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Analysis of Stakeholder Input on California Climate Disclosure Implementation

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Analysis of Comments to the California Air Resources Board's Request for Information to Inform Implementation of California Climate-Disclosure

On December 16, 2024, the California Air Resources Board (CARB) formally requested public comment on the state's climate-risk disclosure laws to help inform their implementation. This paper's two objectives are: 1) to provide an analysis of the comment letters filed, identifying trends in the types of filers and the key themes they addressed; and 2) to summarize CARB's July 9 Frequently Asked Questions (FAQ) release on both the regulatory development of the rules and on the submittal of initial reports starting on January 1, 2026.[1]

Background

Governor Gavin Newsom signed Senate Bills (SB) 253 and 261 into law in October 2023, which were later amended by SB 219 in September 2024. These bills mark an important step towards climate-related disclosures and will likely become a de facto national standard for climate risk financial reporting, in light of the Securities and Exchange Commission (SEC)'s decision in March 2025 to no longer defend *The Enhancement and Standardization of Climate-Related Disclosures for Investors Rule.*

SB 253, the Climate Corporate Data Accountability Act, mandates scope 1, 2, and 3 greenhouse gas emissions reporting, assured by a third party, for all public and private companies doing business in California with more than $1 billion in annual revenue.

SB 261, the Climate-Related Financial Risk Act, mandates disclosure of climate-related financial risks and mitigation strategies for all public and private companies doing business in California with more than $500 million in annual revenue.

SB 219 combines the two pieces of legislation and offers notable amendments, including allowing consolidated reporting, prescribing a reassessment by CARB of greenhouse gas accounting and reporting standards in 2033, and postponing timelines for both emissions reporting and assurance requirements.

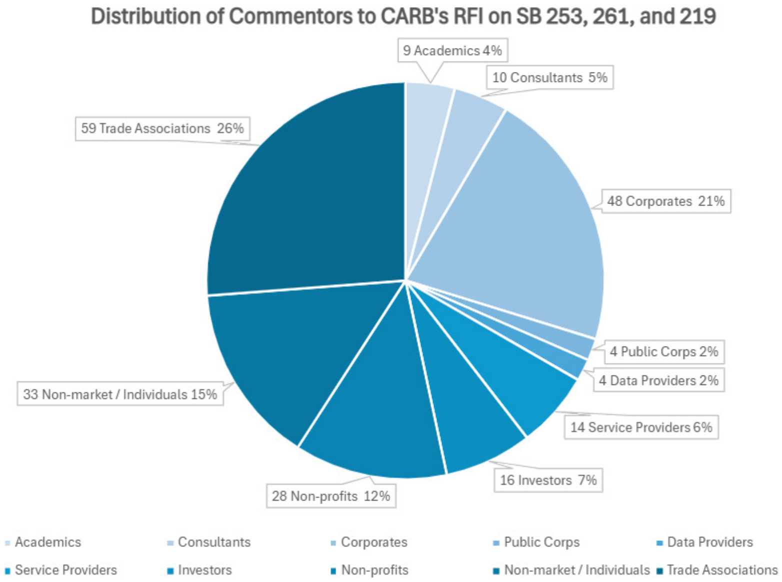
1. This update follows the statutory deadline (July 1, 2025) for CARB to publish guidelines on the implementation of the climate-risk disclosure rules.

Distribution of Commenters to CARB's RFI

In total, CARB received 261 responses, with a total of 238 original comments, from a range of stakeholders over the course of the comment period from December 16, 2024, to March 21, 2025.

Almost 25% of comments came from trade associations, with the most submissions from energy, finance/insurance and industry associations. About 20% of comments came from corporates. Other notable groups of contributors include non-market individual filers, non-profits, consultants, investors, and data/service providers.

A list of all original comments is available in Annex 1.



Major Themes

The Who: A major question left open in SB 253 and SB 261 is the definition of "doing business in California," and thus who must report. Language in SB 253 and SB 261 simply sets revenue thresholds for reporting entities, who are defined as a "partnership, corporation, limited liability company, or other business entity formed under the laws of this state, the laws of any other state of the United States or the District of Columbia, or under an act of the Congress of the United States" that "does business in California."

