

# California's SB 253 and SB 261: Developments and Litigation

January 26, 2026

As discussed in [our November 2025 alert](#), on November 18, 2025, the US Court of Appeals for the Ninth Circuit issued a temporary injunction blocking enforcement of SB 261 (climate-related financial risk reporting) pending appeal, but not affecting SB 253 (greenhouse gas emissions reporting). Oral arguments before the Ninth Circuit took place on January 9, 2026, but as of now the stay remains in effect.

Despite the ongoing litigation, the California Air Resources Board (CARB) has moved from issuing guidance to a formal initial rulemaking package focused on fees and key applicability definitions, proposing a first-year deadline of August 10, 2026, for SB 253 Scopes 1 and 2 reporting. Although SB 261 timing is uncertain given the injunction, the litigation and rulemaking posture suggests covered companies should be prepared to publish SB 261 reports following any lifting of the stay.

As SB 253 currently is unaffected by the litigation, companies should continue preparing for disclosure, taking into account CARB's previously announced first-year reporting guidance for companies that had not previously measured emissions – including CARB's stated expectation that entities not currently collecting/planning to collect Scopes 1 and 2 emissions data as of CARB's December 5, 2024, [enforcement notice](#) may submit, in lieu of emissions data for the 2026 submission, a statement on company letterhead attesting to that fact.

## Litigation developments

The Ninth Circuit is currently considering an appeal challenging California's SB 253 and SB 261. The underlying case was filed by business groups asserting constitutional and procedural deficiencies, including claims that SB 261's disclosure requirements constitute compelled speech in violation of the First Amendment. In response to the litigation, the Ninth Circuit granted preliminary injunctive relief, temporarily halting enforcement of SB 261 while the case proceeds.

SB 253, in contrast, remains in effect. The appeal is currently pending, and the Ninth Circuit recently heard oral argument and will determine whether the injunction should remain in place and whether any of the statutory requirements are enforceable, leaving the ultimate regulatory landscape in flux. At oral argument, the Ninth Circuit focused on how SB 253 and SB 261 should be analyzed under the First Amendment, including whether California is defending the statutes as incidental regulation of conduct (given California's existing emissions regime) and whether the required disclosures are sufficiently tied to "commercial transactions" to fit within a commercial-speech framework. Judge Jacqueline Nguyen questioned the breadth of SB 261's disclosure mandate and asked California to distinguish SB 261 from risk disclosures already required under federal securities laws. California acknowledged overlap, describing the information as similar in some respects while arguing SB 261 requires more specific disclosures than currently mandated by federal securities laws. Plaintiffs emphasized that SB 253, particularly through Scope 3 reporting, would require companies to report emissions associated with other entities in their value chain. Judge Nguyen also raised the possibility of a remand focused on SB 253's Scope 3 requirements (slated to go into effect in 2027), which California stated it would not oppose. The court did not indicate when it would issue a decision, and the stay of SB 261 enforcement remains in place pending appeal.

On December 1, 2025, [CARB issued an enforcement advisory](#) stating that, because of the Ninth Circuit's injunction, CARB will not enforce SB 261 against covered entities that do not meet the statutory January 1, 2026, deadline while the injunction remains in place, and that CARB will provide an alternate reporting date after the appeal is resolved.

## Regulatory implementation

Following several rounds of presentations and informal guidance, CARB has initiated formal rulemaking that is primarily designed to establish annual implementation fees for SB 253 and SB 261 and adopt definitions needed to determine which entities are within scope of each rule (including “revenue” and “doing business in California”). CARB materials describe this package as a first step intended to address fee administration and certain applicability mechanics, with additional program details expected to be addressed through subsequent rulemaking. The proposed rulemaking text is mostly a codification of the guidance given by CARB at the November 18, 2025, workshop covering who is in scope, how fees will be administered, and the one-time, first-year SB 253 Scopes 1 and 2 reporting deadline.

