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Safety, Health, Environmental & Regulatory Affairs Committee Meeting

April 11, 2024 | 2:00 pm – 3:30 pm PT
Loews Coronado Bay Resort
Coronado, California

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Bassman, Mitchell, Alfano & Leiter, Chtd.

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Emerging Issues

Inhance Technologies Litigation

- TSCA Section 5(a)(1)(B)(i) requires manufacturers and importers to provide EPA with prior notice and obtain approval before the manufacture or import of a chemical substance for a use designated by EPA by rule as a "significant new use"
    - Known as "significant new use rule" (SNUR)
    - Notice required is "significant new use notice" (SNUN)
- Some SNURs address concerns about chemical substances no longer in U.S. commerce to ensure that EPA is notified prior to the commercial reintroduction
    - Long-Chain PFAS SNUR is an example (July 27, 2020)

Inhance Technologies Litigation

- EPA issues December 2022 orders to Inhance
  - Prohibits the unintentional manufacture of certain trace PFAS impurities produced by the company during the fluorination of HDPE containers and other plastic products
    - Concern is with Long Chain PFAS

- EPA argues such Long Chain PFAS are not exempt impurities, but instead constitute non-exempt "byproducts" and are thus subject to the preexisting Long-Chain PFAS SNUR
  - EPA claims Inhance failed to provide SNUN notice before it could engage in any plastic fluorination activities
  - In the course of promulgating thousands of SNURs, EPA has never argued that a manufactured impurity can be regulated as a byproduct

- Orders effectively would shutter Inhance's plants with downstream effects.

Inhance Technologies Litigation

- Legal Impact
    - If EPA orders were upheld, it would signal to the Agency that it can use TSCA Section 5 to bypass the rigorous cost-benefit analysis required for existing chemicals under TSCA Section 6.
- Practical Impact
    - Without readily available substitutes, users of fluorinated containers would suddenly lack a mechanism to safely, legally, and reliably transport and store a variety of critical products.
        - By effectively shuttering a major fluorination provider, the orders threaten to disrupt the supply chains that rely heavily on these containers.
        - Perlative regulatory regime constrains producers' ability to quickly substitute new containers
        - Consequence is a long lead time for replacing the fluorinated containers affected by EPA's orders

Inhance Technologies Litigation

- Inhance challenged EPA's orders (December 12, 2023)
- Fifth Circuit Ruling (March 21, 2024)
  - Three judge panel unanimously held that EPA's recent discovery of PFAS contaminating from Inhance's decade's-old fluorination process for plastic bottles is not "new" under the law and cannot be limited by a recent SNUR issued by EPA for certain long-chain PFAS.
  - Vacates EPA's orders.

TSCA Section 8(a)(7) PFAS Reporting

- 2020 National Defense Authorization Act amended TSCA by adding Section 8(a)(7), which directed EPA to issue a rule to require manufacturers (including importers) of PFAS to report on their activities.

- EPA published final rule on October 11, 2023 (codified at 40 C.F.R. 705).

  - "PFAS"
    - Definition
      - R-(CF2)-CF(R')R'', where both the CF2 and CF moieties are saturated carbons
      - R-CF2OCF2-R', where R and R' can either be F, O, or saturated carbons
      - CF3C(CF3)R'R'', where R' and R'' can either be F or saturated carbons
    - Includes
      - All PFAS listed as active on the February 2023 TSCA Inventory
      - All PFAS with TSCA Section 5 (New Chemicals) Low-Volume Exemptions (LVE) claims
    - May include some fluoropolymers.

TSCA Section 8(a)(7) PFAS Reporting

- What must be reported?
  - Chemical or mixture identity, trade name, and molecular structure.
  - Categories of use.
  - Quantity manufactured or processed for each category of use.
  - Descriptions of byproducts resulting from the manufacture, processing, use, or disposal.
  - Existing environmental and health effects information.
  - Number of workers exposed and duration of exposure.
  - Manner or method of disposal and any change in manner or method.

- Some of these data points must already be reported under the Chemical Data Reporting Rule, the Toxic Release Inventory, and Greenhouse Gas Reporting Program.
  - EPA permits submitters to indicate in the CDX reporting tool if they have already reported information.
  - However: This rule requires information for each year in which PFAS was manufactured (or imported).

