California Retailers Association responses are highlighted in yellow underneath the questions we provided answers for CARB.

Information Solicitation to Inform Implementation of California Climate-Disclosure Legislation: Senate Bills 253 and 261, as amended by SB 219

General: Applicability

1. SB 253 and 261 both require an entity that "does business in California" to provide specified information to CARB. This terminology is not defined in the statutes.
    a. Should CARB adopt the interpretation of "doing business in California" found in the Revenue and Tax Code section 23101?

The California Retailers Association Response: No, as this does not specify a revenue threshold.

    b. Should federal and state government entities that generate revenue be included in the definition of a "business entity" that "does business in California?"
    c. Should SB 253 and 261 cover entities that are owned in part or wholly owned by a foreign government?
    d. Should entities that sell energy, or other goods and services, into California through a separate market, like the energy imbalance market or extended day ahead market, be covered?

2. What are your recommendations on a cost-effective manner to identify all businesses covered by the laws (i.e., that exceed the annual revenue thresholds in the statutes and do business in California)?
    a. For private companies, what databases or datasets should CARB rely on to identify reporting entities? What is the frequency by which these data are updated and how is it verified?
    b. In what way(s) should CARB track parent/subsidiary relationships to assure companies doing business in California that report under a parent are clearly identified and included in any reporting requirements?

General: Standards in Regulation

3. CARB is tasked with implementing both SB 253 and 261 in ways that would rely on protocols or standards published by external and potentially non-governmental entities.
   a. How do we ensure that CARB's regulations address California-specific needs and are also kept current and stay in alignment with standards incorporated into the statute as these external standards and protocols evolve?

The California Retailers Association Response: Align with the Task Force on Climate-related Financial Disclosures (TCFD) and ISSB reporting and standardize reporting in alignment with either framework. Additionally, we recommend CARB follow the most updated GHG Protocol standards. If this references external standards and protocols such as the GHG Protocol, the assurance requirements set out by CARB will ensure that company reporting is in alignment with the evolving guidance.

The GHG Protocol was designed in 1998 and is the standard framework for measuring and reporting greenhouse gas emissions, making it the most common method for corporate carbon accounting and reporting globally. Additionally, the Task Force on Climate-Related Financial Disclosure (TCFD) provides guidelines for companies seeking to assess and mitigate their exposure to climate-related risks. Since incorporation of the TCFD into the International Sustainability Standards Board, it provides a structural approach to a complex, highly technical process that involves four themes: governance, strategy, risk management and metrics and targets.

Both standards have a transparent governance process to take feedback, allow for updates and publish a basis for conclusions. CRA recommends that CARB adopt both standards to ease compliance for reporting companies.

   b. How could CARB ensure reporting under the laws minimizes a duplication of effort for entities that are required to report GHG emissions or financial risk under other mandatory programs and under SB 253 or 261 reporting requirements?

The California Retailers Association (CRA) Response: We stress the importance of alignment with existing mandatory regulations and programs. For example, SEC regulation and European Union CSRD, which is the directive on corporate sustainability reporting that empowers the European Union Commission to adopt delegated and implementing acts to specify how competent authorities and market participants shall comply with the obligations laid down in the directive. In particular, CRA stresses the importance of aligning Scope 3 emission reporting and assurance:

- As currently written, CA requires <u>limited assurance</u> in 2030 whereas SEC regulation requires <u>reasonable assurance</u> in 2034.
- As currently written and understood, CA requires disclosure and verification on <u>all categories</u> of Scope 3, but later references the use the GHG Protocol to comply, which refers to disclosing <u>relevant</u> categories of

Scope 3 emissions. Clarity will be necessary in the final draft of CARB's regulations.

The use of "relevant" categories is similar in CSRD, which requires disclosure of significant categories of Scope 3.

Additionally, CRA recommends CARB outsource to a third party like CDP for reporting emissions so companies aren't disclosing the same information in multiple places. Similarly, since SB 261 is TCFD-aligned, CARB can access the TCFD disclosure in a company's annual ESG report to satisfy this requirement. We recommend CARB accept the CDP Climate reporting in accordance with TCFD guidance.

c. To the extent the standards and protocols incorporated into the statute provide flexibility in reporting methods, should reporting entities be required to pick a specific reporting method and consistently use it year-to-year?

The California Retailers Association (CRA) Response: Given the multitude of frameworks and protocols in the statute, CRA recommends CARB provide companies with the flexibility to adjust their reporting methods year over year with a constantly changing and evolving reporting environment. There are times when retailers change methods as data collection improves. If retailers change methods, similar to standard accounting procedures, companies should be able to explain the reasoning behind the change.

