American Forest & Paper Association

March 21, 2025

Liane M. Randolph
Chair
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Re: AF&PA Comments on CARB's Solicitation to Inform Implementation of California Climate Disclosure Laws

To Whom it May Concern:

The American Forest & Paper Association (AF&PA) serves to advance public policies that foster economic growth, job creation and global competitiveness for a vital sector that makes the essential paper and packaging products Americans use every day. The U.S. forest products industry employs more than 925,000 people, largely in rural America, and is among the top 10 manufacturing sector employers in 44 states. Our industry accounts for approximately 4.7% of the total U.S. manufacturing GDP, manufacturing more than $435 billion in products annually. AF&PA member companies are significant producers and users of renewable biomass energy and are committed to making sustainable products for a sustainable future through the industry's decades-long initiative — *Better Practices, Better Planet 2030*.

We are writing to support the comments filed by the California Manufacturers & Technology Association ("CMTA"). We would like to highlight the following points made in the CMTA comments:

Overview

- **Regulatory disclosure on climate-related information, including greenhouse gas ("GHG") emissions, requires substantial time and costs for companies to prepare and implement.** Compliance with a new climate-reporting regulation requires the development of new systems, processes, and controls; the hiring of additional internal staff with particular set of skills and engagement of outside consultants in high demand; and time, resources and processes associated with the assurance requirements.

- For a company—any size but especially a smaller or a private company—preparing these disclosures for the first time, the costs of implementation could be significantly high.

- The collection, analysis, disclosure and assurance of GHG emissions data, which are subject to significant inherent challenges, require companies to spend substantial time and economic resources.

- Even for a company that is already collecting and disclosing climate-related information on a voluntary basis or under a different regulatory regime, compliance with this regulation may be more expensive and time consuming because of the threat of incurring costly fines.

- **CARB's rulemaking should promote practical, and cost-effective compliance.** The language of SB 253 and SB 261 is often unclear and open-ended, and the lack of clarity has created significant uncertainty for companies. Lack of practical guidance for the compliance of these laws may also create a heightened legal risk for companies. Reporting timeline set by CARB should consider timing for climate-related data collection, analysis, and assurance (e.g., CARB's Cap-and-Trade Program, EPA's 40 CFR Part 98). Companies should use the most accurate calculation approach available to them and that is appropriate and material for their reporting context.

  - For major GHG-emitting companies, regulatory frameworks are already in place by the State to collect these data (e.g., CARB's Cap-and-Trade Program).

  - For most small to medium-sized companies and for many larger companies without manufacturing facilities, climate-related data could be immaterial and irrelevant because their providers are covered under the climate-related data collections of regulatory frameworks.

  Companies should be allowed to minimize the cost of implementation by avoiding duplicative reporting obligations and allowing the use of existing regulatory frameworks required by CARB and other environmental agencies (e.g., CARB's Cap-and-Trade Program, EPA's 40 CFR Part 98).

Applicability

1. 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.

a. Should CARB adopt the interpretation of "doing business in California" found in the Revenue and Tax Code section 23101?

CMTA is concerned the Revenue & Tax Code interpretation of "doing business in California" does not align with the scope of jurisdiction of CARB nor is it indicative of whether an entity has emissions that would impact Californians. Instead, CARB should focus the definition on those entities that have a physical manufacturing presence in California and to entities with actual operations in the state that may emit greenhouse gasses and are already subject to reporting. Further, CMTA urges CARB to consider exemptions for entities and activities that are limited to transit through or not directly related to manufacturing operations in the state as well as entities with employees that reside in the state but who do not have direct ties to manufacturing activities within the state that may result in emissions impacts.

c. Should SB 253 and 261 cover entities that are owned in part or wholly owned by a foreign government?

CMTA does not object to including entities that are owned in part or wholly owned by a foreign government but only to the extent they meet two-part test associated with the annual revenue thresholds specified under the laws and they have actual sales and operations in California related to manufacturing.

2. What are your recommendations on a cost-effective manner to identify all businesses covered by the laws (i.e., that exceed the annual revenue thresholds in the statutes and do business in California)?

a. For private companies, what databases or datasets should CARB rely on to identify reporting entities? What is the frequency by which these data are updated and how is it verified?

