

# COMPLIANCE DEADLINES APPROACH FOR CALIFORNIA'S FIRST FORAYS INTO MANDATORY ESG REPORTING

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In late 2023, Governor Newsom signed three landmark Environmental, Social, and Governance (ESG) disclosure laws: SB 253, SB 261, and AB 1305. AB 1305 came into effect on January 1, 2024, and the statutory deadlines for enforcement for both SB 253 and SB 261 begin this year. But as deadlines loom, significant questions remain.

## **SB 253—The Climate Corporate Data Accountability Act**

Codified as amended at Cal. Health & Safety Code section 38532, SB 253 requires for-profit entities formed under U.S. law to annually disclose their Scope 1, Scope 2, and Scope 3 greenhouse gas emissions.<sup>1</sup> As defined by the statute, Scope 1 emissions are those from sources controlled by the reporting entity,<sup>2</sup> Scope 2 emissions come “from consumed electricity, steam, heating, or cooling,”<sup>3</sup> and Scope 3 emissions include sources both upstream and downstream of the reporting entity’s business activities.<sup>4</sup>

The law applies to business entities formed under U.S. law with over \$1,000,000,000 in annual

revenue that “do business in California” and are not excluded by statute or regulation.<sup>5</sup> Reporting entities must disclose Scope 1 and 2 emissions annually starting in 2026, and Scope 3 emissions annually starting in 2027.<sup>6</sup> Initially, reporting will conform to the Greenhouse Gas Protocol standards and guidance, although down the line the California Air Resources Board (CARB) has discretion to adopt a different standard.<sup>7</sup> Reporting entities must obtain independent third-party assurance, starting with “limited assurance” for the 2026 reporting cycle, “reasonable assurance” starting in 2030 for Scope 1 and 2 emissions,<sup>8</sup> and “limited assurance” in 2030 for Scope 3 emissions.<sup>9</sup>

By law, CARB may impose a fee on reporting

entities to fund the program.<sup>10</sup> For non-compliance, the law empowers CARB to bring enforcement proceedings and impose administrative penalties of up to \$500,000.00 per reporting year.<sup>11</sup> CARB's implementing regulations under SB 253—when they are finalized later this year—are exempt from review under the California Environmental Quality Act (CEQA).<sup>12</sup>

### **SB 261—The Climate Related Financial Risk Act**

Codified as amended at California Health & Safety Code section 38533, SB 261 requires for-profit entities formed in the United States to prepare bi-annual reports disclosing physical and transition risks related to climate change, as well as the steps that covered entities are taking to reduce those risks.<sup>13</sup> Reporting should follow recognized voluntary reporting standards, such as those published by the Task Force on Climate-related Financial Disclosures (TCFD),<sup>14</sup> and reports must be publicly available on covered entities' websites.<sup>15</sup>

The law defines “covered entity” as business entities formed under U.S. law with over \$500,000,000.00 in annual revenue that “do business in California” and are not insurance companies.<sup>16</sup> The initial reporting deadline is set by statute as January 1, 2026,<sup>17</sup> and CARB will impose an administrative fee on covered entities, as with SB 253.<sup>18</sup> CARB is also charged with creating an administrative enforcement program, with penalties for noncompliance not to exceed \$50,000.00 per reporting year.<sup>19</sup> As with SB 253, CARB's implementing regulations are not subject to CEQA review.<sup>20</sup>

### **AB 1305—Voluntary Carbon Market Disclosures**

AB 1305, codified at Cal. Health & Safety Code sections 44475-44475.3, is California's anti-greenwashing law. The law requires companies that market or sell carbon offset projects to post on their websites information regarding the projects, how project success is measured, and “[d]etails regarding accountability measures if a project is not completed or does not meet the projected emissions reductions or removal benefits[.]”<sup>21</sup> Companies that operate within California and that make claims of “zero emissions” or “carbon neutral[ity]” within the state are likewise required to publish information supporting those claims on their company websites.<sup>22</sup> Disclosures must be updated annually.<sup>23</sup> Enforcement actions may be brought by the Attorney General of California, district

attorneys, county counsel, or city attorneys.<sup>24</sup> For non-compliance, the law provides for daily civil penalties of \$2,500.00 not to exceed a total fine of \$500,000.00.<sup>25</sup>

Although the law has been in effect since January 1, 2024, most expect future amendments to clarify its requirements and intended scope.

### **Initial Implementing Regulations**

AB 1305 is self-executing. But both SB 253 and SB 261 require CARB to promulgate implementing regulations. CARB has yet to do so. In the absence of regulations or guidance documents, CARB issued an enforcement notice explaining that the agency will “exercise enforcement discretion for the first reporting cycle, on the condition that entities demonstrate good faith efforts to comply with the requirements of the law” in late 2024.<sup>26</sup> CARB also hosted several well-attended public workshops in 2025 that provided some insights before issuing its draft rule on December 9, 2025.<sup>27</sup>

While future rulemakings will likely follow, the initial draft rulemaking provides some guidance to aid businesses trying to determine whether they are in or out of scope during this first reporting cycle.