- Confidential business information protections available.

TSCA Section 8(a)(7) PFAS Reporting

- Who must report?
  - Any person who has manufactured (included imported) PFAS – in any amount – at any time since January 1, 2011, is required to report to the extent the information is known or reasonably ascertainable.
    - No testing or monitoring requirement.
- Who is not required to report?
  - Persons who have only processed, distributed in commerce, used, or disposed of PFAS.
- Takeaways for ILMA Members
  - Most Manufacturing Members fall into the processor category. However, some ILMA members may import PFAS substances.
  - Reporting deadline: May 8, 2025 / November 10, 2025 (Small manufacturers, defined at 40 CFR 704.3)

PFAS & Metalworking Fluids

EPA's "PFAS Strategic Roadmap," released in 2021, set out the Biden Administration's commitment to combat PFAS.

TSCA Section 8(a)(7) PFAS Reporting

Final Rule Changing TRI Reporting Requirements for PFAS

Proposed Rule Listing PFOS & PFOS as CERCLA Hazardous Substances

Proposed Rule Listing Nine PFAS as RCRA Hazardous Constituents

Notable PFAS Rulemaking Efforts

- Final Rule Changing TRI Reporting Requirements for PFAS – (EPA-HQ-OPPT-2023-0223)
  - Final rule released in October 2023.
  - Adds PFAS to the reporting requirements under the Emergency Planning & Community Right-to-Know Act (EPCRA) and Pollution Prevention Act (PPA).
    - Eliminates a previous exemption that excused manufactures from reporting if their PFAS use was less than 100 pounds.
  - Effective November 30, 2023, applies for reporting year beginning January 1, 2024.
    - First reports will be due July 1, 2025.
    - EPA will use information to get a better idea of PFAS releases and waste management.

Notable PFAS Rulemaking Efforts

- Comprehensive Environmental Response, Compensation, and Liability Act (EPA–HQ–OLEM–2019–0341)
  - Initially proposed in September 2022.
  - Listing Perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS) as as CERCLA "hazardous substances."
    - Any entity handling the material liable for the recovery and remediation costs of releases or threatened releases.
      - Liability extends to current and former owners and operators of facilities where the material was released or disposed as well as generators, arrangers, and transporters.
    - Major financial ramifications.
  - After a series of delays, the rule has been sent to the White House Office of Management & Budget (OMB) and is expected to be finalized in March 2024

Notable PFAS Rulemaking Efforts

- Resource Conservation & Recovery Act - (EPA-HQ-OLEM-2023-0278)
  - Proposed rule released in January 2024.
  - Listing nine PFAS as “hazardous constituents” under RCRA.
    - Perfluorooctanoic acid (PFOA)
    - Perfluorooctanesulfonic acid (PFOS)
    - Perfluorobutanesulfonic acid (PFBS)
    - Hexafluoropropylene oxide-dimer acid (HFPO–DA or GenX)
    - Perfluorononanoic acid (PFNA)
    - Perfluorohexanesulfonic acid (PFHxS)
    - Perfluorodecanoic acid (PFDA)
    - Perfluorohexanoic acid (PFHxA)
    - Perfluorobutanoic acid (PFBA)

Notable PFAS Rulemaking Efforts

- Resource Conservation & Recovery Act (RCRA) - (EPA-HQ-OLEM-2023-0278)
  - Listing nine PFAS as “hazardous constituents” is a preliminary step toward classifying it as a hazardous waste.
  - To classify as hazardous waste, EPA must still consider several enumerated factors after finalizing this rule to determine whether the substances are “capable of posing a substantial present or potential threat to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.”
    - Hazardous waste classification triggers RCRA’s cradle-to-grave tracking system and results in cleanup authority under (CERCLA).
  - It is unclear when these rules will be adopted.

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ISO 9001 Amendment

Quality management systems — Requirements

AMENDMENT 1: Climate action changes

4.1 Add the following sentence at the end of the subclause:

The organization shall determine whether climate change is a relevant issue.

