup>6</sup> Cal. HSC § 38562(b)(1)(B)(i).

<sup>7</sup> *Id.*

<sup>8</sup> Cal. HSC § 38562(b)(2).

redistribution disproportionately impacts low-income communities in violation of HSC § 38562(b)(2). By shifting the remaining allowance allocations away from NGSs and towards EDUs, the Proposal reduces the value available to residential gas customers to offset Cap-and-Invest compliance obligations.

AB 1207 does not direct CARB to minimize electric ratepayer impacts at the expense of gas ratepayers; it requires minimization of “ratepayer impacts” including both gas and electric ratepayers. The 30% CARE set-aside, while beneficial for a subset of low-income gas customers, does not address the overall dilution of climate credit value caused by the allowance transfer. Because there are more electric ratepayers than gas ratepayers, the average dual-fuel ratepayer will receive less in total climate rebates than if no allowance transfer occurs, potentially increasing costs for the low-income communities AB 1207 is designed to protect. Moreover, the set-aside is limited to the duration of the NGS-to-EDU transition and relies on CPUC to oversee distribution—details that remain unresolved and may introduce additional uncertainty for ratepayers. This fails to satisfy the AB 1207 statutory mandate.

Notably, members of the California State Legislature have expressed similar concerns regarding the Proposal’s impact on vulnerable ratepayers. In a letter to Chair Sanchez, several legislators—including Assemblymembers Anamarie Ávila Farías, Blanca Pacheco, Greg Wallis, Josh Hoover, Jeff Gonzalez, David A. Alvarez, Esmeralda Soria, Stan Ellis, Rhodesia Ransom, Lisa Calderon, Stephanie Nguyen, José Luis Solache Jr., Blanca E. Rubio, James C. Ramos, and Juan Carrillo, as well as Senator Marie Alvarado-Gil—stated:

We recognize that this phased structure demonstrates an intent to mitigate abrupt cost shifts for households. However, we are concerned that this proposed transfer, and any alternative proposal that would further expedite the transfer, will disproportionately impact low-income constituents who continue to rely on gas service. We urge CARB to craft its regulatory update in a way that ensures the cumulative effects of the proposed changes do not result in unintended adverse impacts – i.e., higher overall energy costs for Californians, particularly for low-income households, residents of disadvantaged communities, and constituents who are already burdened by rising utility bills and infrastructure costs.<sup>9</sup>

This legislative letter underscores that the Proposal’s allowance transfer scheme fails to meet the “where appropriate” standard established by Health and Safety Code § 38562(b)(1)(B)(i). While the 30% CARE set-aside represents a partial response to these legislative concerns, it does not address the fundamental structural problem identified by the legislators—that the transfer as a whole will result in higher overall energy costs for low-income households. Because the proposed transfer, even as modified, fails to minimize ratepayer impacts and risks disproportionately

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<sup>9</sup> Letter from Anamarie Ávila Farías *et al.*, Members, Cal. State Legislature, to Hon. Lauren Sanchez, Chair, Cal. Air Res. Bd. (Mar. 5, 2026).

impacting low-income communities who continue to rely on gas service, the transfer as structured runs counter to the legislative mandate and therefore is not “appropriate” under the statute.

### *Industry*

The current Proposal’s failure to provide sufficient CAFs post-2030 (discussed in Section II below) will further erode the ability of energy producers, including refiners, to continue operating in California. If these companies are forced to leave the state, the jobs and economic activity these companies bring to California will also leave; moreover, California will become increasingly reliant on imported energy sources, exposing consumers to global supply chain price fluctuations. All these impacts fall most heavily on low-income households, who spend a disproportionate share of their income on transportation fuels.

## **II. THE PROPOSAL REQUIRES FURTHER REFINEMENT TO MINIMIZE LEAKAGE**

The Health and Safety Code mandates that CARB shall “[m]inimize leakage.”<sup>10</sup> This statutory obligation applies to allowance allocations to both industries and utilities because both sectors face the risk of shifted production or relocated emissions when compliance costs become untenable.

