Corporate Sustainability Update

December 2025

California's Climate Risk Rules on Pause – Compliance Planning Should Not Be

Major developments recently unfolded in the implementation of California's Climate Corporate Data Accountability Act (SB 253) and Climate-Related Financial Risk Act (SB 261) (collectively, the "200s" or "climate disclosure laws"). On November 18, the California Air Resources Board (CARB) hosted its third public workshop to update stakeholders on the rulemaking process and solicit public feedback on proposed regulations. During the workshop, the U.S. Court of Appeals for the Ninth Circuit in *Chamber of Commerce of the United States, et al. v. California Air Resources Board, et al.*, 2:24-cv-00801 (9th Cir. 2025), froze enforcement of SB 261, pending appeal, but declined to stay SB 253. In this bulletin, we break down the ongoing status of litigation involving California's climate disclosure laws and recap key insights from CARB's third public workshop. For an overview of the requirements of California's climate disclosure laws, please see our August 2025 bulletin "Recapping CARB's Second Public Workshop for California's Climate Disclosure Laws."

Status of Litigation Involving the 200s

Since last year, litigation has threatened to challenge implementation of SB 261. Plaintiffs the U.S. Chamber of Commerce, et al. filed a preliminary injunction in January 2024 to enjoin implantation of the 200s. The motion was denied and eventually appealed to the Ninth Circuit. On November 18, the court in *Chamber of Commerce of the United States v. California Air Resources Board* paused enforcement of SB 261, pending appeal, with oral argument scheduled for January 9, 2026. The Ninth Circuit declined to stay SB 253, presumably because the law's greenhouse gas (GHG) emissions disclosure requirements are not slated to go into effect until mid- to late 2026. With enforcement of SB 261 currently on hold, entities within scope will not be required to publish climate-related financial risk reports until the court reaches a decision on the merits of the appeal, which likely will not be until after January 1, 2026 – CARB's deadline for companies to publish their inaugural climate-related financial risk reports on their websites.

On October 24, ExxonMobil filed a separate lawsuit challenging California's climate disclosure laws in the Eastern District of California. In *ExxonMobil Corporation v. Lauren Sanchez*, 2:25-cv-03104 (E.D. Cal. Oct. 24, 2025), the company alleges that California's climate disclosure laws violate its First Amendment rights by compelling speech on an issue on which the company would prefer to remain silent and, in particular, that SB 261 is preempted by the National Securities Markets Improvement Act of 1996, which already requires publicly traded companies to disclose material risks likely to affect financial performance, including environmental and climate-related risks. On October 29, ExxonMobil filed a Motion for Preliminary Injunction seeking to enjoin CARB from enforcing the 200s. On November 18, the defendants filed a motion to dismiss the plaintiffs' preemption claim. As of the date of this publication, briefing in *ExxonMobil Corp. v. Sanchez* remains ongoing, with a hearing on the defendants' motion to dismiss scheduled for January 22, 2026.

CARB's Third Public Workshop

Despite ongoing legal challenges, CARB's rulemaking is proceeding under the 200s. During the agency's third public workshop on November 18, CARB previewed updates to the regulatory timeline, key definitions, assurance requirements, and Scope 3 reporting expectations for 2027.

Scope and Applicability: Revenue, "Doing Business" in California, Parent-Subsidiary Relationships, and Enumerated Exemptions

CARB continues to propose anchoring "revenue" to gross receipts as defined in California Revenue and Taxation Code section 25120(f)(2) since it is verifiable through Franchise Tax Board filings. Revenue thresholds for each law would be assessed using the lesser of an entity's two previous fiscal years. If a parent and subsidiary file unitary tax filings, the parent corporation must include the subsidiary's revenue as part of the determination. If a parent corporation and subsidiary file separately, both are expected to evaluate whether they are in scope on an entity-by-entity basis. If a parent is out of scope, it may nonetheless elect to report on behalf of an in-scope subsidiary. During the workshop, commentators urged CARB to consider alternative metrics for banks and other financial institutions, noting that the industry relies on net interest income rather than gross receipts. CARB has not indicated whether it will adopt a different test for financial institutions.

CARB proposed revisions to the definition of "doing business" in California provided by Section 23101 of the Revenue and Taxation Code by omitting subsections 23101(b)(3)–(4) relating to property and payroll to better target entities with a meaningful economic nexus to the state. Section 23101(a) defines "doing business" broadly as actively engaging in transactions for financial or pecuniary gain or profit. Section 23101(b)(1)–(2) applies to entities domiciled in California or with sales into the state exceeding inflation-adjusted thresholds of $735,019 (2024).

CARB previewed the concept of a "direct corporate association" to determine when consolidated parent–subsidiary reporting is permissible. A direct corporate association exists when one entity has ownership or control of another entity above 50%, including ownership of shares, voting power, common ownership or management, or analogous control tests for partnerships and LLCs. A direct corporate association also exists when two entities are connected through a line of more than one direct corporate association.

CARB has outlined proposed exemptions for holding companies, mutual funds, nonprofit and charitable organizations, governmental entities and majority government-owned entities, and entities whose only nexus to California is the presence of teleworking employees. Commenters have requested that CARB define "telework" to improve administrability.

Interplay Between CARB's Preliminary Covered Entity List and Proposed Fee Structure

CARB is pursuing a flat-fee structure based on the number of in-scope entities to fund each program under the 200s. Entities covered by both laws will pay a separate fee for each program. Each in-scope subsidiary will be assessed its own fee, though a parent may pay fees in a consolidated payment. The fee schedule is expected to be finalized in 2026, and fees for both regulations will be assessed on September 10, 2026.