4.2 Add the following note at the end of the subclause:

NOTE Relevant interested parties can have requirements related to climate change.

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ISO 9001 Amendment

This international standard was developed in accordance with internationally recognized principles on standardization established in the Decision on Principles for the Development of International Standards, Guides and Recommendations issued by the World Trade Organization Technical Barriers to Trade (TBT) Committee.

ASTM INTERNATIONAL

Designation: E3377 – 24

Standard Guide for Environmental, Social, and Governance (ESG) Disclosure Related to Climate and Community[1]

This standard is issued under the fixed designation E3377; the number immediately following the designation indicates the year of original adoption or, in the case of revision, the year of last revision. A number in parentheses indicates the year of last reapproval. A superscript epsilon (ε) indicates an editorial change since the last revision or reapproval.

1. Scope

1.1 This guide provides an overview of frameworks used for environmental, social, and governance (ESG) disclosures applicable to a variety of organizations.

1.2 This guide discusses the history and purpose of ESG disclosure frameworks, as well as the challenges associated with the greater interest in and broader requirements for transparency and accountability in the information used in disclosures.

1.3 The focus of this guide is the array of ESG disclosure frameworks and the regulatory context for organizations making ESG disclosures including climate and community concerns.

Appendix X6 Resources for Consumer Focused ESG Disclosures
Appendix X7 Resources for ESG Disclosures: Enterprise Software Platforms
Appendix X8 Overview of ESG Ratings

1.6 Before beginning the ESG disclosures process, organizations should document the information and data identified and evaluated, clarify the professional judgement factors considered during decision making and state how those factors influenced decisions or actions, and document the relevant technical policy decisions. The organization should verify that the data and information which are to be used in the ESG disclosures process, including historical data and current data, will be relevant to and of sufficient quantity and quality to answer the questions posed and the decisions made in the ESG

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ISO 9001 Amendment

Guide for Carbon Accounting, Emissions Reduction, and Carbon Footprint Measurement: focus on strategies for climate mitigation; plans for operational transitions; risk analysis, risk management, and risk reduction; setting targets and meeting benchmarks; and evaluation of strategic opportunities. Examples of how climate-related risks and liabilities are identified, measured, tracked, documented, managed, and disclosed. Examples of strategies applicable to climate-related risk reduction, risk management, and transition and strategic opportunities. Example templates (such as lubricants and motor oil / John Howell, Independent Lubricants Manufacturers Assoc.). Example best practices for sectors (such as transportation and construction materials / Amir Golalipour, US DOT FHWA). Discussion of carbon accounting methodologies for cross border trade and the EU Carbon Border Adjustment Mechanism (CBAM) Regulation (enacted in May 2023, published in August 2023) with Implementation Guidance (issued in Nov. 2023) [See: the EU CBAM defined methodology as outlined in the Implementing Regulation of 17 August 2023, and Implementation Guidance of Nov. 2023.] (Interest expressed by: Keith Kline, ORNL; Grace Lacher, API; John Howell, Independent Lubricant Manufacturers Assoc.; Amir Golalipour, US DOT FHWA; and others).

Extended Producer Responsibility

- Extended Producer Responsibility (EPR) laws greater responsibility to producers for the end-of-life management of the products they introduce to the market, as opposed to leaving that burden with consumers and their waste management authorities.

- EPR laws have been instituted in varying forms in Canada and Europe and are becoming more prevalent at the state level in the United States.
  - Maine, Colorado, Oregon, and California have EPR laws.
  - In 2022, California adopted the Plastic Pollution Prevention and Packaging Producer Responsibility Act, arguably most demanding EPR law in the United States.

- Growing popularity; California may serve as model for states considering adopting their own ERP laws.

Extended Producer Responsibility

- Broadly, the California EPR law requires producers of single-use packaging and plastic single-use food service ware to join a producer responsibility program to sell covered materials in the state.
    - Producers include brand owners and those participating in the manufacturing, advertising, distribution or sale of a plastic-containing consumer product in California.
- In January 2024, California Department of Resources, Recycling, and Recovery (CalRecycle) released specific list of the "covered materials" that will subject to the state's EPR law. The list covers various single-use packaging that is routinely recycled, disposed of or discarded after its contents have been used or unpackaged.
    - non-aerosol aluminum containers; aerosol aluminum cans
    - colored and natural PET bottles, jugs, jars and thermoformed containers
    - colored and natural HDPE bottles, jugs, jars, pails and buckets; and
    - PP bottles, jugs, jars.
- CalRecycle is currently developing the regulations to the law.

