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Environment, Land Use & Natural Resources / Securities Law ADVISORY ■

OCTOBER 16, 2023

California's Climate Disclosure Requirements and Their Far-Reaching Effects

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On Saturday, October 7, California Governor Gavin Newsom signed a trio of climate disclosure bills into law that will impose far-reaching reporting requirements on companies. The first, the Climate Corporate Data Accountability Act (CCDAA, also referred to as SB 253), will require companies doing business in California with more than $1 billion in annual revenue to disclose Scopes 1, 2, and 3 emissions in accordance with regulations published by the California Air Resources Board (CARB), as discussed in our previous advisory.

The Climate-Related Financial Risk Act (CRFRA, also referred to as SB 261) requires companies doing business in California with more than $500 million in annual revenue to report climate-related financial risks, and measures used to mitigate these risks, under the Task Force on Climate-Related Financial Disclosures (TCFD), or equivalent, framework.

Lastly, the Voluntary Carbon Market Disclosures Act (VCMDA, also referred to as AB 1305) will require companies that operate in California and make net zero, carbon neutral, or claims of significant emission reductions to substantiate these claims on their website, documenting the accuracy and means of achieving these claims. Additional disclosure requirements apply if a company purchases or uses voluntary carbon offsets (VCOs) within California for such claims.

Climate Corporate Data Accountability Act

Under the CCDAA, companies that exceed $1 billion in annual revenue for the previous fiscal year will be required to annually disclose their Scopes 1 and 2 greenhouse gas (GHG) emissions beginning January 1, 2026 and their Scope 3 emissions beginning in 2027 within 180 days of disclosing the Scopes 1 and 2 emissions. Although it was signed by Newsom less than a week ago, the CCDAA has already seen pushback from the industry. While companies that have been tracking this data for years are well equipped to meet the new reporting requirements, many companies find the preparations for reporting the required climate data a cumbersome task.

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Companies have also expressed concern over the CCDAA's feasibility, the ownership and use of emissions data, and the timelines set forth in the CCDAA. These concerns are reflected in Newsom's signing message for the CCDAA. While he lauds the law's goals, he cautions that he is "concerned about the overall financial impact of this bill on businesses," that "implementation deadlines in this bill are likely infeasible," and that his administration will be working with the legislature to address these issues.

We expect some cleanup legislation as a result of the governor's direction. In the meantime, companies should promptly start evaluating the implications of the CCDAA's reporting requirements in anticipation of CARB's rulemaking pursuant to the new law. In the coming year, CARB will promulgate regulations that should define what it means to "do business" in California and the specifics for reporting emissions. Companies should be aware of the issues that may impact them so that they can be prepared to engage in the rulemaking (and any legislative cleanup), whether through comment letters, trade organizations, or other means.

Climate-Related Financial Risk Act

The CRFRA, similar to the CCDAA, will require any company organized under any U.S. state or the District of Columbia with more than $500 million in revenue for the previous fiscal year that is "doing business" in California to develop and publicly disclose climate-related financial risk reports. The reports must disclose companies' (1) climate-related risks, in accordance with the TCFD or an equivalent framework; and (2) measures that have been implemented to reduce or adapt to those risks. The climate-related risk reports must be made publicly available on each company's website by January 1, 2026 and updated biennially thereafter.

The CRFRA also requires that CARB biennially compile reported climate-related financial risks into a comprehensive report that will be publicly available on CARB's website. Newsom expressed concerns in his signing message of the CRFRA, cautioning that the implementation deadlines are too short to allow CARB to develop regulations and that he is instructing CARB to make recommendations on ways to "streamline the program" to reduce cost impacts.

This new law will help make risk of climate change for businesses more transparent, but companies subject to the CRFRA should begin thinking about their process for preparing this report and how it will be published. As with the CCDAA, CARB will be developing regulations that will implement the CRFRA. Companies should assess the implications of the law and monitor and engage in the rulemaking as warranted.

Voluntary Carbon Market Disclosures Act

The VCMDA, which takes full effect on January 1, 2024, requires companies that operate in California and make claims about net-zero GHG emissions, carbon neutrality, or broadly imply the company has made "significant reductions to its carbon dioxide or greenhouse gas emissions" to make disclosures on its website, including substantiating the claim's accuracy or achievement and how interim progress toward the goal is being evaluated.

Additionally, companies that make these claims and purchase or use VCOs sold in the state must disclose extensive details of the VCO projects, including the entity selling the offset and the registry, identification number, name, type of reduction (including whether it is a carbon removal and/or avoided emission), and protocol. Finally, companies that make GHG emissions claims – whether they use or purchase VCOs – must disclose whether their data and claims have been verified by an independent third party.

The VCMDA also mandates disclosures for companies that market or sell VCOs in California. These companies will be required to publish on their website extensive information about the offsets, including: (1) details on carbon offset projects (including the protocol, project timeline, durability period, and amount of emissions reduced or carbon removed annually); (2) if a project is not completed, a carbon storage project is reversed, or future emissions reductions do not occur, accountability measures the company will take either directly or contractually; and (3) the relevant data and calculation methods that would allow third parties to quantify and verify the VCOs.

The VCMDA has far-reaching, near-immediate implications. The VCMDA does not define "operate" in California, and unlike the CCDAA and CRFRA, does not have a minimum applicability threshold. VCMDA's "make claims within the state" language is broad, appearing to cover every claim on a website of a company, so long as that website is accessible in California. The scope of covered companies is enormous, and prompt action on behalf of these companies is needed given the January 1, 2024 effective date.

Next Steps

- Companies should begin evaluating how they are going to collect, report, and present the different data required under the new trio of California laws.
- Those companies subject to the VCMDA should inventory climate-related claims and prepare to update their websites to make the required disclosures by January 1, 2024.
- Companies should follow CARB's 2024 rulemaking and prepare to submit comments on issues of concern, which may include what it means to "do business" in California, how company data will be publicly displayed, and the scope of reporting required.
- Companies should begin making internal changes to ramp up to meet the reporting deadlines coming in 2026 for these disclosure requirements.

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