TheCorporateCounsel.net

“The SEC’s Climate Disclosure Rules: Preparing for the New Regime”

Wednesday, March 27, 2024

Course Materials

<u>"The SEC's Climate Disclosure Rules: Preparing for the New Regime"</u>

Wednesday, March 27, 2024

2 to 3 p.m. Eastern [archive and transcript to follow]

The SEC's recently adopted climate disclosure rules impose extensive new disclosure obligations on public companies and, together with other climate reporting regimes imposed by the EU, the ISSB and other jurisdictions, create significant compliance challenges for public companies and those considering becoming public. Join our panel of experts as they provide insight into the new disclosure requirements and practical advice on how to build the disclosure infrastructure required to comply with them.

- **J.T. Ho**, Partner, Orrick, Herrington & Sutcliffe LLP
- **Dave Lynn**, Partner, Goodwin Proctor LLP, and Senior Editor, TheCorporateCounsel.net and CompensationStandards.com
- **Rose Pierson**, Assistant Secretary and Senior Counsel, Chevron
- **Kristina Wyatt**, Deputy General Counsel and Chief Sustainability Officer, Persefoni

Topics addressed in this program will include:

- Overview of the SEC's Final Rules and Key Changes From the Original Proposal
- Developing and Implementing an Effective Compliance Plan
- Navigating Multiple Climate Reporting Regimes
- Legal Challenges to the SEC's Rules

“The SEC’s Climate Disclosure Rules: Preparing for the New Regime”

Course Outline/Notes

1. Overview of the SEC’s Final Rules and Key Changes From the Original Proposal

2. Developing and Implementing an Effective Compliance Plan

3. Navigating Multiple Climate Reporting Regimes

4. Legal Challenges to the SEC’s Rules

“The SEC’s Climate Disclosure Rules: Preparing for the New Regime”

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ALERT · MARCH 12, 2024

The Coming Storm: Preparing for The SEC's Final Climate-Related Disclosure Rules

BY John O. Newell David M. Lynn Danielle Reyes

On March 6, 2024, the U.S. Securities and Exchange Commission (SEC) adopted final rules that will require expansive new climate-related disclosures in Form 10-K and Form 20-F annual reports and most registration statements. The disclosure requirements and the initial compliance dates will vary, based on the specific climate-related practices and disclosure content and the company's filer status. The first disclosures by large accelerated filers will be required in Form 10-K reports for the fiscal year ending December 31, 2025, which must be filed by Monday, March 2, 2026.[1] Additional disclosure by large accelerated filers, and initial disclosures by accelerated filers, will be required one year later, with other disclosures and other filers phasing in as shown in the table in the next section.

The new climate-related disclosure requirements are already the subject of litigation challenging their validity; at least one petition seeking an order vacating the new rules was filed by the Attorneys General of ten states. If the new rules become effective as adopted by the SEC, compliance will require significant amounts of time and significant increases in internal and external expenses for most companies. Large accelerated filers that have a December 31 fiscal year end, which will be the first group of companies that will be subject to the new rules, may not be able defer the potentially extensive and costly preparations that may be required to have the relevant internal financial and disclosure controls and procedures operating effectively starting on January 1, 2025.

The final climate-related rules, which are contained in the 886-page adopting release, scale back some of the requirements originally proposed by the SEC in March 2022. The proposed rules generated approximately 24,000 comment letters, which is an unprecedented number. Proposed disclosure requirements that were modified or eliminated in the final rules include a variety of prescribed narrative disclosures, disclosures in the notes to audited financial statements, and a requirement to disclose material Scope 3 greenhouse gas emissions and provide an attestation report covering the Scope 3 disclosures.

The final climate-related rules will require new disclosures about:

- Climate-related risks that have had or are reasonably likely to have a material impact on the company's business, results of operations or financial condition, including actual and potential material impacts and the company's activities to mitigate or adapt to these risks, including the use of transition plans, scenario analysis and/or internal carbon prices;
- Board oversight of climate-related risks and the role of management in identifying, assessing and managing the company's material climate-related risks;
- The company's climate-related targets or goals, including material expenditures and impacts on financial estimates and assumptions related to the company's targets or goals and the company's actions to meet these targets or goals;

- For large accelerated filers and accelerated filers, information about material Scope 1 and/or Scope 2 GHG emissions, and assurance reports provided by an independent third party expert at the limited assurance level for large accelerated filers and accelerated filers, unless exempt, and for large accelerated filers at the reasonable assurance level after an additional transition period; and
- Disclosure in the notes to the company's audited financial statements providing information about:
  - Capitalized costs, expensed expenditures, charges, and losses incurred that result from severe weather events and other natural conditions such as hurricanes, tornadoes, flooding, drought, wildfires, extreme temperatures and sea level rise, subject to one percent and de minimis disclosure thresholds;
  - Capitalized costs, expensed expenditures and losses related to carbon offsets and renewable energy credits or certificates used by the company as material elements of its plans to achieve its disclosed climate-related targets or goals; and
  - Qualitative information about any material impacts of severe weather events or natural conditions on any estimates or assumptions used by the company to produce its financial statements or on any of the company's disclosed climate-related targets or transition plans.

Continuing with a trend seen in recent SEC rulemaking, many parts of the new climate-related disclosure rules contain extensive and detailed prescriptive disclosure requirements, rather than the more general principles-based disclosure requirements that had become typical in SEC rulemaking during the preceding decade.

What Companies Should Do Now

This section reflects our initial assessment of the actions that many companies – especially large accelerated filers and filers with nascent climate-related risk management programs — should consider taking in the near future. Because the new rules involve many new disclosure requirements, our views are likely to develop over the next several months. We expect to provide additional analysis of the new rules and discuss the implications of the new rules in future alerts.

Because the new climate-related disclosure rules are likely to require significant preparation for many companies, we suggest that companies begin by reviewing the detailed compliance timetable below to determine when and how these rules will apply to the company. As the table below indicates, preparation for compliance with the new rules will be more significant in the near future for large accelerated filers than other filers, since large accelerated filers will be the first group of companies that must provide the new climate-related disclosures.

