



CARB Opens Rulemaking on SB 253 and SB 261: Who's in Scope and What Happens in 2026?

Jan 06, 2026

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Promulgated in December 2025, the California Air Resources Board's (CARB) proposed "initial regulation" package focuses on early scoping and administration rather than full-reporting mechanics. It defines threshold terms CARB plans to use to identify entities within each program's reach, proposes an annual implementation-fee framework for California's SB 253 and SB 261, and sets a first-year SB 253 deadline for the reporting of Scope 1 (direct) and Scope 2 (purchased electricity) emissions in 2026. CARB indicates it expects to address additional reporting, assurance, and enforcement details in later rulemaking.

Applicability: Narrow Nexus Test for "Doing Business in California"

The proposal defines "doing business in California" by cross-reference to California Revenue and Taxation Code section 23101(a) and then narrows the trigger for this program. Under the proposed approach, an entity must "do business" *and* meet either the organizational or commercial domicile test in section 23101(b)(1) *or* meet the California sales threshold test in section 23101(b)(2). CARB would not use the property- and payroll-nexus criteria in section 23101(b)(3)–(4), which CARB believes is too limited for its purpose.

The proposal also adds targeted exclusions that may matter for edge cases. It will not include an entity whose California activity is only wholesale electricity, nor would it consider those sales toward the California sales limit. It would also omit an entity if its only presence in California involves employee pay, including remote workers. In addition, the proposal excludes several entity categories, such as tax-exempt nonprofits, entities regulated by the California Department of Insurance or engaged in the business of insurance in another state, and government entities and majority government-owned companies.

Revenue: Gross Receipts, with a Two-Year Screen

CARB's proposal defines "revenue" as "gross receipts" under California Revenue and Taxation Code section 25120(f)(2). It then applies a stabilizing screen for threshold testing by using the lower of the entity's two prior fiscal-year revenue figures to evaluate whether the entity meets the \$500 million annual threshold under SB 261 or the \$1 billion annual threshold under SB 253. CARB's rationale confirms that staff would include entities in the annual fee assessment only after the entity meets the applicable revenue threshold for two consecutive years. This approach aims to reduce turnover driven by one-time transactions, restructuring, or a single spike year.

Corporate Families: Early Control Concepts, Later Reporting Detail

CARB's proposed regulation package defines "parent" and "subsidiary" using control-based concepts. Although the proposal does not yet resolve how CARB will handle merged reporting, boundary documentation, or entity-level coordination across a corporate group, including these definitions is a signal that CARB expects to administer key program concepts through a control framework rather than informal affiliation. This, in turn, suggests that a parent entity may report in manner covering its subsidiaries.

Fees and Administration: Annual Notices, Payment Timing, and Record Retention

To recover program costs for administering SB 253 and SB 261, CARB proposes annual "implementation fees" are structured as a flat, per-entity fee for each program year. The framework would function like a tax-adjacent compliance obligation with an annual invoicing cadence and a fixed-payment window. CARB will issue a written-fee determination notice each year beginning in fiscal year 2026, with notice due by September 10 and payment due within 60 days of the notice date. The proposal also mandates that covered entities retain records for five years to back up revenue and "doing

business in California” claims, providing them to CARB upon request. CARB’s framework considers late fees and penalties, enabling CARB to collaborate with outside entities for audit and collection.

SB 253 Timing: Scope 1–2 Deadline and a Fiscal–Year Pivot

For the first reporting year, CARB proposes that SB 253 reporting entities report Scope 1 and Scope 2 emissions by August 10, 2026. The proposal defines the “applicable preceding fiscal year” using a February 1 cutoff. If a reporting entity’s fiscal year ends by February 1, the applicable preceding fiscal year ends in the current calendar year. If the fiscal year ends after February 1, the applicable preceding fiscal year ends in the prior calendar year. The proposal allows reporting of the prior fiscal year’s data, if possible.

Rulemaking Schedule and SB 261 Litigation Posture

CARB noticed a public hearing on the proposed rules for February 26, 2026, with a potential continuation on February 27, 2026. The written comment period runs from December 26, 2025, through February 9, 2026, with an additional written comment opportunity if CARB issues related modifications. CARB also notes that the Ninth Circuit [enjoined SB 261 enforcement](#) on November 18, 2025. CARB states it will pause SB 261 enforcement while the injunction remains, but it will continue rulemaking.

Practical Implications for Regulated Businesses

Companies should treat this CARB climate regulation package as a scoping and infrastructure rule. These proposed definitions offer a preliminary method for identifying entities subject to fees and reporting. The fee structure also creates operational demands that could be relevant before CARB completes its reporting system. For SB 253 reporting entities, the proposed August 10, 2026, Scope 1–2 reporting deadline and the February 1 fiscal–year mapping rule will guide data–collection sequencing, internal controls, and review timelines.

Our environmental team advises reporting entities on SB 253 and SB 261 readiness. We can create a client-specific checklist that identifies the records required for compliance and assist your company throughout the implementation process. For more information, please contact the author or any attorney with our **Environmental Practice Group**.

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