Leakage is occurring now, and without any certainty on industrial assistance post-2030, leakage will almost certainly increase. When California facilities shut down or reduce production due to Program costs, that production shifts to out-of-state or foreign facilities without comparable carbon constraints – the result is not a net reduction in global emissions. Instead, industrial activities are simply relocated outside of California, often to jurisdictions with weaker environmental standards and less efficient production methods. CARB acknowledged this reality, stating that the “reasonably foreseeable compliance responses to the [Proposal] include[s]...the decrease in oil and gas extraction, refining, and distribution.”<sup>11</sup>

CARB should take further steps to minimize emissions leakage by designating petroleum refining and liquid hydrocarbon fuel production as high-risk leakage activities, providing higher and more consistent CAFs for trade-exposed sectors beyond 2030, expanding MDI eligibility, and affording regulatory flexibility to all refiners with regard to both compliance delays and benchmarks. Each of these areas is addressed below:

### *Extend CAFs Post-2030*

The 15-Day Amendments increase CAFs for 2027–2030 relative to the 45-day proposal—notably raising the standard CAF for 2027 to 0.807 (matching the alternate CAF) and reducing the annualized decline rate from 4% to 3%—and RFG supports these modifications as meaningful

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<sup>10</sup> Cal. HSC § 38562(b).

<sup>11</sup> CARB, [Draft Environmental Impact Analysis for the Proposed Regulatory Amendments to the Cap-and-Invest Program](#), January 20, 2026 at 79, 80.

progress that reflects CARB’s responsiveness to stakeholder concerns.<sup>12</sup> However, the 15-Day Amendments fundamentally fail to address leakage because sufficient post-2030 CAFs have not been provided. This creates substantial regulatory uncertainty for industries that must make long-term capital investment decisions now. This omission is particularly problematic given that AB 1207 extended the Program to 2045. Without established, sufficient CAFs through 2045 to cover the same period, covered entities—particularly petroleum refineries with long investment horizons—cannot plan compliance strategies or commit to the multi-year decarbonization investments that CARB’s own Scoping Plan envisions.

The passage of Assembly Bill 1207 fundamentally altered CARB’s authority with respect to industrial allowance allocations. Prior to AB 1207, CARB was constrained to set the CAF in direct proportion to the overall emissions budget. **The Legislature eliminated this proportionality requirement, thereby granting CARB expanded flexibility to establish CAF values that more properly reflect leakage risks and the economic realities facing critical state industries.** CARB should exercise this discretion to provide the protection from leakage commensurate with the threats faced by sectors demonstrating high leakage vulnerability. Specifically, we propose:

- Petroleum Refining Sector (CAF of 0.85): Increase the CAF in Table 9-2 to 0.85 for the petroleum refining sector, including hydrogen and cogeneration facilities supporting petroleum refining, beginning with compliance year 2030 and maintain the CAF at 0.85 through 2045.
- Biorefining Sector (CAF of 1.0): Increase the CAF to 1.0 in Table 9-2 for the biorefining sector, including hydrogen and cogeneration facilities supporting biorefining, beginning with compliance year 2030 and maintain the CAF at 1.0 through 2045.

### ***Expand MDI to Include Early Actions and the Reduction of Air Pollutants***

RFG supports CARB’s decision to extend MDI allocation eligibility to transportation fuel refineries and associated sectors, which is a significant and welcome change from the 45-day proposal that excluded these industries. Pursuant to its statutory directives to “maximize the total benefits to California”; to “not disproportionately impact low-income communities”; and to consider “overall societal benefits, including reductions in other air pollutants,” RFG encourages CARB to further strengthen this provision by including, as eligible under the MDI, recently completed projects (i.e., those starting in 2025) and projects that reduce the emission of air pollutants.<sup>13</sup>

### ***Permit Further Flexibility Between CWB and LHF Benchmarks***

RFG appreciates CARB’s inclusion of flexibility in benchmark selection through 2033 in the 15-Day Amendments, which represents a constructive acknowledgment of operational realities. However, RFG respectfully requests that CARB extend this flexibility further to permit covered entities to elect between the Complexity Weighted Barrel (“CWB”) and Liquid Hydrocarbon Fuel

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<sup>12</sup> CARB [15-Day Amendments Notice of Public Availability](#), April 14, 2026 at 21-22; CARB [Proposed Regulation Order](#), January 20, 2026, as modified.

<sup>13</sup> Cal. HSC §§ 38562(b)(2), 38562(b)(1)(A), 38562(b)(6).

(“LHF”) benchmarks on an ongoing basis, rather than requiring an irreversible switch to LHF prior to 2033. Allowing refineries to select the methodology that best reflects their operational complexity and emissions profile would support long-term capital investment decisions, while ensuring that allowance allocations remain appropriately calibrated to each facility’s actual operational characteristics.

