Submitted Electronically to: *https://ww2.arb.ca.gov/public-comments/public-comments-california-climate-disclosure-information-solicitation*.

March 21st, 2025

California Air Resources Board
1001 "I" Street, Sacramento, CA 95812

Re: American Chemistry Council Comments on the California Climate Disclosure Information Solicitation

The American Chemistry Council (ACC)[1] appreciates the opportunity to provide comment in response to the California Air Resources Board's (CARB) information solicitation to inform the implementation of the Climate Corporate Data Accountability Act (SB 253) and the GHG: Climate-Related Financial Risk Act (SB 261), as amended by SB 219 (collectively, the Climate Accountability Package, hereto referred as CAP). ACC's mission is to advocate for the people, policy, and products of chemistry that make the United States the global leader in innovation and manufacturing. Our members are key stakeholders and partners in the nation's drive toward a lower emissions future, both as heavily regulated entities in a hard-to-abate sector and as providers and enablers of the materials, products, and technologies needed to reduce emission across the larger economy.

The Climate Accountability Package raises a number of concerns. Beyond the constitutional and procedural flaws, the substantive policy requirements of the laws and, by extension, any implementing regulations, are problematic. These include the risk of overbroad application to foreign entities not registered or operating within the state, a seeming disregard for traditional corporate disclosure materiality standards, the flawed requirement for disclosures beyond direct (Scope 1) emissions leading to double-counting of emissions and distortion of accountability, the potential for inconsistent reporting obligations and disclosure of sensitive information, and the law's overreliance on aspirational voluntary programs as the basis for mandatory standards. ACC has provided responses (Appendix A) for pertinent questions affecting the chemical manufacturing industry.

ACC would welcome the opportunity to discuss California's Climate Accountability Package further. Should you have any questions or would like additional information, please feel free to contact me at charles_franklin@americanchemistry.com or (202) 249-6412.

Sincerely,

Charles Franklin

Charles Franklin
Senior Director, Energy, Climate & Environment
American Chemistry Council

[1] The American Chemistry Council's mission is to advocate for the people, policy, and products of chemistry that make the United States the global leader in innovation and manufacturing. To achieve this, we: Champion science-based policy solutions across all levels of government; Drive continuous performance improvement to protect employees and communities through Responsible Care®; Foster the development of sustainability practices throughout ACC member companies; and Communicate authentically with communities about challenges and solutions for a safer, healthier and more sustainable way of life. Our vision is a world made better by chemistry, where people live happier, healthier, and more prosperous lives, safely and sustainably—for generations to come.

Appendix A: CARB Implementation Questionnaire

1. **QUESTION: SB 253 and 261 both require an entity that "does business in California" to provide specified information to CARB. This terminology is not defined in the statutes. Should CARB adopt the interpretation of "doing business in California" found in the Revenue and Tax Code section 23101?**

In developing a regulatory interpretation of the term "doing business in California," CARB needs to balance the needs for clarity and certainty against the purpose, need, and scope of CARB's mandate. Here, ACC remains concerned that the tax definition and threshold is overbroad for the purposes of the CAP and inappropriate as the basis for imposing obligations on foreign corporations.

The Revenue and Tax Code (RTC) definition does not adequately reflect the practical realities of these new environmental disclosure statues. Specifically, adopting the RTC definition may unintentionally capture entities with minimal or incidental connections to California, imposing disproportionate compliance burdens, confuse investors, and raise constitutional concerns regarding the state's regulation of interstate commerce.

Accordingly, we recommend CARB consider adopting a definition of "doing business in California" specifically fit for the purposes of SB 253 and SB 261. Possible provisions for an entity to be regarded as "doing business in California" under SB 253 and SB 261 could include:

- The entity engages in fundamental business operations within California that are essential and directly tied to its core revenue-generating operations;
- The entity maintains ownership in at least one permanent facility within, actively utilized for meaningful and regular business activities; and
- The entity derives at least $10 million annually in gross revenues directly from operations occurring in California or maintains at least 50 full-time employees whose primary work site is an employer-managed site in California.

Conversely, an entity may not be considered as "doing business in California" if its exclusive relationship with the state is limited to:

- Conducting solely interstate commerce, including shipping goods or services into California, without establishing a fixed, operational presence in the state;
- Ownership of real property or other fixed assets in California without active business utilization;
- Remote sales activities, directed toward California-based customers, absent a sustained physical, operational, or employment presence in California.

