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California Corporate Greenhouse Gas (GHG)
Reporting and Climate Related Financial Risk
Disclosure Programs
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Submitted via the Workshop Comment
Submittal Form and by email to
climatedisclosure@arb.ca.gov

Re: WSPA Comments on the Information Solicitation to Inform Implementation of California Climate Disclosure Legislation: Senate Bills 253 and 261

The Western States Petroleum Association (WSPA) appreciates the opportunity to comment on the California Air Resources Board's (CARB) Information Solicitation to Inform Implementation of California Climate-Disclosure Legislation: Senate Bills (SB) 253 and 261 (2023), released on December 16, 2024.[1] WSPA is a non-profit trade association that represents companies involved in various aspects of the energy sector, such as importing and exporting, producing, refining, transporting and marketing petroleum, petroleum products, natural gas and other energy supplies in California and four other western states, and has been an active participant in air quality and climate planning issues for over 30 years.

The U.S. Chamber of Commerce and other groups representing businesses have filed a lawsuit in federal court to have SB 253 and 261 declared unconstitutional.[2] WSPA supports that lawsuit and believes the laws should be declared unconstitutional and their enforcement enjoined.

Because SB 253 and 261 are unconstitutional, CARB should not implement or enforce them. The laws violate core First Amendment rights by compelling speech through blanket disclosure obligations on any companies that satisfy their revenue thresholds, instead of focusing on California-based GHG emissions thresholds, and even if the company has never made advertisements regarding greenhouse-gas emissions, climate change, or being a "green" company, without connections to a commercial transaction.[3] These laws also impose significant burdens on interstate and foreign commerce with slim to non-existent benefits in addressing climate change, and are therefore precluded under the Supremacy Clause by the Clean Air Act. Further, these laws violate constitutional limits on extraterritorial regulation by purporting to subject companies to burdensome reporting requirements for their global emissions, regardless of what proportion of their revenue stems from California or what proportion of their emissions occurred in California. Companies will be caught up in regulated entities' efforts to report Scope 3 emissions, incurring burdensome compliance costs, regardless of their contacts with California, based on their position in the supply chain. No regulation can change the unconstitutional nature of either law. The collection of these extraordinary amounts of data and the implementation of these laws will cost millions of taxpayers' dollars to California, will be costly and detrimental to business prosperity, and will yield a disjointed collection of GHG emissions with no rationale of what the intent or use for such massive and collective reporting of GHG emissions really is.

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[1] CARB. Information Solicitation to Inform Implementation of California Climate-Disclosure Legislation: Senate Bills 253 and 261, as amended by SB 219. 2024. Available at: https://ww2.arb.ca.gov/sites/default/files/2025-01/ClimateDisclosureQs_Dec2024_v2.pdf. Accessed: March 2025.
[2] See Chamber of Commerce of the United States of America v. Randolph, No. 2:24-cv-00801-ODW-PVC (C.D. Cal.)
[3] See, e.g., Nat'l Inst. of Family & Life Advocates v. Becerra, 585 U.S. 755, 766 (2018).

WSPA submits these comments to attempt to address some of the serious affordability and competitiveness issues, as well as other adverse impacts posed by these laws apart from their unconstitutionality, but WSPA iterates that the laws' core defects are impervious to any regulatory fixes.

CARB must ensure that its climate-disclosure regulations adequately assess "the potential for adverse economic impact on California business enterprises" and address competitive impacts for existing businesses, in accordance with the Board's rulemaking obligations under Cal. Gov. Code §§ 11346.3(a), (e) and 11340.1(a). California Government Code §11346.2(b)(4) also requires CARB to consider "reasonable alternatives to the regulation that would lessen any adverse impact on small business," and reasonable alternatives that are "less burdensome." To comply with these provisions, WSPA urges CARB to develop a more cost-effective reporting program that attempts to minimize compliance burdens for reporting entities.

As discussed in more detail below, WSPA emphasizes the following principles that must underlie any efforts to implement SB 253 and 261:

- **CARB should determine applicability for reporting requirements** based on a substantial portion of an entity's ordinary business being transacted in California based on the entity's GHG emissions levels, considering only direct emissions from operations within California and that are already being reported.
- **CARB should allow maximum flexibility** both by allowing reporting entities to choose which external standards and protocols to follow and in what methodology the reporting entities use**.**
- **CARB should minimize duplicative reporting requirements** by allowing companies to rely on substantially similar disclosures, consistent with CARB's duty to limit regulatory burdens.
- **CARB should not mandate compliance with the GHG Protocol**, which was not designed for regulatory compliance but rather as a voluntary reporting framework. Its methodologies present significant challenges when applied in a compliance setting.
- **Third-party assurance should function as an independent verification of data** – not a mechanism for determining regulatory compliance, enforcement, or policy interpretation.
- **WSPA believes these bills will be costly to implement and comply with**, which presents heightened legal risks for compliance reporting and will result in negative impacts to California's market competitiveness and economic development.