Companies should note that the new rules are likely to require significant changes in internal control over financial reporting (ICFR) and/or disclosure controls and procedures (DCP) for many companies, as discussed further below. Companies should allow sufficient time to design, test and implement these changes on or before the beginning the first fiscal year for which the company will be required to provide the new climate-related disclosures. Among other things, the company's principal executive officer (PEO) and principal financial officer (PFO) must be able to provide the certifications with respect to the company's ICFR and DCP that are required in connection with the filing of the company's Form 10-Q and Form 10-K reports, beginning with the Form 10-Q report for the first fiscal quarter of 2025.

Compliance Phase-In Timetable for Climate-Related Disclosure Rules. The table below summarizes the phase-in dates for the new climate-related disclosure rules, based on a company's filer status and the specific disclosure requirements.

Compliance Dates under the Final Climate-Related Disclosure Rules			
Registrant Type	**Disclosure and Financial Statement Effects Audit**	**GHG Emissions/Assurance**	**Electronic Tagging**

	All Reg. S-K and Reg. S-X disclosures, other than as noted in this table	*Item 1502(d)(2), Item 1502(e)(2), and Item 1504(c)(2) (see note 1 below)*	*Item 1505 (Scope 1 and Scope 2 GHG emissions)*	*Item 1506 - Limited Assurance*	*Item 1506 - Reasonable Assurance*	*Item 1508 - Inline XBRL tagging for subpart 1500 (see note 2 below)*
Large Accelerated Filers	Fiscal years beginning on or after January 1, 2025 *(e.g., Form 10-K for FYE 12/31/25, filed in 2026, for 12/31 filers)*	Fiscal years beginning on or after January 1, 2026 *(e.g., Form 10-K for FYE 12/31/26, filed in 2027, for 12/31 filers)*	Fiscal years beginning on or after January 1, 2026 *(e.g., Form 10-K for FYE 12/31/26, filed in 2027, for 12/31 filers)*	Fiscal years beginning on or after January 1, 2029 *(e.g., Form 10-K for FYE 12/31/29, filed in 2030, for 12/31 filers)*	Fiscal years beginning on or after January 1, 2033 *(e.g., Form 10-K for FYE 12/31/33, filed in 2034, for 12/31 filers)*	Fiscal years beginning on or after January 1, 2026 *(e.g., Form 10-K for FYE 12/31/26, filed in 2076, for 12/31 filers)*
Accelerated Filers (other than SRCs and EGCs)	Fiscal years beginning on or after January 1, 2026	Fiscal years beginning on or after January 1, 2027	Fiscal years beginning on or after January 1, 2028	Fiscal years beginning on or after January 1, 2031	N/A	Fiscal years beginning on or after January 1, 2026
SRCs, EGCs, and Non-Accelerated Filers	Fiscal years beginning on or after January 1, 2027	Fiscal years beginning on or after January 1, 2028	N/A	N/A	N/A	Fiscal years beginning on or after January 1, 2027

Note 1: Items 1502(d)(2), 1502(e)(2) and 1504(c)(2) require qualitative and quantitative disclosure of material expenditures and material impacts on financial estimates and assumptions that result directly from (1) activities taken to mitigate or adapt to climate-related risks (including adoption of new technologies or processes), (2) any transition plan intended to manage a material transition risk, and (3) a target or goal established by the company or actions taken to make progress toward meeting the target or goal.

Note 2: Financial statement disclosures under Article 14 of Regulation S-X must be tagged in accordance with existing rules pertaining to the tagging of financial statements, and are not subject to the one-year transition period provided for tagging of other disclosures by large accelerated filers. See Rule 405(b)(1)(i) of Regulation S-T.

Source: *The Enhancement and Standardization of Climate-Related Disclosures for Investors*, Release Nos. 33-11275; 34-399678 (March 6, 2024).

When a company has determined its compliance dates, it should evaluate how the new climate-related disclosure requirements will affect the company and the nature and extent of actions that may be required for compliance. We expect that the actions, and related time and expenses, that will be required to comply with the new rules will be significant for many companies, although the compliance burden will likely vary widely from one company to another, even within the same or similar industries and lines of business.

Internal Control over Financial Reporting and Disclosure Controls and Procedures. A company's internal control over financial reporting and disclosure controls and procedures are likely to be the most critical areas for companies to review and, if appropriate, revise, in preparation for compliance with the new climate-related disclosure rules. ICFR and DCP are critical to compliance with SEC disclosure requirements, and SEC rules expressly dictate the operational and functional requirements for ICFR and DCP. ICFR and DCP themselves are subject to various disclosure requirements, and require various certifications by

the company's PEO and PFO in exhibits filed with the company's Form 10-Q and Form 10-K reports. In addition, SEC rules generally require that large accelerated filers and accelerated filers obtain and file, with the auditor's report on the company's financial statements, a report from the company's independent auditor attesting to management's assessment that the company's ICFR is effective.

Companies should review the impact of the new climate-related disclosure rules on their ICFR and DCP well in advance of the date on which the company first becomes subject to compliance with the new rules. This review should allow adequate time to permit testing that will enable the company's ICFR and DCP to operate at the beginning of the first fiscal year for which the company is required to comply with the new rules. In the case of large accelerated filers and the new rules, this date will be January 1, 2025, which is less than nine months away.

Disclosure Requirements of Other U.S. and Foreign Regulators. Companies should review the interaction of the SEC's new climate-related rules on the disclosures required by other regulators, including certain U.S. states (for example, California) and non-U.S. jurisdictions (for example, the European Union). Areas of potential concern may include potentially duplicative or inconsistent regulatory reporting and/or public disclosure requirements and different protocols or frameworks that apply to these requirements. For example, the new SEC rules are generally consistent with certain aspects of the frameworks established by the Task Force on Climate-Related Financial Disclosures, also known as TCFD, and the GHG Protocol, but these are not necessarily the same as the E.U. Corporate Sustainability Reporting Directive and the IFRS Sustainability Disclosure Standards. In particular, the new rules require only climate-related disclosures, and do not require any disclosure with respect to matters such as human capital or sustainability. Companies should ensure that their systems enable them to meet the requirements of each of the regimes that apply to their business and operations; there may not be a one-size-fits-all solution.