- Entities that do not generate direct CO_2 emissions within the state whose products are already accounted for in downstream Scope 3 disclosures by other reporting entities.

CARB should ensure that disclosure requirements are confined to business activities occurring within California to prevent regulatory overreach and conflicts with other jurisdictions. Extending reporting obligations beyond state boundaries would introduce compliance challenges, increase complexity, and impose undue burdens on companies for emissions or financial risks unrelated to their California-based operations. To address this, CARB should explicitly state that SB 253 reporting applies solely to direct and indirect emissions from activities physically conducted within California and not cover emissions generated entirely outside the state. For example, required Scope 3 reporting should not include emissions from downstream use, transportation or disposal of exported products beyond California's borders.

2. **QUESTION: What are your recommendations on a cost-effective manner to identify all businesses covered by the laws?**
   a) **[Omitted]**
   b) **In what way(s) should CARB track parent/subsidiary relationships to assure companies doing business in California that reports under a parent are clearly identified and included in any reporting requirements?**

To effectively and economically identify businesses covered by SB 253 and SB 261, CARB should prioritize flexibility, simplicity, and clarity, especially given the complexity of multinational corporate structures. CARB should avoid creating obligations for companies to perform extensive analyses or detailed mapping of their entire corporate structures.

A practical solution could be to permit reporting entities to include a concise statement of scope accompanying their disclosure reports. This statement should clearly identify whether the submitted disclosures apply at the parent-company level and explicitly specify the subsidiaries or affiliates in California that are encompassed within the scope of the disclosure.

Furthermore, CARB itself should refrain from independently tracking or verifying complex parent-subsidiary relationships. Instead, the responsibility to clearly articulate the scope of covered entities within disclosures should rest solely with reporting entities, who can most efficiently and accurately confirm their internal structures.

By adopting this streamlined approach, CARB will reduce administrative burdens, ensure compliance flexibility, and maintain transparency - all without compromising regulatory objectives or creating unnecessary costs.

3. **QUESTION: CARB is tasked with implementing both SB 253 and 261 in ways that would rely on protocols or standards published by external and potentially non-governmental entities.**

    a) **How do we ensure that CARB's regulations address California-specific needs and are also kept current and stay in alignment with standards incorporated into the statute.**

As climate disclosure requirements continue to evolve across jurisdictions, ensuring regulatory interoperability remains critical to avoiding fragmentation and unnecessary compliance burdens. To effectively implement SB 253 and SB 261 while meeting California's specific needs, CARB must develop a regulatory framework that is clear, focused, and avoids imposing obligations beyond what is essential for compliance.

To ensure that SB 253 and SB 261 remain practical, aligned with California's needs, and adaptable to evolving external standards, CARB could consider adopting the following approaches:

- *Recognize Equivalent Reporting Standards* – Businesses that already comply with existing SEC, EU, or other jurisdictional reporting mandates should not be required to submit duplicative reports. CARB should establish a process for recognizing equivalent disclosures to streamline compliance while maintaining transparency. However, CARB may refer to these reports only insofar as they include disclosures relevant to meeting the requirements of CAP. Such reports should not be regarded as binding compliance documents beyond their intended purpose.
- *Align SB 261 Disclosures with traditional concepts of financial materiality* – Materiality standards have been examined by the Supreme Court in *TSC Industries, Inc. v. Northway, Inc.* (1976) and its progeny, deeming information material for disclosure if there is a substantial likelihood that a reasonable investor would consider it important in making an investment or voting decision. Incorporating SEC and Supreme Court precedent aligned materiality thresholds for SB 261 disclosures, using the same standards applied to other corporate information and risks, CARB would enhance regulatory consistency, improve data quality, reduce investor confusion, and avoid unnecessary compliance costs while maintaining effective climate disclosure practices.
- *Incorporate Safe Harbor Protections for Forward-Looking Statements* – To reduce litigation risks and allow businesses to disclose climate-related risks with confidence, CARB should provide safe harbor provisions for forward-looking statements, similar to those used in financial reporting.
- *Focus Reporting Obligations on Past Performance Rather than Speculative Projections* – Requiring disclosure of hypothetical future emissions or climate risk scenarios could introduce significant uncertainty and compliance challenges. To maintain credibility and

enforceability, CARB should ensure that reporting is grounded in verifiable, historical data rather than speculative forecasts.

