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SB 253 update: CARB clarifies scope and previews rules for 2027 and beyond

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Over the past several weeks, CARB continued its implementation of SB 253, California's climate disclosure law, by issuing proposed tweaks to its initial rules, which (among other things) clarify that applicability is to be determined at the individual entity level, and continuing to develop proposed rules for 2027 and beyond. CARB plans to continue its public engagement efforts with respect to these rules in the coming weeks through the public comment process and sector-specific sessions.

Over the past several weeks, two significant developments in the California Air Resources Board's (CARB) implementation of SB 253 occurred:

- On July 27, 2026, CARB issued its previously announced 15-Day Notice proposing modifications to the initial regulation adopted in February 2026 (the Initial Regulations), with comments due August 11, 2026. Most significantly, the modifications include definitive clarifications that both the "doing business in California" and revenue applicability thresholds are evaluated at the individual business entity level, formalizing the enforcement leniencies previously announced in CARB's December 2024 Enforcement Notice, and confirming November 10 as the ongoing annual reporting deadline.
- On July 22, 2026 (the July 2026 Workshop), CARB held its second public workshop regarding its proposals for the second set of regulations that will govern annual Scope 1, Scope 2, and Scope 3 reporting and assurance beginning in 2027 (the 2027 Regulations).

Continuing to loom over CARB's activity is the specter of a potential ruling by the Ninth Circuit on the district court's denial of the plaintiffs' preliminary injunction motion in the federal lawsuit challenging SB 253 and SB 261, which could either remove the existing stay of SB 261 or enjoin SB 253, potentially putting the entire program on hold.

Clarifications to the initial rulemaking

Applicability is to be determined on an entity-by-entity basis

Significantly, the 15-Day Notice proposes to clarify an issue that remained ambiguous throughout the rulemaking process: how should SB 253's applicability thresholds be determined in the context of corporate affiliates or multiple entities under common ownership? The 15-Day Notice proposes that **both "doing business in California" and calculation of revenues be determined at the individual corporate entity level.**

This resolves a critical issue for businesses with multiple subsidiaries or financial firms with funds with multiple portfolio companies or investments. Prior to the issuance of the 15-Day Notice, it was unclear whether an entity could be considered to be "doing business in California" based solely on the activities of a corporate affiliate or portfolio company or whether revenues should be aggregated among affiliated entities in determining whether the revenue threshold is met. While CARB suggested throughout the rulemaking that determinations are to be made at the entity level, CARB had at times indicated that an entity's state tax filing status, which provides for aggregated reporting or disregarding entities under certain circumstances, could be determinative. For example, a CARB FAQ in November 2025 stated that revenues should be aggregated for corporate groups filing as a "unitary business." The 15-Day Notice proposes the following revisions to the Initial Regulations that appear to definitively resolve this issue:

- **Definition of "doing business in California."** The 15-Day Notice proposes to revise the definition to state "Doing business in California is evaluated at the individual business entity level." The definition also clarifies that the tax code provision defining "doing business" that is incorporated by reference should be deemed to be revised to replace the term "taxpayer," a term defined under the tax code, with "business entity," which is a term defined under SB 253 and the Initial Regulations, further disclaiming any intention to import tax rules into the Initial Regulations.
- **Definition of "revenue."** Similarly, the 15-Day Notice proposes to add the phrase "Revenue is evaluated at the individual business entity level" to the definition of revenue. As noted, this appears contrary to prior CARB statements suggesting that for companies filing as a unitary business, revenue is aggregated among the entire group.

