

May 4th, 2026

Ms. Lauren Sanchez
Chair
California Air Resources Board
1001 "I" Street
Post Office Box 2815
Sacramento, California 95812

Re: CLECA Comments on 15-Day Modifications to Proposed Cap-and-Invest Program Amendments

Dear Chair Sanchez:

The California Large Energy Consumers Association (CLECA) submits these comments on the 15-Day Modifications to the proposed amendments to the California Cap-and-Invest Program (Program), in advance of the May 28, 2026, public hearing. These comments build on CLECA's prior submissions during the 45-day comment period¹ and address the substantive changes to the Cap Adjustment Factor (CAF) trajectory, the restructured Manufacturing Decarbonization Incentive (MDI) framework under Section 95891(g), and the transition of indirect electricity allocation from the California Public Utilities Commission (CPUC) to CARB.

CLECA members include emissions-intensive, trade-exposed (EITE) facilities in the steel, cement, glass, industrial and medical gases, beverage, and minerals processing sectors, industries essential to California's economy, supply chains, and public welfare.

I. Adopt the 15-Day Amendments Timely

CLECA's primary request is that CARB adopt the 15-Day Amendments without delay. The revised regulation provides near-term CAF improvements to mitigate near-term emissions leakage and establishes the MDI framework that EITE facilities need to plan and commit to decarbonization investments. Regulatory uncertainty about compliance costs and allocation levels is itself a leakage driver. Facilities deciding whether to invest

¹ California Large Energy Consumers Association (CLECA). *Comments on Proposed Amendments to the California Cap-and-Invest Program*. Submitted to the California Air Resources Board, March 9, 2026.

in California operations or shift production out of state need a settled allocation framework to make that determination. Delayed or uncertain CAF and MDI rules increase the risk of deferred investment or facility closure.

Several issues raised in these comments, including confirmation of prior CPUC electricity benchmarks, the MDI expenditure eligibility start date, clarification of new covered facility MDI implementation, and the post-2030 CAF trajectory, can be addressed through the Final Statement of Reasons (FSOR), administrative action, or a subsequent rulemaking. None of these issues warrants a delay in adoption.

II. The Revised CAF Trajectory Meaningfully Improves Near-Term Leakage Protection

CLECA supports the CAF revisions in the 15-Day Modifications. The 15-Day Modifications increase the standard and alternate CAF for 2027. From 2028 through 2030, the annual decline rate for the standard CAF is reduced from the allowance budget's 4% decline rate to 3%, and from 2% to 1% for the alternate CAF.² For most industrial sectors, these changes increase CAFs relative to the 45-Day Amendments across the full 2027-2030 window. CARB has removed post-2030 CAFs from this rulemaking and deferred them to a future proceeding, a decision CLECA supports and addresses in Section V below. Together, these changes materially improve near-term leakage protection and reflect the economic realities facing California EITE industries during a period of significant uncertainty.

A. The Leakage Context

These adjustments matter because California's existing level of industrial allocation already sits below most major carbon pricing programs. CARB's own ISOR Table 6 shows that in 2023, California's ratio of industrial allocation to covered emissions was 62%, compared to approximately 100% in Washington State, 99% in Québec, 84% in the European Union, and 72% in the United Kingdom.³ None of the major industrial competitor states in the Western region, including Oregon, Nevada, Utah, Arizona, and Texas, has implemented a comparable carbon pricing program. California EITE facilities, therefore, bear compliance costs that competing out-of-state producers do not.

² AB 1207 (Irwin), Ch. 117, Statutes of 2025.

³ CARB. Staff Report: Initial Statement of Reasons, Table 6: Ratio of Industrial Allocation to Covered Emissions in Various Jurisdictions (2023). Released January 20, 2026. Available at: https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2026/cap_invest/nc_isor.pdf.

This asymmetry is producing documented outcomes. In April 2026, CalPortland announced a reduction of 53 employees at its Redding cement plant.⁴ In February 2026, Anheuser-Busch closed its 50-year-old Fairfield brewery, resulting in the loss of approximately 238 jobs.⁵ These are only the most recent emissions leakage events that were preceded by the 2020 closure of Commercial Metals Company's Rancho Cucamonga steel mill, which ended in-state raw steelmaking and left California importing 100% of its steel.⁶ The California Nevada Cement Association has documented the closure of nearly half of California's cement plants and the corresponding rise in import market share over the past two decades.⁷ These are not hypothetical leakage scenarios. They are recent, real losses in the sectors CLECA represents and in industries that CARB has identified as leakage risks.