b) **How could CARB ensure reporting under the laws minimizes a duplication of effort for entities that are required to report GHG emissions or financial risk under other mandatory programs and under SB 253 or 261 reporting requirements?**

CARB should allow companies who already report under any recognized international reporting framework, or ANSII or ISO-approved voluntary disclosure framework to submit their existing disclosures for compliance with state requirements, including global corporate disclosures produced by an international parent company. Leveraging existing disclosure frameworks for alternative compliance would promote interoperability and reduce redundant administrative efforts for covered businesses. Conversely, CARB should not rely on any such third-party standard, whether by reference or textual adoption, to justify mandatory reporting requirements for covered reporters under the CARB rule. Such voluntary standards were not developed with state regulatory compliance in mind and treating their contents as boilerplate regulatory language would be legally and procedurally improper and result in unfair results. To this end, CARB's standard setting process should be "informed by", not dictated by, existing voluntary standards.

c) **To the extent the standards and protocols incorporated into the statute provide flexibility in reporting methods, should reporting entities be required to pick a specific reporting method and consistently use it year-to-year?**

No. Industries need the flexibility to submit reports consistent with parallel state, federal, and global corporate reporting requirements, and it is impossible to predict what changes may occur. The standards and protocols incorporated into SB 253 and SB 261 were designed to provide flexibility in reporting methodologies, and reporting entities should be allowed to fully exercise this flexibility. Requiring businesses to adhere to a single, fixed reporting method year-over-year would be counterproductive, as it would prevent them from adapting to evolving best practices, regulatory changes, and shifts in business operations. At the same time, companies that prefer to retain a single consistent approach should have the discretion to do so, relying on the standard in place at the time the implementing rules are issued. There is no single right answer for a regulation with such sweeping scope and reach. It must allow regulated entities to comply in a manner consistent with their operations and needs.

For some entities, annual adjustments may be preferable. External reporting standards such as the GHG Protocol and other international climate disclosure frameworks are subject to ongoing refinements to reflect advancements in emissions accounting, policy developments, and corporate reporting methodologies. Similarly, businesses operate in dynamic environments, where value chains, operational structures, and regulatory requirements evolve over time.

Additionally, many entities must comply with multiple jurisdictions' disclosure mandates, making it critical that they have the ability to align CARB submissions with their broader global corporate reporting obligations. This is particularly important given the rapidly evolving European regulatory landscape. For entities participating in these separate voluntary or mandatory disclosure frameworks, flexibility in reporting methodology is therefore essential to ensuring accurate, relevant, and decision-useful disclosures. As long as businesses utilize an approach consistent with the GHG Protocol, the specific format or reporting framework used to package the information should not be a regulatory concern.

For other entities, requiring constant adjustments to the disclosure compliance requirements based on changing third-party standards they have not adopted will merely exacerbate an already burdensome state mandate, creating a new level of business uncertainty and raising costs associated with anticipating, learning, operationalizing, and implementing the shifting standard.

Accordingly, CARB should consider ensuring that reporting entities retain the ability, but not the obligation, to modify their reporting methodology over time to align with evolving practices and regulatory requirements; are not locked into a single reporting approach year-over-year; may submit reports that align with their broader global corporate reporting frameworks; permitted to exercise the flexibility explicitly provided within the statute's incorporated standards and protocols, as intended by the legislative framework.

Given the ongoing updates and refinements to external standards like the GHG Protocol, CARB should provide flexibility in allowing reporting entities to choose which version of these standards to follow – the version in place at the time the statutes were passed or later versions. If CARB intends to limit the methods and versions available for use, CARB should explicitly specify the acceptable option(s), providing adequate justification and time for entities to adopt and adjust to the relevant standards. Without such guidance, assurance providers could act independently to mandate which versions are acceptable for verification under SB 253, potentially creating inconsistencies and uncertainty.

By preserving reporting flexibility, CARB can help entities comply effectively while adapting to evolving global reporting standards, improving data accuracy, and avoiding unnecessary administrative burdens.