Extended Producer Responsibility

- CalRecycle named Circular Action Alliance (CAA) as the state's producer responsibility program.
  - A PRO is a nonprofit entity responsible for ensuring its members comply with the EPR law.
  - PROs must submit a plan to CalRecycle, outlining the steps their members will take to achieve the plastic reduction targets set forth in the law.
    - CalRecycle is responsible for reviewing and approving these plans, which are reassessed every five years.
  - Producers may comply individually without joining a PRO, but only if they can demonstrate a recycling rate of at least 65% in the three years prior to January 1, 2027, and a recycling rate at or above 70% annually thereafter.

Extended Producer Responsibility

Goals of California's EPR Law

1) Reduce the overall amount of plastic material (including products packaged in such material) in California by 10% by 2027, 20% by 2030 and 25% by 2032.
   - Methods of reduction may include shifting current materials to reusable/refillable alternatives or eliminating unnecessary packaging or components of packaging.

2) Ensure that all covered materials are recyclable or compostable by 2032.

3) Achieve the following recycling rates for all plastic material in the state:
   - No less than 30% by January 1, 2028
   - No less than 40% by January 1, 2030
   - No less than 65% by January 1, 2032

** In 2021, only 5% of postconsumer plastic waste in the United States was recycled**

Extended Producer Responsibility

- Exemptions:
  - Small producers (gross sales of less than one million dollars in the state)
  - Certain materials are categorically exempt including containers that:
    - House hazardous materials
    - Are used for long-term storage (i.e., five years or more), and
    - Are used to storage prescription drugs.
- Exemptions are <u>not</u> self-executing.

Extended Producer Responsibility

- Takeaways for ILMA Members:
  - CalRecycle will hold a hybrid public hearing on April 23, 2024.
  - Comment period on regulations closes on April 23, 2024.
  - Failure to comply with California's EPR law could result in civil penalties up to $50,000 per day, per violation. Accruals for such penalties begin 30 days after notification of the violation.
  - EPR laws will likely continue to grow in popularity. California may serve as model.

EPA New Particulate Matter Standard (PM 2.5)

- Main Elements of the PM NAAQS Final Decision

- EPA is strengthening the level of the primary (health-based) annual standard for fine particles (PM2.5) to 9.0 micrograms per cubic meter (µg/m3) to reflect the latest available health science.

- EPA is not changing all other PM standards:
  - The primary (health-based) and secondary (welfare-based) 24-hour PM2.5 standards stay at the level of 35 µg/m3
  - The primary and secondary 24-hour PM10 standards stay at the level of 150 µg/m3
  - The secondary annual PM2.5 standard stays at the level of 15.0 µg/m3

- EPA is also:
  - Revising the Air Quality Index (AQI) to improve public communications about the risks from PM2.5 exposures
  - Making changes to the monitoring network to enhance protection of air quality in communities overburdened by air pollution

EPA New Particulate Matter Standard (PM 2.5)

- Revisions to the Air Quality Index (AQI)
- EPA is updating to the Air Quality Index (AQI) for $PM_{2.5}$
  - The AQI is EPA's color-coded tool used by state and local governments to help inform the public about current and daily air quality and recommends steps that individuals can take to reduce their exposure to air pollution
  - The AQI converts $PM_{2.5}$ concentrations to a number on a scale from 0 to 500
- EPA is updating some of the breakpoints to reflect the change to the annual standard and the newest scientific information

Final Revision to AQI for $PM_{2.5}$

AQI Value	Current [µg/m³]	Revisions [µg/m³]
0, Good	0	0
50, Moderate	12	9
100, USG	35	35
150, Unhealthy	55	55
200, Very Unhealthy	150	125
300, Hazardous	250	225
500, Hazardous*	500	325

*The 500 breakpoint is used in conjunction with the 300 breakpoint to calculate AQI values within the hazardous category. The approach does not use the 500 breakpoint to determine other breakpoints values.