Other Climate-Related Disclosures and Climate Governance. Companies should review the impact of the new climate-related rules on public disclosures and reports that are not filed with the SEC. This would in many cases include, for example, corporate sustainability and corporate responsibility reports and environmental, social and governance (ESG) reports that are posted on company websites or included, in part, in public documents such as the company's annual report to shareholders or other investor communications. As a preliminary matter, it is important that each company knows what the company currently discloses about climate and extreme weather risks and developments, where and how this information is distributed and updated, and who is responsible for authorship, review, and general oversight of these materials. Consistent, fact-based disclosure across all of these publications and the company's SEC filings is important.

Companies should also review – or establish if they have not already done so – their internal governance structures that are related to climate and extreme weather risks. It may be helpful to understand also the general state of climate-related and extreme weather disclosure, especially disclosures made by the company's peers and competitors.

Materiality Standards Applicable to the New Climate-Related Disclosures. Because many of the disclosure requirements in the new climate-related rules include materiality qualifications, companies may benefit from beginning to consider how these materiality qualifications, nearly all of which are qualitative in nature – that is, are not based on quantitative measures such as percentages or dollar amounts — may affect the company's disclosures under the new rules. Information that the company believes may be material in one context, either because of the percentage or amount involved or because of the significance of the fact or event, may not be material in another context. Companies should consider how they would apply materiality qualifications to the new disclosures. Companies should note that the process of reviewing specific potential disclosure items may require significant time and effort, especially during the years immediately after the company first becomes subject to the new rules, even if the company determines that no disclosure about a specific potential disclosure item is required.

Auditing, Financial Statement and ICFR Attestation Considerations. The new climate-related disclosure rules include the three requirements for new disclosure in the notes to audited financial statements that are summarized above. Companies should consider discussing with their independent auditor how generally accepted auditing and accounting standards will apply to the relevant disclosure, the company's accounting records and the presentation of the disclosure in the notes to the audited financial statements. At the same time, companies may also wish to confirm that the company understands the extent of any

impact that the new rules may have on the auditor's requirements in connection with its attestation report relating to the company's ICFR.

GHG Emissions Disclosure and Attestation Reports. Although large accelerated filers will not be required to provide Scope 1 and/or Scope 2 GHG emissions disclosure before fiscal years beginning on or after January 1, 2026 and will not be required to provide attestation reports from independent third party expert firms before fiscal years beginning on or after January 1, 2029, companies may wish to begin considering how they will satisfy both the disclosure requirements and, when they become applicable, the requirement to provide attestation reports with respect to that disclosure.

For example, companies may wish to develop a timeline for the process of identifying potential assurance providers and engaging an assurance provider in advance of the applicable compliance date. The number of potential assurance providers may be limited, at least initially, which may result in lengthy lead times for obtaining an assurance report, as a result of the expertise, experience and other requirements that apply to assurance providers under the new rules.

Another factor that may affect the availability of assurance providers is the independence requirements that apply to assurance providers under the new rules. These differ in some significant respects from the independence standards that apply to independent audit firms under the rules of the Public Company Accounting Oversight Board and SEC rules. We will discuss the requirements that apply to GHG attestation reports and firms that will provide these reports in a future publication.

Internal Company Responsibility, Reporting and Review Structures. Beyond any changes companies may make to specific internal subject-matter responsibilities and internal reporting and internal review structures in response to new ICFR and DCP requirements, companies may wish to consider whether other changes that may be less specifically disclosure-driven might be beneficial. For example, companies may wish to review internal company responsibility, reporting and review structures and procedures, especially those that deal with operational, economic and financial modeling, scenario analysis, and reporting and compliance. It is possible that changes in these or other areas might reduce unnecessary expenses and/or improve the efficiency or effectiveness of internal time burdens.

Company Accounting Systems and Software. Companies should review their internal accounting systems and software in light of the new climate-related disclosure rules and determine whether the company's current systems and software will allow the company to track and identify income, expenses, charges and other amounts at a level that will support compliance with the requirements of the new rules. It is possible that some companies will need to supplement or replace existing software or related systems.

Companies Subject to the New Climate-Related Disclosure Rules

The final climate-related disclosure rules will apply to nearly all domestic and foreign companies that are required to file reports under the Securities Exchange Act of 1934, other than asset-backed issuers and Canadian companies that file annual reports on Form 40-F.

Smaller reporting companies (SRCs), emerging growth companies (EGCs) and non-accelerated filers are exempt from the Scope 1 and Scope 2 GHG emissions disclosure and attestation report requirements. Accelerated filers are exempt from the requirement to provide attestation reports at the reasonable assurance level. Other than these reduced requirements related to GHG emissions disclosure, the new rules do not provide any exemptions or scaled disclosure accommodations for SRCs or EGCs. As is the case with the timing of most disclosure transitions after a company ceases to qualify as an EGC, the new rules provide no transition period that would extend the compliance phase-in for EGCs.

Similarly, the new rules do not provide any option for foreign private issuers (FPIs) to substitute home country climate-related disclosure or GHG reports for the disclosures required by the new rules.

Effective Date and Compliance Dates

The new rules will become effective 60 days after publication in the Federal Register. As stated earlier and shown in the compliance phase-in table above, compliance dates vary depending on a company's filer status and the specific disclosure required. The earliest compliance requirement will apply to large accelerated filers beginning with the fiscal year ending December 31, 2025, and will require most of the new Regulation S-K and Regulation S-X disclosures in these companies' Form 10-K reports for that fiscal year. The next group of companies subject to the new climate-related disclosure rules will be accelerated filers, with most Regulation S-K and Regulation S-X disclosures required in their Form 10-K reports beginning with the fiscal year ended December 31, 2026. The last group of filers will be (1) non-accelerated filers and (2) SRCs and EGCs, even if the SRC or EGC does not qualify as a non-accelerated filer; these companies must provide the new climate-related disclosure beginning with their Form 10-K reports for the fiscal year ended December 31, 2027.

