

# Preparing for California's Climate Disclosure Laws

*After a year of wrangling and uncertainty, SB 253 and 261 are finally set to go into effect.*

September 30, 2024

When California Governor Gavin Newsom signed SB 253 and 261<sup>1</sup> into law last year—creating the first broad, industry-agnostic domestic climate reporting obligations for U.S. companies doing business in California—he did so with a caveat. His signing statements pointed out infeasible implementation deadlines ([here](#) and [here](#)) and potentially “inconsistent” reporting that could result based on the required reporting protocol under SB 253, and called upon his Administration to work with the bills’ authors and the state legislature to address those concerns in the 2023-2024 legislative session. Since then, the laws have been somewhat in limbo, first due to lack of funding in the Governor’s proposed budget, and then as negotiations ensued over revisions to the implementation timelines.<sup>2</sup>

Now the picture has finally cleared, with funding secured in the Governor’s finalized budget (signed in June 2024) to enable the California Air Resources Board (“CARB”) to draft regulations, and a new bill enacted to amend SB 253 and 261. Senate Bill 219, signed by Gov. Newsom last week after the state’s legislative session closed, maintains the original 2026 timing for Scope 1 and 2 greenhouse gas (“GHG”) emissions reporting and 2027 for Scope 3 GHG emissions, but postpones the deadline for implementing regulations by six months. Appendix A and B provide further detail regarding the requirements (as amended) under each of the laws.

While SB 219 tweaked certain elements of SB 253 and 261, key questions (including as to scoping) will remain unanswered until CARB finalizes its implementing regulations. However, with the first reporting period kicking off just three months from now in 2025, it’s prudent to take action to prepare for compliance.

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<sup>1</sup> For an introduction to California’s climate disclosure laws SB 253 and 261, see our prior alerts, [Far-reaching California climate disclosure bills signed into law](#) and [California’s Flurry of ESG Lawmaking](#), and our alert comparing the CA laws and the SEC’s Climate Disclosure Rules, [SEC Finalizes Landmark Climate-Related Disclosure Rules](#).

<sup>2</sup> Governor Newsom’s original 2024-2025 state budget proposal in January left out funding for CARB’s implementation of SB 253 and 261. Funding was added to the Governor’s May Revision budget proposal, which was included in the [final budget](#) adopted in June. Following adoption of California’s 2024-2025 budget, draft trailer bill language surfaced on the California Department of Finance’s website proposing a delay in implementation of SB 253 and 261 by two years (until January 1, 2028 from January 1, 2026). This draft trailer bill became SB 219, however, the bill as introduced by Senators Weiner and Stern (and now signed into law) did not adopt the proposed two year implementation delay, instead retaining the original reporting deadlines.

## Key Takeaways from SB 219

- CARB now has six additional months (until July 1, 2025) to adopt implementing regulations. Those regulations will be required to answer key questions such as:
  - The definition of “doing business” in California for purposes of determining application of SB 253 and 261.<sup>3</sup>
  - Calculation of annual revenue for purposes of meeting the financial thresholds specified in the laws.<sup>4</sup>
  - The specific timing of covered entities’ initial, annual Scope 1 and 2 GHG emissions reporting due in 2026.
  - The specific timing of covered entities’ initial, annual Scope 3 emissions reporting due in 2027.
  - Administrative penalties for violations of SB 253 and 261 reporting obligations.
- GHG emissions reports under SB 253 may be consolidated at the parent company level, meaning that in-scope subsidiaries will not be required to submit separate reports.
- With respect to both SB 253 and 261, CARB may, but is not required to, contract with third-party reporting organizations for disclosure and/or public reporting purposes.

## Next Steps for Compliance

Although scoping nuances under the laws may not be clarified until CARB issues the required regulations, business entities (which includes corporations, partnerships and LLCs) should evaluate their likely status under the criteria laid out in Appendix A and B. Additionally, given that CARB is required to consider industry feedback when determining reporting timelines—particularly as to the Scope 3 emissions reporting schedule—companies should consider whether active engagement in the rulemaking process may be advisable.

For those entities likely to be in scope, now is the time to begin preparing, by:

- Determining and designing a course of action for the first reporting period (2026 reports, covering 2025), including potentially retaining consultants and legal counsel to assist in process design and implementation, and preparing first reports;
- Implementing a process for gathering data and information necessary to fulfill reporting requirements, including Scope 1 and 2 emissions for 2025 (*i.e.*, GHG inventory calculations);
- Engaging a third-party auditor or other organization meeting the competency and independence requirements set out in SB 253 to provide assurance over Scope 1 and 2 emissions reporting; and
- Evaluating the Task Force on Climate-Related Financial Disclosures (TCFD) framework and recommended disclosures and beginning to perform a gap analysis.