In its solicitation, CARB proposed adopting California Revenue and Tax Code Section 23101 as the definition of "doing business in California." Section 23101 defines "doing business" as "actively engaging in any transaction for the purpose of financial or pecuniary gain or profit." CARB asked respondents whether this definition was appropriate and whether specific entities should be included, such as federal, state, or foreign government entities or entities that sell energy or other goods and services into California through a separate market.

Commenters who weighed in on defining "doing business in California," fell into two camps: one in favor of an industry standard that included a wide array of actors, and another who critiqued the definition for being too broad, advocating for a narrower, California-focused definition.

Roughly 20% of all commenters agreed with the suggestion to adopt Section 23101 as the definition for "doing business in California." This interpretation was particularly popular amongst consultants, who appreciated this approach's predictability. Commenters in favor of Section 23101 highlighted how this definition, alongside the climate disclosure laws, has built in mechanisms to limit the burden placed on reporting entities; such as calculating revenue based on financial materiality. Some commenters proposed amendments to Section 23101 to further alleviate the reporting burden through measures like a de minimis exemption for employees, property, or sales. Section 23101 already includes these exemptions for out-of-state entities; however, some commenters supported the augmentation of these thresholds.

Vocal opponents of Section 23101—energy trade associations largely fell into this camp—stated that its definition of "doing business in CA" was overly broad. Commenters urged CARB to narrow the definition so entities who engage in minimal business in California, or who contribute limited GHG emissions to the state, do not have to report.

Energy trade associations pushed for an interpretation of "doing business" that focuses on sales and physical presence in California. They also strongly advocated not to include entities who solely operate in an energy market, such as the Western Energy Imbalance Market (WEIM). Commenters cited the authors of SB 253 and SB 261, Senators Wiener and Stern, who have publicly stated that it was not their legislative intent to include energy transactions under the legislations' scope.

Other commenters, coming from a variety of industries, also requested to be exempt from the definition of "doing business in CA." This included an array of corporates and trade associations, such as the housing, retail, and power utilities industry as well as universities.

On the question of including federal, state, or foreign entities, commenters were quite split. Some submissions highlighted that in order to inspire fairness and accurately depict the status of climate risks and opportunities in California, all entities must report, no matter their owner. Yet, other submissions noted costs of reporting could overburden government functions and take away money from public-centered programs. Some commentors in favor of excluding state and federal entities argued that under Section 23101's definition of "doing business in California" state and federal entities make zero revenue because they are funded by tax dollars. Therefore, they do not qualify as reporting entities.

The What: SB 253 and SB 261 reference the Greenhouse Gas Protocol (GHGP) standards and the Task Force on Climate-related Financial Disclosures (TCFD) recommendations as the foundation of the methodology entities should employ when reporting.

CARB asked stakeholders if they should consider standardizing aspects of scope 1, 2, or 3 reporting regarding the built-in flexibility of the GHGP. While some commenters argued for maintaining flexibility to encourage interoperability and reduce costs, others suggested CARB should at least provide some standardization to give reporting entities clearer guidance, especially on scope 3 reporting.

SB 219 assigned CARB the responsibility to set the specific deadline for Scope 3 emissions disclosure in 2027. Across the board, commenters largely accepted reporting scope 3 emissions but asked for a more gradual approach that favored flexibility. Common suggestions to ease reporting requirements were lowering or eliminating scope 3 assurance requirements or implementing a safe harbor provision. Several submissions promoted the inclusion of carbon offset credits to accurately depict scope 3 emissions and to support California's cap and trade market.

Nevertheless, some commenters urged CARB to not include mandatory scope 3 reporting at all, as seen in the Securities and Exchange Commission's (SEC) climate rule. Many corporates and industry trade associations highlighted the heavy burden imposed by scope 3 reporting and its high level of unreliability with the current calculation methods. Subsequently, some commenters argued scope 3 should not be required, as under the GHGP, entities are allowed to exclude disclosures which they are "not yet capable of responsible making."

On the other hand, commenters with an environmental focus, such as nonprofits and investors, emphasized the importance of including material scope 3 emissions. They spotlighted that scope 3 emissions can make up almost ¾ of an entity's total emissions.

Several commenters engaged in debate on the ongoing updates to scope 2 methodology within the GHGP, which started in 2023. Currently, the GHGP requires market and location-based calculations of scope 2 emissions, which differs from calculations made under the Mandatory Greenhouse Gas Reporting Regulation (MRR) for the CA Cap and Trade program. Many energy companies supported the continued inclusion of market-based calculations for scope 2, highlighting the importance of accounting for environmental attribute certificates (EACs). Other commenters, however, pointed to the re-examination of the scientific credibility of the market-based approach, pointing to its demotion in the ISO-14064-1 standard and its reconsideration in the GHGP.