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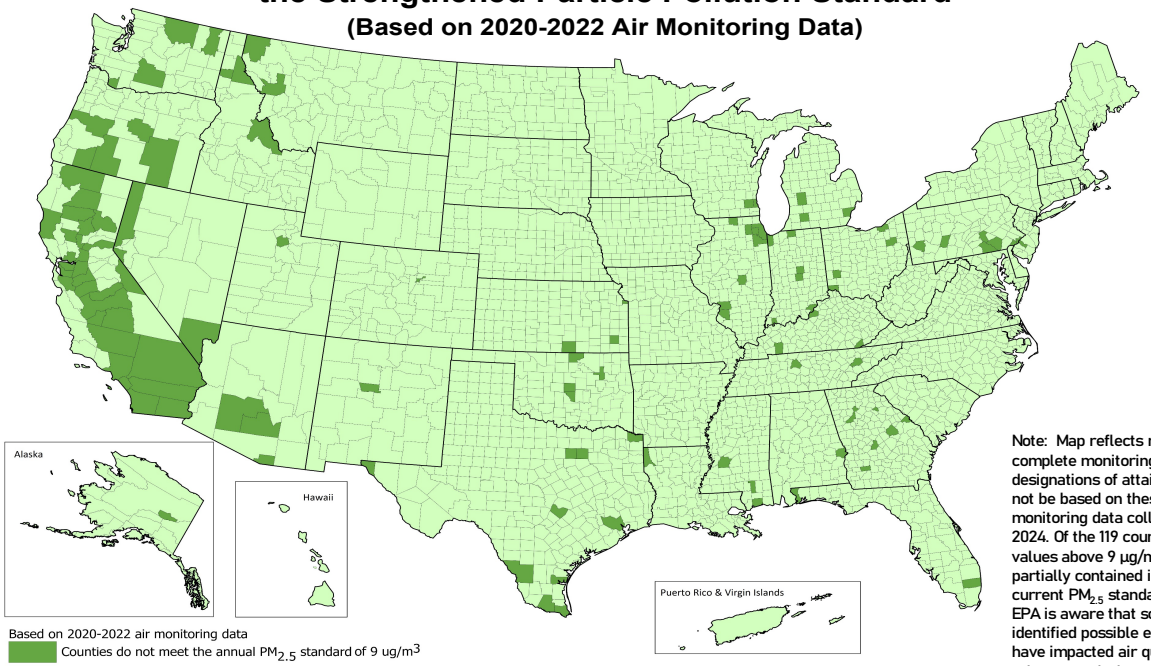
EPA New Particulate Matter Standard (PM 2.5)

EPA United States Environment Agency

Most Counties with Monitors Already Meet the Strengthened Particle Pollution Standard

(Based on 2020-2022 Air Monitoring Data)



Based on 2020-2022 air monitoring data

Counties do not meet the annual $PM_{2.5}$ standard of 9 ug/m^3

This information is provided for illustrative purposes only and is not intended to predict the outcome of any forthcoming designations process.

Note: Map reflects monitored counties with complete monitoring data. Future final designations of attainment/nonattainment will not be based on these data, but likely on monitoring data collected between 2022 and 2024. Of the 119 counties with 2020-2022 design values above 9 $\mu g/m^3$, 59 counties are totally or partially contained in nonattainment areas for current $PM_{2.5}$ standards. In years 2021 and 2022, EPA is aware that some states have already identified possible exceptional events that may have impacted air quality in the US and may be relevant to designations decisions.

EPA New Particulate Matter Standard (PM 2.5)

- Designations/Implementation Timeline
  - The Clean Air Act directs EPA and states to take the following actions to deliver public health benefits following promulgation of a new/revised PM2.5 NAAQS:
    - Stationary source permitting.
      - Prevention of Significant Deterioration (attainment area permitting) applies with respect to a new standard in all areas of the U.S. designated attainment for the pollutant upon the effective date of the new standard.
      - Nonattainment New Source Review applies in areas designated nonattainment for the pollutant, which includes any areas newly designated nonattainment at/after the effective date of nonattainment designations.

