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CARB floats definitions for key terms in California climate disclosure laws and delays final rule

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On May 29, 2025, the California Air Resources Board (CARB) held its first public workshop on its progress for implementing California's climate disclosure laws, S.B. 253 and S.B. 261. CARB announced initial proposals relating to the laws' scope and requested feedback on a number of questions. CARB also indicated that the July 1, 2025 statutory deadline to adopt rules for S.B. 253 will not be met, and suggested a regulatory timetable likely to push a final regulation into 2026.

As we have discussed in our prior client updates,[1] S.B. 253 (the Climate Corporate Data Accountability Act) and S.B. 261 (the Climate-Related Financial Risk Act) will require in-scope companies to report on their greenhouse gas (GHG) emissions and climate-related risks, respectively. CARB's workshop was the public's first opportunity to gain insight on the direction CARB is proposing to take in its implementation of the laws.

Delay in regulatory timeline

Although July 1, 2025 is the statutory deadline for CARB to adopt regulations governing the disclosure requirements under S.B. 253, CARB's discussion of the rulemaking timeline at the workshop indicated that this deadline would not be met. Instead, CARB stated that it aims to release regulatory text – which at one point in the workshop, it described as a "draft" – by the end of 2025.

CARB avoided committing to a specific timeline during the workshop. However, according to the rulemaking framework outlined by CARB, the process is currently at the informal, pre-rulemaking phase, which will continue over the next several months with further workshops and will culminate in a formal public notice accompanied by a proposed rule. This will be followed by:

- a 45-day comment period,
- possible additional 15-day comment periods (in case of amendments),
- formal approval of the rule by CARB, and
- review and approval by the Office of Administrative Law.

Assuming the "end of the year" target mentioned in the workshop by CARB for "draft" regulatory text is referring to a formal proposed rule, the rulemaking process is almost certain to push a final rule to 2026.

Such a delay could create regulatory uncertainty for companies given that the compliance timetables under S.B. 253 remain unchanged. Under S.B. 253, reporting companies will need to collect data for reporting Scope 1 and Scope 2 emissions and – for the first time – Scope 3 emissions in 2026 for reporting in 2027. Without final rules in place in advance of the 2026 reporting period, reporting companies will lack clear guidance as to what data to collect, which could be particularly problematic for Scope 3 emissions given the wide variability in reporting practices for Scope 3 emissions

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and the challenges associated with collecting value chain emissions data. While CARB's December 2024 enforcement notice moderates the compliance burden on companies for Scope 1 and Scope 2 reporting in 2026, the notice does not apply to emissions reporting in 2027. Whether CARB supplements or amends this notice to address uncertainties associated with these rulemaking delays remains to be seen.

Initial "staff concepts" on key issues

During the workshop, CARB staff presented initial proposals – referred to as "staff concepts" – for how three key issues regarding the scope of S.B. 253 and S.B. 261[2] might be defined by CARB. CARB noted that its proposals remain subject to further review and revision and requested feedback from stakeholders on their suitability, including whether they are too broad in scope, or require further specificity.

Defining "doing business in California"

S.B. 253 and S.B. 261 apply to companies formed in the U.S. that "do[] business in California," a phrase not defined in the statutes. As anticipated, CARB's initial proposal for "do[ing] business in California" is to adopt the definition used in Cal. Rev. and Tax Code § 23101. However, CARB is proposing certain modifications to the definition that effectively narrow its scope. As we have discussed in our prior client updates, § 23101 defines the phrase expansively as "actively engaging in any transaction for the purpose of financial or pecuniary gain or profit"[3] in California, ***or*** if any of the following conditions are met: (1) being "organized or commercially domiciled" in California or (2) having California sales, property or payroll exceeding specified amounts.[4] CARB proposes that a company would be considered to be doing business in California if it "actively engag[ed] in any transaction" in California ***and*** is organized or commercially domiciled in California or meets the sales, property or payroll thresholds. CARB further proposed to incorporate § 23101.5 in its definition, which provides the Franchise Tax Board the authority to determine that a company is "not doing business" in California if its activities in the state are limited in certain respects, although how this would work for laws administered by CARB is unclear.