B. Post-2030 CAFs Reductions Dependent on Border Carbon Adjustment

CLECA continues to believe that without a border carbon adjustment (BCA) or equivalent embodied-carbon mechanism, further CAF reductions carry material risk of additional industrial migration and corresponding emissions leakage. The European Union has paired its phase-down of free industrial allocation with the Carbon Border Adjustment Mechanism, recognizing that declining free allocation without a BCA would accelerate production relocation rather than reduce global emissions. CARB's own ISOR acknowledged this approach.⁸ California has not yet implemented an equivalent.

CLECA is not asking CARB to suspend CAF reductions at this time. The 15-Day Modifications strike a reasonable near-term balance. But CLECA asks that any further reductions beyond 2030 be conditioned on either the development of a workable BCA or updated robust leakage data demonstrating that additional reductions can occur without further production migration. CARB's decision to defer post-2030 CAFs creates the appropriate opportunity to resolve this question before additional reductions are set.

⁴ AOL. "Layoffs to hit cement plant north of Redding in June." April 18, 2026. Available at: <https://www.aol.com/news/layoffs-hit-cement-plant-north-225019579.html>.

⁵ CBS Sacramento. "Fairfield Budweiser plant begins wind-down ahead of final closure on Feb. 22." February 9, 2026. Available at: <https://www.cbsnews.com/sacramento/news/fairfield-budweiser-anheuser-busch-closing/>.

⁶ Commercial Metals to Shutter Rancho Cucamonga Steel Mill, Citing High Costs in California, Orange County Coast, Oct. 16, 2020. Available at: <https://www.orangecountycoast.com/commercial-metals-to-shutter-rancho-cucamonga-steel-mill-citing-high-costs-in-california/>.

⁷ California Nevada Cement Association (CNCA). Achieving Carbon Neutrality in the California Cement Industry: Key Barriers & Policy Solutions, Second Edition. July 2023.

⁸ CARB. Staff Report: Initial Statement of Reasons, p. 59 (January 20, 2026).

III. The Manufacturing Decarbonization Incentive Is Now More Effective and Workable

The 15-Day Modifications substantially improve the MDI framework that CLECA commented on during the 45-day period. The changes make the MDI a more credible and operationally viable tool for driving real decarbonization investment in industrial EITE sectors. CLECA strongly supports the adoption of this framework.

A. Structural Improvement: Flat CAF Modifier

The 45-Day Amendments proposed a declining MDI CAF modifier schedule, ranging from 1.2 in 2027-2028 down to 0.6 in 2034-2035 for standard sectors, with the alternate sector modifier set at half those levels. This created an artificial first-mover premium unrelated to the quality or ambition of individual decarbonization projects. The 15-Day Modifications replace this with a flat 0.8 CAF modifier applied uniformly in budget years 2028 through 2030 across all sectors.⁹ This simplification provides consistent, predictable incentive value across the MDI window and allows facilities to time project applications and investments based on project readiness rather than the size of the available modifier.

B. Extended Spending Window

The 45-Day Amendments required facilities to spend the allocated MDI value within five years. The 15-Day Modifications extend this to six or seven years, aligned with the end of two full compliance periods following the period in which MDI allowances are received.¹⁰ Major industrial decarbonization investments, including equipment replacement, fuel switching infrastructure, process redesign, and carbon capture systems, routinely require five to seven years from project inception through commissioning and final expenditure verification. The five-year deadline was too short for the class of investments the MDI is designed to incentivize. The extension corrects this and better reflects the real-world timelines of capital projects in CLECA's member sectors.

⁹ CARB. Notice of Public Availability of Modified Text, Modifications to Section 95891, paragraph 55, pp. 21-22 (April 14, 2026).

¹⁰ CARB. Notice of Public Availability of Modified Text, Modifications to Section 95891, paragraph 50, p. 20 (April 14, 2026).

C. Expanded Eligible Project Categories

The 15-Day Modifications add two new eligible project categories and improve the practical scope of several existing categories.

Capital costs for biomass-derived fuel handling and combustion infrastructure are now eligible under Section 95891(g)(2)(A), alongside the fuel purchase costs already included. The prior three-year additionality criterion for historic biomass use is deleted. Biomethane injected into common-carrier North American pipelines qualifies. These changes address a real barrier: facilities evaluating biomass-derived fuel strategies need capital cost coverage for handling and combustion equipment, not only for the fuel itself. The 50% spending cap on fuel purchase costs appropriately avoids subsidizing baseline energy costs while still reducing the cost premium for low-carbon fuels.

