

## SB 253/261 update: CARB issues draft rules aligned with November proposals and sets public hearing

December 15, 2025 | Client Update | 4-minute read

On December 9, 2025, the California Air Resources Board (CARB) issued initial proposed regulations for SB 253 and SB 261, and set February 26, 2026 as the date for a public hearing to consider the proposed regulations. While the proposed regulations largely align with key concepts CARB previewed at its November 2025 public workshop, they provide some additional details on recordkeeping, fees, penalties and injunctive relief.

### Proposed “initial regulation”

The [proposed regulations issued by CARB](#) contain few changes to the key concepts previewed at CARB’s November 2025 public workshop discussed in our earlier [client update](#). Specifically, key definitions remain largely unchanged, including “doing business in California” and “revenue,” which are still based on the California Revenue and Tax Code, and “parent” and “subsidiary”. Additionally, the categories of exempt entities and first-year SB 253 reporting deadline for Scope 1 and Scope 2 emissions of August 10, 2026 remain unchanged.

The draft regulatory materials issued by CARB also include a [notice of a public hearing](#) set for February 26, 2026, for CARB to consider adopting the proposed regulations, and a [Staff Report: Initial Statement of Reasons](#) explaining the rationales for the proposed regulations. In the staff report, CARB explains that the proposed regulations are a narrow initial rulemaking intended to (i) establish fee structures, (ii) clarify which entities are subject to fees, and (iii) set the first-year SB 253 reporting deadline. The staff report notes that other SB 253 and SB 261 program requirements, including reporting and assurance requirements and enforcement provisions, will be developed and adopted through subsequent rulemaking.

### New details in the proposed regulations

The proposed regulations contain certain new details that had not previously been outlined by CARB, or that differ slightly from what was presented at the November 2025 workshop:

#### – Recordkeeping

- Entities are required to maintain records demonstrating that they meet the “doing business in California” and “revenue” thresholds for five years.

#### – Fee administration

- The proposed regulations establish a formula for calculating the reporting fees for SB 253 and SB 261 which is based on the total amount of funds necessary to recover the costs of implementing the programs <sup>1</sup> (with a

contingency), as well as loan repayments by CARB, and is generally adjusted for inflation.

- Beginning in 2026, each year, on or before September 10, in-scope entities will receive a fee notice, and have 60 days to pay the fee. A failure to timely pay will subject entities to a late fee.

#### – **Penalties for payment violations**

- In addition to late fees, CARB can assess penalties against entities for failure to pay fees. The proposed regulations establish that a failure to pay the full amount of any required fee will constitute a single, separate violation for each day or portion thereof that the fee has not been paid after its due date.

#### – **Injunctions**

- The proposed regulations allow for entities to be enjoined for any fee payment violations.

#### – **Determining “revenue” for purposes of meeting applicable thresholds for unitary businesses**

- As flagged in our prior client update, CARB had indicated at the November 2025 workshop that a determination of whether an entity exceeds applicable revenue thresholds would be determined at the individual entity level, except if a parent and its subsidiaries file California taxes as a unitary business, the revenue of a parent's subsidiaries would count towards the revenue of the parent. However, the proposed regulations do not incorporate this concept.

## **Next steps: Comment process and public hearing**

- The public hearing will take place in person at CARB's offices in Sacramento, California, on February 26, 2026, with a remote option available. A public agenda will be posted 10 days prior to the meeting. Stakeholders may present oral or written comments during the public hearing or submit written comments beforehand.
- In accordance with California's Administrative Procedure Act, a 45-day public comment period on the proposed regulations will commence on December 26, 2025, and conclude on February 9, 2026. Written comments not submitted during the public hearing must be submitted during this period.
- Following the public hearing, CARB may approve for adoption the proposed regulations as currently proposed or with modifications. If substantive modifications are adopted, a further 15-day public comment period on the modified regulations will ensue.
- Interested stakeholders should utilize the public comment period to submit comments to CARB.

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.

**David A. Zilberberg**

+1 212 450 4688  
david.zilberberg@davispolk.com

**Michael Comstock**

+1 212 450 4374  
michael.comstock@davispolk.com

**Timothy J. Sullivan**

+1 212 450 4108  
timothy.sullivan@davispolk.com

---

*This communication, which we believe may be of interest to our clients and friends of the firm, is for general information only. It is not a full analysis of the matters presented and should not be relied upon as legal advice. This may be considered attorney advertising in some jurisdictions. Please refer to the firm's privacy notice for further details.*

<sup>1</sup> This includes personnel salaries and benefits, legal defense costs and contracting expenses.