Many commenters addressed the types of assurance and assurance providers required by SB 253 and SB 261. Largely, commenters agreed on the novelty of assurance and the expected growth within the industry over the next few years. In the face of evolving practices, many commenters advocated for delayed assurance requirements while industry caught up and determined best practices. Many commenters suggested adopting clear international standards and definitions rather than using the MRR definitions. A few options suggested were ISO 14064-3, ISO 14065, ISAE 3000 or the upcoming ISSA 5000. While some commenters stressed expertise among verifiers, others highlighted the importance of flexibility, allowing for the largest number of verifiers to enter the market.

In addition, some commenters suggested using digital tagging in reports, such as XBRL, as is used in the European Union's Corporate Sustainability Reporting Directive (CSRD), to help stakeholders read and understand the reports. Commenters suggested CARB adopt a standardized list of tags.

The When: SB 219 granted CARB a 6-month extension, until July 1, 2025, to adopt guidelines for implementing SB 253 and SB 261. Nevertheless, companies are meant to begin reporting in 2026 for their 2025 scope 1 and 2 emissions, as well as release their first biennial climate related financial risk report.

Regarding SB 253, CARB asked the public about a realistic reporting timeline, requesting information on the frequency currently used for voluntary emissions reporting and when data typically becomes available.

For SB 261, CARB solicited feedback on appropriate reporting timelines based on the availability of data and assurance requirements. CARB asked whether a standardized reporting year or a flexible reporting period should be adopted for the biennial climate risk report.

The majority of commenters, both those looking for more lenient and those looking for more stringent regulations, raised concerns of the limited time entities had to comply with CARB's regulations before the 2026 mandated reporting. Timing complications ranged from awaiting further guidance from CARB, uncertainty about reporting obligations, interpreting GHG emissions or climate-related financial risk frameworks for the first time, and finding satisfactory assurance providers in a developing market. Many commenters stressed the importance of finalizing rules so entities could prepare for 2026 reporting.

CARB released an enforcement advisory for SB 253 on December 5, 2024, which stated that CARB will not take enforcement action against entities that "demonstrate good faith efforts to comply with the requirements of the law." Some commenters asked CARB to clarify what defines "good faith efforts" and to extend this enforcement advisory to reporting under SB 261.

In addition, commenters suggested a range of phase-in approaches to ease the stress of reporting; such as adjusting assurance requirements, pushing back scope 3 requirements past 2027, or allowing a buffer period for newly qualified entities.

For the actual timing of SB 253 reporting, most commenters suggested aligning reporting periods with entities' fiscal years and allowing 6-12 months to report the previous year's data.

As for SB 261, many commenters highlighted while the comparability of data is a significant benefit of a standardized reporting year that it may be more practical for entities to align reporting with their fiscal year or with the timeline of the voluntary frameworks which they already use.

While commenters debated the timing and reporting periods of both SB 253 and SB 261, the underlining theme was the need for clear guidance from CARB as soon as possible.

The Where: One of CARB's duties as prescribed in the climate disclosure legislation is to either create a framework for receiving entities' reports or to contract an "emissions" and/or "climate" reporting organization.

CARB asked the public whether reporting should go directly to CARB or to a third-party reporting organization. CARB requested examples of non-profits or private companies that already provide these services.

One of the principal reasons commenters supported direct reporting to CARB was to ensure data privacy. Corporates and their respective trade associations shared fears of leaked, detailed market information due to the mishandling of data by third parties. Third parties are not bound by California's Public Records Act, which requires state agencies to protect trade secrets.

Commenters proposed a variety of non-profits as contract options like The Climate Registry Project or CDP (formerly the Climate Disclosure Project). Some commenters raised concerns that creating a reporting system from the ground-up could elicit significant time constraints and costs for CARB. These commenters concluded the most efficient approach is to contract an experienced organization who already has a running system, free of bugs. In addition, this approach could reduce some burden from companies as many corporations are already voluntarily reporting GHG emissions and are familiar with these frameworks and platforms.