General: Data Reporting

4. **QUESTION: What factors affect the cost or anticipated cost for entities to comply with either legislation? What data should CARB rely on when assessing the fiscal impacts of either regulation?**

In assessing the potential costs associated with policy design or implementation of SB253 and SB261 regulations, CARB should consider, among other costs:

- *Data Collection and Processing:* Businesses must invest in systems and personnel to track, quantify, and verify emissions across multiple scopes, often requiring specialized expertise.
- *Personnel and Training Costs:* Companies must hire or train employees to manage compliance efforts, oversee reporting, and interpret evolving technical standards.
- *Technology and Software Investments:* Many entities must develop or purchase customized reporting software to manage and disclose emissions data efficiently.
- *Consulting and Compliance Oversight:* Due to the complexity of climate disclosure requirements, many businesses will need to engage external consultants and legal advisors to ensure compliance.
- *Third-Party Audit and Assurance Costs:* The potential requirement for third-party verification—particularly for Scope 3 emissions—introduces substantial additional expenses that may disproportionately burden smaller entities.
- *Management of Meritless Litigation:* The increased risk of nuisance litigation, shareholder activism, and stakeholder opposition will increase the legal costs of doing business in California, requiring companies to anticipate, avoid, and possibly defend against meritless or malicious legal challenges.

Unintended Economic and Environmental Consequences

Beyond the direct compliance and risk management costs on specific reporting entities, the California disclosure mandates, if implemented in an overly burdensome manner, could have unintended economic and environmental consequences. Forced disclosure of nonmaterial information could distort investor risk assessment and investment behavior, imposing artificial constraints on industries producing essential goods in the US. These constraints could, in turn, shift production to jurisdictions with higher emissions intensity, ultimately undermining climate goals by increasing global emissions rather than reducing them.

Opportunities for Reducing Compliance Burdens and Unintended Consequences

Among the steps CARB can consider to reduce unnecessary compliance burdens while maintaining transparency and accountability include:

- *Recognize Equivalent Reporting Standards* – Businesses already complying with established regulatory disclosure requirements (e.g., SEC, EU, or other climate disclosure mandates) should not be required to submit duplicative reports.
- *Adopt a Financial Materiality Standard for Climate Risk Disclosures* – Aligning SB 261 with the SEC's financial materiality threshold ensures that reported risks remain investor-relevant and do not impose excessive, unnecessary obligations.

- *Limit Scope of Emissions Reporting* – SB 253 disclosures should be restricted to direct (Scope 1) emissions, avoiding double-counting issues and unverifiable Scope 3 emissions that would impose unnecessary compliance costs.
- *Avoid Mandating Third-Party Assurance for Scope 3 Emissions* – Independent verification of Scope 3 emissions is logistically and financially prohibitive, particularly given the indirect nature of these emissions and the difficulty of accurate data collection.
- *Ensure Safe Harbor Provisions for Forward-Looking Statements* – To reduce legal risk and encourage transparent disclosures, businesses must have litigation protections when making good-faith climate risk assessments.

5. **QUESTION: Should the state require reporting directly to CARB or contract out to an "emissions" and/or "climate" reporting organization?**

Reporting should be managed directly by CARB rather than contracted out. CARB is uniquely positioned to develop a reporting program and directly receive reports from entities given its extensive expertise and experience in monitoring and reducing GHG emissions. By leveraging this expertise, CARB can streamline the process for reporting entities and increase the usefulness of the reporting program to interested stakeholders much more effectively than a third-party reporting organization.

While CARB should not require *submission* to a third party organization, there should be enough flexibility such that an entity retain the option of submitting a disclosure report prepared under a separate approved third party organizations or regulatory requirement in lieu of a duplicative California disclosure form. This would include a company's global Carbon Disclosure Project Climate Change Questionnaire or its submissions in compliance with EU directives.

6. **QUESTION: [Omitted]**
7. **QUESTION: Entities must measure and report their emissions of greenhouse gases in conformance with the GHG Protocol,1 which allows for flexibility in some areas (i.e. boundary setting, apportioning emissions in multiple ownerships, GHGs subject to reporting, reporting by sector vs business unit, or others). Are there specific aspects of scopes 1, 2, or 3 reporting that CARB should consider standardizing?**

CARB should not impose additional standardization requirements that interfere with the flexibility already provided within the GHG Protocol (GHGP).