While CARB's use of the Revenue and Tax Code definition is not unexpected, its proposed modification of the definition allays some concerns that companies would become subject to reporting solely as a result of a "one-off" transaction in California. Under CARB's proposed modified version, a company would have to have some sort of "footprint" in the state, even if it is a modest one, beyond a single transaction to be considered doing business in California.

Defining "total annual revenue"

S.B. 253 and 261 apply to companies with total annual revenues in the prior fiscal year that exceed $1 billion or $500 million, respectively. As with "doing business in California," the statutes are silent as to how a company's total annual revenue is to be calculated.

CARB's initial proposal for the definition of revenue is to adopt the definition of "gross receipts" in Cal. Rev. and Tax Code §25120(f)(2), which is as follows (subject to certain exceptions):

> "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."

Note that this proposed definition is fairly expansive, and would clearly not be limited to revenues generated within the United States.

CARB requested further public input on whether this definition is in alignment with current business practice (as opposed to defining the term with respect to a company's financial statements, which are based on accounting rules for calculating revenue). CARB is also seeking input regarding how revenue should be allocated between parents and subsidiaries.

Corporate relationships

CARB is also proposing a definition of corporate associations that would appear to extend disclosure obligations to out-of-scope parent corporations based solely on their level of ownership or control over their in-scope subsidiaries. CARB's

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initial proposal is to incorporate the approach to corporate relationships in the California Cap-and-Trade program. This program includes rules governing what sort of corporate affiliates – referred to as "corporate associations" – are required to be disclosed by participants in the program. According to the regulations, participants must disclose parent entities that meet the definition of a "direct corporate association" of the participant, which is defined as a corporate association involving ownership or control of 50% or greater, whether or not the parent entity is itself subject to the program.

Although CARB's discussion on this point lacked specificity, it appears that CARB is proposing to consider an in-scope subsidiary's parent corporation to be in scope as well if the parent corporation meets the definition of a "direct corporate association" of the subsidiary (i.e., its ownership stake meets or exceeds 50%) even if the parent corporation does not itself meet the definition of doing business in California. How this approach would apply to parent entities further up the corporate chain or other affiliated entities is unclear. Notably, CARB did not indicate an intention to apply this test in determining whether revenues of a parent and a subsidiary should be aggregated for the purposes of calculating whether the annual revenue thresholds have been met. CARB is seeking input on the appropriateness of this definition of corporate associations or whether alternatives should be considered.

Next steps

Companies should continue to monitor CARB's workshops and other communications as it works toward developing proposed regulations later this year. As noted, the workshop was limited to a handful of threshold applicability issues, leaving questions about substantive reporting requirements to future sessions. In addition, certain critical questions about applicability discussed in our prior client updates, such as whether to aggregate revenues among affiliated companies for the purposes of the revenue thresholds, remain unanswered for now.

Meanwhile, the federal court challenge to S.B. 253 and 261 continues with a hearing on plaintiffs' motion for preliminary injunction expected to occur within the next several months.[5] Discovery is scheduled to begin later this year and expected to continue through the end of 2025 and the beginning of 2026 with a bench trial scheduled for October 2026. Companies should monitor this litigation as well.

Finally, President Trump's April 8, 2025 executive order titled "Protecting American Energy From State Overreach" calls on the Attorney General to identify "State laws purporting to address 'climate change',…carbon or 'greenhouse gas' emissions" that are or may be "unconstitutional, preempted by Federal law, or otherwise unenforceable" and "take all appropriate action to stop the enforcement of State laws." The Attorney General is required to issue a report within 60 days of the order.[6] Whether the Attorney General targets S.B. 253 and 261 based on this executive order, including, for example, by joining the federal court challenge, remains to be seen.

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If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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[1] Our prior analysis and updates on these laws can be found here and here.

[2] Unlike S.B. 253, S.B. 261 does not give CARB authority to issue regulations to implement its terms (with the exception of a few narrow administrative issues), and CARB is soliciting feedback on how it should implement S.B. 261, including whether it should issue guidance rather than formal regulations. Nonetheless, CARB generally addressed both statutes in its discussion of its "staff concepts" during the workshop.

[3] Cal. Rev. and Tax Code § 23101(a).

[4] Cal. Rev. and Tax Code § 23101(b).

[5] The hearing is currently scheduled for June 24, but the parties have requested that it be rescheduled for a date in July.

[6] As of the date of this Client Alert, this report does not appear to have been issued.

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