To determine the fee schedule under the climate disclosure laws, CARB developed a preliminary list of regulated entities using data from the California Secretary of State. Due to several limitations with the initial dataset, CARB proposed switching to data collected by the Franchise Tax Board and refreshing data annually to align with ongoing fee updates.

SB 253: Scope 1 and 2 Reporting in 2026

CARB originally selected June 30, 2026, as the deadline for entities to disclose their Scope 1 and 2 GHG emissions. Following public feedback, CARB has now proposed delaying the initial reporting deadline to August 10, 2026. Depending on an entity's fiscal calendar, those with fiscal years ending between January 1 and February 1, 2026, would report fiscal year 2026 data and entities with fiscal years ending between February 2 and December 31, 2026, would report fiscal year 2025 data. According to CARB, this reporting structure ensures that all entities will report at least six months of data by August 10, 2026.

During the workshop, CARB provided additional guidance on what constitutes a "good faith" reporting effort under the agency's enforcement discretion policy as articulated in its December 5, 2024 enforcement notice. To constitute a good faith effort, entities are expected to provide the emissions data they had as of the date of publication of the enforcement notice. Entities that had not collected or did not plan to collect Scope 1 and 2 emissions data at the time the enforcement notice was issued are not expected to submit emissions data in 2026. Instead, they are required to submit a statement to CARB on company letterhead explaining the absence of a report consistent with the enforcement notice. On the other hand, entities that had collected or planned to collect Scope 1 and 2 emissions data when the enforcement notice was published are expected to disclose emissions data by August 10, 2026. Limited assurance is not required until 2027; however, if an entity obtained limited assurance on Scope 1 and 2 emissions data as of the date of the enforcement notice, it is expected to submit data at a limited assurance level to meet good-faith expectations. CARB's reporting template, released in October, is optional for the initial reporting cycle.

CARB anticipates holding additional hearings on implementing regulations for SB 253 during the first quarter of 2026. Subsequent rulemaking is expected to address assurance requirements for subsequent reporting cycles, enforcement, recurring reporting deadlines beyond 2026, the applicability of reporting templates, and reporting of Scope 3 emissions beginning in 2027. CARB's initial concept for Scope 3 emissions reporting in 2027 includes 15 categories of indirect GHG emissions (eight upstream and seven downstream), and it is soliciting feedback on which categories are most used and most decision-useful to investors and consumers.

SB 261: Climate-Related Financial Risk Reports Paused as Rulemaking Continues

In light of the Ninth Circuit's stay, CARB issued an enforcement advisory notice on December 1 stating that it will not enforce SB 261 against covered entities for failing to post and submit reports by the January 1, 2026, deadline. According to the notice, CARB is giving entities the option to voluntarily report and alludes to an alternative compliance date should SB 261 survive legal scrutiny.

As CARB previously proposed, a public docket will be open from December 1, 2025, to July 1, 2026, for entities to post a link to the location of their climate-related risk reports and to submit a statement on company letterhead. For now, the public docket is only for entities that voluntarily choose to disclose their climate-related financial risk reports. During the workshop, commentators questioned whether any post-submission updates could be made since climate-related risk reports are housed on each entity's corporate website. CARB's position is that once a link is submitted onto the public docket, the report should be considered final.

For initial reports in 2026, entities at an early stage of risk evaluation may disclose how climate-related risks relate or may be relevant to the organization even if no material risks have been identified. Entities are also encouraged to include in their disclosures gaps, limitations, and assumptions made as part of their initial climate risk assessment. Reports should specify the voluntary reporting framework used, delineate which recommendations and disclosures are included or excluded, and briefly explain why certain recommendations or disclosures were excluded accompanied by a discussion of any plans for future disclosures. CARB will continue to allow entities to select from multiple voluntary reporting frameworks, including TCFD, IFRS, or a report developed in accordance with a regulated exchange, a national government, or other governmental entity. Ultimately, reports must include disclosures related to governance, strategy, risk management, and metrics and targets. To aid in the preparation of reports, CARB posted a finalized checklist and released updated FAQs. Assuming SB 261 remains intact, CARB expects to proceed with initial regulations in the first quarter of 2026.

Key Takeaways

The Ninth Circuit's stay of SB 261 introduces a whole new level of uncertainty as to when and how the 200s will be implemented. CARB's continued rulemaking, however, indicates the disclosure of climate-related financial risks will move forward in one way or another if the law is upheld following judicial review. It is anticipated that most companies will wait to disclose their climate-related financial risk reports until the Ninth Circuit reaches a decision on the merits. In the meantime, companies should continue to prepare their climate-related financial risk reports and be in a position to disclose their reports beginning in 2026 if SB 261 is upheld.

The implementation of SB 253 continues to gain momentum as CARB proposes a new August 10, 2026, reporting deadline for Scope 1 and 2 emissions and more concrete guidance regarding assurance and fiscal year data. CARB's openness to feedback on fundamental concepts such as revenue thresholds and "doing business" in California suggest further refinements are likely in early 2026. Companies should also anticipate iterative guidance on enforcement mechanisms, recurring deadlines, and the applicability of reporting templates in 2026. Our Corporate Sustainability group will continue to follow regulatory and legal developments involving California's climate disclosure laws and CARB's rulemaking process.

FOR MORE INFORMATION

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