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## REPORT



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# ESG During the Second Trump Administration: California Leads the Charge on Climate Disclosure

*By Jacob H. Hupart and Will G. McKitterick\**

*In this column, the authors provide an overview of the ESG regulatory landscape that was upended in 2025 by both the Trump Administration's decision to abandon the Securities and Exchange Commission's long-awaited ESG-focused Federal Disclosure Rules, as well as California's timely passage of new, frontier-pushing climate disclosure requirements for firms operating (at least commercially) within its borders.*

The year 2025 will be remembered as a tale of two sharply diverging jurisdictions with respect to Environmental, Social, and Governance (ESG) rulemaking in the United States. As anticipated, the Trump Administration relentlessly pursued the agenda embodied in Project 2025 by eliminating much of President Biden's environmentally focused executive orders and agency rulemaking, including the SEC's recently passed, yet currently embattled, ESG-focused disclosure rules (the SEC's Disclosure Rules or the Federal Disclosure Rules). Meanwhile, in California, lawmakers were busy passing and operationalizing new legislation (SB-219) that will require companies of a certain size "doing business in California" to make similar public climate-related financial risk disclosures.

Although the California law's exact reach has yet to be determined, state agencies estimate that thousands of companies across the country could be covered by its mandates. To be exact, SB-219's requirements differ depending on the size of the firm implicated: companies that generate \$1 billion or more in annual revenue are subject to emissions reporting requirements while companies that make over \$500 million annually are subject to biannual climate financial risk reporting requirements. This law, if sustained by the courts, will have far-reaching effects for most large public and private companies deemed to be "doing business" in California—an exceedingly low threshold, as detailed by the California regulator responsible for enforcing the law.

This column provides an overview of the ESG regulatory landscape that was upended in 2025 by both the Trump Administration's decision to abandon the SEC's long-awaited ESG-focused Federal Disclosure Rules, as well as California's timely passage of new, frontier-pushing climate disclosure requirements for

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firms operating (at least commercially) within its borders. In short, while ESG-focused reforms may be moribund at the federal-level, companies may face a new wave of ESG-reforms at the sub-national level, as exemplified by the passage of SB-219.

### **THE FEDERAL GOVERNMENT DISAVOWS ESG DISCLOSURES**

The SEC Disclosure Rules were enacted in March 2024 under the Biden Administration. Several conservative opponents of the rulemaking were swift to file legal challenges to these new rules almost immediately after they were enacted. Those suits allege the SEC exceeded its mandate by promulgating disclosure rules related to issues (i.e., climate and sustainability) that fall outside the bounds of the agency's remit. Eventually, this avalanche of lawsuits was consolidated before the Eighth Circuit for adjudication, where the legal challenge remains pending today.

Under the Biden Administration, the SEC initially vowed to oppose all legal challenges to the rulemaking's legality in court.<sup>1</sup> Upon assuming office, however, the Trump Administration quickly reneged on that promise in favor of its commitment to ease environmental regulations and prohibit the mandatory disclosure of undue "social, ideological, political, or 'human capital' information." In turn, the Trump SEC officially withdrew the SEC's legal defense of its rulemaking in March 2025.

However, in a rather unexpected development last September, the Eighth Circuit ordered legal challenges to the rule be held in abeyance until the SEC itself either reconsiders the rule through the proper notice-and-comment process required by the Administrative Procedures Act or renews its defense of the final rule. In effect, the Eighth Circuit has foreclosed any attempt by the Trump Administration to compel the courts to issue what would be considered as an advisory opinion on whether the SEC's effort to engage in climate-focused rulemaking was beyond the scope of its regulatory mandate. Further, if the Trump Administration wishes to repeal the rule, it must go through the Administrative Procedure Act's proper notice-and-comment process to do so, which could take years.

As of the end of 2025, the SEC had not announced a decision as to whether to revisit the disclosure policy. Whether and how the SEC's rulemaking may survive is uncertain, but it is clear for the moment that, regardless of the eventual outcome, the Trump Administration is unlikely to enforce the law during its term in office. (Indeed, even the Biden Administration's SEC had

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<sup>1</sup> Press Release, SEC, SEC Votes to End Defense of Climate Disclosure Rules (May 8, 2025), available at: <https://www.sec.gov/newsroom/press-releases/2025-58>.

agreed to stay enforcement proceedings until the fundamental legal challenge is resolved.) So, although the Federal Disclosure Rules have not yet been altered or overturned, these ESG-focused regulations are functionally moot.

## **CALIFORNIA'S NEW MANDATORY CLIMATE DISCLOSURE REGULATION**

While the SEC no longer requires covered entities to disclose climate-related financial risk, California's SB-219 legislation has incorporated many of the same reporting requirements as the Federal Disclosure Rules. Originally passed in 2024, California SB-219 combines and updates two preexisting (though not yet in-effect) bills of California environmental legislation: SB-261, which mandates that entities doing business in California and generating \$500 million or more each year in revenue publish biannual public reports on climate-related financial risks, as well as information concerning steps taken to mitigate such risks; and SB-253, which mandates entities that generate \$1 billion per year to disclose their annual Scope 1, 2, and 3 GHG emissions.

