

December 19, 2023

Signed into law by California Governor Newsom on October 7, 2023, AB 1305 is known as the “Voluntary Carbon Market Disclosures Business Regulation Act.” The new law imposes disclosure requirements, described below, on California voluntary carbon offset marketers and sellers; California voluntary carbon offset purchasers and users; and entities operating in California making greenhouse gas related claims. This new law is one of three related disclosure laws enacted in California this term; **we previously published on the other two, SB 253 and SB 251, [here](#)**.

Requirements of AB 1305

Each requirement discussed below takes effect on January 1, 2024. The legislature’s goals in passing the statute are “transparency” and “substantiation.” No agency, however, is tasked with issuing guidance or regulations under the statute. Important statutory terms, like “marketing,” “operating” in California, and “significant” are undefined. Neither is it clear when, how, or under what conditions enforcement of the statute will commence. The uncertainty here requires a careful review of the statute against your use of voluntary carbon offset credits and greenhouse gas related claims, and consideration of good faith compliance with the disclosure requirements while guidance and practice develop.

A. Application to voluntary carbon offset marketers and sellers

New § 44475(d)(3) of the California Health and Safety Code defines “voluntary carbon offset” as “any product sold or marketed in the state 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.” “Voluntary carbon offset” does not include products that represent or correspond to legal or regulatory mandates for these activities.

New § 44475(a) requires that a business entity that is marketing or selling voluntary carbon offsets within California shall disclose on the business entity’s internet website details regarding the applicable carbon offset project all of the following information:

1. The specific protocol used to estimate emissions reductions or removal benefits.
2. The location of the offset project site.
3. The project timeline.
4. The date when the project started or will start.
5. The dates and quantities when a specified quantity of emissions reductions or removals started or will start, or was modified or reversed.
6. The type of project, including whether the offsets from the project are derived from a carbon removal, an avoided emission, or, in the case of a project with both carbon removals and avoided emissions, the breakdown of offsets

from each.

7. Whether the project meets any standards established by law or by a nonprofit entity.
8. The durability 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.
9. Whether there is independent expert or third-party validation or verification of the project attributes.
10. Emissions reduced or carbon removed on an annual basis.

New § 44475(b) requires posting details regarding accountability measures if a project is not completed or does not meet the projected emissions reductions or removal benefits, including, but not limited to, details regarding what actions the entity will take if carbon storage projects are reversed or if future emissions reductions do not materialize.

New § 44475(c) requires posting, in conjunction with the above, the pertinent data and calculation methods needed to independently reproduce and verify the number of emissions reduction or removal credits issued using the protocol.

B. Claims related to purchase and use of voluntary carbon offset credits and greenhouse gases

New § 44475.1 and § 44475.2 apply to those entities making:

- claims regarding the achievement of net zero emissions;
- claims that the entity, related entity, or a product is “carbon neutral,” or
- makes other claims implying the entity, related entity, or a product does not add net carbon dioxide or greenhouse gases to the climate or has made significant reductions to its carbon dioxide or greenhouse gas emissions

1. Purchasers and users of voluntary carbon offset credits (§ 44475.1)

These new requirements do not apply to “entities that do not operate within [California] or [that] do not purchase or use voluntary carbon offsets sold within [California].” The phrase “operate within [California]” is not defined, but will most likely include factors including doing business in California, presence in California, or selling, marketing or directing products to consumers in California.

Aside from these exceptions, purchasers and users of voluntary carbon offset credits making the claims above shall disclose on the entity’s internet website all of the following information pertaining to each project or program:

- a. The name of the business entity selling the offset and the offset registry or program.
- b. The project identification number, if applicable.
- c. The project name as listed in the registry or program, if applicable.
- d. The offset project type, including whether the offsets purchased were derived from a carbon removal, an avoided emission, or a combination of both, and site location.
- e. The specific protocol used to estimate emissions reductions or removal benefits.
- f. Whether there is independent third-party verification of company data and claims listed.

2. Claims regarding greenhouse gas emissions (§ 44475.2)

These next requirements do not apply to entities that either do not operate within California, or that do not make claims within California. § 44475.2(c). Operating within California is discussed above. Making claims within California will most likely apply, if the types of claims are made, by the availability of a website in California and/or the availability

of product literature or marketing materials making such claims accompanying products sold within California.

These exceptions aside, Section § 44475.2 requires an entity that is making the claims described above to disclose on the entity's internet website all of the following information pertaining to all greenhouse gas emissions associated with its claims:

(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. This information may include, but not be limited to, disclosure of independent third-party verification of all of the entity's greenhouse gas emissions, identification of the entity's science-based targets for its emissions reduction pathway, disclosure of the relevant sector methodology, and third-party verification used for the entity's science-based targets, and emissions reduction pathway.

(b) Whether there is independent third-party verification of the company data and claims listed.

Although the statute does not explicitly tie the sections together, reading § 44475.1 and § 44475.2 together, § 44475.2 appears to apply to entities that purchase or use voluntary carbon offsets and make the claims described above.

C. Enforcement

New § 44475.3 states that a person who violates the requirements above is subject to a civil penalty of not more than \$2,500 per day, for each day that information is not available or is inaccurate on the person's internet website, for each violation, not to exceed a total amount of \$500,000. These penalties are to be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by a district attorney, county counsel, or city attorney in a court of competent jurisdiction. There is no indication yet when or how these public prosecutors will commence enforcement.

This section also requires that the disclosures discussed above be updated no less than annually.

II. Conclusion

Given the breadth of the requirements above, and the pending January 1, 2024 commencement, companies selling or marketing voluntary carbon offset credits in California, making greenhouse gas related claims within California and/or making such claims using credits purchased or used within California should prepare to make the required disclosures. AB 1305 is a reminder that companies need to carefully review their environmental, climate-related and other ESG disclosures and communications.

Your Key Contacts



Robert S. Schuda
Partner, Los Angeles
D +1 213 243 6136
robert.schuda@dentons.com



Gail A. Lione
Senior Counsel,
Washington, DC
D +1 202 496 7287
gail.lione@dentons.com



Jeffrey C. Fort
Partner, Chicago
D +1 312 876 2380



Bradley R. Cahoon
Shareholder, USA
Co-Leader for

M +1 847 989 4689
jeffrey.fort@dentons.com

Environmental, Mining,
Resources, Salt Lake City
D +1 801 297 1270
M +1 801 671 3030
brad.cahoon@dentons.com