Attempting to standardize emissions reporting at the state level would create significant challenges, including increased compliance burdens, regulatory fragmentation, and legal and jurisdictional concerns. California lacks the legal authority or expertise to dictate uniform emissions measurement methodologies across the entire U.S. economy. Climate reporting is a global issue and should be aligned with federal agencies, international trade partners, and voluntary industry-specific disclosure programs rather than a state-specific standard.

8. **QUESTION: SB 253 requires that reporting entities obtain "assurance providers." An assurance provider is required to be third-party, independent, and have significant experience in measuring, analyzing, reporting, or attesting in accordance with professional standards and applicable legal and regulatory requirements.**

For the purposes of implementing SB 253, what standards should be used to define limited assurance and reasonable level of assurance? Should the existing definition for "reasonable assurance" in MRR be utilized, and if not why?
CARB should not adopt the "Reasonable Assurance" standard from the Mandatory Reporting Regulation (MRR) for greenhouse gas (GHG) emissions verification, as it is not suitable for emissions accounting. Unlike financial audits, emissions verification requires engineering expertise, emissions modeling, and regulatory knowledge—areas where traditional financial assurance frameworks lack applicability. Additionally, emissions estimates inherently involve uncertainty, particularly for Scope 3 emissions, making a financial-style "Reasonable Assurance" standard unworkable for most entities.

Instead, any assurance requirement should be set at "Limited Assurance" or lower, ensuring that reporting entities can reasonably comply without excessive costs or unrealistic verification demands. The field of carbon accounting is still evolving, and both data availability and suitable accounting methodologies vary significantly across industries. Imposing higher assurance levels too soon could result in unnecessary compliance burdens while failing to improve data reliability.

Furthermore, Scope 3 emissions should not be subject to any assurance requirements as they depend on third-party estimates, industry averages, and supply chain disclosures, which are impossible to verify at high levels of confidence. One example highlighting the impracticality, if not the downright impossibility of this task, is that reporting entities may very well be tasked with trying to obtain consistent and reliable data from smaller supply-chain participants who are not themselves subject to the disclosure rules at issue. Requiring assurance for Scope 3 data would force companies to audit unverifiable supplier data, diverting resources from actual emissions reduction efforts to compliance-driven administrative tasks.

CARB should explicitly define the role of third-party assurance to ensure that providers focus solely on verifying the accuracy of reported emissions data, rather than determining compliance with SB 253's regulatory requirements. Assigning compliance enforcement to assurance providers would effectively transfer regulatory authority to private entities, leading to inconsistent enforcement based on varying interpretations by individual firms.

9. **QUESTION: How should voluntary emissions reporting inform CARB's approach to implementing SB 253 requirements?**

Voluntary emissions reporting schemes are relevant where they can guide opportunities for alignment in structure, but they are inappropriate as default guides for determining industry-wide requirements.

10. **QUESTION: For SB 261, if the data needed to develop each biennial report are the prior year's data, what is the appropriate timeframe within a reporting year to ensure data is available, reporting is complete, and the necessary assurance review is completed?**

Given the broad sectoral scope of the rule and the level of detail required, it is not possible to provide a single reasonable estimate that is representative of the regulated community. CARB should provide additional time to accommodate this variability, recommended at 12 months from the balance sheet date of the financial year for which the report is drawn up.

11. **QUESTION: Should CARB require a standardized reporting year (i.e., 2027, 2029, 2031, etc.), or allow for reporting at any time in a two-year period (2026-2027, 2028-2029, etc.)?**

CARB should allow entities to report at any time within a biennial period rather than requiring a standardized reporting year. Providing this flexibility would better align with companies' internal reporting cycles, strategic planning, and risk assessment processes, ultimately leading to more accurate, relevant, and decision-useful disclosures.

A rigid, fixed-year reporting system would fail to account for variations in business operations, investment planning, and evolving regulatory obligations, creating unnecessary administrative burdens. Allowing reporting within a two-year window would enable companies to leverage existing internal processes whereby businesses with already established compliance and disclosure cycles may not align with a strict CARB-imposed timeline. Additionally, companies may not be able to incorporate the latest information into their reports due to a strict timeline and streamlining compliance for companies subject to multiple voluntary and mandatory climate disclosure requirements could reduce redundancy and administrative costs.

By adopting a flexible biennial reporting structure, CARB can ease compliance burdens, improve data quality, and enhance the overall effectiveness of emissions and climate risk disclosures.

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