Filings Affected by the New Climate-Related Disclosure Rules

The new climate-related disclosure requirements will apply to annual reports on Form 10-K and Form 20-F. They will apply also to registration statements under the Securities Act of 1933 on Form S-1, Form S-3, Form S-4 and Form S-11 for companies that file on U.S. domestic forms and Form F-3 and F-4 for companies that file on foreign private issuer forms, and registration statements on Form 10 under the Securities Exchange Act of 1934.

Location of Climate-Related Disclosures

The final rules modify the proposed requirement that the Regulation S-K disclosures must be provided in a separate section under the caption "Climate-Related Disclosure." As alternatives, the final rules permit companies to provide this disclosure in other appropriate sections of the filing, such as Risk Factors, Description of Business or Management's Discussion and Analysis of Financial Condition and Results of Operations, or to incorporate the disclosure by reference from another SEC filing, if the disclosure satisfies the electronic tagging requirements of the new rules.

Delayed Filing of GHG Emissions Disclosure and Attestation Reports

The new rules permit companies to provide GHG emissions disclosure and attestation reports that would be required in the company's annual report on Form 10-K to provide this disclosure with the company's Form 10-Q report for the second fiscal quarter of the fiscal year following the fiscal year for which the GHG emissions disclosure and attestation report were due. Alternatively, the company can provide this disclosure by filing, not later than the due date of the Form 10-Q report for the second fiscal quarter, an amendment on Form 10-K/A that amends the Form 10-K report for the relevant fiscal year. FPIs that file annual reports on Form 20-F can provide the GHG emissions disclosure and attestation report by filing an amendment to the relevant Form 20-F not more than 225 days after the end of the relevant fiscal year.

In each of these cases, the company must include an express statement in its annual report indicating that it intends to incorporate this disclosure by reference from either a quarterly report on Form 10-Q or an amendment to its Form 10-K or Form 20-F annual report. Not later than the due date specified by the new rules.

Expanded Safe Harbor

The final climate-related disclosure rules provide a new safe harbor for certain disclosures required by the new rules. Covered disclosures include disclosures, other than disclosures of historic facts, that pertain to the company's transition plan, scenario analysis, internal carbon pricing, and the company's climate-related targets and goals. In addition, the existing safe harbors for forward-looking statements under Securities Exchange Act Rule 3B-6 and Securities Act Rule 175 will be available for other aspects of the climate-related disclosures, to the extent that these disclosures satisfy the conditions of the safe harbor under Rule 3B-6 and Rule 175.

Structured Data/Inline XBRL

The new climate-related disclosure rules require companies to tag most of the new disclosures using Inline XBRL, as required by Rule 405(b)(1) of Regulation S-T and the EDGAR Filer Manual. It is important to note that although the new rules include a deferred compliance schedule that provides an additional year for compliance with Inline XBRL tagging requirements for most of the new disclosures, this deferral does not include the new disclosures that will be required in the notes to a company's audited financial statements under new Article 14 of Regulation S-X. Companies must properly tag these disclosures starting when the company first files an annual report or registration statement that incudes these disclosures.

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[1] The 60th day after December 31, 2025 is Sunday, March 1, 2026. Rule 0-3 under the Securities Exchange Act of 1934 provides that when a due date falls on a Saturday, Sunday or federal holiday, the filing is due on the next business day. As a result, the latest filing date for Form 10-K reports for the fiscal year ended December 31, 2025 will be Monday, March 2, 2026.

This informational piece, which may be considered advertising under the ethical rules of certain jurisdictions, is provided on the understanding that it does not constitute the rendering of legal advice or other professional advice by Goodwin or its lawyers. Prior results do not guarantee a similar outcome.

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SEC CLIMATE-RELATED DISCLOSURE RULES:

HIGHLIGHTS, DATA INSIGHTS, AND KEY ACTION ITEMS

MARCH.8.2024

The SEC has finalized its long-awaited climate-related disclosure rules. The final rules are consistent with what we believe institutional investors were looking for with respect to climate-related risk oversight and have many of the concessions public companies were seeking. Companies who have already aligned their sustainability reporting with the recommendations of the Task Force on Climate-related Financial Disclosures will benefit from consistency between those recommendations and the final rules. However, many public companies across the board will likely have to invest time and resources to prepare for the final rules. The final rules also provide for complex financial statement disclosure requirements, which financial reporting teams will have grapple with.

We have provided highlights from the final rules, related data insights that provide a view into current market practice, and action items for public companies. Included at the end of this discussion is a more comprehensive description of the key aspects of the final rules and deviations from the proposed rule.

HIGHLIGHTS

- The final rules introduce a materiality threshold for disclosure of Scope 1 and Scope 2 greenhouse gas ("GHG") emissions and climate-related targets and goals, among other things.
- The final rules do not include a requirement for disclosure of Scope 3 GHG emissions.
- The final rules require disclosure of any oversight by the board of directors of climate-related risks.
- The rules require disclosure of management's role in assessing and managing material climate-related risks, including disclosure of relevant management-level climate expertise.
- The final rules provide a safe harbor for disclosures pertaining to transition plans, scenario analysis, internal carbon pricing, and targets/goals. All information required to be disclosed under these sections of the rules, except historical facts, is considered a forward-looking statement.
- Financial statement effects disclosure is required for specific costs, expenditures, charges, and losses due to severe weather events and natural conditions; no financial statement effects disclosure is required for transition risks.

Orrick Data Insights[1]
Climate-related Practices for S&P 500 Companies

99% disclose some level of board oversight, but only 23% have climate-related responsibilities specifically included in their board committee charters[2]

Over 70% disclose primary responsibility for managing climate-related risks at the C-Suite level

95% already have climate-related risks factors in their 10-K[3]

44% disclose having a climate transition plan aligned with a 1.5° C world

96% disclose that climate-related risks are considered as part of their financial planning

91% have a GHG emissions reduction goal

[1] Unless otherwise noted, Orrick Data Insights included in this Client Alert are based on Orrick analysis of publicly available 2023 CDP Climate Questionnaire responses from 367 U.S.-based companies in the S&P 500.