Other notable changes in the 15-Day Notice

- **Formalization of first-year reporting leniencies.** The 15-Day Notice incorporates CARB's enforcement approach for the 2026 reporting year, consistent with CARB's December 5, 2024 Enforcement Notice. These leniencies previously existed only as guidance, but are now part of the regulatory text as follows:
  - Companies may submit Scope 1 and Scope 2 emissions data that can be determined from information they possessed or were collecting on or before December 5, 2024.
  - Limited assurance for Scope 1 and Scope 2 data will not be required.
  - Companies not collecting Scope 1 or Scope 2 data as of December 5, 2024 may submit a letter on company letterhead so indicating instead of a data report.
- **November 10 is confirmed as the annual reporting deadline.** The 15-Day Notice puts the new reporting deadline, November 10, 2026, into the regulatory text and confirms November 10 as the ongoing annual deadline, rather than just a one-time deferral.
- **Exclusion of wholesale electricity transactions in interstate commerce.** The 15-Day Notice proposes to exclude wholesale sales of electricity that occur in interstate commerce from the calculation of an entity's California sales for purposes of the "doing business in California" determination. CARB stated that this exclusion aligns with a January 2024 letter from Senator Wiener and Senator Stern confirming legislative intent to exclude such transactions, and promotes consistency with existing legal frameworks governing interstate commerce.
- **Intercompany revenue exclusion.** The 15-Day Notice proposes to exclude intercompany transactions between business entities of the same combined reporting group from the calculation of "revenue," consistent with section 25106.5-1 of Title 18 of the California Code of Regulations. This responds to stakeholder feedback and aligns with California corporate tax filing practices, reducing the risk that intra-group transactions could push an entity over the $1 billion revenue threshold.
- **Recordkeeping requirements.** The 15-Day Notice adds a requirement that each entity retain California tax records demonstrating that it meets (or does not meet) the revenue and "doing business in California" thresholds. CARB stated that this clarification is intended to assist entities in understanding the types of records CARB may request and is consistent with recordkeeping provisions across other CARB programs.
- **Revised definition of "subsidiary."** The 15-Day Notice proposes to revise the definition of "subsidiary," a term that determines the circumstances under which reporting can be consolidated by the parent, to reference the direct corporate association provisions in section 95833 of Title 17 of the California Code of Regulations (from CARB's Cap-and-Invest program), rather than setting forth all indicia of control within the Initial Regulations. Notably, the revision excludes subsection (a)(4) of section 95833 (relating to indirect corporate associations) and subsection (a)(6) (relating to control via shared contractors and employees), which CARB determined are not appropriate criteria for consolidated reporting under SB 253.

Proposed rules for 2027 and beyond

The July 2026 Workshop was the second public forum held by CARB regarding the proposed 2027 Regulations, which will govern annual Scope 1, Scope 2, and Scope 3 reporting and assurance beginning in 2027. Rather than focusing only on the specific issues addressed at the March 23, 2026 workshop (the "March 2026 Workshop") discussed in our April 7, 2026 client update, CARB laid out an overall view of the regulatory structure for the 2027 Regulations, namely, CARB's plan to incorporate the GHG Protocol into the regulatory text. CARB staff intends to publish a proposed regulation this fall, including a staff report, economic analysis, and full draft regulatory text, followed by a 45-day public comment period and a board hearing. CARB staff is aiming to bring the regulation to the board by the end of 2026.

Adoption of GHG Protocol reporting requirements

CARB proposed that the 2027 Regulations would contain language that would essentially adopt the requirements set forth in the three main GHG Protocol documents: (1) the Corporate Accounting and Reporting Standard, (2) the GHG Protocol Scope 2 Guidance, and (3) the GHG Protocol Corporate Value Chain (Scope 3) Accounting and Reporting Standard. CARB also referred to certain GHG Protocol "recommendations" that would also be adopted in the 2027 Regulations. CARB identified the following elements (among others) drawn from the GHG Protocol that would be adopted as part of the 2027 Regulations:

- **Quantifying and disclosing greenhouse gas (GHG) emissions.** The core reporting obligation under SB 253, quantifying and disclosing gross GHG emissions across the three scopes, would be conducted "in adherence with the principles, requirements and guidance provided by the Corporate Standard, Scope 2 Guidance, and Scope 3 Standard."
- **Reporting on methodology.** Entities would be required to disclose the quantification methods and measurement approaches used, including their consolidation approach for organizational boundaries, emission factors and data sources, and the global warming potential values applied in accordance with the GHG Protocol. Notably, at the March 2026 Workshop, CARB proposed that companies have the option to determine their organizational boundaries based on equity share or control. CARB's reference at the July 2026 Workshop to the GHG Protocol, which preserves this optionality, indicates that CARB is maintaining its earlier approach.
- **Data quality and gaps.** Entities would be required to provide a qualitative or quantitative explanation of any measurement uncertainty (note that this is merely recommended rather than mandated under the GHG Protocol) and document any missing data, including the substitute data source or estimation method used and the assumptions underlying the calculation.
- **Biogenic emissions and voluntary removals.** Reporting of CO? emissions from the combustion, consumption, or biodegradation of biomass and biomethane would be reported separately from Scope 1, Scope 2, and Scope 3 totals, whereas methane and nitrous oxide from combustion would be included within the GHG emissions scope to which it relates. Entities may choose the measurement method they deem most appropriate for biogenic emissions. Voluntary GHG reductions or removals (e.g., from land management activities) may be disclosed separately but must not be netted against gross emissions.
- **Data exclusions.** Entities would be permitted to exclude emissions data where the omission could not reasonably be expected to influence users' decisions provided they apply the GHG Protocol's five foundational principles – relevance, completeness, consistency, transparency and accuracy – and disclose the excluded sources to the extent feasible. Although CARB gave limited guidance as to the circumstances under which data can be excluded aside from the general reference to the GHG Protocol's principles, the GHG Protocol itself permits excluding data where it is unavailable or irrelevant (e.g., where a particular Scope 3 category is not relevant to a company's operations), or where the company determines that a particular emissions source is likely to be insignificant. CARB is seeking feedback on the appropriateness of this provision and whether further guidance to entities may be necessary.
- **Methodology changes and recalculation.** Entities would be required to disclose any changes to quantification or accounting methods and explain why the changes were made. If cumulative changes in corporate structure, methods, data sources, or emission factors would alter base-year emissions by more than 5%, the entity would be required to recalculate affected prior-year emissions and disclose the updated data.

Dealing with future changes to the GHG Protocol

CARB stated that future updates to the GHG Protocol will not automatically be reflected in the regulations. CARB suggested that such "dynamic" updating of the regulations would be inconsistent with California law as it would bypass the mandated notice and comment process. This is particularly relevant to the GHG Protocol's Scope 2 standard, which is currently undergoing significant revisions. CARB stressed that these revisions would not be reflected in the 2027 Regulations, which would be based on the existing Scope 2 standard.

Scope 3 phase-in

As discussed in our April 7, 2026 client update, CARB presented three options for phasing in Scope 3 reporting at the March 2026 Workshop. At the July 2026 Workshop, CARB stated that its preferred approach is to phase in Scope 3 by category. Beginning in 2027, five Scope 3 categories would be required: Category 1 (purchased goods and services), Category 3 (fuel- and energy-related activities), Category 5 (waste generated in operations), Category 6 (business travel), and Category 7 (employee commuting). Voluntary reporting is permitted for the remaining 10 categories, with entities following the GHG Protocol Scope 3 Standard. The data exclusion provision noted above would apply to the five required categories.

For each required category, entities would disclose the category name, number and description, quantification and accounting methods, data types used, total CO?e, an explanation for any exclusions, and the percentage of emissions calculated using primary data. CARB did not commit to a date or timeline for Scope 3 reporting beyond these categories.

Limited assurance of Scope 1 and Scope 2 emissions

Beginning with reports submitted in 2027, entities would be required to obtain independent third-party limited assurance of Scope 1 and Scope 2 emissions (including separately reported biogenic CO?). Consistent with the assurance standards it previewed at the March 23, 2026 workshop and discussed in our April 7, 2026 client update, CARB retained its proposed list of acceptable standards, which comprises AA1000 Assurance Standard (AA1000AS v3); AICPA AT-C Section 210; ISAE 3410 applied together with ISAE 3000 (Revised) for engagements commencing before December 15, 2026; ISSA 5000 for engagements commencing on or after December 15, 2026; and ISO 14064-3:2019 (with additional accreditation requirements). CARB is seeking feedback on whether the standards are sufficiently comparable, whether assurance providers should disclose other services provided to the entity (tax, audit, consulting, advisory), and whether and how often providers should rotate.