Flexibility with the option for companies to utilize common reporting disclosures as the basis for compliance (i.e., CDP questionnaire) would be ideal. Additionally, companies are always looking for opportunities to standardize across jurisdictions to ease the patchwork of regulations that are being adopted at the state-level across the country. CRA recommends CARB utilize common reporting disclosures to allow for consistency and efficiencies.

General: Data Reporting

4. To inform CARB's regulatory processes, are there any public datasets that identify the costs for voluntary reporting already being submitted by companies? What factors affect the cost or anticipated cost for entities to comply with either legislation? What data should CARB rely on when assessing the fiscal impacts of either regulation?

The California Retailers Association (CRA) Response: Anticipated costs are impacted by the usage of carbon accounting/ESG data platforms, associated set up/management fees, and related headcount requirements. Additional costs include consultant labor to obtain and analyze relevant data and develop reports.

For companies that have not completed a GHG inventory and set targets, this reporting will be significantly more expensive initially. Costs depend on business size, where a company does business, whether a company has in-house staff to conduct the assessment and subsequent reporting, the variety of a company's product categories, and more. For example, a company that sells consumer goods must evaluate the environmental/GHG impact of the use and disposal of those goods.

The number of approved assurance providers will also impact costs (e.g., if only the big 4 are allowed, costs will go up).

Requiring reasonable vs limited assurance will drive costs. Reasonable assurance will be more expensive and burdensome from both an audit and resources perspective. CRA is concerned about labor costs if enough time is not allowed following the end of the fiscal year for reporting – at least 180 days is recommended.

CRA recommends CARB conduct a survey or study to determine what the costs are today for companies to do climate disclosures - consultants, submission fees, audit fees, tech platforms, etc.

5. Should the state require reporting directly to CARB or contract out to an "emissions" and/or "climate" reporting organization?

The California Retailers Association (CRA) Response: Many entities already report emissions through CDP. This tool could be leveraged and reporting companies could select an option to share emissions to CARB through the CDP portal. CARB could outsource to another third party like CDP for reporting, so companies aren't disclosing the same information in multiple places.

Alternatively, if CARB maintains a disclosure website for SBs 253 and 261, companies that include Scope 1-3 emissions and TCFD disclosure in their annual ESG report should be given the option to provide a link to the report on the CARB disclosure website to satisfy reporting requirements for both SBs253 and 261.

CRA recommends CARB allow for CDP Climate reporting to "count" in lieu of direct reporting and therefore reduce additional workload for companies that are already voluntarily reporting. We urge the Board to explore the option to use the CDP platform for all emissions reporting so reporting is consolidated under one resource.

CRA would also recommends CARB allow companies to utilize Workiva or CDP (where a data feed transferred over more "seamlessly"); conversely, CRA would also prefer that it is not aligned to CSRD reporting, as many companies are not currently beholden to those disclosure regulations.

Retailer companies want to use the platforms they already use (e.g. S&G report, website, etc).

6. If contracting out for reporting services, are there non-profits or private companies that already provide these services?

The California Retailers Association (CRA) Response: CARB should outsource to a third party like CDP for reporting, so companies aren't disclosing the same information in multiple places. CDP https://www.cdp.net/en

Any standardization would need to happen by industry. CRA requests that Scope 3 does not require assurance and reiterates that retail companies should be able to use their existing platforms (e.g. S&G report, etc).

SB 253: Climate Corporate Data Accountability Act

7. Entities must measure and report their emissions of greenhouse gases in conformance with the GHG Protocol,[1] which allows for flexibility in some areas (i.e. boundary setting, apportioning emissions in multiple ownerships, GHGs subject to reporting, reporting by sector vs business unit, or others). Are there specific aspects of scopes 1, 2, or 3 reporting that CARB should consider standardizing?

The California Retailers Association (CRA) Response: Boundaries, market vs. location-based scope 2 emissions, and different scope 3 categories should be taken into consideration. CRA recommends CARB consider whether the reporting should include US operations only or global operations. For companies that have a global footprint, it will prove challenging to separate the two.

We recommend CARB allow companies to follow pre-established guidance and existing framework outlined in the GHG Protocol or other established accounting standards, which allow for flexibility, but are credible and widely accepted and used and to avoid introducing separate standards.

If various states set state specific "standards" this will become a very complex reporting landscape. The existing frameworks allow for consistency across all reporting requirements.

Fiscal year is preferred. Retailers also need enough time (180 days) after the fiscal year ends to ensure companies can report.

8. SB 253 requires that reporting entities obtain “assurance providers.” An assurance provider is required to be third-party, independent, and have significant experience in measuring, analyzing, reporting, or attesting in accordance with professional standards and applicable legal and regulatory requirements.
    a. For entities required to report under SB 253, what options exist for third-party verification or assurance for scope 3 emissions?