First, CARB plans to adopt the broad definition of revenue from the California Revenue and Tax Code:<sup>28</sup>

The gross amounts realized (the sum of money and the fair market value of other property or services received) on the sale or exchange of property, the performance of services, or the use of property or capital (including rents, royalties, interest, and dividends) in a transaction that produces business income, in which the income, gain, or loss is recognized (or would be recognized if the transaction were in the United States) under the Internal Revenue Code, as applicable for purposes of this part. Amounts realized on the sale or exchange of property shall not be reduced by the cost of goods sold or the basis of property sold.<sup>29</sup>

This confirmed CARB's approach to defining revenue as near universal, with companies falling in scope no matter how much of their annual revenues come from California or abroad. At its most recent workshop on November 18, 2025, CARB explained that it chose this definition, in part, because it is easily verifiable based on Franchise Tax Board filings. The draft rule's definition of “covered entity” clarifies that businesses will only fall in scope

if they surpass the statutory revenue thresholds for both of their previous two fiscal years.<sup>30</sup>

Second, the draft rule proposes defining “doing business in California” for both statutes by reference to California Revenue and Tax Code section 23101:<sup>31</sup>

[A] taxpayer is doing business in this state for the taxable year if . . . :

- (1) The taxpayer is organized or commercially domiciled in the state.
- (2) Sales, as defined in subdivision (e) or (f) of Section 25120 as applicable for the taxable year, of the taxpayer in this state exceed the lesser of five hundred thousand dollars (\$500,000) or 25 percent of the taxpayer's total sales. For purposes of this paragraph, sales of the taxpayer include sales by an agent or independent contractor of the taxpayer. For purposes of this paragraph, sales in this state shall be determined using the rules for assigning sales under Sections 25135 and 25136, and the regulations thereunder, as modified by regulations under Section 25137.<sup>32</sup>

Adjusted for inflation, the sales threshold for 2025 was \$757,070.00. As CARB said at the November 18, 2025 workshop, the draft rule omits the definitions in subsection b parts 3 and 4—which provide for low property and payroll tax thresholds—to ensure that regulated entities have a sufficient nexus to California to justify the costs of reporting and the annual fee. Still, given the low sales threshold and the size of the California market, most entities with a connection to California that meet the statutory revenue thresholds will likely qualify as “doing business in California.”

Third, the draft regulation provides some more guidance on the reporting requirements for parents and subsidiaries. Both SB 253 and SB 261 allow for consolidated reporting, giving parents the option of reporting for their subsidiaries.<sup>33</sup> The draft regulation tracks with the definition of the parent-subsidiary relationship in the Cap and Invest regulations.<sup>34</sup> At the November 18, 2025 workshop, CARB reiterated that the consolidated reporting is optional, and a parent-subsidiary relationship is irrelevant to the scope analysis; each entity must determine for itself whether it is in or out of scope based on the statute and regulations.

Fourth, the draft rule creates reporting deadlines for 2026. For SB 253, CARB plans to require reporting by August 10, 2026.<sup>35</sup> Companies with a fiscal year ending before February 1, 2026, should use FY26 data.<sup>36</sup> Companies with a fiscal year ending between

February 2, 2026 and December 31, 2026, should use FY25 data.<sup>37</sup> For SB 261, the January 1, 2026 deadline is set by statute, although, as discussed below, the statute has been enjoined by the Ninth Circuit pending appeal. CARB opened its reporting docket on December 1, 2025 for entities that still wish to submit links to their public climate risk reports.

Finally, the draft rule proposes the following categories of excluded or exempted entities from reporting under either SB 253 or SB 261: (1) non-profit or charitable organizations, as defined by the Internal Revenue Code; (2) entities whose only presence in California is the presence of teleworking employees; (3) federal, state, and local government entities; (4) entities that are majority owned by government entities; and (5) entities regulated by the California Department of Insurance.<sup>38</sup>

Comments on the draft rule were due on February 9th, and CARB held a public hearing on February 26th.

### Ongoing Litigation and Uncertainty

There are two pending federal court challenges to the enforceability of SB 253 and SB 261. The first filed case, *U.S. Chamber of Commerce v. Sanchez*, argues that SB 253 and SB 261 amount to compelled speech and are thus unconstitutional under the First Amendment. The case is currently in the Ninth Circuit on an interlocutory appeal of a denial of a preliminary injunction by the Central District of California.<sup>39</sup> On November 18, 2025, the Ninth Circuit granted an injunction pending appeal against SB 261 but not against SB 253.<sup>40</sup> Then, on December 1, 2025, CARB issued an enforcement advisory confirming that it “will not enforce Health and Safety Code section 38533 against covered entities” and “will provide further information—including an alternate date for reporting, as appropriate—after the appeal is resolved.”<sup>41</sup> The Court held argument on January 9th, 2026, and, as of the time of writing, has not yet released its opinion.

