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California Climate Disclosure Laws: CARB Seeks Input to Develop Implementation Guidance

Posted in: California Climate Disclosure Laws
Posted on: December 20, 2024

Entities in-scope (or likely to be) may want to consider participating in the rulemaking process, as CARB is required to consider feedback from industry stakeholders when determining reporting timelines

The California Air Resources Board (CARB), the state's lead agency for climate change programs, has announced it is soliciting public feedback to help craft implementation guidance for the state's mandatory GHG emissions and climate risk reporting laws enacted last year. Compliance with both laws is first required in 2026. CARB has until **July 1, 2025** to finalize implementing regulations, which are expected to clarify myriad ambiguous provisions in the legislation, including critically with respect to scoping.

The information solicitation consists of 13 numbered questions, many with multiple subparts; selected requests for comment are highlighted below. Respondents are advised that they "may also provide any additional information they feel is important to inform staff's work to implement the statutes." CARB notes that it is already in the process of hiring staff. Responses may be submitted online here. The comment file may be viewed here. All of these links are also accessible via CARB's landing page for implementation of the climate disclosure legislation. ***Comments are due by March 21, 2025***.

Publication of the solicitation follows CARB's release earlier this month of an enforcement notice stating that, **for the first GHG emissions report due in 2026**

(covering Scope 1 and Scope 2 emissions), CARB will not take enforcement action against entities that submit incomplete emissions data, so long as they demonstrate "good faith efforts" to comply with the reporting requirements and are actively working toward full compliance. The notice permits companies to submit emissions data "that can be determined from information the reporting entity already possesses or is already collecting" as of December 2024.

Background

As outlined in our earlier client alert, SB-253 (as amended by SB-219) requires public and private U.S. entities that "do business" in California with total annual revenue in the previous fiscal year **exceeding $1 billion** to annually report Scope 1 and Scope 2 GHG emissions metrics **beginning in 2026** and Scope 3 GHG emissions metrics **beginning in 2027**—in each case for the prior fiscal year and regardless of materiality—and obtain independent third-party assurance over those metrics.

SB-261 (as amended by SB-219) requires public and private U.S. entities, other than insurance companies, that "do business" in California with total annual revenue in the previous fiscal year **exceeding $500 million** to biennially (i.e., once every two years) report climate-related financial risks and the measures they have adopted to reduce and adapt to such risks in accordance with the framework recommended by the Task Force on Climate-related Financial Disclosures (TCFD), or an equivalent reporting framework. The first TCFD-compliant report must be posted to the reporting entity's website by **January 1, 2026**, with biennial updates thereafter.

The laws remain subject to ongoing federal litigation challenging their constitutionality, but have not been stayed and thus—at least for now—will remain in effect pending the outcome of the litigation.

Selected Implementation Questions

General: Applicability

1. SB 253 and 261 both require an entity that "does business in California" to provide specified information to CARB. This terminology is not defined in the statutes.

    a. Should CARB adopt the interpretation of "doing business in California" found in the Revenue and Tax Code section 23101?

2. What are your recommendations on a cost-effective manner to identify all businesses covered by the laws (i.e., that exceed the annual revenue thresholds in the statutes and do business in California)?

General: Standards in Regulation

3. CARB is tasked with implementing both SB 253 and 261 in ways that would rely on protocols or standards published by external and potentially non-governmental entities.

   a. How could CARB ensure reporting under the laws minimizes a duplication of effort for entities that are required to report GHG emissions or financial risk under other mandatory programs?

General: Data Reporting

4. What factors affect the cost or anticipated cost for entities to comply with either legislation? What data should CARB rely on when assessing the fiscal impacts of either regulation?

5. Should the state require reporting directly to CARB or contract out to an "emissions" and/or "climate" reporting organization?

SB 253: GHG Emissions Disclosure

7. Entities must measure and report their emissions of greenhouse gases in conformance with the GHG Protocol, which allows for flexibility in some areas. Are there specific aspects of scopes 1, 2 or 3 reporting that CARB should consider standardizing?

8. SB 253 requires that reporting entities obtain "assurance providers."

   a. For entities required to report under SB 253, what options exist for third-party verification or assurance for scope 3 emissions?

   b. For purposes of implementing SB 253, what standards should be used to define limited assurance and reasonable level of assurance?

9. For those parties currently reporting scopes 1 and 2 emissions on a voluntary basis:

   a. What frequency (annual or other) and time period (1 year or more) are currently used for reporting?

   b. When are data available from the prior year to support reporting?

   c. What software systems are commonly used for voluntary reporting?

SB 261: Climate Risk Disclosure

10. For SB 261, if the data needed to develop each biennial report are the prior year's data, what is the appropriate timeframe within a reporting year to ensure data are available, reporting is complete, and the necessary assurance review is completed?

11. Should CARB require a standardized reporting year (i.e., 2027, 2029, 2031, etc.), or allow for reporting any time in a two-year period (2026-2027, 2028-2029, etc.)?

13. Many entities that are potentially subject to reporting requirements under SB 261 are already providing other types of climate financial risk disclosures.

   a. What other types of existing climate financial risk disclosures are entities already preparing?

   b. For covered entities that already report climate related financial risk, what approaches do entities use?

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