To Speak or Not to Speak:

Unraveling California's Web of Climate Disclosure Laws

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California is forging a path for climate disclosure with its series of related legal frameworks requiring covered entities to disclose climate-related information, supporting documentation for certain net zero claims and financial risk frameworks.

In October 2023, California became the first state to enact such broad climate disclosure legislation, with the passage of the Climate Corporate Data Accountability Act (SB 253), the Climate-Related Financial Risk Act (SB 261) and California's Voluntary Carbon Market Disclosures Act (AB 1305). Entities covered by these three programs generally include those that do business in the state of California and either (1) make certain climate related claims about the business, its products, etc.; (2) market and/or purchase certain voluntary carbon offsets; and/or (3) meet certain monetary thresholds (for purposes of SB 253 and SB 261). Further detail is included within our "Overview" section below on each of the programs.

With compliance deadlines already in place or approaching quickly, implementation has been challenging for industry. The California Air Resources Board (CARB) is responsible for promulgating regulations associated with the three statutory programs, but has yet to do so. AB 1305 has already gone into effect, with its first deadline occurring as of January 1, 2025. SB 253 and SB 261 have deadlines starting in 2026. Like AB 1305, SB 261's climate-related financial risk disclosure requirement does not depend on CARB completing its rulemaking prior to when the first reports are due on January 1, 2026. However, SB 253 differs from the other two in that no reporting obligations are imposed without CARB's adoption of implementing regulations. CARB has expressed that it will utilize enforcement discretion in the first reporting cycle for both SB 253 and SB 261 based on December 2024 Enforcement Notice, provided reporting entities demonstrate a good faith effort to comply.

To date, CARB has held two public workshops on the climate disclosure laws, during which it delved into questions on applicability, scoping, definitions and the mechanics of report submissions. Definitions as fundamental as what it means to do business in the state of California, and what constitutes a parent versus a subsidiary are still subject to definition – forcing regulated industry to make a good faith effort to comply in the face of uncertainty. CARB also developed an FAQ addressing certain questions about the programs and an initial checklist for climate-related financial risk disclosures.

Furthermore, two of the programs, SB 261 and SB 253, are subject to pending litigation in the US District Court for the Central District of California: Chamber of Commerce of the *United States, et al. v. California Air Resources Board, et al. C.D. Cal., Case No. 2:24-cv-00801*. The plaintiffs in this case have challenged the statutory programs on the basis that (1) the laws violate the First Amendment by effectively compelling speech from companies regarding climate change, (2) the laws are preempted by the Clean Air Act because they seek to de facto regulate greenhouse gases and (3) the laws are extraterritorial in that they seek to effectively regulate interstate commerce.

In late August 2025, the district court denied the plaintiffs' motion for an injunction of the two statutory programs pending appeal. The district court then proceeded to stay the proceedings pending resolution of the plaintiffs' interlocutory appeal to the Ninth Circuit (Case No. 25-5327). Depending on how this case proceeds, the decision has the potential to affect the scoping of programs, as well as how and when CARB can direct speech (disclosures) related to greenhouse gas emissions and climate change programs.

Considering the challenges above, regulated entities needs to be prepared to comply while remaining flexible given pending publication of regulations in December. To assist, this alert provides key information on the three programs, including the applicability, the program's coverage, steps for compliance, timing and other miscellaneous information. This alert is intended as a high-level guide based on current guidance, and we encourage you to reach out to your firm contact for more personalized guidance. Our team will also continue to monitor and provide updates as developments arise.

Overview of the Three Climate Disclosure Programs

California Section 261; Cal. Health & Safety Code § 38553 (Climate-Related Financial Risk)

- **What** – SB 261 requires certain covered entities doing business in the state to provide biennial disclosures of climate-related financial risk. Once a covered entity falls within the scope of the program, the entity must generate a climate-related financial risk report. Climate-related financial risk is very broadly defined as including "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." § 38533(a)(2).

- **Who** – A covered entity falls within the scope of the program if it does business in California, and has global revenues exceeding US$500 million. Following its initial public workshop, CARB issued preliminary guidance indicating the agency will adopt the definition of "does business in California" found in the California Revenue and Tax Code section 23101, which encompasses almost any entity that "engag[es] in any transaction for the purpose of financial or pecuniary gain or profit." However, CARB is considering shifting its definition of revenue to include "the total global amount of money or sales a company receives from its business activities, such as selling products or providing services." While the climate-related financial risk reports "may be consolidated at the parent company level," the statute does not require that. It merely provides an option to avoid breaking out subsidiaries separately, if desired by a reporting parent. CARB has published a preliminary list of potentially covered entities that may be subject to SB 261 and SB 253.
- **Timing** – The first report must be submitted on or before January 1, 2026, and then updated biennially thereafter. § 38533(b)(1)(A).
- **How** – Covered entities must publicly post their climate risk reports online by January 1, 2026. CARB intends to post a public docket on December 1, 2025, for entities to post the public link to their climate-related financial risk reports. The docket will remain open until July 1, 2026. The disclosures must follow the framework developed by the Task Force on Climate-related Financial Disclosures (TCFD), the International Sustainability Standards Board's (ISSB) Climate-Related Disclosures Standard or a comparable voluntary reporting framework. CARB has released both a checklist and Q&A document to assist with preparing the required financial risk disclosures.
- **Fees** – Covered entities must pay annual fees to CARB for program implementation. § 8533(c)(2)(A). Per CARB's August webinar, CARB currently estimates annual fees will be US$1,403 for SB 261.