In response to the December 2024 information solicitation, WSPA offers the following comments:[4]

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?**
   No. Using Revenue and Tax Code Section 23101 will likely lead to further overreach and uncertainty for the regulated community – as well as for CARB – in determining scope. As the provision's thresholds are incredibly low and, in some instances, subjective, it is likely to be impossible for CARB to enforce efficiently and will likely lead to inconsistent enforcement.

   WSPA instead recommends that CARB adopt a comprehensive definition for entities based on the entity's GHG emissions levels from direct emissions in California and for entities "doing business in California" that encompass all entities that meet the total annual revenue thresholds specified in the legislation – $1 billion for SB 253 and $0.5

[4] Nothing in this submission should be considered an admission of lawfulness on the part of WSPA or its members. WSPA, and its members, reserve the right to challenge the underlying statute, or implementing regulations, as unconstitutional or otherwise unlawful.

billion for SB 261—and conduct business within the State. This may include a gradual approach, first broadly identifying reporting entities and subsequently phasing in mandatory reporting. Such an approach would align with CARB's mandate to consider alternatives that would limit regulatory burdens for covered entities by clarifying regulatory requirements and avoiding unnecessary reporting.[5]

More specifically, for purposes of SB 253 and 261, "Doing business in California" should be defined to require a substantial portion of an entity's ordinary business to be transacted there. To constitute ordinary business, activities must be indispensable to the business rather than simply incidental, such as mere ownership of real and physical property. Additionally, interstate activities, such as engaging in interstate commerce, should be specifically excluded.

WSPA further believes that GHG reporting applicability should also be based on an entity's direct emissions (Scope 1) stemming from operations within California and that are already reported to the State of California under existing regulations. Such an approach would still capture emissions activities in California, since any indirect emissions (Scope 2) from one entity would be included as direct emissions (Scope 1) from other entities. As such, companies that report GHG emissions to the State of California under existing environmental regulations should be deemed as satisfying SB 253.

b. **Should federal and state government entities that generate revenue be included in the definition of a "business entity" that "does business in California?"**
No comment.

c. **Should SB 253 and 261 cover entities that are owned in part or wholly owned by a foreign government?**
WSPA believes that GHG reporting applicability and disclosure requirements should be determined based on an entity's GHG boundary, and associated GHG emissions reports companies are already publicly disclosing that contain such information (e.g., reporting to state and federal environmental agencies), including at a consolidated parent-company level, should be considered as deemed as satisfying SB 253. Such an approach would minimize to some extent competitive disadvantages for businesses that may potentially be subject to California's new reporting rules and disclosures, consistent with CARB's rulemaking obligations pursuant to Cal. Gov. Code §11340.1(a). Such an approach would also minimize to some extent duplicative reporting requirements, which would reduce regulatory burdens for covered entities in accordance with Cal. Gov. Code §11346.2(b)(4). Furthermore, WSPA contends that ownership, including partial or full ownership by foreign governments, should not be a factor in determining applicability.

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 comment.

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?**

[5] *See* Cal. Gov. Code § 11346.2(b)(4). Accessed March 2025. See Attachment A.

WSPA believes that GHG reporting applicability and disclosure requirements should be determined based on an entity's GHG boundary, i.e., direct emissions arising from entity-owned assets in California (Scope 1), and GHG emissions reports companies are already publicly disclosing that contain such information should be considered as a valid proxy submission as satisfying SB 253. As discussed above, this interpretation would help minimize to some extent competitive disadvantages for covered businesses, consistent with Cal. Gov. Code §11340.1(a), and would help to some extent reduce regulatory burdens by minimizing duplicative requirements, consistent with Cal. Gov. Code §11346.2(b)(4). Thus, such database reported to the State should be used to identify reporting entities, frequency by which data is updated, and verification procedures.

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?**
WSPA suggests allowing parent companies the option to identify their subsidiaries themselves.

<u>**General: Standards in Regulation**</u>

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?**
   As indicated by CARB's question, the external standards and protocols referenced by the statutes are evolving[6] – for example, the GHG Protocol is currently undergoing revisions. If CARB mandates full compliance with the latest version of these external standards and protocols, any future changes made by their respective governing body would automatically affect California's reporting requirements—without legislative action, regulatory rulemaking, or public input. This creates regulatory uncertainty and amounts to unauthorized *de facto* rulemaking by an external organization that is not accountable to California lawmakers, regulators, or citizens. Instead, CARB should allow maximum flexibility by allowing reporting entities to (1) choose which external standards and protocols to follow, including which version thereof, and (2) choose what methodology to use. This approach retains critical reporting flexibility while providing ensuring reporting accuracy.

