March 21, 2025

Thank you for the opportunity to provide responses to your pre-rulemaking questions for SB 253 and 261. As an initial matter, the California Chamber of Commerce (Cal Chamber) notes that it is currently a party to a lawsuit filed in federal court against the California Air Resources Board (CARB) because SB 253 and SB 261 are unconstitutional and unwarranted. 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.) (*Chamber of Commerce*), 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, and for that reason CARB should not implement or enforce the law in any way.

If CARB takes steps to implement the laws despite their unconstitutionality, CARB should minimize, to the extent possible, the laws' unnecessary costs and risks. To be clear, the below suggestions do not cure any of the defects at issue in the *Chamber of Commerce* lawsuit. However, we provide these responses in an effort to reduce, at least to some degree, the negative consequences of implementing these laws.

Cal Chamber, and the undersigned, respond as follows.

General: 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?

SB 253 and 261 are overbroad and require disclosure of information that has no or little relation to the State of California.

CARB should not use the taxation threshold of Revenue and Tax Code Section 23101 to trigger compliance obligations under SB 253 and SB 261. Applying §23101 thresholds could capture companies whose California presence is minimal or entirely unrelated to meaningful climate impacts within the state, simply because they meet California's low tax nexus thresholds. In fact, a company that barely exceeds the tax nexus threshold under §23101 could find itself with administrative compliance costs for reporting under SB 253 and SB 261 that exceed their annual California revenue. Imposing GHG emission reporting and climate-risk disclosures based purely on exceeding the minimal tax nexus is an excessive and unjustified burden on interstate commerce. A definition based on Section 23101 would memorialize, and ultimately would render ripe for judicial challenge, a regulatory scope that violates the U.S. Constitution's Supremacy Clause and its limits on extraterritorial regulation, including the dormant Commerce Clause.

CARB should instead adopt a new definition of "does business in California" that requires, at a minimum, a reporting entity to generate a significant amount of business in the State. CARB should consider potential metrics concerning revenue, income, number of in-state employees, in-state emissions, and other criteria that indicate a significant and ongoing connection to the State of California in ordinary course of the reporting entity's business. CARB should study the issue, propose a significantly higher threshold to be considered an entity that "does business in California," and invite public comment on that proposal.

b. Should federal and state government entities that generate revenue be included in the definition of a "business entity" that "does business in California?"

Federal, state, and local government activities are significant drivers of emissions. For example, according to California's Department of General Services' Statewide Property Inventory, the State leases or owns over 300 million square feet of building space in California. Further, federal, state, and local governments operations require complex supply chains and often involve the use of large fleets of vehicles. CARB should avoid any attempt to arbitrarily exempt government entities from the scope of SB 253 and 261.

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

Yes. Business entities that are partly or wholly owned by foreign governments should be covered if they otherwise meet the criteria (exceed the revenue threshold and do business in California). As discussed above, CARB should not arbitrarily exempt government entities from the laws' scope. There is no reason to treat an entity above the revenue threshold different from any other reporting entity simply because it is partly or wholly government-owned (foreign or domestic).

d. Should entities that sell energy, or other goods and services, into California through a separate market, like the energy imbalance market or extended day ahead market, be covered?

No. Entities whose only connection to California is selling energy or other goods and services into the state through centralized markets (such as the Western Energy Imbalance Market or the California Independent System Operator's Extended Day-Ahead Market) should **not** be considered as "doing business in California" for the purposes of SB 253 and SB 261. In fact, Senators Wiener and Stern, the authors of SB 253 and SB 261, respectively, wrote in a January 30, 2024, Letter to the Journal the following:

We write to clarify our intent in authoring Senate Bills (SB) 253 and 261. There is a question as to whether wholesale electricity transactions that occur through the Western Energy Imbalance Market and will occur through the Extended Day Ahead Market, operated by the California Independent System Operator, constitute "doing business in California," under the definitions of both laws. It was not our legislative intent to include such energy transactions within the scope of this reporting obligation, and we are therefore providing clarification to the Senate Daily Journal and to the California Air Resources Board as they proceed with implementation of both laws.

