

Voluntary Carbon Market Disclosure Requirements Are Coming: What Companies Need to Know About California's AB 1305

October 29, 2024

California's far-reaching law imposes new obligations on entities that market, sell, purchase or use voluntary carbon offsets—and on entities that make claims about their GHG emissions reductions, even without the use of offsets.

California Governor Gavin Newsom signed the Voluntary Carbon Market Disclosures Act ([AB 1305](#)) into law on October 7, 2023, creating a novel disclosure requirement for entities that participate in the voluntary carbon offset market, or that make certain claims about their carbon dioxide or greenhouse gas (“GHG”) emissions. While California's other brand-new climate reporting laws, SB 253 and SB 261 (discussed further [here](#)), have attracted a great deal of more attention (and involve more preparatory work), companies will need to determine if AB 1305 applies to them and prepare to make required disclosures by the end of the calendar year.¹

No implementing regulations or official guidance² has been issued under AB 1305, and none is expected, although state legislators are expected to re-attempt “clean-up” legislation clarifying aspects of AB 1305 next year. If a company hasn't assessed whether it needs to comply with AB 1305, it should immediately begin doing so. With near-term compliance deadlines in mind, we set out below the requirements of the statute, potential consequences of noncompliance, and best practices for covered entities.

¹ Confusion about when initial disclosures must be made led some companies to post disclosures by January 1, 2024, the date on which it became effective. In November 2023, Assemblyman Jesse Gabriel sent a letter to the Chief Clerk of the California Assembly expressing his intent that entities in scope post disclosures by January 1, 2025. The letter does not constitute binding guidance. [Clean-up legislation](#) that would have provided clarity failed to pass during California's most recent legislative session.

² The California Attorney General has issued one advisory [opinion](#) concerning the definition of VCO; the opinion is not binding and no additional opinions are expected to be issued before the end of this year.

Companies Impacted by AB 1305 and Disclosure Required

The scope of AB 1305 is broad and will impact many companies and other organizations. The law establishes three distinct reporting categories, which apply independently of one another, and require different types of website disclosures (updated at least annually).

1. A business entity that is marketing or selling voluntary carbon offsets within the state (§44475)

The first prong of the statute applies to business entities that market or sell VCOs. AB 1305 doesn't define "business entity," but by reference to the California Code of Regulations, this term would include both public and private and both domestic and foreign (i) corporations, (ii) limited liability companies and (iii) partnerships.³

AB 1305 defines VCOs broadly to mean any product that claims to be a "greenhouse gas emissions offset," a "voluntary emissions reduction," a "retail offset," or any like term, that connotes that the product "represents or corresponds to a reduction in the amount of greenhouse gases present in the atmosphere or that prevents the emission of greenhouse gases into the atmosphere that would have otherwise been emitted." It does not include products that are sold to address legal mandates to reduce or prevent GHG emissions (including carbon offsets involved in California's cap-and-trade program). Additionally, an advisory opinion issued by the California Attorney General's Office clarified that the definition of VCO does not include renewable energy credits ("RECs") issued in respect of units of electricity generated from renewable energy sources, on the basis that RECs do not claim to offset or reduce emissions.⁴

We note that because the first prong of the statute applies to VCOs that are sold *or marketed* within California, the statute does not appear to require that the actual sales transaction occur in the state, or that the underlying project associated with the offset be located within the state.

Required disclosure: Website disclosure of discrete factors regarding applicable carbon offset projects, including the location, project name, durability, whether the project uses independent third-party verification, and other information intended to enable consumers to independently assess the efficacy and status of applicable carbon offset projects. Disclosure must also include details regarding accountability measures and the information required to reproduce and verify the credits issued. (See Appendix A for full details).

2. An entity that (i) purchases or uses VCOs and (ii) makes climate-related emissions claims (§44475.1)

The second prong of the statute applies to entities that purchase or use offsets and make certain types of claims about their emissions. The statute specifically identifies claims regarding the achievement of net zero emissions, claims relating to the entity or a product being "carbon neutral," or other claims that imply that the entity does not add net carbon dioxide or GHG to the climate or "has made significant reductions" to its carbon dioxide or GHG emissions. Intensity-based decarbonization goals are not expressly addressed but assumed to be included.

³ Cal. Code Regs., tit. 2, § 21001 (Lexis Advance through Register 2024, No. 39, September 27, 2024).