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<sup>3</sup> While neither SB 253 nor 261 explicitly requires regulations on this point, we understand that CARB expects to address it through regulation.

<sup>4</sup> *Ibid.*

Finally, while SB 253 and 261 are set to go into effect in amended form on Jan. 1, 2025, both laws are currently subject to ongoing litigation<sup>5</sup> in the U.S. District Court for the Central District of California, with plaintiffs seeking a permanent injunction on the argument that the laws violate the First Amendment by compelling corporate speech. A hearing on motions for summary judgment is scheduled for October 15, and the laws are not stayed pending the determination of the case—nor is CARB refraining from pushing forward with rulemaking—meaning preparation should proceed in the meantime.

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<sup>5</sup> *Chamber of Commerce of the United States of America, et al. v. California Air Resources Board, et al.*, No. 2:24-cv-00801 (C.D. Ca.).

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## Appendix A

### Key Requirements of California SB 253: Climate Corporate Data Accountability Act

(as amended by SB 219)

#### Covered Entities

Corporations, partnerships, LLCs and other business entities formed under the laws of California, any other U.S. state or the District of Columbia, or under an act of Congress that (i) are “doing business” in CA and (ii) have more than \$1B annual revenue (based on prior fiscal year)

“Doing business” to be defined in regulation, but for other purposes, including the California Transparency in Supply Chains Act of 2010, California considers an entity to be “doing business” in California if it does any of the following:

- Engages in any transaction for the purpose of financial gain within California;
- Is organized or commercially domiciled in California;
- 25% of total sales, property or payroll are in California; or
- Has California sales, property or payroll exceeding threshold amounts. For the 2023 tax year, those amounts were:
  - Sales: \$711,538
  - Real and tangible personal property: \$71,154
  - Payroll compensation: \$71,154<sup>6</sup>

Entities already subject to mandatory reporting requirements for significant GHG sources may provide that data with their required disclosure

#### Reporting Requirements

Annual disclosure required as follows:

- 2026:** Scope 1 & 2 GHG emissions for prior fiscal year with limited assurance
- 2027 - 2029:** Scope 1 & 2 GHG emissions for prior fiscal year with limited assurance;  
Scope 3 GHG emissions for prior fiscal year (no assurance required)
- 2030 and after:** Scope 1 & 2 GHG emissions for prior fiscal year with reasonable assurance;  
Scope 3 GHG emissions for prior fiscal year with limited assurance

Specific reporting deadlines (dates) to be determined by CARB; reporting timelines must take industry stakeholder input into account, including the timelines by which reporting entities typically receive Scope 1, 2 and 3 emissions data

Consolidated reporting permitted at parent level

<sup>6</sup> Cal. Rev. & Tax. Code § 23101. Threshold amounts are adjusted for inflation annually.

## Key Requirements of California SB 253: Climate Corporate Data Accountability Act

(as amended by SB 219)

<p><b>Reporting Standard</b></p>	<p>“Scope 1 emissions” defined as all direct GHG emissions that stem from sources that a reporting entity owns or directly controls, regardless of location, including, but not limited to, fuel combustion activities</p> <p>“Scope 2 emissions” defined as indirect GHG emissions from consumed electricity, steam, heating, or cooling purchased or acquired by a reporting entity, regardless of location</p> <p>“Scope 3 emissions” defined as indirect upstream and downstream GHG emissions, other than scope 2 emissions, from sources that the reporting entity does not own or directly control and may include, but are not limited to, purchased goods and services, business travel, employee commutes, and processing and use of sold products</p> <p>Reporting is required to be in conformance with the Greenhouse Gas Protocol (“GHG Protocol”) standards and related guidance, which includes information on topics such as setting operational and organizational boundaries, identifying and calculating emissions, accounting for reductions and other<sup>7</sup></p> <p>After 2033, CARB may adopt another globally recognized alternative accounting and reporting standard</p>
<p><b>Publication</b></p>	<p>Publicly disclose to CARB or to an emissions reporting organization (if one is contracted by CARB)</p> <p>Public report to be issued by emissions reporting organization, if contracted, or CARB</p>
<p><b>Administration/ Enforcement</b></p>	<p>Reporting entities must pay an annual fee to CARB (to be set out in regulation)</p> <p>CARB to adopt regulations authorizing administrative penalties for non-filing, late filing or other reporting-related failures</p> <p>Penalties imposed on a reporting entity may not exceed \$500K in a reporting year</p>

