September 11, 2025

Rajinder Sahota, Deputy Executive Officer
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Re: Comments on the August 21, 2025 Public Workshop on SB 253 / SB 261 Implementation

Ms. Sahota,

Thank you for the opportunity to provide comments on the pre-rulemaking concepts presented at the August 21, 2025 SB 253/SB 261 implementation workshop (August Workshop).

The California Chamber of Commerce (CalChamber) is currently a party to a lawsuit filed in federal court against the California Air Resources Board (CARB) challenging the constitutionality of SB 253 and SB 261.[1] While the comments below do not cure any of the defects at issue in the CalChamber lawsuit, they are provided by the undersigned in the hopes of addressing significant economic and implementation issues should CARB ultimately implement these laws.

I. The Need for Standardized Regulatory Impact Assessment

The annual economic impact of the disclosures compelled by SB 253 and SB 261 will be significant. Each covered entity will be forced to spend hundreds of thousands of dollars, if not more, on data collection, interpretation, and assurance. In addition to increased administrative expenses, many covered entities do not have existing in-house capabilities to take on these new responsibilities and will therefore be required to retain consultants and lawyers to set up their programs and prepare and review disclosures and climate-related financial risk disclosure reports (CFRDs).

[1] As we explain in *Chamber of Commerce of the United States of America et al. v. Randolph, No. 2:24-cv-00801- ODW-PVC (C.D. Cal.)*, SB 253 and 261 unconstitutionally compel companies to speak on a controversial topic, in clear violation of their First Amendment rights, impermissibly burden interstate commerce, and further violate constitutional and statutory limitations on California's ability to regulate beyond its borders. No "implementing" regulations can fix these and other fundamental flaws in SB 253 and 261.

Under the Administrative Procedures Act (APA), Government Code Section 116346.3, agencies like CARB are required to prepare a Standardized Regulatory Impact Assessment (SRIA) for major regulations (those that exceed $50 million in economic impact). A rulemaking that defines the "who" "what" "when" and "how" for a program with billions of dollars of compliance costs clearly crosses the SRIA threshold.

It is therefore incredibly disappointing to see a proposed rulemaking schedule that targets a notice of proposed action (NOPA) date of October 14, 2025, without any indication that a SRIA has been, or will be, performed.

The importance of performing SRIAs on major regulations like these is reinforced by the structure and purpose of SRIAs. A SRIA must be submitted **BEFORE** a NOPA so that the analysis can shape the proposal rather than simply justify it after the fact. The SRIA process not only helps provide insight into the economic impacts of regulations, but it also collects stakeholder feedback and helps calibrate design details to achieve policy aims at reasonable cost. This helps advance affordability and feasibility while reducing the risk of unintended consequences. SRIAs benefit the public and regulated community by providing a framework of numbers and assumptions to engage with during the 45-day comment period, which also improves the likelihood of rule that is workable and durable over time.

The Legislative Analyst's Office has found that the SRIA requirement increases the consistency, robustness, and quality of agency analyses of proposed rules.[2] Similarly, Cal/OSHA has noted that the SRIA process has been productive and useful by "[surfacing] many instances of confusion regarding the intent of the regulations and their related requirements."[3]

CARB cannot move forward on the timeframe set forth at the workshop because doing so denies the public the benefit of a SRIA and violates the APA. We urge CARB to develop a reasonable regulatory timeline that allows CARB the time needed to prepare a robust SRIA in compliance with the APA and to consider that analysis in developing the draft regulatory language.

II. Defining the "Who" Reinforces the Need for a SRIA

The August Workshop showed that one of the most consequential design choices for these rulemakings, "who" is covered, is still very much in flux. Each permutation carries vastly

[2] Legislative Analyst's Office, "Improving California's Regulatory Analysis," p. 12 (February 3, 2017).

[3] Cal/OSHA "Initial Statement of Reasons, Public Hearing," p. 56 (September 15, 20216)

different costs, legal risks, and administrative burdens. Staff floated importing the Revenue & Taxation Code §23101 tax threshold, exploring commercial datasets to infer coverage, and even treating the presence of an agent for service of process as an indicator of "doing business in California." Similarly, CARB has proposed multiple approaches for assessing whether an entity exceeds the revenue threshold of SB 253 and SB 261.