Carbon capture, utilization, and storage (CCUS) capital, electricity, and design costs are added as a conditionally eligible category under Section 95891(g)(2)(H), subject to Board approval of a quantification methodology. For sectors with substantial unavoidable process emissions, CCUS may be the only viable path to deep decarbonization within California. Including CCUS as an eligible category, even conditionally, signals that the MDI is designed to drive emissions reductions in hard-to-abate sectors. CLECA strongly supports this addition.

Design, engineering, and permitting costs are now eligible alongside direct capital costs for electrification, solar thermal, and geothermal projects under Sections 95891(g)(2)(B) and (E). For major industrial capital projects, front-end development costs can represent a significant share of total project cost and commonly precede construction by two to four years. Covering these costs makes the MDI financially accessible to facilities in earlier project stages.

D. Revised Application Timeline

Once the regulation takes effect, the first MDI application deadline is moved from September 1, 2026, to June 1, 2027.¹¹ The 45-Day proposal would have required facilities to apply before the regulation was in force, which was procedurally untenable. The revised timeline gives both facilities and CARB staff adequate time to develop, document, and evaluate qualifying project proposals.

E. Confirm MDI Eligibility for New Facilities in Their First Year of Production

CLECA asks CARB to confirm, through implementation guidance, the FSOR, or another appropriate mechanism, that new facilities commencing covered production during the MDI window (budget years 2028-2030) are eligible to receive MDI allocation in their first year of production, and that the allocation methodology will provide equivalent MDI value in the early years of a new facility's operation to an existing facility in the same sector with the same production in that year.

This matters because the standard initial allocation formula uses production data from year t-2, which a new facility will not have. For example, a facility commencing production in 2028 will have no t-2 production. CLECA recommends that CARB clarify eligibility in the first year of production and incorporate the MDI into the production-based 'catch up' true up mechanism for new facilities. For a new facility, the MDI incentive in the early production years is a direct input into decarbonization investment feasibility analysis. Uncertainty about whether and how MDI applies to new entrants could discourage new investments in California or delay decarbonization investments at new facilities, particularly for capital-intensive projects, where early cash flow from the MDI allocation contributes meaningfully to project economics.

New facilities built with innovative, best-in-class, lower-emissions technology integrated directly into process design represent an important pathway to reducing emissions leakage, rather than merely slowing it. These are precisely the investments the MDI is designed to attract. CARB should confirm their eligibility clearly and full MDI value in the initial production years so that the regulatory framework encourages rather than delays that outcome.

IV. Confirm the Value Neutrality of Indirect Electricity Allocation Benchmarks

CLECA requests that CARB confirm in the FSOR that the electricity efficiency benchmarks published in Table 9-1 are consistent with those previously used by the CPUC to calculate California Industry Assistance Credits, and that the administrative transition has not reduced the effective leakage protection provided to EITE facilities.

A. The ISOR's Representation

The ISOR states that "for electricity purchases allocation, CARB will use the same electricity efficiency benchmarks currently used by CPUC to determine California Industry Assistance Credits." CARB further represented that transitioning this allocation from CPUC to CARB "would not significantly change the amount of value provided for leakage

minimization.”¹² CLECA has supported the administrative consolidation of indirect electricity allocation under CARB on the assumption that it is value-neutral for EITE facilities.

B. The Transparency Gap

The prior CPUC benchmarks were never published publicly, and the California Industry Assistance Credit was delivered to facilities as a dollar credit on electricity bills without adequate transparency. No publicly available benchmark value was stated, making independent verification of value-neutral continuity impossible before or after the proposed transition. Now that CARB has published the proposed electricity efficiency benchmarks in Table 9-1, there is no remaining confidentiality rationale for withholding the prior values. Publishing them is the natural first step toward the transparency that the shift to CARB administration was meant to provide.

C. The Discrepancy Concern

CLECA members who receive the CPUC California Industry Assistance Credit report that the electricity efficiency benchmarks implied by their credits appear to be approximately 3-5% higher than the values published in proposed Table 9-1. If accurate, this would reduce effective leakage protection for affected EITE sectors, contrary to CARB’s stated position that the transition is value-neutral. CLECA acknowledges that a definitive comparison is not possible without the prior benchmark values on the record, which is precisely the problem.