### **III. WITHOUT FURTHER AMENDMENT TO MINIMIZE LEAKAGE, ADDITIONAL ANALYSIS IS NECESSARY UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

CARB has a clear statutory mandate under the Health and Safety Code to “[m]inimize leakage.” As discussed in Section II, leakage is occurring now, and without regulatory certainty on industrial assistance post-2030, it will almost certainly increase. The lower pre-2031 CAFs in the 45-day proposal created significant deficiencies in CARB’s CEQA analysis given the ultra-high leakage risk associated with that framework.<sup>14</sup> While the 15-Day Amendments represent a meaningful reduction in near-term impacts on in-state refining as compared to the 45-day proposal, the Proposal—even as modified—will foreseeably accelerate refinery closures and increase California’s reliance on imported fuels.

Although the 15-Day Amendments increase near-term CAFs, they do not provide certainty that post-2030 CAFs will adequately address these concerns. As discussed above, CARB can address this by amending the rule as follows:

- Establish a CAF of 0.85 for the petroleum refining sector, including hydrogen and cogeneration facilities supporting petroleum refining, beginning with compliance year 2030 and maintain the CAF at 0.85 through 2045.
- Increase the CAF to 1.0 in Table 9-2 for the biorefining sector, including hydrogen and cogeneration facilities supporting biorefining, beginning with compliance year 2030 and maintain the CAF at 1.0 through 2045.

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<sup>14</sup> While the Draft EIA acknowledges the concept of leakage and describes measures ostensibly designed to minimize it, it contains no data-supported analysis of the Proposal’s actual leakage impacts—despite CARB’s own recognition that refinery closures are a foreseeable compliance response. This omission violates CEQA’s requirement that environmental documents analyze and disclose “[d]irect and indirect significant effects of the project on the environment,” including effects occurring outside California’s borders when they are reasonably foreseeable consequences of the project. See Cal. Code Regs., tit. 14, §§ 15126.2(a); 15360. Further, although the Draft EIA acknowledges that reduced refining activity is a foreseeable compliance response, it does not analyze the indirect environmental consequences that would follow from refinery closures. These include increased emissions from marine vessel and tanker truck fuel imports, supply chain disruptions, and potential urban decay in surrounding communities. The 2015 Torrance Refinery shutdown illustrates these risks: that single closure resulted in a significant gasoline price spike, and decreased local supply had to be replaced by increased imports from outside the region. See California Energy Commission, [Potential Transportation Fuel Supply and Price Impacts of HF Pan Presentation](#), (Sept. 20, 2017), at 18, 22, 25.

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If CARB does not make such amendments, additional environmental analysis under CEQA will be necessary.

#### IV. CONCLUSION

RFG recognizes CARB's efforts to advance California's ambitious climate goals and is encouraged by the state's commitment to cost-effectively reduce GHG emissions. RFG also acknowledges and endorses that the 15-Day Amendments represent meaningful improvements to the Proposal that demonstrate CARB's willingness to engage constructively with stakeholder concerns, particularly with respect to increased CAFs for 2027–2030, the extension of MDI eligibility to transportation fuel refineries, and the 30% CARE set-aside for low-income gas ratepayers. However, as summarized above, the Proposal as modified continues to fall short of critical statutory requirements, particularly CARB's mandate to "[m]inimize leakage,"<sup>15</sup> "minimize costs ... to California,"<sup>16</sup> and "not disproportionately impact low-income communities."<sup>17</sup>

RFG encourages CARB to retain the positive changes reflected in the 15-Day Amendments while undertaking the additional modifications described above. RFG stands ready to work collaboratively with CARB to achieve a final rule that meets California's ambitious environmental objectives while safeguarding the state's economy and protecting its most vulnerable communities.

We greatly appreciate the opportunity to provide these comments. If CARB has any questions or would like to discuss our comments, please feel free to contact me at (213) 891-7395, or by email at [john.heintz@lw.com](mailto:john.heintz@lw.com).

Best regards,



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cc: RFG Members  
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<sup>15</sup> Cal. HSC § 38562(b).

<sup>16</sup> Cal. HSC § 38562(b)(1)(A).

<sup>17</sup> Cal. HSC § 38562(b)(2).