The uncertainty regarding to whom the law applies underscores the need for a SRIA to quantify how these alternatives change the size and composition of the regulated universe, impact upstream and downstream economic activity, and increase compliance and fee burdens. Setting a definition without understanding the full ramifications of its economic impacts and the economic impacts of reasonable alternatives deprives the public of its right to fully ascertain the extent of the regulation's impact. It invites unintended consequences and costs. CARB should use the SRIA process to help shape these fundamental design choices, which will also help provide more robust and informed public comments on the proposed rulemakings.

We encourage CARB to develop a definition of "doing business in California" that demands ***substantial nexus*** with California rather than a minimal or non-existent presence (which raises Commerce Clause concerns) while imposing high compliance costs unrelated to in-state climate impacts. CARB should craft a ***program-appropriate*** definition that considers any number of indicators (e.g., in-state revenue, employees, facilities, and operational footprint) to evidence a sufficient California nexus. Any definition should be analyzed through a robust SRIA with stakeholder input so that the public can be informed when it comes time to provide public comments following a NOPA.

Similarly, SRIA analysis is necessary to informing treatment of parent-subsidiary relationships under these laws. CARB staff has indicated that they are considering using the definition of "subsidiary" under the existing cap-and-trade regulation and are trying to develop a process through which relevant subsidiary relationships can be identified. There are numerous ways to define "subsidiary." CARB should use the SRIA process to evaluate the economic impacts of the many ways "subsidiary" can be defined and treated, including under the fee setting structure, for purposes of this rulemaking.

III. The Need for Flexibility on the "When"

Under SB 253, CARB has wide discretion to set the deadline for reporting prior fiscal year emissions. At the August Workshop, CARB staff invited public feedback on the idea of setting a June 30th reporting deadline.

A June 30th reporting deadline for prior fiscal year emissions assumes that all covered entities run on a July through June fiscal year. However, there is no standardization amongst

covered entities and thus fiscal years may vary depending on the entity. A number of international companies, for example, use an April through March fiscal year. The staff's proposal would give those companies just three months to collect, assure, and disclose data for their prior fiscal year. A retailer running a February through January fiscal year to ensure that its fiscal year captures the entire holiday season would have just five months. Setting **ANY** calendar date for reporting prior fiscal year data arbitrarily disadvantages certain covered entities based solely on their chosen fiscal year.

Therefore, providing covered entities timing flexibility on filing GHG disclosures is essential to producing useful reporting. This will become even more relevant in future years when companies also are required to report Scope 3 emissions, which often have significant lag because of the need to collect data up and down the supply chain from suppliers who may publish their own data on a different time frame. Forcing filings on arbitrary dates would push companies to use incomplete or rushed estimates and place them at risk for lawsuits from investors if the information provided turns out to be inaccurate as a result. Allowing each entity to report at any time within a year from the date its fiscal year ends would yield a fairer process and more reliable results.

Flexible timing also will help manage costs and make the required third-party assurance more feasible. Compressed timelines drive up costs (overtime, rush consultant work) and collide with limited assurance market capacity, where qualified providers and methods are still maturing. Requiring all covered entities to contract with the limited pool of assurance providers to obtain assurance ahead of the same deadline will make assurance more expensive and lead to more mistakes. Allowing covered entities to report within a year of the end of their fiscal year would allow the limited pool of assurance providers to serve more covered entities on more realistic schedules and give the opportunity for the assurance market to grow without price spike pain.

It is important to keep in mind that SB 253 does not require all covered entities to be subject to the same reporting deadline date. CARB should be indifferent to whether a covered entity submits data in March in line with that entity's fiscal year when another submits data in June in line withs its own fiscal year. The substantial difference in the cost and ability to comply between a set reporting deadline for all covered entities and a rolling reporting deadline based on fiscal year is another example of an issue that could, and should, be evaluated through the SRIA process.

IV. CARB Should Not Rely on Third Party "Emissions Reporting Organizations" For Reporting

CARB, and not a third party "emissions reporting organization," should be the entity running these programs. The introduction of a third-party "emission reporting organization" raises significant concerns around data security, trade secrets, and national security.