Notably, not all company-friendly guidance previously issued by CARB is formalized in these regulations, such as allowing companies not currently collecting or planning to collect emissions data to submit a statement on company letterhead to CARB stating that they did not submit a report and indicating that in accordance with the December enforcement notice, the company was not collecting data or planning to collect data at the time the notice was issued. Further, the rulemaking package does not codify CARB’s guidance that no limited assurance will be required for SB 253 reporting in 2026, or guidance on the content of SB 261 reports. There is no indication that previously issued guidance on topics not covered by the proposed regulations are superseded, and many items, including first-year exemptions for companies not previously collecting data, are covered in additional CARB guidance issued alongside the proposed regulations..

## Key rulemaking dates

- Public comment period opened: December 26, 2025
- Written comments due: February 9, 2026
- CARB Board hearing: February 26, 2026 (may continue on February 27)

## Who is covered? (‘covered/reporting entities’)

CARB’s proposal includes changes to definitions relevant to threshold determinations for purposes of establishing whether an entity is within scope of SB 253 or SB 261. Both laws require an entity (“corporation, limited liability company, or other business entity”) with total annual **revenues** in excess of \$500 million (SB 261) or \$1 billion (SB 253) that **do business in California** to submit the applicable disclosures.

### Revenue definition

CARB proposes defining “revenue” by reference to California tax law concepts, tying the threshold analysis to “gross receipts” as used in the California Revenue and Taxation Code (RTC). Under the proposed package, the definition of “revenue” would be tied to the meaning of “gross receipts” under RTC § 25120(f)(2).

### Revenue measurement

CARB’s proposed framework would allow companies to determine whether they are in scope by looking at the “lesser of the last two fiscal years.” The framework would assess whether an entity qualifies as a “reporting entity” under SB 253 (greater than \$1 billion) or a “covered entity” under SB 261 (greater than \$500 million) using the lesser of the entity’s two previous fiscal years of revenue. Under the RTC § 25120(f)(2) “gross receipts” definition, the relevant “gross revenue” concept generally means the total amounts realized from business transactions – cash plus the fair market value of property or services received. This could result in significant numbers of high-growth companies falling out of scope of climate reporting obligations for 2026.

### ‘Doing business in California’

CARB proposes defining “doing business”/“doing business in California” by reference to the definition in RTC § 23101(b)(1) and (2), but omitting Section 23101(b)(3-4) relating to property holdings and payroll, excluding certain subcomponents (including certain property and payroll-related factors) and clarifying the exclusions of certain categories of transactions for purposes of the “doing business in California” test. These changes also have the potential to slightly narrow the list of companies covered by SB 261 and SB 253 in 2026.

### Proposed exclusions

CARB's rulemaking package proposes five categories of entities that would be excluded as "covered entities" even if revenue thresholds are otherwise met, including:

1. Nonprofit or charitable organizations that are tax-exempt under the Internal Revenue Code.
2. A business entity that is subject to regulation by the Department of Insurance in California, or that is in the business of insurance in any other state.
3. Federal, state and local government entities, and companies that are majority-owned by government entities (greater than 50%).
4. A business entity whose only activity within California consists of wholesale electricity transactions.
5. A business entity whose only business in California is employee compensation or payroll expenses, including teleworking employees.

## SB 261 reporting docket

The SB 261 reporting docket is CARB's public portal for climate-related financial risk reports. It functions primarily as a submission point for companies to provide the public URL to an SB 261 report hosted on the company's own website (including voluntary submissions while enforcement is stayed). CARB opened the docket on December 1, 2025, and plans to close it on July 1, 2026. As of January 24, 2026, approximately 100 entities have voluntarily submitted reports, many of which link to or adapt existing Task Force on Climate-related Financial Disclosures-aligned annexes from their sustainability reports. Reports should:

- Specify (if applicable) the list of subsidiaries included.
- Use the file naming convention "CompanyName\_Statement\_date."
- Include a URL to the publicly available report hosted on the company's website.