CARB's regulations should explicitly exclude such transactions from triggering the "doing business" test. This will avoid further over-extension of the law's reach and is necessary to provide more certainty to energy suppliers and similar businesses that purely transact through interstate markets without a direct California business nexus.

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?

There is no "cost-effective manner to identify all businesses covered by the laws." That said, the significant statutory penalties for a reporting entity's failure to comply with either SB 253 or SB 261 and the reputational harm that would result from failing to report are two significant factors that will drive self-reporting.

Data providers like S&P Global, D&B Hoovers, Bloomberg, and Pitch Book maintain financial information on both private and public companies. These and other sources can help estimate which entities have annual revenues over $500 million or $1 billion. We are unaware of a single source that would identify all reporting entities.

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?

In practice, most large companies will choose to report at a consolidated level that includes all related entities, rather than having each entity file separate reports. CARB should allow for the "ultimate parent," attorney-in-fact or similar entity to identify their related entities doing business in California and allow for one combined report for that group. The consolidated report should satisfy the reporting requirement for all of its related entities doing business in California. To the extent CARB seeks to track these types of relationships, CARB should allow companies to self-identify such relationships subject to protection for trade secret (as listing each related entity and their revenues could reveal proprietary information, strategic positioning, market entry tactics, geographic footprints or commercially sensitive information to competitors or other third parties).

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 attempt to align its regulations with the external standards referenced by SB 253 and SB 261, while providing flexibility. First, SB 253 provides that reporting entities measure and report GHG emissions "in conformance with the Greenhouse Gas Protocol." Similarly, SB 261's risk disclosure is to be "accordance with" the framework and disclosures contained in the Jun 2017 Final Report of Recommendations of the Task Force on Climate-related Financial Disclosures (TCFD), or any subsequent publication thereto. CARB's rules should align with those standards as they existed as of effective date for each law. CARB, to the extent possible, should not create additional unique California-specific reporting requirements, as doing so would add further unnecessary burdens, forcing companies to prepare duplicative reports. CARB should strive to minimize additional unique reporting systems to reduce the burden of compliance on companies grappling with reporting requirements either in effect or in development in other jurisdictions.

Given the dynamic and evolving nature of both climate science and technologies or methodologies to monitor or measure GHG emissions, it should reasonably follow that standards will be updated over time. Reporting entities should be allowed to elect to report under newer standards as they are updated (which may be necessary to avoid duplicative reporting) or to continue reporting under a prior edition of the GHG Protocol or, as authorized by Sections 38532(c)(2)(D)(i) (for SB 253 reporting) and 38533(b)(3)(A) (for SB 261 reports), reports required by other national or international requirements. However, we believe it would be inappropriate to require entities to adopt new or modified reporting standards, including updates to the GHG Protocol. Doing so would delegate regulatory and legislative authority to entities outside of California.

It should be noted that SB 253 discourages the development of a California-specific standard by requiring entities to measure and report emissions "in conformance with" the GHG Protocol. Beginning in 2033, CARB is authorized to assess and adopt an alternative "globally recognized alternative accounting and reporting standard" but even if it does, SB 253 does not require additional emissions reporting beyond the GHG Protocol standard.

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?

As this question acknowledges, 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 Section 38533(b)(4) of 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).

CARB should allow companies to satisfy the laws' requirements by using reports prepared for other regulatory regimes. For example, if a company is reporting under the EU's Corporate Sustainability Reporting Directive (CSRD) or the ISSB's IFRS Sustainability Disclosure Standards, those disclosures likely overlap to some degree with SB 253 and 261 requirements. CARB's regulations should allow a company to submit or reference its CSRD report, etc., in lieu of a separate California-specific report. If there are differences between another framework's requirements and California's (for instance, if California mandates a particular metric not included elsewhere), CARB should allow the company to provide a supplement addressing the difference rather than starting from scratch. A company should not have to duplicate work by preparing one report for California and another one for other purposes.

Towards this end, to eliminate any doubt, CARB could maintain guidance or a reference list of recognized equivalent reporting frameworks. This approach reduces state administrative burden, since CARB can review existing reports rather than manage an entirely separate reporting format. In summary, CARB should "credit" other disclosures against the SB 253 and 261 obligations and communicate how companies can leverage other reporting (domestic or international) to comply with California's laws. To allow such crediting and avoid duplication of effort, it is important that CARB avoid creating a standardized reporting format (additionally, data that is assured by a third party typically cannot be separately provided from the assurance report, thus a standardized template or data platform will potentially create additional compliance challenges).