   CARB should recognize the intentional distinction in SB 253's statutory language regarding conformance with reporting standards. Section 2(c)(1)(A)(ii) requires only "conformance with" the GHG Protocol, whereas Section 2(c)(1)(A)(iii) mandates "full conformance with" any new standard adopted by CARB. This deliberate differentiation indicates that strict adherence to the GHG Protocol is not required for compliance with SB 253.

   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?**

[6] Greenhouse Gas Protocol's "The Greenhouse Gas Protocol, A corporate accounting and reporting standard – Revised edition" (2004); Greenhouse Gas Protocol's "GHG Protocol, Scope 2 guidance, An amendment to the GHG Protocol corporate standard" (2015); Greenhouse Gas Protocol's "GHG Protocol, Corporate value chain (Scope 3) accounting and reporting standard, Supplement to the GHG Protocol corporate accounting and reporting standard" (2013). Accessed March 2025. See Attachment A.

WSPA suggests that CARB accept other documents prepared for corporate GHG reporting, as well as existing global, federal, and state reports, to reduce duplication of efforts. This includes, but is not limited to, documents such as CARB GHG MRR reports, EPA 40 CFR 98 reporting, company annual, sustainability or climate reports. For example, reporting entities should have the option to use GHG disclosures submitted to another regulatory body as a valid proxy for SB 253 compliance, whether reported at the individual entity level or consolidated at the parent level. However, CARB may only reference such reports to the extent they contain relevant disclosures to satisfy SB 253/261's requirements and should not treat external reports as enforceable compliance documents beyond their original purpose. By recognizing these equivalent reports, CARB can meet the requirements under SB 253 and 261 while minimizing to some extent the burden on reporting entities, consistent with its rulemaking obligations pursuant to Cal. Gov. Code §11346.2(b)(4). In contrast, the imposition of unique California reporting procedures would cause the opposite result and require companies to further duplicate efforts.

WSPA suggests that CARB should accept approaches informed by, rather than requiring rigid, full adherence to, the standards incorporated into SB 253 and 261 as compliance:

- CARB should recognize the intentional distinction in SB 253's statutory language regarding conformance with reporting standards. Section 2(c)(1)(A)(ii) requires only "conformance with" the GHG Protocol, whereas Section 2(c)(1)(A)(iii) mandates "full conformance with" any new standard adopted by CARB. This deliberate differentiation indicates that strict adherence to the GHG Protocol is not required for compliance with SB 253. Instead, the statute should be read to allow for flexibility in interpretation and application, ensuring that reporting entities are not bound by rigid GHG Protocol methodologies that may be impractical, unsuitable, or nonapplicable for regulatory compliance. CARB should provide reasonable latitude in how companies achieve conformance with the GHG Protocol, allowing approaches informed by the GHG Protocol rather than imposing rigid, full adherence.

  The GHG Protocol was not designed for regulatory compliance but rather as a voluntary reporting framework, and its methodologies – present significant challenges when applied in a compliance setting. This fundamental limitation makes it unsuitable as a prescriptive regulatory tool.

  For example, one key concern is that Chapter 5 of the GHG Protocol imposes a mandatory ("shall") requirement that companies must recalculate their base year emissions after significant structure changes, such as mergers, acquisitions, or divestitures.

  While SB 253 itself does not explicitly require adherence to Chapter 5, the third party assurance process could effectively impose it if assurance providers default to requiring recalculation of base year emissions as part of their verification criteria. This creates a circular and problematic dynamic where companies are forced to apply the standards of Chapter 5 – not because SB 253 requires it, but because assurance providers do – resulting in an unintended regulatory obligation for information that is irrelevant to SB 253's statutory purpose. CARB should accordingly explicitly clarify that assurance providers are limited to assessing the accuracy and consistency of reported data within the scope of SB 253, without requiring full adherence to all aspects of the GHG Protocol.

  Moreover, the mandatory requirement of Chapter 5 is self-contradictory with the guidance in Chapter 11, which clearly denotes that updating a base year is not required if a company uses intensity goals, further exemplifying the impracticality of requiring strict adherence to the GHG Protocol for compliance purposes. CARB could mitigate such discrepancies by explicitly authorizing conformance with either GHG Protocol guidance OR standards, rather than both. The GHG Protocol is especially fundamentally inappropriate as a prescriptive corporate reporting tool beyond Scope 1 emissions, i.e., emissions outside of a company's direct control, due to double counting of emissions and accountability distortions. A particularly flawed application of the Protocol is holding suppliers accountable for their customers' choices and their resulting absolute emissions (Scope 3). WSPA reiterates here that the GHG Protocol was *not* designed for regulatory compliance, which would present significant challenges when applied in a *compliance* setting.