⁴ 107 Ops. Cal. Atty. Gen. 99.

While identifying claims relating to net zero emissions or carbon neutrality may be relatively easy to identify, what constitutes a “significant [emissions] reduction” is less clear, as the statute is silent on this point. Determination would likely depend on various internal and/or external factors including total carbon dioxide/GHG footprint, sector, and global benchmarks used to define emissions reductions, among others.

While the statute requires both that the subject entity purchase or use VCOs, and that it make specified climate-related claims, the language does not indicate that the claims must relate specifically to the impact of the VCOs. That is, a claim could theoretically relate to emissions reductions or carbon neutral status achieved by means other than the purchase or use of VCOs. In addition, companies that purchase or use VCOs but make no claims whatsoever about their CO₂ or GHG emissions are not required to make website disclosure under AB 1305.

Further, AB 1305 does not define what constitutes a “claim” for this purpose, or specify whether such claims may be direct or indirect and/or must be made publicly to be covered by the statute. Claims made to a particular group of stakeholders (for example, to private investors through a password-protected portal) but not accessible to consumers more broadly may nonetheless fall in scope.

Finally, this prong of AB 1305 does include an exception for entities that do not operate within California, or which do not purchase or use VCOs sold within California. The statute does not define what it means to “operate in California.” However, the spirit of the law suggests that any activity whereby an entity is interacting with California customers or otherwise reaching the California market—including potentially by having a website accessible to California consumers—could qualify as operating in the state. It also does not define what it means to purchase or use VCOs sold within the state, though presumably if the VCO in question was available to California consumers, even if the purchase did not take place in California, disclosure may be required.

Required disclosure: Entities must disclose six discrete factors relating to each project or program, as applicable (name, offset seller, offset registry/program, and project ID number, offset project type and other details, methodology to estimate emissions reductions/removal benefits, and whether independent third-party verification is included). (See Appendix A for full details).

3. An entity that makes climate-related emissions claims (§44475.2)

The third and final prong of AB 1305 is the broadest and applies to entities that are not involved in the voluntary carbon market. This part of the statute applies to any entity making claims regarding the achievement of net zero emissions, claims relating to the entity or a product being “carbon neutral,” or other claims that imply that the entity does not add net carbon dioxide or GHG to the climate or “has made significant reductions” to its emissions, as above.

The statute does include an exception for entities that either do not operate within the state, or that do not make claims within the state. As above, while not specified, we assume that “operating” in the state could include any activity whereby an entity is interacting with California customers or otherwise interacting with the California market.

Also, as above, while the statute doesn’t specify what it means to make claims “within the state,” we generally recommend a conservative reading that would capture any claims that are accessible within the state. This would, for example, include statements made on a broadly-accessible public website.

Required disclosure: Disclose information on the method the entity uses to substantiate claims and whether there is independent third-party verification of the company’s data and claims.

Consequences of Noncompliance

The consequences of noncompliance with AB 1305's requirements (*i.e.*, failure to disclose or inaccurate disclosure on company's website) are penalties up to \$2,500 a day per violation, not to exceed \$500,000 (whether annually or in total is not specified). These penalties may be recovered in a civil action brought by a broad range of public entities—the California Attorney General and any state district attorney, county counsel or city attorney.⁵

Despite the confusion with respect to the first disclosure date (referenced above), we note that to date, neither the California Attorney General nor any other public prosecutor in California has brought an action to compel compliance with AB 1305.

Additionally, we note that AB 1305 does not address whether it limits any remedies available for a violation of any other state or federal law (under *e.g.*, California's various consumer protection statutes).

Next Steps for Companies

Companies should assess now whether they may be required to make disclosure under any one or more of the statute's three independent prongs, and begin to prepare website disclosures for posting by the end of the year.

- For companies that participate in the carbon offset market, as buyers or sellers (*i.e.*, prongs one or two), the disclosure obligation is more extensive and will likely require external and internal information-gathering to prepare initial disclosures—and potentially increased documentation requirements when securing VCOs in the future.
- For companies in scope of the third prong relating to emissions claims, the required disclosure (*i.e.*, methods used to substantiate claims and whether independent third-party verification is involved) may already be available elsewhere in the company's sustainability reporting, but we recommend that companies separately consolidate, reiterate and identify these data points as corporate "AB 1305 disclosures."