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?**

CARB should not require each reporting entity to lock in a specific reporting methodology permanently, given the evolving nature of data and standards. It is important that companies retain the ability to refine and improve their reporting approaches as new data, tools, or methodologies become available. Requiring strict methodological consistency year-to-year could discourage companies from adopting new techniques or incorporating new categories of data.

Generally, the GHG Protocol recognizes the need to allow entities to refine their reporting, particularly as the standard or methodologies embedded within the standard evolve. Thus, CARB should give reporting entities the flexibility to revise a reporting method based on an updated standard, the availability of additional assessment tools or unique circumstances of an entity. SB 253 specifically mandates reporting "in conformance with" the GHG Protocol and its guidance. SB 261 similarly requires risk reporting "in accordance with" or "consistent with" TCFD or SDS. CARB should give deference to the evolving nature of standards, which, are living documents intended to reflect new information or methodologies.

If a company changes its approach to data gathering or emissions calculation (say, switches to a more granular emission factor set, or improves its boundary definitions for Scope 3), it should be permitted to do so.

Directing the use of a specific reporting methodology or prohibiting an entity from updating a prior methodology could inadvertently create a California-specific method that diverges from global standards over time. Such divergence would appear to conflict with SB 253/261.

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?**

CARB should consider existing research and data on the costs of climate reporting, and the many factors that drive those costs.

The Securities and Exchange Commission, in its 2022 proposed rule on climate-related disclosures (and the subsequent 2024 final rule). The comment file drew thousands of public comments. The SEC's analysis estimated that for large public companies, ongoing annual compliance costs could be on the order of several hundred thousand dollars per year (and potentially more for initial implementation). For instance, the SEC's proposal estimated roughly **$530,000 per year** in ongoing costs for a large registrant after the first year. That estimate may be understated; industry surveys submitted to the SEC indicated even higher expenditures, **especially to gather Scope 3 data**.

Some key factors that affect the cost of compliance include: the size and complexity of the company (more facilities and a global supply chain mean more data to gather), the maturity of the company's existing sustainability data systems, if any, the availability and quality of data (especially for Scope 3 categories – data gaps may require estimation methods that are labor-intensive), the need for software or IT system upgrades to collect and manage data, personnel or consultant costs for preparing the disclosures and managing the process, and the requirement for third-party assurance (verification fees can be substantial, particularly if a high level of assurance is required).

Another factor is timeline – a compressed timeline drives up costs (overtime, rush consultant work, etc.), whereas a longer timeline might spread costs more manageably.

We encourage CARB to recognize that costs will vary widely by company; some large companies already do some reporting, whereas others who are new to this will face higher initial investments (for training staff, building data systems, etc.). Providing flexibility and scalability in the regulations (for example, phasing in certain requirements, offering safe harbors for difficult reporting areas, etc.) can help mitigate the financial burden to some extent, especially for those at the beginning of their disclosure journey.

In summary, existing public and private data indicate that climate disclosure can be resource-intensive – often hundreds of thousands of dollars annually for a large entity, and in many cases much more – and the exact burden depends on multiple factors (data complexity, assurance scope, overlap with other reporting, etc.). CARB should strive to minimize compliance costs.

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

The state should require reporting directly to CARB (as discussed in our response to Question 3b, CARB should avoid a standardized reporting format) or through self-reporting on a reporting entity's website. The introduction of a third-party "emissions" or "climate" 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.

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 on 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. Similarly, if a reporting entity self-reports on its own website, it is solely responsible for the security of the underlying data. 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 resulting from the disclosure law is an essential government function and 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 potentially fee structures that may not align with the regulatory requirements.

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

For the reasons stated in our response to Question 5, we strongly recommend direct reporting to CARB or self-reporting by reporting entities rather than the use of third-party services.