The second case, *Exxon Mobil Corporation v. Sanchez*, was filed in late September in the Eastern District of California.<sup>42</sup> Exxon Mobil raises similar, but distinct, compelled speech arguments to those in the *Chamber of Commerce* case. That case is still in its early stages.

### Conclusions and Guidance

While we continue to await the final rule, we can still lean on the statutory text and draft rule to help clients during this first reporting cycle.

Initially, to determine whether SB 253 or

SB 261 apply, companies should consider three factors. First, SB 253 and SB 261 only apply to companies formed under U.S. law, so foreign business entities are not covered and should begin the analysis at the level of their highest U.S. subsidiary. Second, companies should consider whether they meet one or both revenue thresholds for their prior two fiscal years using the broad definition of revenue from California Revenue and Tax Code section 25120(f)(2). Third, companies should determine whether they are “doing business in California” by consequence of either (1) being formed or domiciled in California or (2) having sales in California in 2025 above \$757,070.00. If all three criteria are met, the entity falls in scope and should prepare the applicable report(s).

Companies should also remember the standard for this first reporting cycle is not perfection, but good faith. The biggest mistake would be to not report at all. CARB has reiterated that it understands that there will be some friction as the regulated community adapts. Companies with no prior history of emissions or climate-related financial risk reporting should do the best they can with an eye on refining the process in future cycles.

Finally, with uncertainty remaining regarding CARB’s regulations, potential amendments, and ongoing litigation, companies should make sure they stay abreast of updates that could impact future reporting cycles.

### ENDNOTES

- (1) Cal. Health & Safety Code § 38532(c)(1).
- (2) *Id.* § 38532(b)(3).
- (3) *Id.* § 38532(b)(4).
- (4) *Id.* § 38532(b)(5).
- (5) *Id.* § 38352(b)(2).
- (6) *Id.* § 38352(b)(2)(A)(i).
- (7) *Id.* § 38352(b)(2)(A)(ii), (iv).
- (8) *Id.* § 38352(b)(2)(F)(ii).
- (9) *Id.* § 38352(b)(2)(F)(iii).
- (10) *Id.* § 38352(b)(2)(G).
- (11) *Id.* § 38352(f)(2).
- (12) *Id.* § 38352(g).
- (13) *Id.* § 38533(b)(1)(A).
- (14) *Id.* § 38533(b)(1)(A)(i).
- (15) *Id.* § 38533(c)(1).
- (16) *Id.* § 38533(a)(4).
- (17) *Id.* § 38533(b)(1)(A).
- (18) *Id.* § 38533(c)(2).
- (19) *Id.* § 38533(f)(2).
- (20) *Id.* § 38533(g).
- (21) Cal. Health & Safety Code § 44475(b).
- (22) *Id.* § 44475.1-44475.2.
- (23) *Id.* § 4475.3(b).
- (24) *Id.* § 4475.3(a).

(25) *Id.*

(26) Enforcement Notice, The Climate Corporate Data Accountability Act, California Air Resources Board (Dec. 5, 2024), available at <https://ww2.arb.ca.gov/sites/default/files/2024-12/The%20Climate%20Corporate%20Data%20Accountability%20Act%20Enforcement%20Notice%20Dec%202024.pdf>.

(27) Draft Rule, California Corporate Greenhouse Gas (GHG) Reporting and Climate Related Financial Risk Disclosure Programs, California Air Resources Board (Dec. 9, 2025), available at [https://ww2.arb.ca.gov/sites/default/files/2025-12/200s%20appA\\_regulatory%20text.pdf](https://ww2.arb.ca.gov/sites/default/files/2025-12/200s%20appA_regulatory%20text.pdf) [hereinafter Draft Rule].

(28) *Id.* at 3.

(29) Cal. Rev. & Tax Code § 25120(f)(2).

(30) Draft Rule, supra note 27, at 3.

(31) *Id.* at 2.

(32) Cal. Rev. & Tax Code § 23101(b).

(33) See Cal. Health & Safety Code § 38532(c)(2)(A)(iii); *Id.* § 38533(b)(2).

(34) Draft Rule, supra note 27, at 3; compare 17 CCR § 95833(a).

(35) Draft Rule, supra note 27, at 7.

(36) *Id.*


(37) *Id.*

(38) *Id.* at 1.

(39) Case No. 25-5327 (9th Cir.).

(40) *Id.*

(41) Enforcement Advisory, Climate-Related Financial Risk Reporting (SB 261), California Air Resources Board (Dec. 1, 2025), available at <https://ww2.arb.ca.gov/sites/default/files/2025-12/Dec%201%20SB%20261%20Enforcement%20Advisory.pdf>.

(42) Case No. 2:25-at-01462 (E.D. Cal.). 

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