Moreover, with particular reference to Scope 3 emissions, the GHG Protocol relies heavily on modeled and estimated data that often requires companies to use third-party information, industry averages, and proxy data that lack the verifiability and auditability necessary for regulatory enforcement. If CARB mandates strict adherence to the GHG Protocol, entities may be forced to report emissions using highly uncertain or unverifiable methodologies, increasing compliance risk and creating potential liability for reporting entities despite best efforts to provide accurate data. Such a requirement would be arbitrary and capricious, in contravention of rulemaking requirements.

In view of the above challenges, CARB should allow flexibility in reporting methodologies, permitting the use of alternative, compliance-focused protocols that provide more verifiable and jurisdictionally relevant emissions data, as well as permitting maximum flexibility in the application of, and deviations from, the GHG Protocol itself. This includes allowing methodology changes to enable reporting entities to continuously improve their reporting processes and select the most suitable methods for accurate and efficient reporting. This will also streamline compliance and ensure effective reporting without imposing unwarranted expenses. Additionally, CARB should establish safe harbor provisions to protect entities from enforcement risks when reporting emissions under inherently uncertain methodologies. A more pragmatic and compliance-ready approach will improve reporting integrity, and minimize regulatory uncertainty.

The above approach permitting methodology-flexibility is consistent with the principles of the GHG Protocol. For example, GHG Protocol guidance on "Identifying and Calculating GHG Emissions"[7] states that reporting companies "should use the more accurate calculation approach available to them and that is appropriate to their reporting context."

- Despite the flaws of the GHG Protocol guidance as a reporting mechanism, even if it classifies Scope 3 emissions as "an optional reporting category" since "Scope 3 emissions are a consequence of the activities of the company, but occur from sources not owned or controlled by the company." If the implementation of SB 253 cherry picks alignment with the GHG Protocol and yet also requires companies to disclose Scope 3 emissions, then at least CARB should allow companies to follow guidance from the GHG Protocol when it describes that in the disclosure of Scope 3 "[C]ompanies may want to focus on accounting for and reporting those activities that are relevant to their business and goals, and for which they have reliable information." As also noted in the GHG Protocol, "since companies have discretion over which categories they choose to report," Scope 3 may include material or

[7] https://ghgprotocol.org/sites/default/files/standards/ghg-protocol-revised.pdf, Chapter 6, p. 40. Accessed March 2025. See Attachment A.

relevant emissions only.[8] Therefore, CARB should also allow reporting companies to use existing disclosures of Scope 3 or indirect emissions (such as the GHG emissions from the use of products) under voluntary frameworks as well as existing federal and state reporting as substituted compliance for Scope 3 reporting. In any case, reporting entities should not be required to report all 15 categories of Scope 3 emissions recognized by the GHG Protocol.

- Regarding alternative compliance in the case of SB 261, CARB should also allow reporting companies to use disclosures that comply with securities, environmental, and/or corporate governance laws and regulations.
- The disclosure requirements for climate-related financial risks under SB 261 should be aligned with SEC requirements and Supreme Court case law regarding *financial materiality*. Specifically, CARB should adopt SEC's long-standing financial materiality standard, i.e., a matter is material if there is a substantial likelihood that a reasonable investor would consider it important when determining whether to buy or sell securities.

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?
WSPA recommends that CARB permit entities the flexibility to select and modify their reporting methods over time. This adaptability is crucial for entities to respond to evolving circumstances and new processes, and be consistent with reporting in different jurisdictions, while avoiding unnecessary administrative burdens. This is especially true for entities that may report under international standards, where cross-referencing could become uniquely challenging when external standards and/or guidelines evolve over time. By allowing method changes, CARB will enable reporting entities to continuously improve their reporting processes and select the most suitable methods for accurate and efficient reporting. This flexibility will streamline compliance and facilitate effective reporting without imposing unwarranted expenses.

<u>**General: Data Reporting**</u>

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?
WSPA is unaware of any public datasets that detail the costs associated with voluntary reporting currently submitted by companies. We do, however, encourage CARB to review the published comments submitted by individual registrants to the SEC's rulemaking proposal on climate-related disclosures. These comments provide a clear indication of the enormity of the above-anticipated compliance costs for climate-related disclosures akin to those required by California's SB 253 and 261.

