



C L I F F O R D
C H A N C E

CLIMATE DISCLOSURE – SUPERCONFERENCE 2024
TY'MEKA REEVES-SOBERS, PARTNER



SEC CLIMATE-RELATED DISCLOSURE RULES



THE SEC CLIMATE-RELATED DISCLOSURE RULES

MARCH 2022	The U.S. Securities and Exchange Commission (“SEC”) proposed rules that required SEC registrants to disclose certain climate-related information in their registration statements and periodic reports. The proposed rules drew over 24,000 comments, including over 5,000 letters.
MARCH 2024	The SEC issued the final climate disclosure rules in a 3-2 vote, adding subparts to Regulation S-K and S-X which implement a pared-down version of the proposed rules.

The final rules require disclosure of, among other things:

Climate-related risks that have had or are reasonably likely to have a material impact on business strategy, results of operations, or financial condition;

Assessment, management, board oversight, and mitigation of these material risks;

Scope 1 and 2 greenhouse gas (“GHG”) emissions for Large Accelerated Filers and Accelerated filers with an independent attestation report if those emissions are material; and

Financial statement disclosures related to the material effects of severe weather events, natural conditions, and carbon offsets/renewable energy credits if material to a company’s plans to achieve climate-related targets or goals.

The final rules apply to companies on a phased-in basis, with the first compliance deadline for “Large Accelerated Filers” in 2026 for fiscal year 2025 annual reports.

KEY DIFFERENCES BETWEEN THE PROPOSED AND FINAL RULES; LEGAL CHALLENGES

Removal of Scope 3 GHG emissions reporting requirements and the reduced scale of requirements for Scope 1 and 2 GHG emissions reporting requirements

Removal of line-item reporting requirements and the streamlining reporting of severe weather events

Addition of “materiality” threshold throughout the final rules

In total, 25 States, energy companies, and business advocates have challenged the final rules since their release, with Iowa leading a consolidated lawsuit in the Eighth Circuit. 18 States and the District of Columbia have counter-sued to intervene in the lawsuit in support of the SEC.

Challenges are based on four major theories:

Ultra Vires

Critics describe the rules as being outside the SEC’s statutory authority, arguing that enabling statutes only permits SEC regulations relating to financial information.

Compelled Speech

The legal doctrine requires government actors to only compel disclosure of purely factual and uncontroversial information.

Major Questions

Challengers indicate that climate change is a controversial issue, and the SEC cannot regulate issues of economic or political importance without express authorization from Congress.

Arbitrary and Capricious

Under the Administrative Procedure Act, challengers argue that the SEC acted without consideration of the relevant factors and made a clear error of judgment to invalidate the rule.



Supreme Court strikes down Chevron,

Breaking News: Overturned Chevron Deference



An aerial photograph of a power plant. In the foreground, two large, cylindrical cooling towers are visible, each emitting a thick plume of white steam. A tall, slender smokestack with a red and white striped top stands between the towers. The background shows a landscape with a body of water, green fields, and some buildings under a sky with scattered clouds.

CALIFORNIA CLIMATE DISCLOSURE LAWS

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**OCTOBER
2023**

California enacted three bills to enhance transparency and consistency in climate emissions disclosure:

1. **Senate Bill 253** – the Climate Corporate Data Accountability Act
2. **Senate Bill 261** – the Climate Related Financial Risk Act
3. **Assembly Bill 1305** – the Voluntary Carbon Market Disclosures Business Regulation Act

SB-253

- Applies to entities with an annual revenue of \$1 billion or more that do business in California.
- The California Air Resources Board (“CARB”) is tasked with establishing implementing regulations compelling entities to publicly disclose their Scope 1, 2, and 3 GHG emissions, regardless of the emission location.
- SB-253 accounts for existing climate reporting frameworks and seeks to reduce duplicate reporting by permitting entities to submit reports that have been prepared to meet other frameworks.
- First reporting deadline: January 1, 2026 (Scope 3 disclosure required in 2027).

SB-261

- Applies to entities with annual revenue of \$500 million or more that do business in California.
- Requires bi-annual public disclosure of climate-related financial risks and their mitigations plans.
- Aims to integrate the global standards for climate-related financial risk disclosures in California.
- First reporting deadline: January 1, 2026.

AB-1305

- Requires business entities that market or sell Voluntary Carbon Offsets (“VCOs”) to provide detailed information about the carbon offset project on their website.
- Applies to entities that purchase or use VCOs claiming “net zero emissions,” “carbon neutrality,” or make other, similar assertions.
- In a letter, Assembly Member Gabriel has indicated that the State expects the initial disclosure to be made by January 1, 2025.

GOVERNOR CONCERNS



OFFICE OF THE GOVERNOR

OCT 07 2023

To the Members of the California State Senate:

I am signing Senate Bill 253 which would require, among other things, the California Air Resources Board (CARB), by January 1, 2025, to develop and adopt regulations requiring businesses with total annual revenues over \$1 billion and operating in California to disclose their greenhouse gas emissions to an emissions reporting organization.

This important policy, once again, demonstrates California's continued leadership with bold responses to the climate crisis, turning information transparency into climate action. However, the implementation deadlines in this bill are likely infeasible, and the reporting protocol specified could result in inconsistent reporting across businesses subject to the measure. I am directing my Administration to work with the bill's author and the Legislature next year to address these issues.