While not directly responsive to Question 6, we urge the CARB to consider the following – it is imperative that CARB provide a mechanism to exclude confidential business information (CBI), trade secrets, and national security information from any public database and to protect such information from public disclosure. Public disclosure of this information, whether in response to requests from the public or through a clearinghouse, could place reporting entities at a competitive disadvantage and harm national security. To avoid these unintended negative consequences, CARB must provide a reliable system for reporting entities to designate and protect this sensitive information, and for CARB to validate confidentiality designations. If CARB determines that any such information is subject to disclosure under the California Public Records Act, under court discovery rules, or under any other authority, before CARB discloses any such information, CARB should provide the reporting entity with at least 60 days advance notice, a reasonable opportunity to object to the disclosure, and a reasonable opportunity to provide additional justification for withholding the information from the public. In addition, before making public or producing in litigation any information that is designated as sensitive for national security reasons, CARB's review process should include consulting with relevant federal authorities and confirming they agree with CARB's determination.

Finally, entities supporting national security missions, such as aerospace and other defense entities, must have the full discretion to redact and not-disclose sensitive data and or other information which could potentially harm US national security interests and its allied partners.

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?**

No. We do **not** recommend that CARB impose additional state-specific standardization on Scope 1, 2, or 3 emissions reporting beyond what is already required by the GHG Protocol. SB 253 is unambiguous—reporting entities must report their emissions "in conformance with" the GHG Protocol and Scope 3 guidance. CARB should explicitly acknowledge this and allow entities to report pursuant to the GHG Protocol in its entirety, including its built-in flexibilities, rather than standardizing any aspect of reporting. To do so prior to 2033, when SB 253 authorizes CARB to assess alternative reporting standards, would be in violation of SB 253, including the requirement to minimize "duplication of effort." Moreover, such modifications would almost certainly increase compliance costs and complexity, especially for companies that operate globally and currently base their reporting on the GHG Protocol. They would have to maintain two sets of accounting records: one for California and one for everyone else, which is exactly the outcome to avoid.

The GHG Protocol provides a structured yet adaptable approach to measuring and reporting GHG emissions. It is designed to balance the need for consistency in reporting with the practical challenges companies face in gathering and disclosing emissions data. The GHG Protocol recognizes that not all emissions data is readily available or feasible to collect. It allows for justified exclusions when specific Scope 3 emissions categories are insignificant, infeasible to quantify, or lacks reliable data sources. This helps reduce the risks speculative or misleading reporting. CARB should fully preserve the flexibilities embedded within the GHG Protocol and allow for exclusion of such items.

SB 253 requires CARB to authorize "…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 this section." Therefore, CARB should not adopt its own reporting standards. If it does, an entity would have to prepare two separate reports at potentially significant expense. As noted earlier, many entities are grappling with reporting requirements either in effect or under development in different jurisdictions. Minimizing additional unique reporting systems can reduce the burden of compliance. We encourage CARB to allow entities to build on or extend existing voluntary reporting efforts, to help minimize some cost and duplication of effort.

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?**

Third-party verification for assurance for Scope 3 is a nascent field. Companies required to report under SB 253 will likely turn to one of two broad categories of assurance providers: (1) specialized environmental/ESG audit firms, and (2) traditional financial audit firms expanding into ESG assurance.

At this time, it is unclear if there is enough capacity and competition in the assurance market so that companies can obtain services at a reasonable cost. Encouraging a range of providers (both large and small firms) will help. CARB might coordinate with accreditation bodies or professional associations to provide a non-exclusive list of qualified assurance providers or to promulgate guidance on best practices for Scope 3 verification. CARB can facilitate the growth in capacity and competition in the market by not imposing overly prescriptive criteria on who qualifies as an assurance provider beyond what the statute requires (the law already specifies they must be independent and experienced in GHG accounting). If a provider has appropriate credentials and follows established assurance standards, they should be acceptable.

