HUSCH BLACKWELL

THOUGHT LEADERSHIP

LEGAL UPDATES PUBLISHED: APRIL 17, 2025

Developments Regarding Federal and State Climate-Related Disclosure Requirements

View Federal Actions & Impacts Hub

Services

Environmental

Securities & Corporate Governance

Industry

Energy & Natural Resources

Professionals

STEVEN R. BARRETT
CHATTANOOGA:
423.757.5905
STEVE.BARRETT@
HUSCHBLACKWELL.COM

ROBERT J. JOSEPH
CHICAGO:
312.526.1536
ROBERT.JOSEPH@
HUSCHBLACKWELL.COM

VICTORIA H. SITZ
OMAHA:
402.964.5096
VICTORIA.SITZ@
HUSCHBLACKWELL.COM

Federal climate disclosure rules

The SEC's climate disclosure rules and their initial rollout

On March 6, 2024, the Securities and Exchange Commission (SEC) issued rules aimed at standardizing climate-related disclosures by public companies. Commonly known as the SEC climate disclosure rules, these rules were designed to enhance transparency by requiring companies to provide detailed information about their climate-related risks, governance practices, and strategies. (Our guide to the SEC climate disclosure rules is available here.) Specifically, the rule mandated that companies report their greenhouse gas (GHG) emissions, including Scope 1 (direct emissions) and Scope 2 emissions (indirect emissions from purchased energy). However, the rule faced immediate pushback from various stakeholders, including industry groups and political opponents. In April 2024, the SEC announced a stay of the implementation of the regulations pending judicial review.

The Trump administration's efforts to roll back the rules

The Trump administration had signaled its intent to roll back the SEC's climate disclosure rules, and on February 11, 2025, acting SEC Chair Mark Uyeda issued a statement indicating that he had directed SEC staff not to request oral arguments in the ongoing judicial review of the rules. This pause was intended to provide the SEC with time to reassess its position and determine next steps. Subsequently, on March 27, 2025, the SEC voted to end its defense of the climate disclosure rules.

However, the climate disclosure rules have not been repealed or rescinded and the court has not yet determined whether to proceed with the litigation. Several intervenors, including 18 states (among them Massachusetts and New York) and the District of Columbia, have affirmed their intention to defend the climate disclosure rules despite the SEC ending its defense.

Although businesses that were preparing to comply with the SEC climate disclosure rules have been given at least a temporary reprieve, they should not forget about a number of parallel state-level climate disclosure requirements that are still pending, as described below.

California climate disclosure requirements

California has passed a package of legislation aimed at creating new reporting requirements for companies related to climate data. Two pieces of legislation, the **California Climate Corporate Data Accountability Act (SB 253)** and **Greenhouse Gases: Climate-Related Financial Risk (SB 261), as amended by Senate Bill No. 219**, are set to go into effect in the near future and, if they survive pending legal challenges, will represent significant new requirements for many large companies doing business in California. Below are key highlights for each piece of legislation, as amended. However, it should be noted that, until related regulations are issued by the California Air Resources Board (CARB), significant uncertainty remains around who is covered, the treatment of affiliated entities, and the specific contents of the required reports. A 2024 amendment to SB 253 requires CARB to adopt these implementing regulations.

SB 253: Climate Corporate Data Accountability Act

SB 253 applies to any corporation that meets the definition of a "Reporting Entity," which includes any public or private U.S. business entity with total annual revenues in excess of $1 billion that "does business in California." While the bill does not define what "doing business in California" consists of, this phrase could be interpreted to have broad applicability. The legislative history for the bill references the definition of that phrase in the California tax code, which defines the phrase expansively to include "actively engaging in any transaction for the purpose of financial or pecuniary gain or profit" in California; being "organized or commercially domiciled" in California; or having California sales, property, or payroll above specified amounts — in 2024, these amounts were: (A) for annual sales, the lesser of $735,019 or 25% of the entity's total sales; (B) for the aggregate value of real and tangible personal property, the lesser of $73,502 or 25% of the value of the entity's total California property; and (C) for payroll, the lesser of $73,502 or 25% of the entity's total California payroll.

The bill requires annual public disclosures by Reporting Entities of Scope 1, 2, and 3 emissions, assured by a third party. GHG emission data is required to be measured and reported in conformance

with the Greenhouse Gas Protocol standards listed in the bill. Disclosures must be submitted to CARB or a publicly available database that will be developed by the CARB.

For Scope 1 and 2 emissions, annual disclosures will begin in 2026 for fiscal year 2025. For Scope 3 emissions, annual disclosure will begin in 2027 for fiscal year 2026. Failure to comply results in a Reporting Entity being liable for up to $500,000 per reporting year.

As indicated above, the bill requires Reporting Entities to obtain assurance from third-party assurance providers for the emissions data. The assurance engagement for Scope 1 and 2 emissions requires only a limited assurance level in 2026. In 2030, the assurance level rises to require reasonable assurance by the third party. For Scope 3 emissions, CARB will evaluate trends in third-party assurance requirements and may establish assurance requirements in 2027 for Scope 3 emissions. By 2030, Scope 3 emissions will be required to meet limited assurance levels.

Based on these phase-in dates (and pending the outcome of related litigation), Reporting Entities' compliance with these California rules will be required soon.