[2] The 23% figure is based on the entire S&P 500, not limited to CDP response data, and covers disclosure since March 2021.

[3] The 95% figure is based on the entire S&P 500, not limited to CDP response data, and covers disclosure since March 2021.

TIMELINE

The final rules will become effective 60 days after publication in the Federal Register, and compliance will be phased in as follows:

Compliance Dates under the Final Rules[1]

Registrant Type	Disclosure and Financial Statement Effects Audit		GHG Emissions and Assurance[2]			Electronic Tagging
	All new disclosures, other than as noted in this table	**Disclosures pertaining to material expenditures**	**Scopes 1 and 2 GHG emissions**	**Limited Assurance**	**Reasonable Assurance**	**Inline XBRL and financial statement tagging**
Large Accelerated Filers (LAFs)	FYB 2025	FYB 2026	FYB 2026	FYB 2029	FYB 2033	FYB 2026
Accelerated Filers (AFs) - other than SRCs and EGCs	FYB 2026	FYB 2027	FYB 2028	FYB 2031	N/A	FYB 2026
Non-Accelerated Filers, SRCs, and EGCs	FYB 2027	FYB 2028	N/A	N/A	N/A	FYB 2027

[1] As used in this chart, "FYB" refers to any fiscal year beginning in the calendar year listed.

[2] 2. Any registrant that is required to provide Scope 1 and/or Scope 2 emissions disclosure pursuant to § 229.1505 that obtains voluntary assurance over its GHG emissions disclosure prior to the first required fiscal year for assurance must provide certain information about the voluntary assurance obtained.

ACTION ITEMS FOR PUBLIC COMPANIES

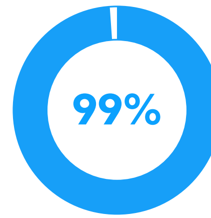
We suggest companies consider taking the following steps to prepare for compliance with the final rules:

1. **Start Now:** Begin preparations now for the first reporting year under the final rules. Determine whether the company wants to implement additional climate-related initiatives before the first reporting year and conduct a disclosure "dry run" to identify gaps between current voluntary disclosures and the new SEC requirements, as well as the requirements of other climate-related disclosure laws that may apply.
2. **Apply Materiality Thresholds:** Given that the final rules make a number of disclosures subject to a materiality determination, confirm or develop the company's approach to applying SEC materiality principles to Scope 1 and 2 GHG emissions and climate-related measures such as the company's transition plan, scenario analysis, and climate-related targets and goals, as applicable.
3. **Establish Oversight:** Develop a climate oversight structure at both the board and management level and consider delegating oversight to a board committee and creating a management-level ESG Steering Committee or Climate Working Group. Consider how you are leveraging internal or external climate expertise in exercising management-level oversight, whether through individual personnel or through a management-level committee.

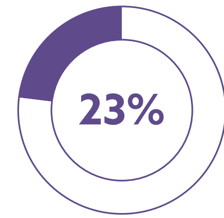
Orrick Data Insights

Nearly every company in the S&P 500 has established oversight of climate-related matters at the board-level, but companies have taken different approaches when formally establishing board and committee responsibilities in relevant charters. Additionally, current approaches for setting defined management-level responsibilities on climate vary significantly from company to company.

Disclose Some Level of Climate-related Board Oversight



Climate-related Responsibilities Disclosed in Board Committee Charters



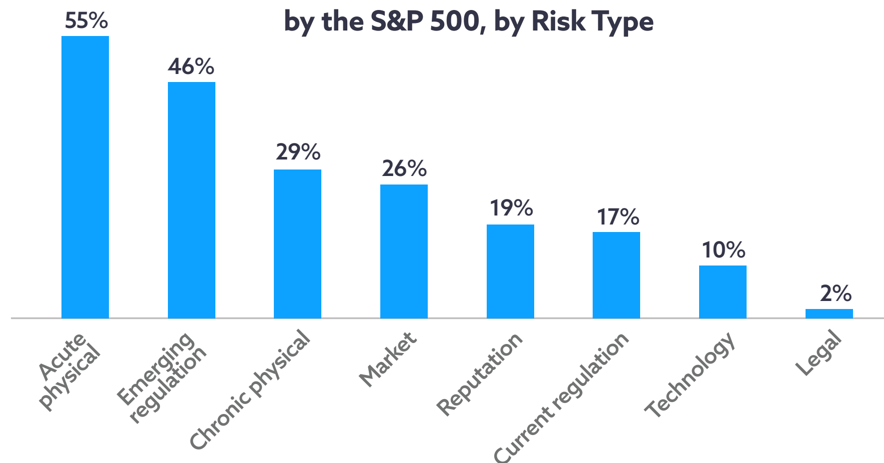
Common Climate-related Responsibilities at the Management Level

4. **Develop a Climate Playbook:** Create a comprehensive Climate Playbook outlining actions to be taken in current and upcoming years to comply with the final rules and other climate-related disclosure laws that may apply.
5. **Conduct a Risk Assessment:** Utilize existing risk management processes and third-party expertise to complete a climate-related risk assessment. Incorporate these results into the overall risk management processes. Establish (or refine) the framework for determining materiality of climate-related risks, incorporating input from counsel, advisors, and internal risk and governance committees.

Orrick Data Insights

While 95% of the entire S&P 500 have recently disclosed climate-related risks factors in their 10-K, the specific types of climate-related risks identified vary based on the company. There is no clear one-size-fits-all approach to climate-related risks; based on CDP data, we found that the types of climate-related risks, including the types of physical and transition risks, vary significantly from company to company.