The California Retailers Association (CRA) Response: CRA recommends Assurance, which allows the ISO standard - standard for emissions - or other established accounting standards like ISAE. Many assurance vendors exist and are experts in GHG emissions assurance, which differs from financial assurance. CRA urges CARB to not use SB 253 to mandate that companies use a Big 4 accounting firm for emissions assurance. Additional options for standard verification/assurance providers are: Keramid Standard, KPMG and Apex.

    b. For purposes of implementing SB 253, what standards should be used to define limited assurance and reasonable level of assurance? Should the existing definition for “reasonable assurance[2]” in MRR be utilized, and if not why?

The California Retailers Association (CRA) Response: The existing definitions of reasonable vs. limited assurance should remain as those are the standards that companies have already been using to inform their assurance reports.

Assurance allows ISO standard, which is standard for emissions, or other established accounting standards. CRA recommends CARB establish definitions for limited and reasonable assurance, which have been in place for emissions verification for many years. There is no need to create something new.

The ability to use commonly-accepted assurance standards is preferred (i.e., AICPA standards, ISO standards, international standards, etc). The International Auditing and Assurance Standards Board (IAASB) is the comprehensive standard for both reasonable and limited assurance engagements on non-financial information.

Some assurance providers only use certain standards so clarity on acceptable standards, as well as provider qualifications is needed.

Additional clarity about the reporting requirements is needed for retailers to estimate costs (e.g., a mandate to use a big 4 accounting firm would increase company costs of compliance).

It is better to keep at limited assurance. Jumping to “reasonable assurance” will be more expensive and resource-intensive for companies.

9. How should voluntary emissions reporting inform CARB's approach to implementing SB 253 requirements? For those parties currently reporting scopes 1 and 2 emissions on a voluntary basis:
    c. What frequency (annual or other) and time period (1 year or more) are currently used for reporting?

The California Retailers Association (CRA) Response: Annual reporting on one fiscal year of data is the frequency and time period currently being used for reporting.

The timing for reporting should be relative to a company's fiscal year close in order to allow time for companies to calculate and assure data. October would be recommended since it aligns with CDP disclosure, which many companies are already reporting to. Major annual reporting requirements are 180 days or more for retail companies.

    d. When are data available from the prior year to support reporting?

The California Retailers Association (CRA) Response: Historically, emissions data becomes available at the end of February or early March (throughout Q1 and sometimes even into Q2) and is not finalized until early Summer. This then requires verification. Therefore, data is not ready to be reported typically until six months following the fiscal year end. This can range from late July to late August or in October to align with CDP Climate disclosure timeline.

    e. What software systems are commonly used for voluntary reporting?

The California Retailers Association (CRA) Response: Software systems commonly used for voluntary reporting emissions data in an annual ESG Report include: Watershed, Persefoni, Net Zero Cloud, Carbon Trail, Schneider Electric, Workiva, CDP Climate, S&P Global's CSA, and other voluntary ESG surveys. Some companies still do calculations in Excel. GHG calculations are performed in these software systems and reported through the CDP Climate disclosure platform.

SB 261: Climate Related Financial Risk Disclosure

10. For SB 261, if the data needed to develop each biennial report are the prior year's data, what is the appropriate timeframe within a reporting year to ensure data are available, reporting is complete, and the necessary assurance review is completed?

The California Retailers Association (CRA) Response: The timeframe should be at least six months following a company's fiscal year end and align with timing for SB 253 and CDP deadlines. Synchronizing timing for these bills will minimize the reporting burden on companies.

[1] https://ghgprotocol.org/

[2] "Reasonable Assurance" under MRR means a "high degree of confidence that submitted data and statements are valid.

11. Should CARB require a standardized reporting year (i.e., 2027, 2029, 2031, etc.), or allow for reporting any time in a two-year period (2026-2027, 2028-2029, etc.)?

12. SB 261 requires entities to prepare a climate-related financial risk report biennially. What, if any, disclosures should be required by an entity that qualifies as a reporting entity (because it exceeds the revenue threshold) for the first time during the two years before a reporting year?

The California Retailers Association (CRA) Response: CRA recommends CARB begin with Scope 1 & 2 emissions for year one and provide a two-year cycle grace period for other climate related financial risks and metrics such as scenario analysis and quantification of material risks.

13. Many entities that are potentially subject to reporting requirements under SB 261 are already providing other types of climate financial risk disclosures.
    f. What other types of existing climate financial risk disclosures are entities already preparing?

The California Retailers Association (CRA) Response: Existing climate financial disclosures companies are already preparing include: ISSB, ESG Reports, 10K reports, Proxy statements, CDP Climate and Corporate Responsibility Reporting following Task Force on Climate-Related Financial Disclosures (TCFD) guidelines.

    g. For covered entities that already report climate related financial risk, what approaches do entities use?