California's new law is expected to impact a sizable share of companies across the state and even beyond its borders. The California Air Resources Board (CARB) released a *non-exclusive* list of over 3,000 companies it believes will be covered under its laws; while California Climate Reporting Readiness, a website with additional resources for companies seeking to comply with the state's ESG laws, estimates over 10,000 companies will be covered, placing the state at the forefront of state-level ESG regulation.<sup>2</sup>

On December 23, 2025, CARB issued proposed guidance on SB-219's applicability to covered entities (e.g. delineating what it means to "do business" in California).<sup>3</sup> CARB also implemented a deadline of August 10, 2026 for covered entities to begin reporting Scope I and II emissions.<sup>4</sup> (Covered entities will begin reporting Scope III emissions at some point in 2027, though CARB has not yet set a specific date.) So, this means that companies exceeding the \$1

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<sup>2</sup> California Climate Reporting Readiness, Is Your Company Ready for California's Climate Disclosure Laws? (last accessed January 8, 2026), available at <https://californiaclimatedisclosure.com/>.

<sup>3</sup> Several other blue states, including Illinois, New Jersey, Colorado, and New York, have followed California's lead and introduced or passed bills requiring similarly large businesses operating within their respective states to disclose their emissions. See Democratic-Led States Double Down on Corporate Climate Disclosure Legislation, ICSC (Feb. 13, 2025), available at: <https://www.icsc.com/news-and-views/icsc-exchange/democratic-led-states-double-down-on-corporate-climate-disclosure-legislation#:~:text=Colorado%20has%20five%20bills%20that%20require%20large,emissions%20to%20the%20California%20Air%20Resources%20Board.>

<sup>4</sup> Task Force on Climate Related Financial Disclosures, TCFD Recommendations (last accessed January 8, 2026), available at: <https://www.fsb-tcf.org/recommendations/>.

billion annual revenue threshold must report both direct GHG emissions from any owned or controlled sources (Scope 1) and indirect GHG emissions stemming from purchased electricity (Scope 2). A failure to do so could lead to a penalty of up to \$500,000; however, CARB has indicated that it will accept a good faith effort to comply for the first year the law is in effect. (CARB had also promulgated a deadline of January 1, 2026 for companies to disclose the climate-related financial risk report; this deadline is currently stayed pending the resolution of the appeal of the initial district court decision upholding the law. Any non-compliance with that disclosure requirement is punishable by a fine of up to \$50,000.)

Thus, SB-219 has stepped into the breach left by the Trump Administration's decision to jettison federal ESG-disclosure requirements, as the California law mirrors similar requirements contained in the SEC's effectively defunct Disclosure Rules. For example, both policies require covered entities report Scope I and II emissions. In other ways, SB-219's mandates are far more demanding (albeit more limited in scope and applicability), such as obligating California's largest companies to report Scope III emissions, a hotly debated measure dropped from the SEC's final rulemaking after receiving a frosty reception during the rules' notice and comment period.

Like the SEC's rulemaking, SB-219's enactment, however, has not been without controversy. Shortly after its passage, a number of organizations, including the Chamber of Commerce, filed lawsuits seeking to block the enforcement of SB-219 for violating: the First Amendment (by compelling speech from companies); the Supremacy Clause of the U.S. Constitution (by usurping authority reserved to federal authorities under the federal Clean Air Act); and for constituting extraterritorial regulation that impermissibly aims to control conduct outside California. Those specific arguments have, to date, been unsuccessful before the federal district courts in California. Now, however, these challenges are pending before the Ninth Circuit, which has already preliminarily enjoined part of the law that requires certain companies report biannually on climate-related financial risk. Otherwise, however, the Court has allowed the law's implementation to move forward, including the new August 10, 2026 deadline for covered entities to report Scope I and II emissions.

Oral argument concerning the appeal occurred on January 9, when a three-judge panel for the U.S. Court of Appeals for the Ninth Circuit heard oral arguments relating to the U.S. Chamber of Commerce and other parties' challenges to the two statutes that serve as SB-219's foundation, SB 253 and SB 261. The panel has yet to render a decision; however, one is expected to issue later this year. The Ninth Circuit may issue either a preliminary injunction against one or both laws or deny plaintiffs' request for that relief—in either case,

the litigation will then return to the Central District of California court where proceedings are currently stayed pending appeal.

## **CONCLUSION**

This was an unprecedented year of executive action that reshaped federal policy on environmental regulation. In particular, the Trump Administration disavowed broad swathes of the Biden Administration's environmental agenda, including the SEC's recently promulgated disclosure rules. But even as the federal government began to retreat from environmental rulemaking, California emerged as perhaps the most prominent sub-national level leader of ESG initiatives in the United States, as demonstrated by the state's passage of new climate-focused disclosure rules that rival the SEC's embattled reporting requirements.

Ultimately, only time will tell whether and how the divergence between ESG-rulemaking at state and federal levels can be resolved. In the meantime, companies who once prepared to adhere to a federally based ESG-disclosure regime should instead confirm whether they are subject to the mandates of SB-219. And until Washington becomes less politically fraught, expect the national debate over ESG-based rulemaking to rage on and continue to confound companies.

But, in the near-term, the key takeaway is that the disclosures of Scope 1 and Scope 2 GHG emissions should be prepared prior to the looming deadline of August 10, 2026.