California SB 253; Cal. Health & Safety Code § 38532 (Climate Corporate Data Accountability Act)

- **What** – SB 253 requires CARB to development regulations that will require public disclosures of scope one, two and three greenhouse gas (GHG) emissions for certain covered entities doing business in California, and that have global revenues exceeding US$1 billion dollars. The first reporting period is expected to begin in 2026. Scope one emissions are defined as "all direct greenhouse gas emissions that stem from sources that a reporting entity owns or directly controls, regardless of location, including, but not limited to, fuel combustion activities." Scope two emissions are defined as "indirect greenhouse gas emissions from consumed electricity, steam, heating, or cooling purchased or acquired by a reporting entity, regardless of location." Scope three emissions are defined as "indirect upstream and downstream greenhouse gas emissions, other than scope two emissions, from sources that the reporting entity does not own or directly control and may include, but are not limited to, purchased goods and services, business travel, employee commutes and processing and use of sold products."
- **Who** – A reporting entity is a partnership, corporation, LLC, or other business entity with total annual global revenues exceeding US$1 billion, and that does business in California. CARB is exploring the development of a database of companies it believes are "doing business in California'" and will likely refer to the California Revenue & Taxation Code for its initial concept. Subsidiary GHG emission reports may be consolidated at the parent company level. CARB has published a preliminary list of potentially covered entities that may be subject to SB 261 and SB 253.
- **Timing** – SB 253 set a deadline of July 1, 2025, for CARB to adopt regulations for the GHG reporting; however, CARB is running behind. During a recent CARB webinar, CARB is expected to propose a June 30, 2026 implementation deadline for SB 253-required scope one and two reporting. Scope three emissions reporting is anticipated to begin in 2027.
- **How** – SB 253 requires entities to seek third-party assurance of their GHG reporting. CARB plans to use existing assurance frameworks, such as ISSA 5000 (IAASB), AA1000, ISO 14060 family and AICPA. It also welcomes public feedback on how to incorporate assurance requirements into the forthcoming regulations. The GHG reports must adhere to the standards articulated in the Greenhouse Gas Protocol developed by the World Resources Institute and the World Business Council for Sustainable Development. We also anticipate CARB will prepare a portal for links to these disclosures to be submitted (comparable to SB 261 above). CARB's Q&A guidance document also applies to this program.
- **Fees** – Covered entities must pay annual fees to the CARB for program implementation. §38532(c)(2)(G). Per CARB's August webinar, CARB currently estimates annual fees will be US$3,106 for SB 253 entities.

California AB 1305; Cal. Health & Safety Code § 44475;-1,-2,-3 (California's Voluntary Carbon Market Disclosures Act)

- **What** – California AB 1305 and its implementing regulations cover disclosure requirements for entities that participate in the carbon offset market and, separately, disclosures for covered entities that make certain net-zero or significant reductions in greenhouse gas claims.

  Part one – Voluntary Carbon Offsets – Entities marketing or selling voluntary carbon offsets must publicly disclose on their website certain information regarding the applicable carbon offset project and accountability measures. A voluntary carbon offset is defined as "any product sold or marketed in the state that claims to be a "greenhouse gas emissions offset," a "voluntary emissions reduction," a "retail offset," or any like term, that connotes that the product represents or corresponds to a reduction in the amount of greenhouse gases present in the atmosphere or that prevents the emission of greenhouse gases into the atmosphere that would have otherwise been emitted."

Part Two – Claims Regarding Voluntary Carbon Offsets – Entities that purchase or use voluntary carbon offsets, and make claims regarding net zero emissions, carbon neutrality and/or related claims "implying the entity, related entity or a product does not add net carbon dioxide, or greenhouse gases to the climate or has made significant reductions to its carbon dioxide or greenhouse gas emissions" must make certain disclosures on their website.

Part Three – General Claims re Net Zero Emissions – Importantly, the third layer does not include carbon offsets at all. This broader category covers any entity that makes claims regarding net zero emissions, carbon neutrality and/or "makes other claims implying the entity, as well as related or affiliated entity, or a product does not add net carbon dioxide or greenhouse gases, as defined in Section 38505, to the climate or has made significant reductions to its carbon dioxide or greenhouse gas emissions, as described in Section 38505." Like the categories above, the entity must then disclose additional information on their website. Information must include documentation on how the claim was found to be accurate; interim progress toward how the goal is being measured; and whether independent third-party verification was used.

- **Who** – Covered entities must have nexus to the state, which has been interpreted very broadly. For Part One, covered entities are those that market or sell voluntary carbon offsets within the state. For Part Two, covered entities are those that operate within the state, and/or purchase or use voluntary carbon offsets sold within the state. For Part Three, covered entities that operate within the state, and/or make claims within the state.
- **Timing** – Disclosures required for Parts One, Two and Three were already required to be publicly posted on websites as of January 1, 2025. Disclosures must be updated annually.
- **How** –Disclosures for Parts One, Two, and Three are to be publicly posted on the entity's website. There is no clear format required yet by CARB, but covered entities have established industry best practices of what these should look like based on the initial reporting. We have templates available and can provide guidance on standards referenced depending on the industry.

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