CMTA recommends CARB focus on entities who meet the two-part test noted above and who are already subject to greenhouse gas reporting requirements, Title V operating permits, and have manufacturing operations in California.

b. In what way(s) should CARB track parent/subsidiary relationships to assure companies doing business in California that report under a parent are clearly identified and included in any reporting requirements?

California should focus its efforts on entities located within the state and eliminate extraterritorial expectations for parent or other subsidiary entities with limited to no connections to the state. For companies already reporting to the state under programs such as CARB's Cap-and-Trade Program or EPA's 40 CFR Part 98, the state should allow companies to report at the same entity level and options should be provided to limit double reporting of emissions.

General: Standards in Regulation

3. 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 these external standards and protocols evolve?

CARB should not rely on other non-accountable independent organizations to establish the standards to which companies will be required to submit information. These standards are inconsistent with existing reporting requirements and will cause companies to report different information to CARB for different regulatory purposes. The regulatory burden associated with this inconsistent reporting is unnecessary, confusing, and will not result in any benefit to the citizens of California.

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?

CMTA urges CARB to allow emissions disclosures provided under and compliant with other regulatory emissions and climate related risk reporting frameworks to count as compliance with these reporting requirements.

General: Data Reporting

4. To inform CARB's regulatory processes, are there any public datasets that identify the costs for voluntary reporting already being submitted by companies? 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?

Even for a company that is already collecting and disclosing climate-related information on a voluntary basis or under a different regulatory regime, compliance with these laws and associated regulation may be more expensive and time consuming because of the threat of incurring in costly fines. Under the Securities and Exchange Commission's (SEC) 2022 proposed rule and 2024 final rule, the SEC estimated that large public companies were expected to incur upwards of roughly $640,000 in the first year of implementation, and around $530,000 per year in ongoing costs after the first year. The SEC analysis and findings were similar to those identified in the Sustainability Institute's report by ERM, Costs and Benefits of Climate-Related Disclosure Activities by Corporate Issuers and Institutional Investors.[1] That said, some other analyses provided to the SEC at that time suggested even higher expenditures would be incurred for implementation and ongoing compliance with costs driven in large part in gathering data associated with Scope 3.

Additionally, the breadth of required greenhouse gas emissions data – if Scope 1 and 2 are not material to the entity's business but still required, or if Scope 3 and all its categories are required – may require extensive information from the entities value chain, drive up cost of business, diminish competitiveness and burden of compliance, as well as increase data unreliability.

To this end, CMTA notes the importance of reasonable and practical rules developed by CARB that can reduce the impact of implementation of these rules without compromising the accuracy of California's greenhouse gas emissions reporting under programs like the Cap and Trade Program, which covers more than 400 major companies who represent 80% of California's greenhouse gas emissions.[2] As previously mentioned, more than 30 of these companies are CMTA members who participate in and comply with the Cap and Trade reporting obligations, which would appropriately align with the data required under this regulatory framework.

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

As CARB knows, this type of information is potentially sensitive and may be submitted in conjunction with confidentiality or trade secret claims. Therefore, this information should be submitted to CARB rather than a third-party reporting organization. Third

[1] Costs and Benefits of Climate-Related Disclosure Activities by Corporate Issuers and Institutional Investors, The SustainAbility Institute by ERM, May 17, 2022.
[2] FAQ Cap-and-Trade Program | California Air Resources Board

party reporting organizations often are funded by entities that may have their own interests in having access to such information and could use information that they become privy to in ways that were not the original intent of the laws, including litigation. CMTA is highly concerned about such an approach resulting in third party litigation against entities that are the economic engines of California.

6. If contracting out for reporting services, are there non-profits or private companies that already provide these services?

In line with feedback in Question 5, CMTA and its members are concerned that third party, non-profit, and private companies who may have the mechanisms to provide these services will not be able to ensure and provide the level of confidentiality protection that CARB would be able to provide. Further, as mentioned, such entities may lack independence and have inherent biases, including funding from organizations who may intend to use the reported information for litigation purposes.