Key cost drivers include the reporting of duplicative and irrelevant metrics, including costs of hiring and training of employees for reporting tasks, reviewing and consulting on technical standards, software development / purchase costs, use of external consultants to assist with ensuring compliance, as well as third-party assurance requirements, including costs of engaging a third-party auditor and allocating employee resources to assist with the audit. These factors can significantly increase the financial burden on entities required to comply

[8] https://ghgprotocol.org/sites/default/files/standards/ghg-protocol-revised.pdf, Chapter 4, p. 24. Accessed March 2025. See Attachment A.

with the legislation. WSPA recommends that CARB maintain flexibility in report type, assurance provider, and timeline to streamline compliance and reduce unnecessary expenses. CARB is required to account for potential adverse economic impacts on California business enterprises and competitive impacts for existing businesses.[9]

WSPA believes that these bills will be costly to implement and to comply with, which will result in negative impacts to California's market competitiveness and economic development:

- The SEC has acknowledged the potential harm the proliferation of climate disclosure rules can cause, describing the final SEC climate rule as "deeply flawed" with the potential to "inflict significant harm on the capital markets and our economy." Furthermore, we believe that the SEC's cost estimates were significantly understated, especially for large entities, which require substantial time and millions of dollars in costs for data and information collection, IT system solutions, services provided and other related tools, techniques, and expertise.

- WSPA believes that CARB should avoid an outcome in which the implementation of SB 253 and 261 will lead to additional inefficiencies and unnecessary costs incurred by multiple parties across the value chain, without necessarily yielding useful information to investors and other stakeholders. This implementation will be costly and will necessitate widespread changes in accounting and reporting, including costs associated with staffing, auditing, legal and verification expenses. Systems, processes, and controls will need to be implemented, yet in the end companies will be left to guess or generalize basic estimates and assumptions, particularly in the case of a mandatory disclosure of Scope 3. The challenge for companies to report new metrics, for which there are no well-established and vetted precedents will be extraordinarily expensive for all, with costs ultimately being passed through to end-consumers and with likely impacts on contracts and arrangements with suppliers and business partners, and other third-party companies that will likely be forced to collect and provide data to reporting companies in an attempt to support complying entities. For instance, Scope 3 GHG emissions accounting will require intensely detailed accounting and considerable speculation, all the while being incredibly costly to implement. One example underscoring the impracticality, if not 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. As a result, in-state projects will likely have increased overall costs. In fact, as SB 253 was being negotiated last year, CARB's recommendation and draft amendments to SB 253 proposed removing requirements for businesses to report Scope 3 emissions in light of implementation costs. CARB should reconsider the merits of these comments regarding the cost of compliance and lack of data reliability and take them into consideration in developing the GHG emissions reporting under the proposed program.

WSPA further believes that there will be heightened legal risks for companies reporting under SB 253 and 261, which will be an additional cost of implementation. CARB's decisions on the implementation of SB 253 and 261 most likely will create liability risk arising for the use of, or reliance on, any data or information provided under its contemplated approach potentially attracting alleged and unfounded greenwashing, consumer fraud and/or human rights claims in the United States and also from other jurisdictions in the world.[10] For instance, Scope 3 GHG emissions data is often imprecise and difficult to

[9] *See* Cal. Gov. Code §§ 11346.3(a), (e) and 11340.1(a). Accessed March 2025. See Attachment A.

[10] Canada's Bill C-59 (which amended Canada's Competition Act by improving, among others, deceptive marketing practices provisions such as environmental claims and benefits of products and business activities) and European directives such as CSRD and CSDDD, among others. Accessed March 2025. See Attachment A.

meaningfully quantify due to estimation uncertainties and data limitations. The resulting Scope 3 disclosures would expose companies to undue second-guessing and liability associated with providing such information without any considerable liability protections. As mentioned above, companies would need to share value chain GHG emissions, including Scope 3 GHG emissions that result from assets and/or operations not controlled or owned by them. Calculating Scope 3 GHG emissions involves many different judgment calls, all with competing advantages and disadvantages. The verification of Scope 3 GHG emissions further depends on the level of transparency of companies in the value chain. And due to limited and/or the inconsistent disclosure of Scope 1 and 2 GHG emissions from certain value chain partners, it may not always be possible to fully calculate value chain GHG emissions in a manner that is comparable, consistent, and reliable across companies.

5. **Should the state require reporting directly to CARB or contract out to an "emissions" and/or "climate" reporting organization?**
   WSPA strongly recommends that the state mandate direct reporting to CARB rather than outsourcing to third-party organizations. This recommendation stems from significant concerns about data security and the potential complications associated with third-party involvement. Direct reporting to CARB increases the likelihood, as compared to reporting to third-party organizations that sensitive data is consistently handled in an appropriate and consistent manner, allowing maximum oversight from stakeholders, while limiting the potential introduction of partiality by third party organizations. Additionally, 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 organization.