Additionally, we recommend CARB include a robust safe harbor for Scope 3 disclosures made in good faith. By nature, Scope 3 emissions are the broadest and most complex category to quantify accurately. The complexities inherent in collecting and validating data from numerous sources beyond the direct control of reporting entities mean that Scope 3 emissions reporting is subject to substantial uncertainty, inconsistency, and unreliability. Reporting entities may not have primary data access to measure the emissions of their suppliers, will have to rely heavily on secondary data and estimates, and may see methodological variability and inconsistency across their suppliers. Given the challenges of collecting Scope 3 data (often relying on estimates or suppliers' info), companies should not be penalized if they have made a reasonable effort, and the data later turns out to have inaccuracies. If a company can demonstrate that its Scope 3 disclosure was prepared on a reasonable basis and it pursued limited assurance diligently, CARB should, as a policy, refrain from imposing penalties for errors or omissions in those Scope 3 figures. This will encourage honest effort and continuous improvement without fear of punitive action over elements that might be beyond a company's immediate control.

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?**

As an initial matter, it should be noted that the European Commission recently released an omnibus package of proposals which includes a proposal to eliminate the requirement to obtain reasonable assurance of sustainability data (including GHG data) reported under the CSRD. Refraining from imposing assurance requirements would be consistent with regulatory trends. This, and other changes, were proposed to "to foster a favorable business environment and ensure that companies are not stifled by excessive regulatory burdens."[1]

If CARB elects to move forward with assurance requirements, CARB should allow companies and assurance providers flexibility to determine the appropriate procedures and requirements to provide assurance, including the choice of standards for limited and reasonable assurance. Instead of imposing rigid standards, CARB should require assurance providers to disclose the standards they follow and provide a summary of the procedures undertaken in their assurance reports. To support that effort, CARB should align the definitions of assurance levels with international auditing standards to ensure clarity and consistency. To minimize duplication of efforts and the development of a California- standard that deviates from global standards, CARB should avoid using the definition of "reasonable assurance" in MRR and should instead rely on the terminology and frameworks outlined by assurance providers under the American Institute of Certified Public Accountants (AICPA) assurance standards or the International Standards on Assurance Engagements (ISAE). Aligning with global standards could avoid unnecessary duplications and partially facilitate integration into entities' existing assurance processes.

We urge CARB to not require "reasonable assurance" for Scope 1 and Scope 2 GHG emissions reporting until it is more feasible. The current industry practice, even for leading companies, is to obtain limited assurance on emissions. Reasonable assurance for GHG, is rare currently due to data variability and the nascent state of methodologies. Therefore, CARB should plan for initial compliance to involve limited assurance (as the statutes outline phased assurance requirements). Over time, if and when reasonable assurance becomes standard and achievable for Scopes 1 and 2 (perhaps by 2030 per SB 253's timeline), CARB can move to that higher bar as mandated. But imposing a requirement for reasonable assurance prematurely could overwhelm assurance providers and companies alike, increase costs unnecessarily, and would likely not yield commensurate benefits in data accuracy given the current data constraints. With respect to Scope 3, CARB should avoid imposing any assurance requirements given the inherent flaws in reporting described in further detail in our response to 8(a) above.

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

For those parties currently reporting scopes 1 and 2 emissions on a voluntary basis:

a. **What frequency (annual or other) and time period (1 year or more) are currently used for reporting?**

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[1] See "Commission simplifies rules on sustainability and EU investments, delivering over €6 billion in administrative relief" dated February 26, 2025, at https://finance.ec.europa.eu/publications/commission-simplifies-rules-sustainability-and-eu-investments-delivering-over-eu6-billion_en

Most entities currently reporting voluntarily report emissions data annually, covering a one-year period compared to a baseline year. Because of difficulties on obtaining Scope 3 data, companies may report scope 3 information later than Scope 1 and Scope 2 data.

For at least the first annual report, we encourage CARB to provide reporting entities as much time as reasonably possible after the adoption of regulations to report prior fiscal year emissions. Especially for entities without prior reporting experience, sufficient time and flexibility will be needed to train, staff and develop the internal systems to collect, analyze, report and externally assure relevant data and disclosures. As provided by SB 253, “The reporting timelines shall consider industry stakeholder input and shall take into account the timelines by which reporting entities typically receive scope 1 emissions, scope 2 emissions, and scope 3 emissions data, as well as the capacity for an independent assurance engagement to be performed by a third-party assurance provider.”

