

CARB Advances Climate Disclosure Rules as Ninth Circuit Appeal Continues

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As we previously [noted](#), a legal challenge to California's climate disclosure laws has made its way to the Ninth Circuit Court of Appeals, which stayed enforcement of one of the laws pending appeal.^[1] While the appeal is pending, the California Air Resources Board (CARB) has continued to refine how it plans to operationalize the laws. On December 23, 2025, CARB issued [proposed implementing regulations](#) for these laws, together with related [staff materials](#) in support of the regulations. The public comment period on the proposed regulations began on December 26, 2025, and runs through February 9, 2026, after which CARB will hold a public hearing on February 26, 2026. Below we discuss several key updates that companies should be aware of, pending resolution of the appeal.

COVERAGE AND CORE OBLIGATIONS UNDER SB 253 AND SB 261

SB 253, the Climate Corporate Data Accountability Act, will require covered companies to publicly disclose their greenhouse gas emissions. As previewed by CARB, initial reporting will focus on Scope 1 and Scope 2 emissions, ^[2] with Scope 3 phased in thereafter.^[3]

SB 261, by contrast, requires a biennial climate-related financial risk report aligned with Task Force on Climate-related Financial Disclosures (TCFD) (2017) or International Financial Reporting Standards Sustainability Disclosure Standards, as issued by the International Sustainability Standards Board (IFRS S2). To assist reporting entities, CARB has posted a detailed [checklist](#) discussing topics to be covered by these reports, including governance, strategy, risk management, and metrics and targets, as well as clear explanations for any omissions and plans to close gaps over time.

“DOING BUSINESS IN CALIFORNIA”

As noted [previously](#), these laws only apply to companies “doing business in California” that meet certain financial thresholds. In its proposed regulations, CARB partially aligned the definition of “doing business” with the California Franchise Tax Board’s “doing business” standard set forth in the California Franchise Tax Board’s Revenue & Taxation Code § 23101, with notable exceptions. Ultimately, an entity would be considered to do business in California if either of the following apply:

1. The entity is organized or commercially domiciled in California; or

2. The entity's sales attributable to California exceed a dollar threshold or represent at least 25% of the entity's overall sales.^[4]

FIRST-YEAR GREENHOUSE GAS REPORTING

With respect to greenhouse gas reporting under SB 253, CARB's proposed regulations would set an initial deadline of August 10, 2026, for Scope 1 and Scope 2 inventories. Under the text of SB 253, the California legislature directed CARB to issue regulations that require limited assurance with respect to the Scope 1 and Scope 2 inventories that are reported in 2026. CARB's proposed regulations do not include a limited assurance requirement, and CARB has indicated it intends to add this requirement in future years through subsequent rulemaking. Similarly, Scope 3 reporting is not covered by CARB's proposed regulations and is anticipated to commence in 2027 as part of subsequent rulemaking.

CARB's proposed regulations also clarify what period of time should be covered in entities' emissions reports. CARB's intention is for entities to have at least six months between their fiscal year-end and the reporting deadline for reporting those emissions. As such, for the first report that is anticipated to have a deadline of August 10, 2026, entities with a fiscal year-end between February 2 and December 31, 2026, would report FY 2025 data, while entities with a fiscal year-end between January 1 and February 1, 2026, would report FY2026 data.

We note that CARB has indicated it intends to exercise enforcement discretion during the first reporting period to provide additional leeway as companies transition into complying with these new requirements. CARB noted this is particularly true for companies that were not collecting this data or planning to collect this data prior to CARB's December 2024 Enforcement Notice.

PRACTICAL TAKEAWAYS

Now that CARB has proposed a "doing business" definition and the first-year greenhouse gas reporting requirements, companies can more readily assess whether they are subject to the law and plan next steps. Priority actions include evaluating applicability based on California's updated proposed definition of "doing business in California," mobilizing Scope 1 and Scope 2 data collection in preparation for the proposed August 10, 2026 deadline, and monitoring CARB's next rulemaking for details related to Scope 3 reporting and assurance requirements in future reports. Perhaps most importantly, however, companies should track the current legal challenges to the laws, including the current appeal pending in the Ninth Circuit.

For further information or questions about the California climate bills, please contact your Winston & Strawn relationship attorney or the authors of this post.

[1] The first deadline under the second law is still several months away, which may be why the Ninth Circuit did not stay that law pending appeal as well.

[2] Scope 1 emissions are direct GHG emissions from an entity's owned/controlled assets and operations, regardless of location. Scope 2 emissions are indirect GHG emissions associated with an entity's purchased power or heating.

[3] Scope 3 emissions are indirect upstream and downstream GHG emissions associated with others in an entity's value chain (both upstream and downstream), including, for example, GHG emissions associated with purchased goods and services or the transportation thereof. <https://www.winston.com/en/blogs-and-podcasts/winston-and-the-legal-environment/newly-enacted-california-climate-bills-create-sweeping-disclosure-requirements-for-companies-across-the-country>.

[4] The dollar threshold is updated each year; for 2024, the threshold was \$735,019. For businesses that have income inside and outside of California, CARB has indicated that they should apply the Franchise Tax Board's apportionment rules to calculate sales attributable to California.

Authors

[Madeline Barone](#)

[Sam Falcon Trimbach](#)

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