Some commenters argued that if CARB does contract a third party, they should provide a rationale for this extended cost. Commenters proposed a variety of cost-effective ways CARB could create a reporting system; such as, a platform that links to data published on company websites or adopting similar platforms already utilized by other California agencies.

The additional benefit of transparency was underscored by some commentors who argued CARB should host the reporting platform. They pointed out that CARB could provide a long-standing platform that eliminated paywalls and ensured accessibility to relevant stakeholders, such as consumers and investors. The primary purpose of SB 253 and SB 261 is to inform state action regarding GHG emissions and climate risk, thus commenters stated it makes the most sense for the government to be the guardian of such information.

The How: California's climate disclosure laws join a myriad of other jurisdictions' efforts to quantify GHG emissions and identify climate-related financial risks and opportunities.

SB 253 requires that "emissions reporting is structured in a way that minimizes duplication of effort," allowing for submissions of other jurisdictions' reports, provided they satisfy the necessary requirements. SB 261 permits entities to utilize any prepared climate-related financial risk report, provided they meet the outlined standards.

CARB requested commenters share the types of frameworks that companies are already using for both emissions and climate risk reporting. Using the GHGP and the TCFDs as the basis for California's laws already creates a strong foundation for interoperability as many global standards have stemmed from these methodologies. Many commenters pointed to the International Sustainability Standards Board (ISSB) as the new standard as the "successor" of the TCFDs.

The majority of commenters advocated for harmonization of CARB's regulations with international standards due to the growing number of reporting requirements, from global standards like the CSRD and over 20 jurisdictions adoption of ISSB standards, to California and US standards like the MRR or Title 40 of the Code of Federal Regulations of the

Environmental Protection Agency. Commenters argued harmonization would not only minimize the burden on reporting entities, but it would also allow stakeholders to receive comparable and decision-useful data.

Nevertheless, some commenters raised concerns about an external organization setting regulations within California and bypassing the Administrative Procedures Act (APA) that governs California's rulemaking. A mix of options were suggested; such as, stepping away from global harmonization and focusing on California specific requirements or boosting cooperability by creating a multilateral working group between these jurisdictional bodies to promote compatibility and discuss and review standards. Some commenters suggested CARB should create its own body that regularly reviews updates to international standards. SB 219 calls on CARB to review international standards and update its own framework in 2033; however, this body would stand as a more consistent review, which could implement APA rulemaking processes for any changes it wishes to make to keep CARB's regulations relevant.

Most commenters requested flexibility on the type of methodologies used, giving as much choice to reporting entities as possible. Yet, some commenters highlighted the importance of comparability of data over time to document change within an entity. These commenters supported entities maintaining the same methodology year after year. Commenters suggested CARB could create a list of acceptable reasons to change methodologies; however, opinions were split on whether a reporting entity should recalculate previous emissions with the new methodology if they decide to switch.

For filing reports, commenters suggested a variety of options for CARB to improve interoperability, including CARB curating a pre-approved list of reports that they will accept or create software that fills in comparable information from reports to California's standards.

Insights From CARB

CARB received a range of diverse opinions in response to its solicitation for feedback to inform its implementation of SB 253, SB 261, and SB 219. Since the comment period closed on March 21, CARB has provided the public with some insights into its regulatory development through a stakeholder workshop on May 29 and a document covering Frequently Asked Questions (FAQ) that was released on July 9. In both, CARB highlighted additional opportunities this summer for stakeholders to share feedback with the regulatory body to continue informing its rulemaking.

In both the workshop and the FAQ document, CARB reiterated its commitment to "ensure that accurate, comparable, and decision-useful climate information is made available to investors, consumers, and other interested parties." The FAQ document provided an update on the development of the guidelines for the climate-related risk rules and answered some key questions on initial reporting. CARB provided initial definitions for key terms in the stakeholder workshop; such as, "doing business in California," "revenue," and "parent" versus "subsidiary" companies.

"Doing business in California:" CARB's initial definition of "doing business in California" models California

Revenue and Tax Code Section 23101. Due to stakeholder feedback, the staff incorporated further qualifying thresholds. Alongside "actively engaging in any transaction for the purpose of financial or pecuniary gain or profit," reporting entities must also either:

- **a.** Be organized or commercially domiciled in California
- **b.** Surpass $735,019 in California-based sales
- **c.** Exceed $73,502 in real property and tangible personal property within California (or 25% of the entity's total real property and tangible personal property, whichever is lesser)
- **d.** Exceed $73,502 in compensation within California (or 25% of the entity's total compensation, whichever is lesser

CARB solicits feedback from stakeholders on whether this amendment addresses concerns that the Section 23101 definition of "doing business" was too broad. CARB also seeks responses on the rationale for business sector exemptions. CARB proposes adopting the definition of parent and subsidiary companies from the California Cap-and-Trade program, which states a corporate relationship exists when a level of ownership or control exceeds 50%.