While the statute does not require that companies use independent third parties to verify their emissions-related claims (but simply to disclose whether they use such parties or not), increasing uptake in this area is expected—particularly as assurance requirements phase in via California's climate reporting law SB 253, and via the Corporate Sustainability Reporting Directive (CSRD)⁶ for companies with a significant European nexus.

Finally, although the statute requires that website disclosure be updated at least annually, companies participating in the voluntary carbon market may want to consider whether more regular and frequent updates are potentially appropriate as changes are made to their portfolio of VCOs.

⁵ Certain California Assembly members provided in their bill analysis that this penalty scheme is commensurate (in fact less) with other penalties leveled for California Global Warming Solutions Act violations. [CA SB32](#) requires the California state board (enforcement and monitoring authority) to ensure that statewide greenhouse gas emissions are reduced to 40% below the 190 level by 2030. The existing fine for most violations of SB32 is \$5,000 per day.

⁶ For additional discussion on CSRD, see our prior Alerts ([here](#) and [here](#)).

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Appendix A

| | Business Entities Marketing or Selling VCOs (§44475) | Entities Purchasing or Using VCOs and Making Climate-Related Claims (§44475.1) | Entities Making Climate-Related Emissions Claims (§44475.2) |
|--------------------------------|---|---|--|
| Disclosure Requirements | <p>Details regarding the carbon offset project including:</p> <ul style="list-style-type: none"> a) the specific protocol⁷ used to estimate emissions reductions or removal benefits b) the location of the offset project site c) the project timeline d) the date when the project started or will start e) the dates and quantities when a specified quantity of emissions reductions or removals started or will start, or was modified or reversed f) the type of project g) whether the project meets any standards established by law or by a nonprofit entity h) the durability⁸ period for any project that the seller knows or should know that the durability of the project’s greenhouse gas reductions or greenhouse gas removal enhancements is less than the atmospheric lifetime of carbon dioxide emissions, i) whether there is independent expert or third-party validation or verification of the project attributes; and j) emissions reduced or carbon removed on an annual basis. <p>The entity must also disclose details regarding accountability measures and the calculation methods needed to verify the emissions reduction or removal credits issued.</p> | <p>Details regarding the carbon offset project including:</p> <ul style="list-style-type: none"> a) the name of the business entity selling the offset and offset registry or program b) the project identification number c) the project name as listed in the registry program⁹ d) the offset project type, including whether the offsets purchased were derived from a carbon removal, an avoided emission, or a combination of both e) the site location f) the specific protocol used to estimate emissions reductions or removal benefit; and g) whether there is independent third-party verification of company data and claims listed. | <ul style="list-style-type: none"> a) All information documenting how, if at all, a “carbon neutral,” “net zero emission,” or other similar claim was determined to be accurate or actually accomplished, and how interim progress toward that goal is being measured; and b) whether there is independent third-party verification of company data and claims listed. |

⁷ “Protocol” means a documented set of procedures and requirements to quantify ongoing greenhouse gas reductions or greenhouse gas removal enhancements achieved by an offset project and to calculate the project baseline, including specification of relevant data collection and monitoring procedures, emission factors, and methodologies used to conservatively account for uncertainty and activity-shifting and market-shifting leakage risks associated with an offset project.

⁸ “Durability” is defined as the duration of time over which an offset project operator commits to maintain its greenhouse gas reductions and greenhouse gas removal enhancements, as applicable, exclusive of any aspirational outcomes that exceed or extend beyond the mandatory outcomes required of the offset project pursuant to its offset protocol.

⁹ The four largest VCO registries are the American Carbon Registry (ACR), Climate Action Reserve (CAR), Gold Standard, and Verra (VCS), which are responsible for the largest VCO market share in the US and globally. *See, e.g.*, “Voluntary Carbon Credit Markets and the Commodity Futures Trading Program,” Congressional Research Service (June 13, 2024).

| | Business Entities Marketing or Selling VCOs (\$44475) | Entities Purchasing or Using VCOs <u>and</u> Making Climate-Related Claims (\$44475.1) | Entities Making Climate-Related Emissions Claims (\$44475.2) |
|------------------------------------|--|---|---|
| Location of Disclosure | Website (homepage not indicated as a requirement) | | |
| Deadline to Post Disclosure | January 1, 2025; to be updated no less than annually | | |