   To further ensure data security, WSPA urges CARB to develop clear guidance on how it will organize and use the data provided by entities, while protecting the confidentiality of proprietary information. This approach will clarify data requirements and prevent reporting entities from submitting extraneous information, thereby reducing unnecessary administration costs for both CARB and the reporting entity involved.

6. **If contracting out for reporting services, are there non-profits or private companies that already provide these services?**
   For the reasons stated in the response to Question 5, WSPA strongly recommends direct reporting to CARB.

SB 253: Climate Corporate Data Accountability Act

7. **Entities must measure and report their emissions of greenhouse gases in conformance with the GHG Protocol[11], 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?**
   As noted above, the GHG Protocol was designed to be a voluntary framework and not for regulatory compliance. CARB should therefore not only permit maximum flexibility in application of the GHG Protocol, but also permit entities to fulfill SB 253 reporting obligations with approaches informed by, rather than requiring strict adherence to, the Protocol.

   WSPA further advises against standardizing or restricting the methods for any specific aspects of reporting beyond what the GHG Protocol already standardizes. Flexibility allows

[11] https://ghgprotocol.org/

corporate reporters to align their GHG accounting and reporting practices with the context of their business models and reporting practices. It also classifies Scope 3 emissions as an "optional reporting category." This approach maintains the necessary flexibility for reporting entities, allowing them to adapt to evolving circumstances and new processes, while avoiding some unnecessary administrative burdens, consistent with CARB's rulemaking obligations pursuant to Cal. Gov. Code §11346.2(b)(4). For example, with respect to organizational boundary setting, entities should have flexibility in any consolidation approach selected. Specifically, if parent companies elect to report on a consolidated approach, they should have the option to report only on entities over which they have operational control, rather than financial or equity control. This flexibility would help avoid the significant reporting burden for non-operators of collecting data from operators and mitigates challenges related to the quality, accuracy, and integrity of the reported information.

Additionally, minimizing standardization for Scope 3 emissions is essential due to the inherent complexity and variability in what these emissions encompass for individual reporting entities and how those are calculated. Unlike Scope 1 and 2 emissions, which are somewhat within a company's control, Scope 3 emissions depend on numerous external factors, including supply chain operations and end-user behavior. The ability to calculate them depends on data availability, which is outside the reporting entities' control, such as from smaller supply-chain participants who are not themselves subject to the disclosure rules at issue. Given these factors, strict standardization could lead to significant compliance costs without improving the accuracy or usefulness of reported emissions. As such, companies should have no reporting obligations for Scope 3 emissions whatsoever. Should companies voluntarily elect to disclose Scope 3 emissions, they should further have discretion to only report for the categories that are most relevant to their business enterprises, including those that are already reported externally. In any case, reporting entities should not be required to report all 15 categories of Scope 3 emissions recognized by the GHG Protocol.

For those entities that choose to disclose Scope 3 emissions, WSPA believes that CARB should allow those reporting companies to use existing disclosures of Scope 3 emissions (such as the GHG emissions from the use of products) under voluntary frameworks as well as existing federal and state regulatory reporting as described above. Otherwise, any CARB-required deviation from, or addition to, voluntary reporting frameworks such as ISSB Standards could lead to divergent reporting practices and undermine the usefulness of an entity's disclosures. Further, any such deviations may impact the modified disclosure standard's interoperability with other jurisdictional requirements to which multinational companies may be subject. The justification for CARB deviating from voluntary reporting frameworks such as the ISSB Standards must therefore meet a high degree of scrutiny, based on a clear, specific, and transparent rationale.

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?**
      The assurance requirements for Scope 3 emissions in 2030 are subject to review by CARB on or before January 1, 2027, regarding the feasibility of obtaining such an assurance. No level of third-party assurance should be required for Scope 3 emissions due to existing uncertainties regarding these emissions.

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[12]" in MRR be utilized, and if not why?**
CARB should explicitly authorize use of ISO 14064-3:2019 for purposes of obtaining assurance, noting that this GHG-specific attestation standard is the most predominantly used in the United States. However, CARB should maintain flexibility for reporting entities to use other standards, such as applicable GHG emissions reporting standards.

To support the need for process flexibility and efficiency, widespread application of the MRR verification process for out-of-state emissions reporting would prove to be an excessive administrative and capital burden on a program that does not have the critical financial underpinnings of a Cap-and-Trade program.