<sup>7</sup> The GHG Protocol is currently revising the Corporate Accounting and Reporting Standard, Guidance on Scope 2 Emissions and Scope 3 Standard and Scope 3 Calculation Guidance to incorporate public feedback on its current standards and potential new guidance, with revised texts expected to be released in 2025, and final standards and guidance expected in the latter half of 2026. Public feedback was invited from November 2022 through March 2023, and the GHG Protocol has since released corresponding survey and proposal summary reports.

## Appendix B

### Key Requirements of California SB 261: Greenhouse Gases: Climate-Related Financial Risk

(as amended by SB 219)

<p><b>Covered Entities</b></p>	<p>Corporations, partnerships, LLCs and other business entities formed under the laws of California, any other U.S. state or the District of Columbia, or under an act of Congress that (i) are “doing business” in CA and (ii) have more than \$500M annual revenue (based on prior fiscal year)</p> <p>Insurance companies are excluded</p> <p>See SB 253 above for a discussion of the “doing business” in CA requirement</p>
<p><b>Reporting Requirements</b></p>	<p>Disclose (i) its climate-related financial risk, determined in accordance with the TCFD (as discussed below) and (ii) measures adopted to reduce and adapt to climate-related financial risk</p> <p>First reports must be made available on or before January 1, 2026 and at least biennially thereafter</p> <p>Substituted compliance available for publicly-available reports prepared pursuant to other law, regulation or listing requirement that incorporates consistent requirements, including IFRS Sustainability Disclosure Standards</p> <p>Consolidated reporting permitted at parent level</p>
<p><b>Reporting Standard</b></p>	<p>Report climate-related financial risk in accordance with the recommended framework and disclosures contained in the Task Force on Climate-related Financial Disclosures (“TCFD”)</p> <p>The TCFD <a href="#">recommendations</a> are structured around four thematic “pillars” as follows:</p> <ol style="list-style-type: none"> <li>(1) <b>Governance:</b> Disclose the governance around climate-related risks and opportunities             <ol style="list-style-type: none"> <li>(a) Describe the board’s oversight of climate-related risks and opportunities</li> <li>(b) Describe management’s role in assessing and managing climate-related risks and opportunities</li> </ol> </li> <li>(2) <b>Strategy:</b> Disclose the actual and potential impacts of climate-related risks and opportunities on the reporting entity’s business, strategy and financial planning             <ol style="list-style-type: none"> <li>(a) Describe the climate-related risks and opportunities that have been identified over the short, medium, and long term</li> <li>(b) Describe the impact of climate-related risks and opportunities on businesses, strategy, and financial planning</li> <li>(c) Describe the resilience of the strategy, taking into consideration different climate-related scenarios</li> </ol> </li> <li>(3) <b>Risk Management:</b> Disclose how the entity identifies, assesses and manages climate-related risks and opportunities             <ol style="list-style-type: none"> <li>(a) Describe the processes for identifying and assessing climate-related risks</li> <li>(b) Describe the processes for managing those risks</li> <li>(c) Describe how those are integrated into overall risk management</li> </ol> </li> <li>(4) <b>Metrics and Targets:</b> Disclose metrics and targets used to assess and manage climate-related risks and opportunities             <ol style="list-style-type: none"> <li>(a) Disclose the metrics used to assess climate-related risks and opportunities in line with its strategy and risk management process</li> <li>(b) Describe the targets used to manage climate-related risks and opportunities, and performance against those targets</li> </ol> </li> </ol> <p>Where an item of disclosure is not provided, the company is required to provide information to the best of its ability, a detailed explanation of gaps and any steps it plans to take to complete disclosures</p>

**Key Requirements of California SB 261: Greenhouse Gases: Climate-Related Financial Risk**  
*(as amended by SB 219)*

**Publication**

Make publicly available on reporting entity's website

**Administration/  
Enforcement**

Reporting entities must pay an annual fee to CARB (to be set out in regulation)

CARB to adopt regulations authorizing it to seek administrative penalties for non-filing, late filing or other reporting-related failures

Penalties imposed on a reporting entity may not exceed \$50K in a reporting year