Additionally, I am concerned about the overall financial impact of this bill on businesses, so I am instructing CARB to closely monitor the cost impact as it implements this new bill and to make recommendations to streamline the program. I look forward to working with the Legislature on these modifications to ensure we achieve this bill's goals of "full transparency and consistency".

Sincerely,



Gavin Newsom

LEGAL CHALLENGES

The United States Chamber of Commerce, California Chamber of Commerce, and American Bureau Federation have brought a legal challenge in federal court against CARB and the CA AG, seeking a declaratory judgment and permanent injunction to prevent SB-253 and SB-261 from taking effect.

Challenges are based on two theories:

Compelled Speech

- Plaintiffs argue that climate change has been recognized by SCOTUS as ‘controversial’ and California is compelling companies to engage in controversial speech, which violates the First Amendment.
- A company’s evaluation of risks to financial outcomes from various events is a topic of reasonable debate.
- Plaintiffs argue that a cost of more than \$1 million per year on businesses without a legitimate government interest is excessively burdensome, which also echoed Governor Newsom’s claims.
- In response, the defendants have noted that “significant costs” imposed by compliance are not an appropriate basis to establish an injury-in-fact.

Dormant Commerce Clause

- Plaintiffs argue that SB-253 and SB-261 are preempted by the Clean Air Act (“CAA”), which limits a states ability to regulate interstate GHG emissions.
- The CAA entrusts the federal government with regulating GHG emissions and limits the state’s role to commenting on proposed rules and intrastate regulation.
- In response, the defendants note that the dormant commerce clause argument is void because the challenged laws do not discriminate against businesses outside of California; rather, they apply uniformly to all companies.



FTC GREEN GUIDES



ANTICIPATED UPDATES TO FTC GREEN GUIDES

In December 2022, the U.S. Federal Trade Commission (“FTC”) commenced a review of the 2012 Guides for the Use of Environmental Marketing Claims (the “Green Guides”) and requested public comment on potential updates.

The FTC solicited comments on a number of proposed updates, including a list of terms to be considered for inclusion in the Green Guides.

Terms under consideration include:

Carbon neutral

Net zero

Recyclable

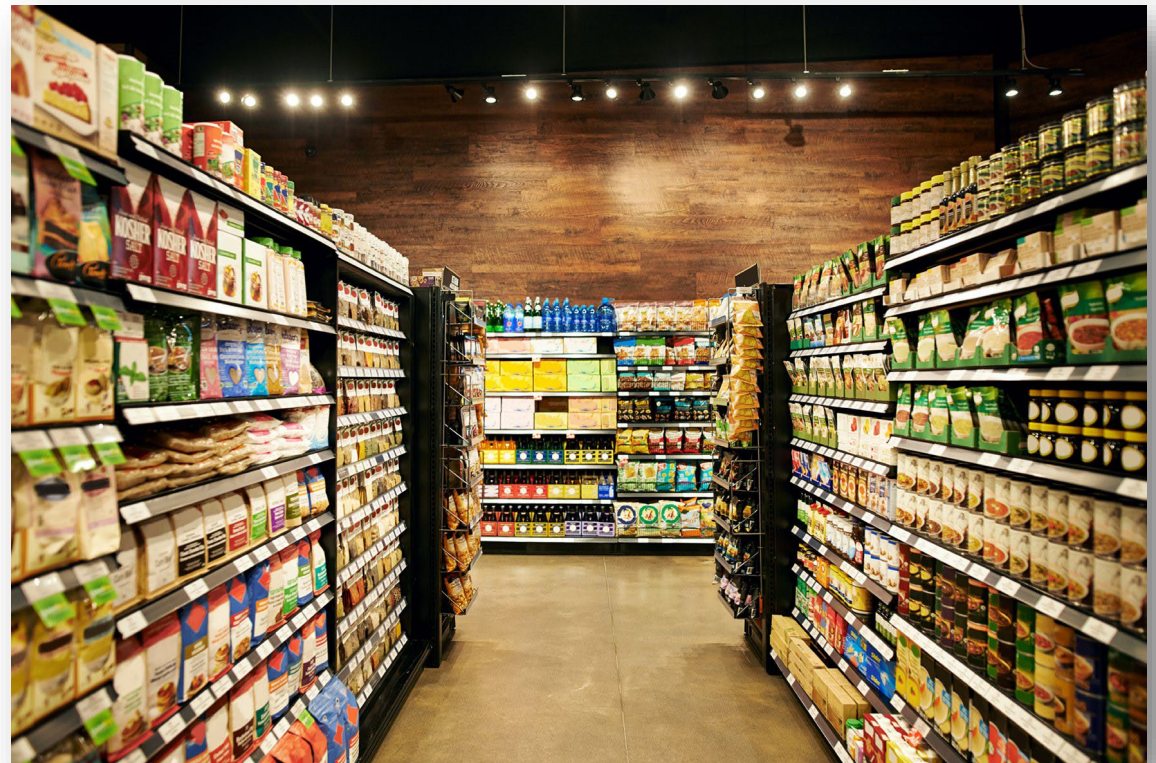
Organic

Sustainable

Eco-friendly

Green

Clean Beauty



UPDATES ARE EXPECTED IN 2024 BUT...



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SPECIAL THANKS TO KEY CONTRIBUTORS



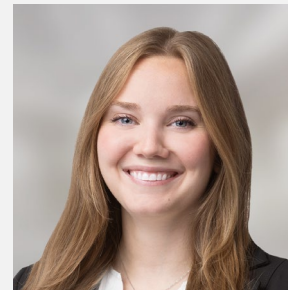
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