We encourage CARB to allow as much time as feasible so that companies can produce as reliable data as reasonably possible. For example, if reporting for FY2026 is due in 2027, providing the maximum statutory window (perhaps up to the end of 2027) would be helpful. Many companies without prior experience will need that first cycle to build capacity.

Data availability and quality, particularly for scope 3 emissions, will be daunting. Scope 3 emissions data, assuming they are available, will vary widely as many suppliers operate in jurisdictions without robust sustainability reporting requirements or simply lack the resources or expertise to measure emissions. This will undoubtedly result in data gaps, which may impact the reliability of reporting. Moreover, the quality and consistency of available data can vary significantly across industries and the use of proxy data will complicate assurance and comparability.

b. When are data available from the prior year to support reporting?

Generally, up to a year from the end of a reporting year (which may not be the same across all entities) will be necessary to collect and compile necessary data for Scope 1 and 2 reporting. This timeframe will also accommodate the collection of data from third party sources (e.g., utilities). However, more time may be necessary to assure data depending on the availability, needs, and requirements of assurance providers.

Scope 3 data will likely have an even longer lag time. Many Scope 3 categories rely on data from external parties (suppliers, portfolio companies, customers) who may themselves only publish data once a year and often not immediately after year-end. It’s common for companies to use prior-year proxies for some Scope 3 elements – for instance, using a supplier’s last reported emissions (which might be for FY2022) to estimate FY2024 supply chain emissions if the FY2023 data isn’t yet out. In some sectors like finance (for “financed emissions”), banks often use a mix of current exposure data and lagged emissions data from borrowers because of these timing issues. Because of difficulties on obtaining Scope 3 data, companies may report scope 3 information later than Scope 1 and Scope 2 data.

Because of these dynamics, CARB should avoid setting any submission deadline that is too soon after the year being reported. If companies are forced to report very early (e.g., in Q1 of the next year), they will either have to use incomplete data or rush estimates, further reducing accuracy. In practice, a timeline such as “emissions for year X must be reported by end of year X+1” would provide more reliable information as companies would have a full year to collect, calculate, and assure data.

c. What software systems are commonly used for voluntary reporting?

Because companies already use a variety of software tools and systems to gather, manage, and report GHG emissions and climate data, we encourage CARB to keep reporting templates (if any) data-flexible. Typical software platforms include dedicated carbon accounting software, modules within enterprise software, and the reporting interfaces of frameworks like CDP. Many institutions also complement these with their own databases and spreadsheets.

SB 261: Climate Related Financial Risk Disclosure

10. 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 are available, reporting is complete, and the necessary assurance review is completed?

SB 261 requires that climate risk reports be submitted biennially. However, the statute does not explicitly state whether these reports must cover a single fiscal year or a two-year period. CARB should clarify that reports are only required to cover a single fiscal year, as requiring coverage of two fiscal years would result in the publication of outdated information and create inconsistencies with both voluntary reporting practices and mandatory disclosure requirements in other jurisdictions.

Additionally, strict filing deadlines that require reports to be submitted immediately after a fiscal year ends—such as a January 1 deadline for a company with a December 31 fiscal year-end—are not feasible. Requiring companies to publish a climate-related financial risk report within 24 hours of the fiscal year ending would mean that the report could not include data for that year, as companies would not have had time to collect, analyze, and incorporate the necessary information. For example, for a company with a fiscal year ending on December 31, a report required to be filed on January 1, 2026, would necessarily contain information covering the fiscal year ended December 31, 2024, rather than the most recently completed year.

To ensure practical and meaningful reporting, CARB should instead adopt a flexible deadline that aligns with established reporting practices. One approach would be to require SB 261 disclosures no later than the last day of the following fiscal year. In this case, a report covering the fiscal year ended December 31, 2024, would be due by December 31, 2025, providing reporting companies with sufficient time to gather necessary data and produce a robust and reliable disclosure.

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

CARB should allow entities the flexibility to report at any time during a two-year reporting period or twelve months after the end of a reporting period. Flexibility in the reporting period allows entities to align disclosures with the most up-to-date data.

12.SB 261 requires entities to prepare a climate-related financial risk report biennially. What, if any, disclosures should be required by an entity that qualifies as a reporting entity (because it exceeds the revenue threshold) for the first time during the two years before a reporting year?