EPA New Particulate Matter Standard (PM 2.5)

- Designations/Implementation Timeline
  - Within 2 years after a final NAAQS: For areas with available information, EPA must "designate" areas as meeting (attainment areas) or not meeting (nonattainment areas) the final NAAQS considering the most recent air quality monitoring data and input from states and tribes. All PM2.5 nonattainment areas are initially designated as “Moderate.”
  - Within 3 years after a final NAAQS: Clean Air Act section 110 requires all states to submit state implementation plan revisions to show they have the basic air quality management program components in place to implement the final NAAQS.
  - Within 18 months after the effective date of designations: Nonattainment area PM2.5 state implementation plans are due.
  - End of the 6th calendar year after the effective date of designations: “Moderate” area attainment date.

EPA New Particulate Matter Standard (PM 2.5)

- Clean Air Act Permitting Basics – Who needs a Permit and Why?
  - Clean Air Act permits protect air quality while allowing economic growth.
  - States issue almost all permits.
  - An industry with high emissions must apply for a permit before they build or if they are going to expand their operations in a way that increases air pollution. EPA estimates that each year there are 100-200 major source permits issued.
  - Once issued, permits are not often changed or adjusted.
  - The permitting requirement applies only to a large new facility that emits particle pollution, or a facility that would increase the amount of particle pollution they emit. Mobile sources and many categories of industrial activity never need a permit.

USPS New Mailing Standards for Shipments of Hazardous Material

- On December 15, 2023, the United States Postal Service released proposed changes to its Publication 52, a set of internal guidelines that provides information and guidance on mailing potentially hazardous materials.
    - Hazardous materials (a.k.a. "dangerous goods") are "any article or substance designated by the U.S. DOT as being capable of posing an unreasonable risk to health, safety, or property during transportation."
    - Publication 52 is incorporated by reference into the Code of Federal Regulations.
- Key Proposed Changes:
    - Shipments of hazardous materials weighing 20 pounds or less will be required to be housed in a package that can either pass a 200-pound burst test or a 32-edge crush test (or equivalent).
    - Shipments of hazardous materials weighing more than 20 pounds will be required to pass a 275-pound burst test or 44-edge crush test (or equivalent).

USPS New Mailing Standards for Shipments of Hazardous Material

- Takeaway for ILMA Members:
  - Oil samples may fall into the definition of hazardous material.
  - Final rule is expected to be promulgated in the coming months.
  - Members that use the USPS to mail oil sample will have to ensure compliance with new mailing requirements.

California Senate Bills 253 and 261

- **SB 253 - Climate Corporate Data Accountability Act, CCDAA**
- **SB 261 - Climate-Related Financial Risk Act, CRFRA**
- ***Governor Newsom signed both SB 253 and SB 261 into law on October 7, 2023.***

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SB 253

Who will be required to disclose?	Public/private entities formed in the U.S. with annual revenues in excess of $1 billion and business in the state of California
What will be required to disclose?	Scopes 1, 2 and 3 GHG emissions for the prior fiscal year
How to disclose?	Report to an "emissions reporting organization"
Alternatives for compliance?	None
At what cadence?	2026 (Scopes 1 & 2 for FY25) 2027 (Scope 3 for FY26) Annually thereafter
Assurance	Scopes 1&2 • 2026 – Limited Assurance • 2030 – Reasonable Assurance Scope 3 • 2030 – Limited Assurance

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SB 261

Who will be required to disclose?	Public/private entities formed in the U.S. with annual revenues in excess of $500 million and business in the state of California
What will be required to disclose?	Climate-related financial risks in accordance with TCFD & measures taken to mitigate/adapt to these risks
How to disclose?	Prepare and publish a publicly available report on company's internet website
Alternatives for compliance?	Provide required disclosures to the best of the entity's ability and explanations for gaps and steps to be taken to fully comply
At what cadence?	2026 and biennially thereafter
Assurance	N/A

TCFD = Task Force on Climate-related Financial Disclosures

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California Senate Bills 253 and 261

Complaint Filed
January 30, 2024

Rule May Be delayed
As The Complaint
Works Its Way Through
The Courts

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA,
WESTERN DIVISION

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, CALIFORNIA CHAMBER OF COMMERCE, AMERICAN FARM BUREAU FEDERATION, LOS ANGELES COUNTY BUSINESS FEDERATION, CENTRAL VALLEY BUSINESS FEDERATION, and WESTERN GROWERS ASSOCIATION,

Plaintiffs,

v.