Companies attempting to comply with these new California rules should be aware of certain notable differences between SB 253 and the SEC's climate disclosure rules. While compliance with the SEC disclosure rules typically only would have required disclosing Scope 1 and 2 emissions, California also mandates disclosure of Scope 3 emissions. This expands the disclosure responsibilities of Reporting Entities because Scope 3 emissions include indirect upstream and downstream GHG emissions from sources not owned or directly controlled by the Reporting Entity, such as business travel or employee commutes. Additionally, disclosure under SB 253 remains mandatory irrespective of materiality, unlike the SEC climate disclosure rules which would have only required disclosure of Scope 1 and 2 emissions considered "material" to investors.

SB 261: Greenhouse Gases and Climate-Related Financial Risk

The other important climate disclosure rule pending in California is SB 261, which applies to any "Covered Entity" (defined as any public or private U.S. business entity, other than insurers, with total annual revenues in excess of $500 million that "does business in California"). While the bill does not define what activities meet this threshold of "does business in California," the same broad definition as was referenced in SB 253 is likely to be used for SB 261.

SB 261 requires the biennial preparation and public disclosure of a Climate-Related Financial Risk report and measures adopted to reduce and adapt to the identified climate-related financial risks. A "Climate-Related Financial Risk" means a 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. Covered Entities will need to comply by publicly posting these reports to the company's website.

Compliance will be required on or before January 1, 2026, with penalties for non-compliance of up to $50,000 per reporting year.

Status of SB 261 and SB 253

On December 16, 2024 CARB issued an Information Solicitation to Inform Implementation of California SB 253 and SB 261 requesting feedback from stakeholders on a number of topics, including what it means to 'do business' in California. Comments were due to CARB by March 21, 2025. CARB is currently reviewing the feedback provided from the over 200 comments submitted. Readers can see all of the comments submitted to CARB here.

Despite the SEC climate disclosure rules facing significant implementation challenges, California's SB 253 and SB 261 remain mostly unaffected. On February 3, 2025, the U.S. District Court for the Central District of California dismissed a portion of the plaintiff's claim in *U.S. Chamber of Commerce v. CARB*, which significantly narrowed the ongoing legal challenge to these California climate disclosure laws. The remaining claim argues that the laws violate the First Amendment by compelling speech.

As noted earlier, CARB has until July 1, 2025, to adopt implementing regulations for the California climate disclosure laws.

Additional proposed state legislation

New York: On January 27, 2025, Senate Bill 3456 was introduced. If passed, the bill would require any company that does business in New York with over $1 billion dollars in total revenues to publicly disclose its Scope 1, 2, and 3 emissions. On April 2, 2025, the bill was reported and committed to the Senate Finance Committee.

Colorado: On January 28, 2025, House Bill 25-1119 was introduced that would require any company that does business in Colorado with over $1 billion dollars in total revenues to publicly disclose its Scope 1, 2, and 3 emissions. The bill also proposed giving the attorney general or district attorney the power to bring a civil action against non-complying entities with a potential penalty of up to $100,000 per day. As of April 10, 2025, the bill has been postponed indefinitely.

New Jersey: On February 3, 2025, the Climate Corporate Data Accountability Act was introduced in New Jersey as Senate Bill 4117. This bill would require any company that does business in New Jersey with over $1 billion dollars in total revenues to publicly disclose its Scope 1, 2, and 3 emissions.

Although the bill is still in the Senate, on March 17, 2025, the bill was referred to the Senate Budget and Appropriations Committee.

Illinois: On February 18, 2025, the Illinois House of Representatives introduced House Bill 3673 which proposes the adoption of legislation similar to California's Climate Corporate Data Accountability Act. On March 21, 2025, the bill was re-referred to the House Committee. If passed, qualifying entities would have to begin compliance as soon as January 1, 2027.

Trump administration response to state legislation

On April 8, 2025, President Trump issued an executive order directing the attorney general, in consultation with other federal officials, to identify all "state and local laws, regulations, causes of action, policies, and practices . . . burdening the identification, development, siting, production, or use of domestic energy resources that are or may be unconstitutional, preempted by federal law, or otherwise unenforceable." The executive order also includes relatively broad language requesting the attorney general prioritize the identification of any state laws purporting to address "climate change" or involving "environmental, social, and governance" initiatives, "environmental justice," carbon or "greenhouse gas" emissions, and funds to collect carbon penalties or carbon taxes. It then states that the attorney general is to "expeditiously take all appropriate action to stop the enforcement" of such laws and civil actions that the attorney general determines to be illegal. Although the executive order does not specifically call out the state climate disclosure laws discussed above, the language is broad enough that those state climate laws could be targeted.

International climate disclosure requirements

Moreover, outside the U.S., public and private companies in the United Kingdom (including large subsidiaries of U.S.-based multinationals) already are required to make greenhouse gas emission and climate-related risk disclosures and, in the European Union, the Corporate Sustainability Reporting Directive requires disclosure across a range of ESG topics, not just climate. While the detailed requirements of foreign jurisdictions are beyond the scope of this article, companies with international operations should remain mindful of these requirements.

What this means to you

Navigating the evolving landscape of federal and state climate disclosure laws can be complex. Despite indications that the SEC climate disclosure rules are unlikely to be implemented, particularly in the near term, and the potential impact from the April 8 executive order targeting state laws, companies that are potentially covered should still begin preparing to comply with applicable state disclosure requirements.

Companies should continue to monitor the status of California's SB 253 and 261, along with the pending legislation in several other states, including with respect to any actions taken by the federal government pursuant to the April 8 executive order targeting state laws.

Contact us

If you have any questions, please do not hesitate to contact Steve Barrett, Robert Joseph, Victoria Sitz, Andrew Spector, Brittney Beetcher, or your Husch Blackwell attorney.