If an entity surpasses the revenue threshold and thus becomes a "reporting entity" for the first time in the middle of a two-year cycle, CARB should not require a special or out-of-cycle climate risk report for the partial period before the next regular reporting year. Instead, that entity should be expected to prepare its first SB 261 report on the normal schedule for the next full reporting cycle. In other words, there should be no penalty, or immediate disclosure required the moment a company crosses $500 million in revenue; rather, they would simply be included when the next biennial report comes due.

For brand new entrants, CARB should also provide some grace period or guidance. For instance, if a privately held company suddenly exceeds $500M and has never done climate risk analysis, it may need the full two-year lead time to produce a quality report. Companies newly meeting the criteria should be folded into the regular biennial schedule and given adequate time to comply. This avoids penalizing growth. CARB can clarify that such companies are expected to begin their reporting at the next cycle and encourage them to use the intervening time to gear up (perhaps through outreach or support). This pragmatic approach will ease to some extent the onboarding of new reporting entities over time as businesses grow or enter the California market.

13.Many entities that are potentially subject to reporting requirements under SB 261 are already providing other types of climate financial risk disclosures.

f. **What other types of existing climate financial risk disclosures are entities already preparing?[2]**

To minimize redundant effort, CARB should acknowledge the variety of forums that firms are already used to make existing disclosures and, as discussed earlier, harmonize requirements with them. Some common types of climate financial risk disclosures that companies (especially larger ones and those in regulated industries) are preparing include voluntary TCFD Reports or sustainability reports, EU CSRD reports, UK TCFD-aligned reports, ISSB (IFRS S2) Disclosures, and industry-specific reports.

CARB should design SB 261 implementation to recognize and credit existing climate risk disclosures, such as annual TCFD reports or reporting under CSRD or OSFI guidelines.

Again, we stress harmonization: CARB should not require a company to produce a separate California-specific climate risk report if the company is already producing a comparable report

[2] Numbering for consistency with question numbering in the Information Solicitation issued by CARB.

for other purposes. Instead, the company should be allowed to submit that report (with perhaps a cover note mapping it to SB 261's requirements if needed). CARB should survey which frameworks are most common among the covered companies (likely TCFD and soon ISSB/CSRD) and attempt to align its rules so that those can satisfy SB 261.

g. **For covered entities that already report climate related financial risk, what approaches do entities use?**

Companies may use a range of different frameworks including TCFD, CDP aligned with TCFD, EU CSRD, and ISSB. Often these reports disclose governance and process details, highlight key risks and how they are managed, and share some metrics and goals. They often stop short of sharing highly sensitive or speculative data, focusing instead on demonstrating that they have a handle on material issues. We encourage CARB to allow companies to present their information in the structure as they are used to, provided such structure covers statutory requirements.

h. **In what areas, if any, is current reporting typically different than the guidance provided by the Final Report of Recommendations of the Task Force on Climate-related Financial Disclosures?**

Many companies base their voluntary disclosures on TCFD's principles, however, not all areas identified by the TCFD may be relevant or material to a particular business model or company. Assessing material financial impacts of climate risks has inherent uncertainty. CARB should adopt a robust safe harbor that recognizes this uncertainty and limits exposure for entities acting in good faith in performing this assessment.

i. **If not consistent with the Final Report of Recommendations of the Task Force on Climate-related Financial Disclosures, are there other laws, regulations, or listing requirements issued by any regulated exchange, national government, or other governmental entity that is guiding the development of these reports?**

We believe that most frameworks (e.g., ISSB's IFRS S2) have a material degree of consistency with TCFD.

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Agricultural Council of California
American Counsel of Life Insurers
ATA
Association of California Life and Health Insurance Companies
BOMA
California Apartment Association
CBPA
California Cement Manufacturers Environmental Coalition
California Chamber of Commerce

California Construction & Industrial Materials Association
California Food Producer
California Grocers Association
California Hospital Association
Chemical Industry Council of California
California Trucker Association
Dairy Institute of California
Insured Retirement Institute
NAIOP California
Natural Association of Mutual Insurance Companies
Plumbing Manufacturers International
Personal Insurance Federation of California
Western Growers Association
Wine Institute