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CLIENT ALERT

California Air Resources Board Approves Regulations Implementing Climate Disclosure Laws SB 253 and SB 261

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On February 26, 2026, the California Air Resources Board ("CARB") adopted final regulations implementing Health and Safety Code sections 38532 and 38533—also known as SB 253 (the "Climate Corporate Data Accountability Act") and SB 261 (the "Climate-Related Financial Risk Act"). The release of the new regulations follows a 45-day comment period whereby CARB solicited and sifted through more than 300 comments from interested stakeholders on a range of practical and legal issues left unclear, or unresolved, when California enacted the climate disclosure laws in October 2023. The final regulations mark a significant development in mandatory climate disclosure, and will likely impact corporate reporting practice far beyond the borders of California. Although CARB took pains to factor stakeholder perspectives into account, it may well take further regulatory development and a reporting cycle (or several) before applied practice resolves all the key interpretive points, making compliance reasonably straightforward.

Scope of Affected Entities

SB 253 and SB 261 establish climate reporting requirements for large corporations doing business in California. SB 253 requires annual reporting of Scope 1, 2, and 3 greenhouse gas emissions for U.S.-based entities doing business in California with over $1 billion in annual revenue. SB 261 requires biennial climate-related financial risk reporting for U.S.-based entities doing business in California with over $500 million in annual revenue.

Reporting Deadlines and Fee Structure

The regulations set a first reporting deadline for SB 253 of August 10, 2026 for initial Scope 1 and 2 emissions data.[1] Further, the regulations establish a flat-rate fee structure that will cover program administration costs, with estimated annual fees of $2,000 to $7,000 per in-scope entity, depending upon whether the reporting entity is subject to SB 253 and/or SB 261.

Exemptions

The regulations confirm a carve out from both SB 253 and SB 261 for insurance companies (defined as a business entity subject to regulation by the California Department of Insurance or that is in the business of insurance in any other state). The regulations also exempt from both laws entities whose only business in California involves employee compensation or payroll expenses, as well as certain other enterprises, such as nonprofits and charitable organizations, and government entities.

Ongoing Constitutional Challenge

Enforcement of SB 261 remains enjoined pending a decision from the Ninth Circuit Court of Appeals regarding the constitutionality of the law. Entities subject to SB 261 should monitor related developments in the Ninth Circuit, as an adverse decision could impact the timing and enforceability of biennial climate-related financial risk reporting obligations.

Will Further Clarification Be Forthcoming?

Several aspects of the regulatory framework remain undeveloped or were deferred by CARB for future resolution:

Scope 3 Emissions Reporting Methodology. Although SB 253 requires reporting of Scope 3 emissions, the regulations set an initial reporting deadline only for Scope 1 and 2 emissions data. The methodology and timeline for Scope 3 emissions reporting—which encompasses indirect emissions across a company's value chain, the calculation of which can be highly subjective—has been deferred, with related regulations anticipated later in 2026.

[1] There is presently no compliance deadline for SB 261 in light of an injunction on the enforcement of the law.

Third-Party Assurance Requirements. SB 253 contemplates third-party assurance of emissions data, but the regulations do not clarify the standards, qualifications, or timing requirements for such assurance. As with Scope 3 emissions reporting, CARB intends to propose further regulations that address assurance later this year. In the interim, one can expect continued requests from respondents for further guidance as they plan to fulfill verification and attestation obligations.

Interplay with Federal and International Standards. The regulations do not explicitly address the interconnectivity, or incongruity, of CARB's reporting regime in relation to other emerging frameworks in the U.S. and abroad, whether mandatory or voluntary.

Continuing Challenges in Application and Interpretation

Several aspects of the new regulations are unlikely to resolve all interpretive questions:

"Doing Business" Threshold. The definition of "doing business in California" imports tax code concepts that may not translate seamlessly in the climate disclosure context. The relatively low sales threshold of $735,019, for example, may sweep in entities with minimal California contacts, raising questions about extraterritorial reach and sparking potential constitutional challenges under the Commerce Clause.

Revenue Calculation for Private Entities. The reliance on "gross receipts" as the measure of revenue may prove difficult for private companies or complex corporate structures, particularly where intercompany transactions or pass-through income distort standard revenue calculations.

Parent-Subsidiary Attribution. While the final regulations define "parent" by reference to existing California regulatory definitions, the rules for attributing emissions and revenue across affiliated entities remain potentially ambiguous, particularly for joint ventures, minority investments, and multitiered holding company structures.

Insurance Company Exemption. The exemption for insurance companies extends to entities "in the business of insurance in any other state." This formulation could create interpretive disputes regarding captive insurers, reinsurers, and entities with ancillary insurance operations.

Progress, Yes; Clarity, Not Yet

CARB's new climate disclosure regulations helpfully augment the sparse language of the laws they seek to implement while providing affected entities with a better understanding of their compliance obligations. Absent a comparable federal reporting regime, California laws will serve as an important benchmark, even for firms not subject to the requirements. In addition, other states, such as New York, can be expected to look to California's approach toward matters of applicability and implementation in formulating their own regimes. Yet many issues remain to be clarified by further regulation and applied practice. For this reason, entities subject to reporting obligations in California should continue to monitor, and inform, CARB implementation and enforcement closely.

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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