For many businesses, GHG emissions data and climate risk information can divulge operational details, supply chain models, or advanced technologies that provide a competitive edge. Even if final reporting is mostly public, many steps in data compilation, including underlying calculations or facility-level details, could still reveal trade secrets if not carefully handled.

Placing that sensitive information in the hands of a third party raises worries that it might be inadvertently shared with competitors, used internally in ways not authorized by the reporting entity, or eventually sold if the third party changes its mission or ownership or goes bankrupt.

State laws, such as California's Public Records Act, outline strict guidelines for how agencies protect trade secret information. A third party is not necessarily bound by the same procedures or legal precedents, potentially leaving companies vulnerable to public records requests or data subpoenas directed at the third-party provider. While confidentiality provisions can be written into contracts, these are subject to interpretation, compliance issues, and legal disputes. Relying on third parties inherently makes it more difficult to guarantee consistent application of trade secret protections.

Some covered entities, particularly in sectors such as energy, transportation, and utilities, may supply data that implicates infrastructure vulnerabilities or asset-level emissions. If this information is stored outside direct government control, it could become a national security concern if accessed by hostile parties. Aggregated data from multiple critical facilities can reveal operational patterns, system redundancies, or resource dependencies that, if exploited, might disrupt essential services. Additionally, third parties sometimes store data in cloud environments with servers located in jurisdictions outside the U.S. This raises further national security questions about foreign government access, either through direct legal mechanisms in those jurisdictions or cyber intrusions that exploit local infrastructure weaknesses.

When data is housed directly with the regulator, the state can deploy its own vetted cybersecurity measures, abiding by established government security protocols. Contracting out to a third party introduces additional vulnerabilities and reliance on non-state systems.

Outsourcing to a third party raises significant risks that sensitive data will be mishandled. We strongly recommend that reporting under these laws either be in the form of direct reporting to CARB which already has extensive experience in managing its own reporting programs or through self-reporting on a reporting entity's website. Data collection and publication resulting from the disclosure law should not be delegated to a third-party. Additionally, either a CARB-administered reporting system or self-administered reporting system would ensure that reporting entities are not required to conform to an external organization's framework or fee structures that may not align with the regulatory requirements.

V. Covered Entity Identification and Publication

CARB has indicated that they intend to post a preliminary public list of entities that they believe would qualify as covered entities under SB 253 and SB 261. Doing so is likely to lead to public confusion and may impose an undue burden on entities named by CARB. CARB staff are continuing to work through developing clear definitions on several foundational concepts that will determine the scope of entities covered by the laws. They have modified their initial proposed definitions of "revenue" and "doing business in the state," and are continuing to solicit public feedback on the adequacy and appropriateness of their new proposed definitions. Again, we believe that CARB should analyze the economic impact of those choices through a robust SRIA process prior to formalizing definitions through formal rulemaking. Until those definitions are finalized in a formal regulation, CARB cannot accurately identify the entities that will be covered by either SB 253 or SB 261.

The public, however, is likely to believe that a list publicized by CARB is accurate and final. There is no clear public purpose for CARB to provide premature information to the public. Companies **incorrectly identified** in a public posting may **face unwarranted scrutiny or even shareholder lawsuits** if they then do not perform the GHG disclosure and climate-related financial risk disclosures **that they are not required to perform**. We urge CARB not to post a preliminary public list. If CARB intends to publish a list of potential covered entities on its website, we ask that CARB include this in its formal regulatory proposal, along with related procedures such as a mechanism to contest the information on the list, to provide a meaningful opportunity for stakeholder feedback.

VI. CARB Should Leverage Existing Frameworks

The Legislature explicitly required CARB in SB 253 to minimize "duplication of effort" by allowing a reporting entity to submit "…reports prepared to meet other national and international reporting requirements, including any reports required by the federal government, as long as those reports satisfy all of the requirements of…" SB 253.

SB 261 similarly permits a reporting entity to satisfy climate-related financial risk reporting by preparing "…a publicly accessible biennial report that includes climate-related financial risk disclosure information…" consistent with the Final Report of Recommendations of the Task Force on Climate-related Financial Disclosures (TCFD) or the International Financial Reporting Standards Sustainability Disclosure Standards (ISDS).