## SB 253's timing

- **First-year reporting deadline (Scopes 1 and 2):** CARB's proposal provides a specific "on or before" date of **August 10, 2026**, for first-year Scopes 1 and 2 reporting.
- **First-year data posture ("best-available data"):** CARB staff materials describe an initial transition period and contemplate that first-year reporting may rely on "best-available data."
- **Fiscal-year approach (February 1 cutoff):** CARB's proposal includes mechanics using a February 1 cutoff to determine which fiscal year's data will be treated as "applicable" for first-year reporting, with flexibility to use more recent data where available.
  - Entities with fiscal years ending on or before February 1, 2026, should report on the fiscal year ending in calendar year 2026 (e.g., January 31, 2026).
  - Entities with fiscal years ending after February 1, 2026 (February 2 – December 31) may report on the fiscal year that ended in calendar year 2025.
    - However, if an entity's most recent completed fiscal year ends in 2026 before the August 10, 2026, filing date (e.g., March 31 or June 30), you may choose to report on FY 2026 instead.

Companies should note that CARB materials continue to emphasize that the initial package does not finalize the full reporting architecture, which will be phased in at later dates, including:

- Detailed reporting formats and content requirements
- Assurance requirements and schedules
- Enforcement provisions beyond fee administration

## Practical impacts

### SB 253: Treat implementation as 'on track'

- **Confirm scoping now using CARB's proposed definitions.** Entity mapping (including subsidiaries), threshold testing and "doing business" analysis should be validated now.
- **Stand up first-year Scopes 1 and 2 reporting capability.** Determine a data collections process now and pressure-test

whether you can produce a defensible first-year report on the proposed timetable. Companies should also evaluate whether they are able to rely on CARB's exemption for companies that previously had not been collecting data.

- **Do not defer Scope 3 planning.** Even though later-year obligations are currently being litigated, supplier engagement and data strategy typically require long lead times and are hard to accelerate late.

#### **SB 261: 'Stayed' does not equal 'stop'**

- **Maintain a publish-ready report.** The highest risk posture is waiting for a ruling and then attempting to compress governance, risk identification and disclosure approvals into a short window.
- **Coordinate messaging across disclosure channels.** Align SB 261 work with existing risk factor disclosures and sustainability reporting (e.g., Task Force on Climate-related Financial Disclosures, International Financial Reporting Standards S2) and governance narratives to reduce disclosure inconsistency and review friction.
- **Decide intentionally on voluntary posting.** Some companies may choose to post during the stay, while others may prefer to hold pending litigation clarity. The decision should be deliberate and documented.

This content is provided for general informational purposes only, and your access or use of the content does not create an attorney-client relationship between you or your organization and Cooley LLP, Cooley (UK) LLP, or any other affiliated practice or entity (collectively referred to as "Cooley"). By accessing this content, you agree that the information provided does not constitute legal or other professional advice. This content is not a substitute for obtaining legal advice from a qualified attorney licensed in your jurisdiction, and you should not act or refrain from acting based on this content. This content may be changed without notice. It is not guaranteed to be complete, correct or up to date, and it may not reflect the most current legal developments. Prior results do not guarantee a similar outcome. Do not send any confidential information to Cooley, as we do not have any duty to keep any information you provide to us confidential. When advising companies, our attorney-client relationship is with the company, not with any individual. This content may have been generated with the assistance of artificial intelligence (AI) in accordance with our AI Principles, may be considered Attorney Advertising and is subject to our [legal notices](#).

## Key Contacts

Beth Sasfai New York	bsasfai@cooley.com +1 212 479 6081
Michael Mencher San Francisco	mmencher@cooley.com +1 415 693 2266
Vince Flynn San Diego	vflynn@cooley.com +1 858 550 6119
Jordan Cohen Palo Alto	jjcohen@cooley.com +1 650 843 5193

This information is a general description of the law; it is not intended to provide specific legal advice nor is it intended to create an attorney-client relationship with Cooley LLP. Before taking any action on this information you should seek professional counsel.

Copyright © 2023 Cooley LLP, 3175 Hanover Street, Palo Alto, CA 94304; Cooley (UK) LLP, 22 Bishopsgate, London, UK EC2N 4BQ. Permission is granted to make and redistribute, without charge, copies of this entire document provided that such copies are complete and unaltered and identify Cooley LLP as the author. All other rights reserved.

