



CARB's New Climate-Disclosure Rule Drops Property and Payroll — and Catches More Companies

May 18, 2026

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The California Air Resources Board (CARB) approved its initial climate-disclosure regulation on February 26, 2026. The rule defines key threshold terms for SB 253 and SB 261, sets the first-year reporting deadline, and establishes the fee structure. Most coverage has focused on what the statutes require. The more consequential question may be who they reach — and CARB answered that question in a way that warrants immediate attention from companies that assume they fall outside California's climate-disclosure regime because they lack a physical California presence.

The Threshold That Matters

SB 253 applies to U.S.-based entities with more than \$1 billion in annual revenue that do business in California. SB 261 applies to entities with more than \$500 million. Both statutes use the same jurisdictional concept: "doing business in California," as defined in *Revenue and Taxation Code* section 23101.

Section 23101(a) provides the general standard — actively engaging in any transaction for financial gain or profit. Section 23101(b) adds four bright-line tests: the entity is organized or commercially domiciled in California, exceeds the California sales threshold, exceeds the California property threshold, or exceeds the California payroll threshold. Meeting any one of those tests independently establishes that the entity is doing business in the state.

What CARB Left Out

CARB did not adopt all four bright-line tests. Its Initial Statement of Reasons confirms that it excluded the property and payroll criteria — section 23101(b)(3) and (4) — from the climate-disclosure definition. The regulation uses the general "doing business" standard under section 23101(a) together with only the domicile test under section 23101(b)(1) and the California sales test under

section 23101(b)(2).

In formal terms, CARB narrowed the menu. In practical terms, it shifted the coverage analysis away from physical indicators and toward market activity — the metric most likely to reach remote and asset-light businesses. Companies with no California office, warehouse, or employee base may still be covered if California assigns enough of their revenue to the state through market-based sourcing.

Sales Sourcing Becomes the Gate

Once property and payroll drop out, the California sales prong becomes decisive for most out-of-state companies. For product companies, the analysis may be relatively straightforward. For service providers, it is not.

California does not source service revenue by asking where the seller performed the work. Under *Revenue and Taxation Code* section 25136 and the corresponding regulation, California sources service sales to the state to the extent the purchaser receives the benefit of the service in California. The Franchise Tax Board's Legal Ruling 2022-01 frames the inquiry around four questions: who is the customer, what is the service, what is the benefit, and where is the benefit received. The relevant value is usually the direct effect of the service on the customer.

That framework is familiar to state tax practitioners. CARB's rule gives it new significance by converting it into a climate-disclosure threshold test.

Asset-Light Companies Face the Hardest Questions

Software companies, platforms, consultancies, intermediaries, and other businesses that deliver value without a traditional in-state operational footprint will find that the coverage question turns not on where they operate but on where California says their customers receive value. CARB's February 2026 press release confirms that the agency views the rule under this framework as applying not

merely to entities with a conventional California presence.

When a company sells consulting, coordination, brokerage, data services, or platform access, the location of the “benefit of the service” may be genuinely contestable. California’s sourcing rules offer a hierarchy: look first to contracts and books and records, then to reasonable approximation, and then to proxies such as the place from which the customer ordered the service or the customer’s billing address. That makes documentation central. Coverage may depend less on a broad business description than on how contracts, billing systems, and records describe the service and the customer relationship.

What to Do Now

CARB’s approved rule confirms that SB 253 requires first-year Scope 1 and Scope 2 reporting in 2026, with initial reports due August 10, 2026. Scope 3 reporting begins in 2027. SB 261 uses the same “doing business” threshold for its climate-related financial risk reporting obligation, though CARB has acknowledged a current non-enforcement posture on SB 261’s reporting deadline while litigation continues. An entity above both revenue thresholds faces the same threshold question under both statutes, even though the obligations differ.

Companies that have not assessed their California-source revenue position should do so now. That assessment requires a tax-style sourcing analysis: identifying the services sold, the legal customer, the location of the customer benefit, and the documentary support for that position in contracts and records. For businesses near the line, the inquiry will require joint work among tax, regulatory, accounting, and sustainability personnel — and it should begin before the compliance calendar forces the question.

The compliance risk is not that CARB adopted the broadest nexus test available. It is that by dropping property and payroll and centering the analysis on sales sourcing, CARB built a threshold that reaches companies whose only California connection is commercial. For those companies, the first climate-disclosure question is a tax question — and the time to answer it is before the reporting

deadline, not after.

For more information about California's climate-disclosure thresholds and help determining whether your business may be subject to these new reporting requirements, please contact the author or any attorney with FBT Gibbons' [Environmental Practice Group](#).

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