"Total annual revenue:" CARB's initial proposition for calculating "total annual revenue" of qualifying entities is its gross receipts as defined in California Revenue and Taxation Code Section 25120(f)(2). CARB continues to seek feedback on whether this definition models current business practices and how to calculate revenue and subsequent GHG emissions of subsidiaries doing business in California when their parent company is not.

GHG Reporting: CARB explicitly stated that reporting entities must report scope 1 and 2 GHG emissions in 2026, covering the prior fiscal year, by the date stated in the rulemaking process. Limited assurance must be obtained on scope 1 and 2 starting in 2026 and reach reasonable-assurance level by 2030. Scope 3 reporting will begin in 2027.

CARB is still seeking stakeholder feedback on how to design a regulatory framework that supports future developments in scope 2 and 3 reporting. CARB recognized the debate around scope 2 reporting methodologies and asks stakeholders how CARB can set standards that meet California's needs. As for scope 3, CARB requests feedback on how to develop appropriate materiality thresholds that focus on "significant emissions categories—without undermining transparency."

Climate-related Financial Risk Reporting: Reporting entities must publish their first climate-related financial risk report by January 1, 2026, and submit a public link to the report on CARB's public docket, which will open on December 1, 2025. Based on stakeholder feedback, CARB will accept the fiscal year reports of 2023/2024 or 2024/2025. Subsequent reports will be submitted biennially.

Regarding the content of the report, CARB highlighted the definition for "climate-related financial risk" in the law:

> ***"Material risk of harm to immediate and long-term financial outcomes due to physical and transition risks, including, but not limited to, risks to corporate operations, provision of goods and services, supply chains, employee health and safety, capital and financial investments, institutional investments, financial standing of loan recipients and borrowers, shareholder value, consumer demand, and financial markets and economic health."***

CARB highlighted the flexibility that the statute grants entities in choosing a reporting framework. CARB flagged TCFD's advice to determine materiality for climate issues in the same fashion as other areas of financial reports.

"Good faith efforts:" CARB addressed the December 2024 Enforcement Notice which granted some grace to reporting entities who may be navigating GHG and climate-related risk reporting for the first time. CARB will not seek penalties for reporting violations, provided that entities use the best information available to them at the time of the December 2024 notice.

Next Steps and Potential Hurdles

As CARB works on these guidelines, a lawsuit led by the Chamber of Commerce challenges the legality of California's climate disclosure laws. In February, the Federal District Court for the Central District of California dismissed two of the three claims by the Chamber of Commerce which challenged the laws through the First Amendment, the Supremacy Clause and the Clean Air Act, as well as the dormant Commerce Clause in the Constitution that limits extraterritorial regulation.

The court has still yet to rule on the third claim that the laws violate the First Amendment by coercing speech from reporting entities. Nevertheless, within its decision, part of the court's reasoning for dismissing claims against SB 253 were that there were no "published CARB regulations imposing any obligation on reporting entities," thus making it difficult to discern if "any possible regulations CARB issues would impermissible burden interstate commerce or violate the Supremacy Clause."

California's lawyers took this argument to bat on July 1, 2025, during the case hearing. Deputy Attorney General Caitlan McLoon stated, "If there is no requirement to speak, there can be no First Amendment harm." Each side also presented arguments on the merits of the First Amendment claims. The case is likely to pass into next year; however, Judge Otis D. Wright II is expected to deliver his decision on whether to temporarily block the laws while the case plays out in court.

CARB likely has a close eye on this case as it formulates its guidelines. CARB has stated its intent to release a final rule by the end of 2025. CARB will follow the California APA to create the guidelines, which will include an initial notice, a 45-day comment period, a staff report with comment response, and a formal adoption by CARB and review by the CA Office of Administrative Law.

Stakeholders are encouraged to continue to send feedback to CARB at climatedisclosure@arb.ca.gov. All submissions will be added to the public record and help inform the implementation of the CA climate-disclosure legislation.

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