Prevalence of Climate-related Risks Disclosed by the S&P 500, by Risk Type

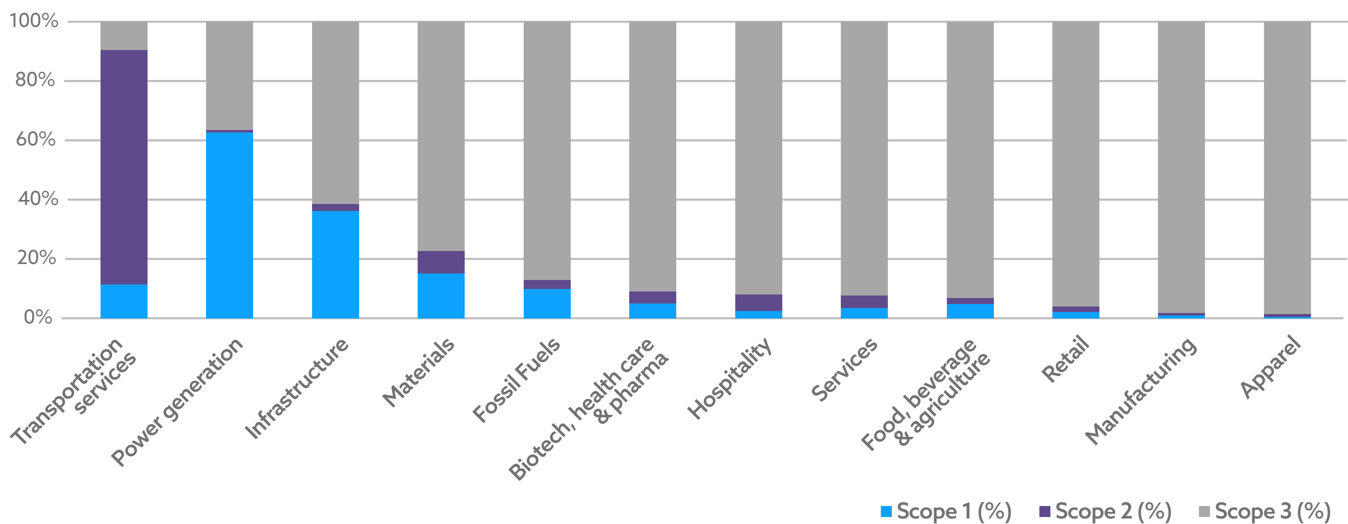


6. **GHG Inventory Management Plan:** Where GHG emissions are or could be material, establish a control environment for measuring GHG emissions, ensuring consistency in disclosures and recording changes in relevant data collection processes and estimates. Companies should consider relevant emissions inventory methodologies, as sources of material GHG emissions vary significantly based on the industry.
7. **Prepare for Third-Party Attestation:** Where GHG emissions are or could be material, enlist a consultant for a pre-assurance assessment and initiate discussions to secure an independent attestation provider as soon as possible.

Orrick Data Insights

A GHG emissions inventory is highly dependent on the relevant industry, location in the value chain, and specific business activities. For most companies, Scope 1 and 2 GHG emissions are likely to account for a significant minority of total GHG emissions, once accounting for emissions in the value chain.

Average Scope 1 and 2 GHG Emissions (% of Total) by Primary Industry



KEY ASPECTS OF THE FINAL RULES

The final rules require public companies to include the following information in their registration statements and annual reports:

- Any existing board oversight of climate-related risks and of progress against material climate-related targets/goals and transition plans;
- Any existing management oversight of material climate-related risks, including disclosure of relevant management-level climate expertise, and any related identification, assessment, and management processes for such risks;
- Identified material climate-related physical and transition risks in the short term (next 12 months) and long term (beyond 12 months), along with their potential impacts on strategy, business model, and outlook, and how these impacts influence company strategy, financial planning, and capital allocation;
- Any activities undertaken to mitigate or adapt to material climate-related risks, including quantitative and qualitative details of associated expenditures and impacts on financial estimates, and the use, if any, of transition plans, scenario analysis, or internal carbon prices;
- Climate-related targets and goals with a material impact on the company's business, operations, or financial condition, if any, including related expenses and financial outcomes; and
- For Large Accelerated Filers (LAFs) and Accelerated Filers (AFs), and only to the extent material, Scope 1 and/or Scope 2 historical GHG emissions and intensity metrics, coupled with the methodology, significant inputs, and significant assumptions used to calculate such information.

LAFs and AFs required to make Scope 1 and/or Scope 2 GHG emissions disclosures must additionally obtain an attestation report for these disclosures. They must also disclose whether the GHG emission attestation engagement is subject to any oversight inspection program, and provide disclosure about any changes in, or disagreements with, the GHG emissions attestation provider. The final rules also require any issuer, not just LAFs and AFs, that offers GHG emissions disclosures and voluntarily subjects them to assurance, to disclose specific additional details about that voluntary assurance engagement.

As indicated above, the final rules provide a safe harbor for disclosures pertaining to transition plans, scenario analysis, internal carbon pricing, and targets/goals. All information required to be disclosed under these sections of the rules, except historical facts, is considered a forward-looking statement.

The final rules also require public companies to provide disclosure in the notes to their financial statements covering the following:

- Costs, expenses, charges, and losses resulting from severe weather events and natural conditions like hurricanes, tornadoes, flooding, droughts, wildfires, extreme temperatures, and sea level rise, subject to applicable one percent and de minimis disclosure thresholds;
- Costs, expenses, and losses linked to carbon offsets and renewable energy credits or certificates (RECs) if they play a material role in achieving disclosed climate-related targets or goals; and
- If severe weather events, natural conditions, disclosed climate-related targets, or transition plans materially affect the estimates and assumptions used in producing financial statements, a qualitative description of how the development of such estimates and assumptions was impacted.

All climate-related disclosures must be tagged in Inline XBRL. Foreign private issues must provide analogous disclosures, but asset-backed issuers are exempted from compliance.