D. The Requested Remedy

CLECA requests that CARB: (1) publish in the FSOR the electricity efficiency benchmarks previously used by the CPUC to calculate California Industry Assistance Credits, by sector; and (2) confirm that the Table 9-1 values are consistent with those benchmarks. If the values are the same, documenting that fact closes the issue and provides helpful transparency and confidence in the transition. If any values differ, CARB should explain the basis for the change. If the difference reflects an unintended reduction in effective leakage protection, correcting the Table 9-1 values to align with the prior benchmarks would be a minor administrative correction to implement the policy stated in the ISOR,

¹² CARB. Staff Report: Initial Statement of Reasons, pp. 69-70 (January 20, 2026).

not a substantive policy change, and should not require reopening the rulemaking. This issue does not need to delay the adoption of the regulation.

V. Establish a Timeline for the Post-2030 CAF Rulemaking

CLECA supports CARB's decision to remove post-2030 CAFs from the current rulemaking and defer them to a future proceeding informed by updated leakage data and, importantly, informed by an assessment of whether a workable border carbon adjustment can be paired with further CAF reductions. Establishing post-2030 CAFs before completing that analysis would be premature.

Timing matters. The MDI spending window runs six to seven years from the compliance period in which MDI allowances are received. A facility receiving MDI allocation for budget year 2028 will be committing and deploying capital through 2034 or 2035. The post-2030 compliance cost environment, including the CAF level, will directly affect whether those investments generate an acceptable return. Facilities cannot make major capital commitments without reasonable visibility into the allocation framework they will face during project payback periods.

CLECA recommends that CARB: (1) initiate the post-2030 CAF rulemaking with sufficient lead time for EITE facilities to make informed investment decisions before the close of the second MDI compliance period; (2) base that rulemaking on updated emissions leakage data and an updated assessment of the competitive environment, including the status of carbon programs in neighboring states; and (3) evaluate whether a workable BCA mechanism is sufficiently developed to justify further CAF reductions, consistent with AB 398's direction and the EU precedent documented in CARB's own ISOR. Post-2030 CAF visibility, delivered with adequate lead time, is itself a tool for reducing leakage risk: facilities with confidence in the allocation trajectory are better positioned to plan and finance long-term decarbonization investments.

VI. MDI Expenditure Eligibility Start Date

The 15-Day Modifications specify that MDI value may be used for eligible expenditures incurred on or after September 1, 2026, the expected effective date of the regulation.¹³ CLECA recommends that CARB revise this to January 20, 2026, the date the ISOR was published and facilities first had specific, documented notice of the proposed MDI structure.

Facilities that contemplated the ISOR and began project-development steps in reliance on the proposed MDI framework should not be incentivized to defer expenditures until the regulation formally takes effect. Setting the eligibility date at September 1 also encourages facilities to delay project spending that could otherwise begin earlier, working against the investment acceleration the MDI is designed to achieve. CLECA understands this issue can be addressed in the final implementation and does not need to delay adoption.

VII. Conclusion

CLECA urges the Board to adopt the Cap and Invest proposed regulatory structure with 15-Day Amendments at the May 28, 2026 hearing. The revised CAF trajectory and the restructured MDI framework represent a meaningful improvement to mitigate emissions leakage and encourage industrial decarbonization over the 45-Day proposal. Adoption will help provide the industrial sector with a regulatory structure to encourage meaningful decarbonization investments.

The following items can be addressed through FSOR responses, administrative action, or a subsequent rulemaking, without delaying adoption:

- Publish in the FSOR the electricity efficiency benchmarks previously used by the CPUC to calculate California Industry Assistance Credits, confirm consistency with proposed Table 9-1 values, and explain or correct any differences before budget year 2027 allocation is calculated.
- Confirm through the FSOR or implementation guidance that new facilities commencing covered production during the MDI window are eligible to receive MDI value for their first year of actual production through the new facility true-up mechanism.

¹³ CARB. Notice of Public Availability of Modified Text, Modifications to Section 95891, paragraph 22, p. 15 (April 14, 2026).

- Revise the MDI expenditure eligibility start date in Section 95891(g)(2) to January 20, 2026.
- Initiate the post-2030 CAF rulemaking with sufficient lead time for EITE facilities to incorporate the post-2030 allocation trajectory into long-term investment planning, informed by updated emissions leakage data, the status of carbon programs in neighboring states, and an assessment of border carbon adjustment options.

CLECA appreciates CARB Staff's engagement throughout this rulemaking and looks forward to continued collaboration as the Program is finalized and implemented.

Respectfully submitted,

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