CALIFORNIA AIR RESOURCES BOARD, LIANE M. RANDOLPH, in her official capacity as Chair of the California Air Resources Board, and STEVEN S. CLIFF, in his official capacity as the Executive Officer of the California Air Resources Board.

Defendants.

CASE NO. 2:24-cv-00801

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

, Dunn &

Some Issues of the Complaint

94. S.B. 261 requires companies to make public statements estimating their future risk from climate change. This speech is necessarily speculative because it requires companies to estimate not only their risk of damage from future events like natural disasters, but also to speculate about whether those events will occur and will do so as a result of climate change. And it is a politically controversial topic about which significant uncertainty is inevitable.

Some Issues of the Complaint

95. S.B. 261 also fails to describe its key term—"climate-related financial risk"—with enough specificity to enable companies to comply. The term is so ambiguous that companies will be forced to make high-stakes, public guesses about their future—with the aim, on the part of the State, to discourage investors and consumers from doing business with the companies based on that speculation.

Some Issues of the Complaint

96. S.B. 253 requires companies to make public statements not only about their greenhouse-gas emissions, but also about the emissions of up- and downstream entities with which they do business. Because companies must report these Scope 3 emissions as their *own* emissions, the law necessarily requires that a company falsely and inaccurately represent the provenance of these emissions.

97. Moreover, this compelled speech requires companies to speculate about Scope 3 emissions. Calculating Scope 3 emissions is a subjective undertaking, requiring myriad judgment calls about how to identify and quantify another entity's emissions. Alternatively, companies will be forced to demand information from their non-covered partners in the supply chain. Reporting companies under S.B. 253 might disagree with how upstream and downstream entities calculated their emissions, and thus may be forced to convey speech with which they disagree.

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Securities and Exchange Commission Activity

FACT SHEET

The Enhancement and Standardization of Climate-Related Disclosures: Final Rules

NEW Rule is
880 pages: Includes:
Scope 1 and Scope 2

Does Not Require
Scope 3 Emissions

On March 6, 2024, the Securities and Exchange Commission adopted final rules to require registrants to disclose certain climate-related information in registration statements and annual reports. The Commission proposed the rules on March 21, 2022. The public comment file is available online.

Updates

OSHA Hazard Communication Standard

- It's Coming
  - Final Rule has been at OMB for interagency review since October 11, 2023
  - Next-to-last step in rulemaking process.
- Proposal Largely Intended to Move from GHS Rev. 3 to GHS Rev. 7
- GET READY!!!

EPA Used Drum Management & Reconditioning ANPRM

- In August 2023, EPA released an advanced notice of proposed rulemaking indicating that the Agency is considering:
  - Redefining the RCRA-empty container provision by lowering or eliminating the current one-inch residue threshold for 55-gallon drums and the 3% by weight limit for IBCs
  - Add a requirement for generators to rinse used or empty drums and totes prior to their shipment to reconditioners
  - Requiring generators and transporters to adopt more stringent packaging and inspection practices

- Overwhelming majority of commenters argued that RCRA empty container provision should not be amended
  - EPA's concerns can be effectively addressed by working with industry to develop best practices guidance

- No timeline provided in the Fall 2023 Unified Agenda
  - EPA will be reviewing comments first half of 2024

OSHA Heat Injury & Illness Prevention in Outdoor and Indoor Work Settings

- October 2021: OSHA released an ANPRM asking stakeholders whether the Agency should adopt a national heat injury and illness prevention standard for indoor and outdoor workplaces.
- May 2023: NACOSH Work Group recommended that OSHA should consider requiring businesses to adopt including written heat illness plans, employee training, and workplace temperature controls.
- August 2023: OSHA convened a Small Business Advocacy Review Panel ("SBREFA" Panel) as required by law for potential regulations that will likely have a significant impact on small businesses.
- November 2023: Panel published report that largely recommended rulemaking.
- The Fall 2023 regulatory agenda indicates that OSHA is reviewing the SBREFA Panel's report.