While reporting entities should retain flexibility to utilize the MRR program's 'reasonable assurance' standards in order to limit duplicative reporting requirements, since these standards currently apply to Scope 1, 2, and 3 emissions reporting for California-based emissions activities, the MRR standards should not be required for all reported emissions, particularly out-of-state emissions that do not already meet these requirements. The MRR emphasizes *compliance* obligations,[13,14] where facility-level emissions are subject to an emissions cap and tied to an entity's compliance obligation under the Cap-and-Trade program – thereby incentivizing investments and/or credit market participation.[15] The definition of "reasonable assurance" in the MRR is effectuated through the verification process, which "must establish reasonable assurance of conformance with measurement accuracy requirements in §95103(k) for measurements used to calculate covered emissions and covered product data." These requirements impose meter accuracy, calibration, and inspection obligations that potentially require removal from service, incurring unit downtime and lost operational opportunity. Verification requirements also extend to CARB's Low Carbon Fuel Standard,[16] to "ensure integrity in the LCFS credit market" as was proposed to a standard of reasonable assurance.[17] In contrast, SB 253 is primarily for disclosure purposes, rather than specific compliance obligations. The State has clarified that MRR assurance is distinct from California's other GHG programs and SB 253 disclosure objectives. In any case, it is justified and appropriate for CARB to limit the extent to which any reporting entity would need to provide emissions information at all and, if any reporting is required, that reporting should be limited to an entity's direct GHG emissions from entity-owned assets in California.

CARB should develop clear definitions for 'reasonable assurance' and 'limited assurance' that align with existing corporate reporting standards. Specifically,

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[12] "Reasonable Assurance" under MRR means a "high degree of confidence that submitted data and statements are valid."
[13] See CARB 2019 Annual Enforcement Report, June 2020, at page 44: "CARB's Mandatory Reporting Program requires companies to report greenhouse gas emissions to support the implementation of the Cap-and-Trade Program and AB 32 GHG Inventory. When emission reports are inaccurate, the Cap-and-Trade program may be impacted, as a result, CARB penalties in this program can be substantial.": https://ww2.arb.ca.gov/sites/default/files/2020-06/2019_Annual_Enforcement_Report.pdf. Accessed March 2025.
[14] AB 32 explicitly supported verification under CARB's Cap-and-Trade Program, calling for CARB to "adopt regulations to require the reporting and verification of statewide greenhouse gas emissions and to monitor and enforce compliance…" HSC §38530(a). Accessed March 2025. See Attachment A.
[15] See CARB Appendix C, Staff Report: Initial Statement of Reasons, Proposed Amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulations, Revised Standardized Regulatory Impact Assessment (SRIA), dated August 2, 2016, "Benefits to Typical Businesses" at page 13: https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2016/capandtrade16/appc.pdf. Accessed March 2025.
[16] See CARB Staff Report: Initial Statement of Reasons at Public Hearing to Consider Proposed Amendments to the Low Carbon Fuel Standard Regulation, dated March 6, 2018, "Addition of Third-party Verification" at page EX-6: https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2018/lcfs18/isor.pdf?_ga=2.89110427.125262710.1742331596-2090891991.1736186241. Accessed March 2025.
[17] See CARB Staff White Paper, "Framework for Development of a Low Carbon Fuel Standard Verification Program" dated October 21, 2016: https://ww2.arb.ca.gov/sites/default/files/classic/fuels/lcfs/lcfs_meetings/verification_whitepaper_102116.pdf. Accessed March 2025.

reasonable assurance verification should be allowed to be based on analytical reviews, proxy data, inquiries, and limited sampling efforts. Similarly, 'limited assurance' should be designed as a less extensive verification process than reasonable assurance.

CARB should also clearly define the scope of third-party assurance to ensure that assurance providers are limited to verifying the accuracy of reported emissions data and are not tasked with assessing compliance with SB 253's regulatory requirements. Allowing assurance providers to act as compliance auditors would improperly delegate regulatory authority to private entities, resulting in arbitrary and fragmented enforcement based on the interpretations of individual assurance firms.

Third-party assurance should function as an independent verification of data. It should not function as a mechanism for making determinations on regulatory compliance, enforcement, or policy interpretation. Compliance assessments should remain solely within CARB's jurisdiction to preserve regulatory uniformity and avoid the risk of inconsistent enforcement across entities based on which assurance provider they engage.

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?**
   While annual reporting is used by some entities who currently report greenhouse gas emissions under certain reporting programs, other reporting programs may operate on a multi-year rotation basis. WSPA recommends that CARB also consider a reporting period longer than one year.

   b. **When are data available from the prior year to support reporting?**
   Data from the prior year is generally not available for external reporting purposes until the third or fourth quarter of the following year, with Scope 3 emissions data often taking even longer given the need to acquire and verify information from external parties. As CARB develops reporting timelines, WSPA recommends that CARB take these factors into account, as sufficient time is essential for reporting entities to compile, verify, and ensure the accuracy of their data to the extent feasible. In particular, WSPA encourages that CARB should consider implementing a later deadline for Scope 3 emissions reporting, as more flexibility is required due to the complex and inherently uncertain nature of the data. The timelines proposed by CARB should not conflict with those for MRR timelines for mandatory reporting requirements based on the jurisdiction(s) applicable to the parent company reports.