HOW THE FINAL RULES DIFFER FROM THE PROPOSAL

Key departures from the proposal include:

- Making certain climate-related disclosures subject to a materiality determination, including disclosures regarding Scope 1 and Scope 2 GHG emissions, transition plans, scenario analysis, the use of a carbon price, and climate-related targets and goals;
- Removing the requirement to describe board members' climate expertise;
- Limiting Scope 1 and Scope 2 emissions disclosure to LAFs and AFs, phased in and only when material, with exemptions for SRCs and EGCs;
- Adjusting assurance requirements for Scope 1 and Scope 2 emissions, allowing a longer phase-in period for obtaining reasonable assurance by LAFs and requiring only limited assurance for AFs;
- Permitting Scope 1 and Scope 2 emissions disclosure to be filed on a delayed basis;
- Eliminating the Scope 3 emissions disclosure requirement;
- Dropping the requirement to disclose the impact of severe weather events and natural conditions on each financial statement line item;
- Refocusing financial statement effects disclosure on specific costs, expenditures, charges, and losses due to severe weather events and natural conditions;
- Requiring disclosure of material expenditures related to climate-related activities in the body of annual reports and registration statements, instead of in notes to the financial statements;
- Scrapping the requirement for private companies involved in business combination transactions to provide the required climate-related disclosures; and
- Removing the need to disclose material changes to climate-related disclosures on a quarterly basis.

Although the final rules have reduced the expected disclosure burden for public companies in many ways, complying with the SEC's new climate disclosure rules, along with potential overlapping or conflicting requirements from other jurisdictions, will nonetheless be a significant lift for many companies. Orrick stands ready to act as a valuable partner in navigating this evolving disclosure landscape. Orrick has been helping companies develop climate reporting playbooks and serving as an outsourced sustainability reporting function with respect to various climate-related reporting requirements and can provide practical insights regarding how companies can integrate the requirements of the final rules into their internal sustainability reporting systems and prepare for disclosure. Please contact one of the listed authors of this article or your regular Orrick contact for additional information.

LEARN MORE

- SEC news release
- SEC fact sheet
- SEC final rules

Related SEC guidance from 2010 remains in place.

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March 7, 2024

SEC Adopts Highly-Anticipated Climate Disclosure Rules!

Yesterday, the SEC adopted the highly anticipated and hotly debated climate disclosure rules — here are the 886-page adopting release and the 4-page fact sheet. The Commissioners voted 3-2 in favor of the final rules. Here are supporting statements from SEC Chair Gary Gensler, Commissioner Crenshaw, and Commissioner Lizárraga, and the dissenting statements from Commissioner Peirce and Commissioner Uyeda.

As a reminder, the SEC proposed climate-related disclosure rules in March 2022, then reopened the comment period in May, and again in October of that year. We previously reported that the SEC had received 15,000+ comments on this proposed rulemaking, but Chair Gensler updated this number to 24,000+ comments, noting that the Commission received a flurry of additional comments in the 72 hours leading up to the open meeting.

I'm sharing a high-level overview here — starting with the new Regulation S-K requirements — pulling from the fact sheet. The final rules create a new subpart 1500 of Regulation S-K that requires public companies to include the following climate-related disclosure in their Exchange Act reports and registration statements:

> – Climate-related risks: (1) Climate-related risks that have had or are reasonably likely to have a material impact on the registrant's business strategy, results of operations, or financial condition, (2) the actual and potential material impacts of those risks, (3) a quantitative and qualitative description of material expenditures incurred and material impacts on financial estimates and assumptions that directly result from mitigation or adaptation activities and (4) specified disclosures regarding a registrant's activities, if any, to mitigate or adapt to a material climate-related risk or assess the impact of climate-related risks including the use, if any, of transition plans, scenario analysis, or internal carbon prices.
>
> – Governance of climate-related risks: (1) Oversight by the board of directors of climate-related risks and any role by management in assessing and managing the registrant's material climate-related risks, (2) the processes the registrant has for identifying, assessing, and managing material climate-related risks and (3) if the registrant is managing those risks, whether and how any such processes are integrated into the registrant's overall risk management system or processes.
>
> – Targets and goals: Information about a registrant's climate-related targets or goals, if any, that have materially affected or are reasonably likely to materially affect the registrant's business, results of operations, or financial condition, including material expenditures and material impacts on financial estimates and assumptions as a direct result of the target or goal or actions taken to make progress toward meeting such target or goal.
>
> – Emissions data and third-party assurance: (1) For large accelerated filers and accelerated filers that are not otherwise exempted, information about Scope 1 emissions and/or Scope 2 emissions, if material, and (2) for those required to disclose Scope 1 and/or Scope 2 emissions, an attestation report at the limited assurance level and, for large accelerated filers, following an additional transition period, at the reasonable assurance level.

The GHG emissions data requirement differs significantly from the proposed rules — note the absence of Scope 3 and the decision to limit Scopes 1 and 2 to large-accelerated filers and accelerated filers only when material. Tomorrow, we'll cover some other key differences from the proposal. Also, check out Lawrence's blog on PracticalESG.com for more details on the assurance and assurance provider aspects of the rules.

– **Meredith Ervine**

Posted by Meredith Ervine
Permalink: https://www.thecorporatecounsel.net/blog/2024/03/sec-adopts-highly-anticipated-climate-disclosure-rules.html

March 7, 2024

Final Climate Rules: Regulation S-X

The final rules also create a new Article 14 of Regulation S-X that requires the following disclosures in the notes to a company's financial statements:

> – The capitalized costs, expenditures expensed, charges, and losses incurred as a result of severe weather events and other natural conditions, such as hurricanes, tornadoes, flooding, drought, wildfires, extreme temperatures, and sea level rise, subject to applicable 1% and de minimis disclosure thresholds (a registrant is not required to make a determination that a severe weather event or other natural condition was caused by climate change to trigger disclosure).
>
> – The capitalized costs, expenditures expensed, and losses related to carbon offsets and RECs if used as a material component of a registrant's plans to achieve its disclosed climate-related targets or goals.
>
> – If the estimates and assumptions a registrant uses to produce the financial statements were materially impacted by risks and uncertainties associated with severe weather events and other natural conditions or any disclosed climate-related targets or transition plans, a qualitative description of how the development of such estimates and assumptions was impacted.

As detailed memos become available, we'll post them in our "Climate Change" Practice Area, so be sure to check that out in the coming days and weeks.