Accordingly, CARB should allow companies to satisfy the laws' requirements by using reports prepared for other regulatory regimes provided that the report meets the statutory requirements of SB 253 or SB 261. If there are differences between another framework's requirements and California's statutory framework, CARB should allow the company to provide a supplement addressing the difference rather than starting from scratch. Covered entities should not have to duplicate work by preparing one report for California and another one for other purposes.

During the public comment period at the August Workshop, multiple stakeholders requested clarification on whether CDP reports can be used to satisfy SB 261 reporting requirements. To address this confusion, CARB should clearly indicate in the regulation that CDP is among the several paths to satisfying SB 261 reporting requirements.[4]

VII. Safe Harbors, Assurance, and the Problems of Scope 3

We urge CARB to develop appropriate safe harbors through regulation for the initial years of implementation. CARB anticipates finalizing its regulations in December and then immediately having SB 261 CFRD reporting due on January 1, 2026. That simply is not enough time for entities to know whether they fit the definitions crucial to identifying "who" is covered by these laws. Additionally, during the first years of implementation, based on the limited number of accredited assurance providers, it may be very difficult to timely obtain assurances required under these laws.[5] In addition to providing a safe harbor on the

[4] Section 38533(b)(1)(A)(i) provides that a covered entity shall prepare a climate-related financial risk report "in accordance with" the TCFD framework "or any successor thereto, or pursuant to any equivalent reporting requirement as described in paragraph (3)." Paragraph (3)(B) states that an entity satisfies the requirements of paragraph 1 if it reports using "a framework that meets the requirements of clause (i) of subparagraph (A) of paragraph (1) or the International Financial Reporting Standards Sustainability Disclosure Standards, as issued by the International Sustainability Standards Board." In 2018, CDP aligned with TCFD recommendations. The taskforce has disbanded, and its responsibilities have folded into the IFRS Foundation from 2024. In 2024, CDP aligned its corporate disclosures with the IFRS S2 standard issued by the International Sustainability Standards Board (ISSB). CDP meets the requirements of both the TCFD framework and the IRFS S2/ISSB standard and, therefore, is permissible under Section 38533(b)(3)(B).

[5] CARB should establish and implement an assurance program to support mandatory reporting under SB 253 and SB 261, including publication on CARB's website of an up-to-date list available on CARB's website of

timing of assurance, CARB should limit early-phase assurance to Scope 1 and 2 and not require assurance on Scope 3. Finally, the rule should provide a robust safe harbor for Scope 3 disclosures made in good faith.

As we noted in our March 2025 comments, Scope 3 emissions, by their nature, are the broadest and most complex category to quantify accurately due to the complexities inherent in collecting and validating data from numerous sources beyond the direct control of a covered entity. In reporting Scope 3, covered entities run significant risks of double counting. For example, in the construction context, if both a general contractor and supplier report emissions associated with the same input (e.g., lumber, steel, or concrete) to a covered entity, there is a high likelihood that the impacts of that input will be counted multiple times in data reported to CARB. Even an agency as well-resourced as the California State Teachers' Retirement System (CalSTRS) has warned that its past efforts at reporting Scope 3 emissions were inaccurate after it discovered a colossal climate data error.[6] If even CalSTRS struggles with Scope 3, we must expect covered entities to struggle as well. A robust safe-harbor and clear permission to use proxies where primary data is unavailable is necessary for Scope 3 reporting.

In closing, we strongly urge CARB to fully comply with SRIA requirements before moving forward with SB 253 and SB 261 implementation. These are among the most far-reaching climate disclosure mandates in the world, and their economic and operational impacts will be significant. The SRIA process is the state's primary safeguard to ensure that regulations are both cost-effective and legally durable. A rigorous, transparent SRIA will allow policymakers to fully understand compliance costs, explore less burdensome alternatives, and avoid duplicative or counterproductive requirements that could divert resources away from real emissions reductions. Skipping or rushing this step risks undermining California's climate goals while harming competitiveness.

accredited assurance providers. This compliance support measure is consistent with the approach CARB takes to verifier accreditation under the Mandatory Greenhouse Gas Emissions Reporting (MRR) program.

[6] Why CalSTRS can't count - POLITICO