   c. **What software systems are commonly used for voluntary reporting?**
   Companies often use a variety of reporting tools for tracking, measuring, and managing their GHG emissions. Traditional methods range from spreadsheet programs like Microsoft Excel or Google Sheets, which are highly manual, time-consuming, and resource-intensive processes, to specialized emissions software systems designed to streamline and enhance reporting processes. Although specialized software systems offer advantages over manual methods, they require sustained and substantial investment by reporting companies. This includes initial system design, configuration, and ongoing maintenance by information technology and emissions subject matter experts to ensure emission reporting compliance. These more specialized solutions may therefore not be appropriate or feasible to implement for all companies and could needlessly drive up the cost of compliance for companies that prefer to use more traditional methods. Accordingly, CARB should not prescribe a specific emissions

reporting tool or software, allowing companies to select the most appropriate reporting solution for their unique situations and needs.

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?**
    Consistent with the response to Question 9, WSPA identifies the earliest appropriate time that this data can be made available to be the third or fourth quarter of the following year, as data from the prior year are generally not available until then.

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.)?**
    WSPA recommends that CARB allow flexibility within a two-year reporting period to accommodate varying company needs and operational cycles. This approach would provide companies with the necessary flexibility to meet reporting requirements in a manner that aligns with their specific operational timelines. This approach will likely help ease the use of external resources within the same period – especially given that there are limited number of consultants available.

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?**
    WSPA supports a phased approach for entities newly qualifying under SB 261. For those exceeding the revenue threshold for the first time within the two years before a reporting year, WSPA recommends instituting a staggered approach with a reasonable lead-time allowance such that initial disclosures should focus on governance of climate risks and publicly available targets, as appropriate for the entity. More complex elements should be introduced later, as needed. This phased approach helps make the reporting burden more manageable, and allows entities more time to develop disclosures.

13. **Many entities that are potentially subject to reporting requirements under SB 261 are already providing other types of climate financial risk disclosures.**
    a. **What other types of existing climate financial risk disclosures are entities already preparing?**
       WSPA is aware of entities providing disclosures in sustainability reports, climate reports, and annual reports on Forms 10-K or international equivalents (i.e., with CDP) if required. In addition to the TCFD recommendations per UK Listing Rules, some entities are also subject to and reporting against the climate-related disclosure requirements in the European Sustainability Reporting Standards (ESRS) E1 Climate Change per the EU Corporate Sustainability Reporting Directive (CSRD) for the first time this year (FY2024). However, the EU CSRD should not be looked to as a model regulation. In particular, WSPA notes here that the European Commission is considering an "Omnibus" legislative package[18] to simplify their sustainability reporting requirements and make significant changes to sustainability reports, recognizing that to boost competitiveness and growth, the European Union needs "to foster a favourable business environment and ensure that companies are not stifled by excessive regulatory burdens."

[18] 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. Accessed March 2025. See Attachment A.

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

WSPA is aware of approaches using a financial materiality standard aligned with U.S. SEC requirements and Supreme Court case laws as a way to determine if a risk is significant and relevant for disclosure to stakeholders. CARB should adopt SEC's long-standing financial materiality standard for SB 261 disclosures, i.e., a matter is material if there is a substantial likelihood that a reasonable investor would consider it important when determining whether to buy or sell securities.

Adopting a financial materiality standard would help limit reporting burdens while still ensuring that reports disclose material risks, and would be consistent with existing SEC requirements that reporting entities are already familiar with. Other materiality standards, such as the EU Corporate Sustainability Reporting Directive's double materiality standard, would impose an undue burden on reporting entities, and would conflict with CARB's obligation to reduce regulatory burdens for covered entities, pursuant to Cal. Gov. Code §11346.2(b)(4).

c. 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?

WSPA notes here that not all areas identified by the Task Force on Climate-Related Financial Disclosures may be relevant to a business entity, informative to users of the report, or appropriate for disclosure. For example, a company may opt not to disclose their transition plans in detail because of the confidential nature of their business strategy.

d. 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?

Again, there may not be specific reports but rather disclosures within financial or annual reports, such as those in Forms 10-K. As discussed above, reporting thresholds should align with existing SEC financial materiality thresholds and existing Supreme Court precedent.

Thank you for considering our comments. We would welcome the opportunity to discuss these concerns in more detail. If you have any immediate questions, please feel free to contact me at sellinghouse@wspa.org. We look forward to working with you on these important issues.

Sincerely,

S. Ellin

Sophie Ellinghouse
Vice President, General Counsel & Corporate Secretary