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Climate Reporting Across Jurisdictions: Mapping Applicability and Charting a Course Forward

In this new era of mandatory climate reporting, companies operating in multiple jurisdictions must comply with a complex array of new disclosure laws. Companies operating in the European Union and California, as well as public filers in the U.S., should map the applicability of these new laws to their operations and create a strategy to collect and report information including on greenhouse gas ("GHG") emissions, climate risk, actions taken to address climate risk, and information on climate-related goals and the use of carbon offsets.

The chart below provides a snapshot of core requirements contained in the EU's Corporate Sustainability Reporting Directive ("CSRD"), California's three climate disclosure rules signed into law in October 2023 (Senate Bills 253 and 261 and Assembly Bill AB 1305), and the Securities and Exchange Commission ("SEC") final Climate-Related Disclosure Rule. While these three jurisdictions have overlapping requirements in some instances – such as Scope 1 & 2 GHG emissions reporting and disclosure of climate-related financial risk in all three frameworks – the requirements differ in other important respects, such as California's climate-related claims and carbon offset requirements contained in AB 1305 and the CSRD's unique "double materiality" assessment. While the SEC stayed implementation of the Climate Disclosure Rule on April 4 in light of ongoing legal challenges now consolidated in the Eighth Circuit, and California's SB 253 and 261 are also subject to litigation in the Eastern District of California, the outcome of all of these legal challenges remains uncertain and the California laws continue to be in effect.

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Snapshot Comparison of SEC, CSRD, and California Key Requirements

	SEC	CSRD/ESRS	CA (SB 253^, SB 261×, AB 1305*)
Status of standards	Final; stayed pending litigation	Final; CSRD transposition in Member State law until July 2024	Final; SB 253 & 261 litigated in E.D. Cal.
Primary audience	Investors	Investors, Public, etc.	Investors, Public, etc.
Materiality[1]	Financial	Double	Financial×
Disclosure location	10-K / 10-Q	Annual report / website	Annual report^× / website*
First effective date[2]	Fiscal year 2025	Fiscal year 2024	2024 (AB 1305); FY 2025 (others)
Assurance[3]	Mandatory	Mandatory	Mandatory^
GHG Scope 1, 2	Required if material	Required if material	Required^
GHG Scope 3	Not required	Required if material	Required^
Carbon offsets disclosure	Required if material	Required if material	Required*

[1] Under a "financial" materiality model, an enterprise must report on how sustainability impacts its business. By contrast, a "double" materiality model requires an enterprise to report on how sustainability impacts both its business and society more broadly.
[2] "First effective date" refers to the earliest possible period for which data must be collected. Note that the CSRD, SEC, and CA rules ramp up requirements over several years. Of CA's three laws, only AB 1305 — which deals with climate-related claims and carbon offsets — covers fiscal year 2024. CA's other laws first apply to fiscal year 2025.
[3] For Scope 1 and 2 emissions, the SEC rule and CA's SB 253 start with limited assurance before moving to reasonable assurance. For Scope 3 emissions, SB 253 provides for limited assurance by 2030. The CSRD starts with limited assurance and envisions a shift to reasonable assurance.

Covington is assisting companies in compliance with the CSRD, SEC, and California climate disclosure laws, as well as strategies for compliance across multiple jurisdictions that seek to provide harmonization, standardization, and sound efficiencies. Companies should understand the applicability of each of these laws, relevant implementation timelines, how to assess materiality – including the CSRD's "double materiality" standard –, and how to create strategies for collecting and disclosing accurate climate-related information, including audit-ready information.

While some uncertainty with respect to implementation remains, the new era of mandatory climate reporting is here and companies are well advised to prepare.

For additional information, contact Covington's ESG, Carbon Management and Climate Mitigation, and Securities and Capital Markets teams.