

# California's First-in-the-Nation Climate Disclosure Laws Will Move Forward with Limited Delay Under Recent Amendment

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## KEY TAKEAWAYS

- The amendments to the CA climate disclosure laws did not delay the reporting deadlines applicable to reporting entities.
- Companies should act now to ensure they will be ready to report their 2025 greenhouse gas emissions under the GHG Protocols and climate-related risks under the TCFD or IFRS S2 frameworks.

When California Governor Gavin Newsom signed two climate disclosure bills into law last year, he expressed an interest in working with the legislature this year to amend the deadlines. Accordingly, on June 28, 2024, the Newsom administration released its proposed amendments to the laws. Under this proposal, the California Air Resources Board (CARB) would have an additional two years to develop its implementing regulations, and reporting companies would have an additional two years before the first reporting deadline.

The authors of the two bills immediately signaled opposition to the proposed delay. Rather than taking up the Newsom administration's proposed amendment, the California legislature considered and ultimately passed Senate Bill 219 (SB 219). In contrast to the amendments proposed by the Newsom administration, SB 219 provided only one extension: a six-month extension on the deadline for CARB to develop its implementing regulations (changing the deadline for those regulations from January 1, 2025 to July 1, 2025). SB 219 did not include any change to the reporting deadlines. Governor Newsom signed SB 219 into law on September 27, 2024.

Under the amendments, CARB is not required to issue its implementing regulations until July 1, 2025, but the first reports that must be submitted in 2026 will cover all of 2025. This raises several important concerns for businesses:

## 1. WHO IS SUBJECT TO THE LAWS?

The laws apply to any entity that meets specified total annual revenue thresholds and “does business in California.”<sup>[1]</sup> This phrase is not defined in the laws or elsewhere in the California Health and Safety Code (where the laws are codified). To the extent that CARB will provide additional guidance on applicability in its regulations, such guidance will not be received until six months into the first reporting year.

Practitioners have looked to the California Corporations Code<sup>[2]</sup> and the California Revenue and Taxation Code<sup>[3]</sup> for guidance on how to interpret this phrase. Many entities have already reviewed whether they are required to register with the California Secretary of State under the Corporations Code or subject to taxation in California under the Revenue and Taxation Code, and a conservative assumption would be that an entity that is subject to either would be considered “doing business” under the climate disclosure laws. In the event CARB does address applicability in its implementing regulations, this point can be reviewed after the regulations are released and before the first reporting deadline.

## 2. WHAT MUST BE REPORTED?

1. The Climate Corporate Data Accountability Act (previously referred to as SB 253) will require reporting entities to disclose Scope 1 and Scope 2 emissions beginning in 2026 (covering 2025 emissions) and Scope 3 emissions beginning in 2027 (covering 2026 emissions). This law requires that entities follow the Greenhouse Gas Protocol standards and guidance, with the potential for CARB to change frameworks starting in 2033. Reporting entities should therefore take steps now to ensure they will be able to collect the data needed to report under the Greenhouse Gas Protocol.
2. The Climate-Related Financial Risk Act (previously referred to as SB 261) will require covered entities to publish a climate-related financial risk report (the first report must be published by January 1, 2026 and then biennially thereafter). This law allows entities to follow the 2017 Final Report of Recommendations of the Task Force on Climate-related Financial Disclosures (TCFD), or any successor thereto. Covered entities that are not currently using the TCFD framework (whether because they are using a different framework or because they are not currently reporting on climate-related financial risks) should take steps to ensure they will be able to complete the first required report by January 1, 2026. Since the TCFD disbanded last year, some companies have begun reporting under the IFRS S2 Climate-related Disclosures standard. Because this standard builds on the TCFD framework, reporting under this standard should meet the requirements of this law.
3. Given each law allows the use of existing frameworks, companies should take steps now to ensure they can collect the data needed to comply with these frameworks. CARB’s implementing regulations should be reviewed once they are issued to identify any additional requirements or deviations from these established frameworks.

Separately, we note that these laws are currently the subject of litigation.<sup>[4]</sup> Since no stay of the laws is in place, until that litigation is resolved, we recommend that companies take actions assuming the laws will stand as written.

For further information or questions about the California climate bills, please contact your Winston & Strawn relationship attorney or the authors of this post.

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[1] Cal. Health & Safety Code §§ 38532(b)(2), 38533(a)(4).

[2] Portions of the California Corporations Code apply to business entities that are not registered or domiciled in California if they are “transacting intrastate business,” which is defined generally to mean “entering into repeated and successive transactions of its business in this state, other than interstate or foreign commerce,” subject to certain exceptions. Cal. Corp. Code §§ 191, 2100.

[3] California’s corporate tax applies to every corporation “doing business” within the state, which is defined generally to mean “actively engaging in any transaction for the purpose of financial or pecuniary gain or profit,” with specific tests that can be applied related to sales volume, real and tangible personal property value, and compensation paid in the state. Cal. Rev. & Tax. Code §§ 23101, 23151.

[4] *Chamber of Com. of the U.S. et al. v. Cal. Air Res. Bd. et al.*, Case No. 2:24-cv-00801 (C.D. Cal.).

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