Insurance companies

The Initial Regulations exempted insurers from 2026 reporting to avoid duplication with the California Department of Insurance (CDI). Under Board Resolution 26-1, staff coordinated with CDI and identified reporting gaps: CDI disclosures under the NAIC survey (based on the TCFD framework) are less detailed than GHG Protocol requirements, particularly for Scope 3. Staff proposed that, starting in 2027, insurers report to CARB the GHG data already submitted under CDI's program plus any additional data needed to satisfy SB 253. This approach remains subject to public comment.

Preliminary economic analysis

Staff presented a preliminary economic analysis refining the cost estimates first shared at the March 23, 2026 workshop and discussed in our April 7, 2026 client update. In response to stakeholder feedback received after that workshop, staff adapted SEC climate-rule cost estimates, using the upper bound of Scope 3 cost estimates and treating costs as ongoing to be conservative. Stakeholder feedback ranged from assertions that costs are underestimated (particularly for Scope 3 and assurance) to assertions that they are overestimated (given interoperability with existing frameworks and AI-enabled efficiencies).

Reporting deadline

Staff proposed November 10 as the recurring annual reporting deadline going forward, which would align with the deadline for 2026 reporting. CARB indicated it is open to feedback on this date.

Upcoming engagement opportunities

CARB will hold six, sector-specific virtual listening sessions over the next several weeks:

– August 5 – Data Users & Public Interest Stakeholders (universities, research institutions, NGOs, ESG software providers, consultants, and assurance providers)
– August 12 – Manufacturing, Industrial, Fuel & Life Sciences (oil and gas, refining, chemicals, metals, construction materials, automotive, aerospace, pharmaceuticals, and medical devices)
– August 19 – Agriculture, Food, Beverage & Forestry (farming, livestock, forestry, food processing, and related industries with significant land-sector emissions)
– August 26 – Energy, Utilities, Transportation, Logistics & Waste Management (electricity generation, renewable energy, water and gas utilities, freight, airlines, rail, shipping, and waste)

- September 2 – Retail, Consumer Goods, Technology & Commercial Services (retail, apparel, e?commerce, software, semiconductors, telecom, media, real estate, hospitality, and professional services)
- September 9 – Banking, Finance & Insurance (banking, insurance, asset management, private equity, fintech, capital markets, and other financial institutions)

Registration links are available on CARB's website. These sessions are intended as opportunities for reporting entities to share experience, raise questions, and hear from peers in related sectors.

In addition, CARB will accept written comments via email on an ongoing basis. A separate 45-day public comment docket will open when the 2027 Regulations are published.

Takeaways and next steps

- **Submit comments on the 15-Day Notice by August 11, 2026.** The proposed clarification of entity-level applicability is a favorable development for companies that had been uncertain whether revenue or "doing business" tests could be applied on an aggregated basis across corporate affiliates. Companies should review the full modified text and consider submitting comments.
- **Continue preparing for the November 10 deadline based on current rules.** The 15-Day Notice formalizes the enforcement approach for 2026 reporting: entities report Scope 1 and Scope 2 data they were already collecting as of December 2024 with no assurance required. Entities not collecting such data may submit a letter in lieu of a data report. CARB will not pursue enforcement against entities making good-faith compliance efforts.
- **Begin planning for 2027 requirements.** Requirements for 2027, including mandatory limited assurance and phased Scope 3 reporting, represent a significant expansion of current obligations. Companies should assess readiness for reporting on the five initial Scope 3 categories and begin evaluating assurance providers.
- **Engage with CARB's listening sessions.** Six virtual sessions beginning August 5, 2026 offer an opportunity to provide input before the formal regulatory text is released and the 45-day comment docket opens for the 2027 Regulations.
- **Watch the Ninth Circuit.** The constitutional challenge to SB 253 and SB 261 remains pending after oral argument on January 9, 2026. A ruling favorable to the challengers could pause SB 253 obligations. The deferral to November 10 increases the likelihood the court decides before the new compliance date.

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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