The California Retailers Association (CRA) Response: Companies are using the following approaches: Climate risk/scenario analysis; Enterprise Risk Management; EU Taxonomy. CRA recommends that CARB allow companies to align the definition of materiality / substantive impact with existing company frameworks, such as enterprise risk management or other financial reporting frameworks across the organization. This approach aligns with CSRD.

    h. In what areas, if any, is current reporting typically different than the guidance provided by the Final Report of Recommendations of the Task Force on Climate-related Financial Disclosures?

The California Retailers Association (CRA) Response: Aligned with TCFD.

    i. If not consistent with the Final Report of Recommendations of the Task Force on Climate-related Financial Disclosures, are there other laws, regulations, or listing requirements issued by any regulated exchange, national government, or other governmental entity that is guiding the development of these reports?

The California Retailers Association (CRA) Response: CSRD; ISSB/IFRS S2. TCFD is folding into the IFRS Foundation standard: https://www.ifrs.org/issued-standards/ifrs-sustainability-standards-navigator/

Respondents may also provide any additional information they feel is important to inform staff's work to

Additional, over-arching comments and concerns by the California Retailers Association (CRA) include:

Top priorities in rulemaking for CRA are:

1. Maintain reporting based on Fiscal Year
2. Provide sufficient timing to report (minimum 180 days). Businesses need enough time (180 days) after the fiscal year ends to ensure they can gather data, complete calculations, and obtain assurance
3. "Reasonable assurance" level creates biggest cost burden.
4. Compliance Costs: Overly complex requirements could lead to the need for implementing costly new systems and processes. Retailers would need to invest in new software, hire additional staff, or seek external consultants to ensure compliance.
5. Scope 3 Emissions: Although not immediately required, future reporting of Scope 3 emissions (indirect emissions from the entire value chain) is a significant concern. Retailers will need to engage with suppliers and other partners to gather this data, which can be complex and time-consuming. We will need clearly defined thresholds to exempt small and medium sized businesses.
6. Defining Materiality: Retailers need strong indicators of what is material and what is not, as well as acceptable methods for screening Scope 3 emissions. This will help ensure that the reporting is both accurate and relevant, and that it meets regulatory expectations.
7. Subsidiary of Parent Company Reporting Obligations: The inclusion of non-California subsidiaries in the parent company's emissions reporting significantly increases the data collection and reporting burden, creates operational discrepancies, requires additional resources, leads to regulatory overlap, and exposes companies to reputational risks due to potential misinterpretation of consolidated data. Additionally, these subsidiaries may be immaterial to the overall emissions profile, making their inclusion unnecessary and burdensome.

Companies currently disclose Scope 1 and 2 GHG emissions, and two categories of Scope 3 GHG emissions in its annual voluntary sustainability report and all Scopes and applicable categories of emissions through CDP. Companies evaluate whether their current disclosures would comply with all specific information and data required under the California laws, acknowledging that much of the information and data they disclose does conform in principle with the California laws' requirements.

Sustainability consultants assist companies with their GHG emissions data gathering and calculations, and obtain limited assurance over their disclosed emissions from third-party assurance providers. Costs associated with these services are contemplated within companies' disclosure to CDP and not necessarily related to additional disclosures that would be required by the California climate-related disclosure laws.

Nonetheless, costs associated with additional external service providers, such as those for financial-related guidance and support, as well as assurance, may be incurred and are unascertainable at present time.

In addition to these general statements and concerns regarding SBs 253 and 261, CRA has questions about CARB's expectations for compliance with the requirements of the California climate-disclosure laws, in particular those included in SB 261:

- Does CARB expect the "biennial report" to cover a two-year period?
- Would a report issued "at least every two years" with annual information and data, which aligns with typical reporting commitments by a large-cap company, satisfy the "biennial report" obligation?
- Will disclosures under SB 261 need to be standardized across respondents?
- If CARB expects a standard format for SB 261 reports, will the Board issue a template for completion by responding entities?
- If a company responds to the annual CDP questionnaire, which itself is aligned with the TCFD recommendations and the ISSB IFRS S2 climate standard, could that company publish a copy of its CDP response on its own website to satisfy the requirements of SB 261?

Further, CRA has questions about CARB's expectations for compliance with the requirements of the GHG emissions disclosures and specific formatting for regulations to be promulgated under SB 253:

- Given CARB's focus on minimizing the duplication of efforts for entities that are required (or elect) to disclose emissions (and financial risk) under other programs, could compliance be satisfied through the sharing of existing disclosures, such as those submitted to CDP?
- Is CARB considering allowing for qualitative explanation to accompany emissions data?
- If CARB requires disclosers to follow a specific methodology or protocol, and that methodology or protocol is not one currently used by a company, will CARB grant a "grace period" for disclosures to allow for companies to change their approach on capturing and reporting relevant GHG emissions data?