SB 253: Climate Corporate Data Accountability Act

7. Entities must measure and report their emissions of greenhouse gases in conformance with the GHG Protocol, 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 maximize entities' flexibility to disclose GHG emissions based on their circumstances, including the relevance of certain emissions to their operations, as well as their existing data capabilities. For example, consistent with the GHG Protocol[3]:

- Companies should not be forced to make disclosures that they are not yet capable of responsibly making. To this end, as it relates to small and medium sized supply chain businesses, the World Resources Institute (WRI) guidance for Scope 3 emissions specifically notes "It is unlikely that all of a company's relevant suppliers will be able to provide it with GHG inventory data."[4] Low-quality disclosures not only expose companies to heightened litigation, legal and reputational risks but also do not benefit California or the broader market that would use these low-quality [unreliable] disclosures. Instead, impacts on smaller supply chain entities will have significant impact putting them in the untenable position of choosing between incurring significant costs to figure out how to

[3] https://ghgprotocol.org/sites/default/files/standards/ghg-protocol-revised.pdf, pages 40-47
[4] World Resources Institute (WRI, *Technical Guidance for Calculating Scope 3 Emissions* (Version 1.0). World Business Council on Sustainable Development, pg. 19.

compile and report such information or risk losing a valuable customer who is responsible for the broader reporting under the law.

- Entities should not be required to disclose any greenhouse gas emission categories that are not relevant (including any Scope 3 emissions), if such emissions are not financially material.

- Forcing companies, or compelling the speech of companies, to disclose the emissions of other entities upstream or downstream of their own operations is unnecessary and unlawful. Much of Scope 3 requires speculation, extensive resources to gather data, and uncertainty about how another company's data may or may not be aligned with the reporting that the reporting company selects to use to report overall emissions. The data therefore may be inaccurate, misleading and unhelpful to the overall goals of the underlying legislation.

- CMTA urges CARB to adopt a financial materiality approach aligned with GAAP standards following the accounting principle that materiality is related to the significance of information within a company's financial statements. If a transaction or business decision is significant enough to warrant reporting to investors or other users of the financial statements, that information is "material" to the business and is recorded or reported in the business's financial statements using GAAP standards. This ensures that only companies with material emissions from a financial stakeholder perspective in any scope or category would have to expend the resources to collect, measure, and verify such disclosures. If this financial materiality assessment has already being completed (including but not limited to at the State or Federal level), businesses that have not qualified for disclosure should not been made mandated to disclose under these laws. By imposing financial materiality using GAAP standards as an initial threshold, businesses with negligible exposure to emissions would not be required to spend time and money on data gathering and measurement to support a non-materiality determination.

- If emissions disclosure is financially material for the business, companies should use the most accurate calculation approach available to them that is appropriate for their reporting context.

- Companies should be allowed to use one system to capture and disclose GHG emissions. Significant cost savings are achieved by using the same system in all facilities, as compared to disparate systems. Therefore, if a company is already disclosing emissions under regulatory frameworks or climate-related risks and

opportunities under regulatory or voluntary disclosures, CARB should allow for those disclosures to constitute compliance.

- Companies should have the option to "comply or explain," particularly where Scope 1, 2 and Scope 3 emissions are concerned. By allowing companies to comply with these rules by using existing regulatory disclosures and permit other companies to use the "comply or explain" approach, CARB would allow itself, in-scope companies, and the market to better understand the overall inventory of emissions in the state without duplication, unreliable calculations and defective reporting. Further, given the relationship between SB 253 and SB 261 disclosures, we would note that SB 261 indeed takes this type of approach and does so appropriately providing the opportunity for reporting entities to explain and develop a plan to close the gaps of data and information associated with the required disclosures while also maintaining compliance with the law and regulation.

8. 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.

a. For entities required to report under SB 253, what options exist for third-party verification or assurance for scope 3 emissions?

Unfortunately, there are limited entities and as such CARB should consider a phase in period of assurance. This, in particular, is one of the requirements that will unnecessarily increase the costs of compliance.

b. For 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?

CMTA does not recommend CARB expand the requirement for "reasonable assurance" beyond sources already obligated to do so for their Scope 1 emissions subject to the state's MRR. Any additional assurance required by the statute should focus on limited assurance only.

There will be a limited number of third parties expected to have expertise in the requirements of these new laws as the regulations are currently being developed. In addition, these resources are likely already committed to conducting verifications for facilities subject to the state MRR verification

requirements. As such, CMTA recommends phasing in any third-party assurance required by statute over a longer period of time. Notably, the statute provides the authority for CARB to consider the "capacity for an independent assurance engagement to be performed by a third-party assurance providers" in establishing reporting timelines that could support a phased in approach.

Thank you for the opportunity to comment on the Proposal. If you have any questions, please contact me at julie_landry@afandpa.org.

Sincerely,

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American Forest & Paper Association