OSHA Heat Injury & Illness Prevention in Outdoor and Indoor Work Settings

- As part of the SBREFA Process, OSHA released a potential regulatory framework which includes the following regulatory options:
    - Adopt written heat illness policies and procedures
    - Define what constitutes a heat hazard exists
    - Provide administrative controls such as drinking water and rest breaks
    - Provide engineering controls such as fans or air-conditioned cool-down areas
    - Heat illness and prevention training
    - Monitor weather conditions to determine when there is a heat hazard.
- May apply to both indoor and outdoor workplaces, including to the manufacturing sector (N# 31-33).
- A proposed rule may be released in 2024 – likely before Congressional Review Act deadline (late May).

OSHA Walkaround Rule

- Proposed in August 2023.
- Final Rule cleared OMB / issued March 29, 2024.
- Effective May 31, 2024.
- Will allow employees at non-union workplace to request union rep on OSHA walk around inspection
  - OSHA inspector can determine whether 3rd party "is reasonably necessary" to aid in the inspection
  - Part of Biden administration effort to aid unions
- Problems – A Lot
  - Would allow any 3rd party rep (e.g., plaintiff's lawyer, activist)
  - No limit on number of employee requests
  - Legitimize trespassing?
  - No ability of employer to restrict/control 3rd party's activities onsite

DOL Overtime Rule

- The Fair Labor Standards Act (FLSA) regulates when employees must be paid minimum wage and overtime.
    - Currently, unless specifically exempt, employees who work more than 40 hours / week must receive overtime pay.
- Section 13(a)(1) exempts executive, administrative, or professional employees (white collar workers) from overtime pay.
- DOL regulations also exempt “highly compensated employees” from overtime pay.
- Proposed Rule released September 2023 raises the salary thresholds for both white collar and HCE exemptions
    - Final Rule sent to OMB March 2024.

DOL Overtime Rule

- Changes
  - Increases salary threshold for white collar workers to $55,068 annually ($1,059 per week)
    - Meaning if an employee earns less than this amount, the employer must provide overtime.
    - Significant increase from previous $35,568 annually (or $684 weekly).
  - Increases salary threshold for “highly compensated employees” to $143,988 annually.
    - From $107,432.
- Commissions and nondiscretionary bonuses count.
- Reimbursements, payments for medical, life insurance, or contributions to retirement plans or other fringe benefits DO NOT count.

DOL Overtime Rule

- Takeaways for ILMA Members
  - Review employee classifications to confirm compliance with new salary basis to remain exempt.
  - Review employee classifications to determine whether employees should be reclassified as nonexempt.
  - For employees reclassified as nonexempt, ensure all hours worked are properly recorded.
  - For employees reclassified as nonexempt, review budgets, set hours expectations, and development policies for approval of overtime.

Non-Competes

- The Federal Trade Commission (FTC)
  - In January 2023, a proposed a rule that, if enacted, will prohibit employers entering and maintaining – virtually – all non compete agreements with employees.
    - Significant stakeholder participation during comment period.
    - No official timeline for release of final rule but, it is widely expected to be promulgated in 2024.
- General Counsel of the National Labor Relations Board
  - On May 30, 2023, the General Counsel issued a memo to agency lawyers and regional leaders advising that most non-compete provisions are unfair labor practices that violate the National Labor Relations Act (NLRA) because they, among other things, erode employees' bargaining power in labor disputes and their right to change, or threaten to change, jobs for better working conditions.

Non-Competes

- Status Among States
  - Five states have fully banned non-compete clauses: California, Colorado, Oklahoma, North Dakota, and Minnesota.
  - New York state legislature passed a complete ban, but it was vetoed by Governor Hochul.
    - Governor signaled that she is willing to sign bill that exempts high-salaried employees (~$250,000+) from ban.
    - New York City has introduced its own proposed ban on non-competes. It is under consideration by the New York City Council.

ILMA ENGAGE

Thank you!

Questions & Comments?

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