– **Meredith Ervine**

Posted by Meredith Ervine
Permalink: https://www.thecorporatecounsel.net/blog/2024/03/final-climate-rules-regulation-s-x.html

← More on the CTA: What Does the District Court Decision Mean for You? | Main | Final Climate Rules: Regulation S-X →

March 7, 2024

Final Climate Rules: Compliance Timeline

The climate disclosure rules will become effective 60 days after publication in the Federal Register. But, in a change from the proposed rules, the phase-in periods were significantly extended in some cases — depending on filer status and the contents of the disclosure. The fact sheet includes this table showing the compliance dates for the new disclosure requirements by filer type:

Compliance Dates under the Final Rules(1)

Registrant Type	Disclosure and Financial Statement Effects Audit		GHG Emissions/Assurance			Electronic Tagging
	All Reg. S-K and S-X disclosures, other than as noted in this table	*Item 1502(d)(2), Item 1502(e)(2), and Item 1504(c)(2)*	*Item 1505 (Scopes 1 and 2 GHG emissions)*	*Item 1506 – Limited Assurance*	*Item 1506 – Reasonable Assurance*	*Item 1508 – Inline XBRL tagging for subpart 1500(2)*
LAFs	FYB 2025	FYB 2026	FYB 2026	FYB 2029	FYB 2033	FYB 2026
AFs (other than SRCs and EGCs)	FYB 2026	FYB 2027	FYB 2028	FYB 2031	N/A	FYB 2026
SRCs, EGCs, and NAFs	FYB 2027	FYB 2028	N/A	N/A	N/A	FYB 2027

1 As used in this chart, "FYB" refers to any fiscal year beginning in the calendar year listed.

2 Financial statement disclosures under Article 14 will be required to be tagged in accordance with existing rules pertaining to the tagging of financial statements. *See* Rule 405(b)(1)(i) of Regulation S-T.

The first disclosures will be required of large accelerated filers covering fiscal years beginning in calendar 2025. Page 590 of the final rule release details this example:

> [A]n LAF with a January 1 fiscal-year start and a December 31 fiscal year end date will not be required to comply with the climate disclosure rules (other than those pertaining to GHG emissions and those related to Item 1502(d)(2), Item 1502(e)(2), and Item 1504(c)(2), if applicable) until its Form 10-K for fiscal year ended December 31, 2025, due in March 2026.

> If required to disclose its Scopes 1 and/or 2 emissions, such a filer will not be required to disclose those emissions until its Form 10-K for fiscal year ended December 31, 2026, due in March 2027, or in a registration statement that is required to include financial information for fiscal year 2026. Such emissions disclosures would not be subject to the requirement to obtain limited assurance until its Form 10-K for fiscal year ended December 31, 2029, due in March 2030, or in a registration statement that is required to include financial information for fiscal year 2029. The registrant would be required to obtain reasonable assurance over such emissions disclosure beginning with its Form 10-K for fiscal year ended December 31, 2033, due in March 2034, or in a registration statement that is required to include financial information for fiscal year 2033.
>
> If required to make disclosures pursuant to Item 1502(d)(2), Item 1502(e)(2), or Item 1504(c)(2), such a filer will not be required to make such disclosures until its Form 10-K for fiscal year ended December 31, 2026, due in March 2027, or in a registration statement that is required to include financial information for fiscal year 2026.

Items 1502(d)(2), (e)(2) and 1504(c)(2) require disclosures of material expenditures incurred and material impacts on financial estimates and assumptions that directly result from activities to mitigate climate-related risks, from the company's transition plan or from targets or goals or actions taken to meet any targets or goals. The SEC provided an additional phase-in period for these disclosures in recognition that registrants may need to develop systems and update disclosure controls to accommodate the tracking and reporting of these expenditures and impacts.

– **Meredith Ervine**

Posted by Meredith Ervine
Permalink: https://www.thecorporatecounsel.net/blog/2024/03/final-climate-rules-compliance-timeline.html

March 8, 2024

Final Climate Rules: Key Changes from the Proposed Form

As Dave highlighted following the cybersecurity adopting release, the Commission clearly considered the concerns of commenters on many important issues and modified final cyber rules as a result of key comments. The same can be said of the final climate disclosure rules. The significant changes from the proposing release are detailed beginning on page 31 of the adopting release. During the open meeting, the Staff summarized those changes by highlighting that the final rules differ from the proposed by:

> – Adopting a less prescriptive approach to certain of the final rules, including risk disclosure, board oversight disclosure and risk management disclosure
> – Qualifying the requirement to provide certain disclosures based on materiality, including for expenses, impacts of climate-related risk and use of scenario analyses and internal carbon prices
> – Eliminating the requirement to disclose board-level climate-related expertise
> – Limiting the requirement to disclose Scopes 1 and 2 GHG emissions to only large-accelerated filers and certain accelerated filers, and only when material
> – Exempting smaller reporting companies and emerging growth companies from the requirements to disclose Scopes 1 and 2 GHG emissions
> – Omitting the proposed requirement to provide Scope 3 emissions for any registrant
> – Removing the requirement to disclose the impact of weather events, natural conditions and transition activities on line items in the financial statements
> – Including the requirement to disclose certain material expenditures related to the registrant's climate-related strategy, transition plan, targets or goals under Reg. S-K rather than Reg. S-X
> – Extending the PSLRA to certain forward-looking statements pertaining to transition plans, scenario analyses, carbon pricing and targets and goals
> – Eliminating the proposed requirement for a private company party to a business combination registered on Form S-4 or F-4 to provide the S-K or S-X disclosures
> – Eliminating the proposed requirement to disclose any material changes to the disclosures in Form 10-Qs

The Staff also highlighted key changes in compliance timing. First, recognizing the difficulty registrants face measuring and reporting GHG emissions by the 10-K deadline, the final rules provide an accommodation allowing GHG emissions for the most recently completed fiscal year to be reported in the Form 10-Q for the second quarter of the next fiscal year (which the 10-K would incorporate by reference) or in an amendment to the Form 10-K due at the same time as the second quarter Form 10-Q (with comparable delay permitted for FPIs). The final rules also provide extended and additional phase-in periods depending on filer status and the contents of the disclosure.

The final rule release acknowledges major developments in climate-related disclosure requirements in other jurisdictions since the proposed rules — specifically in California and the EU. I'm sure much ink will be spilled about how much additional effort the SEC rules will require of public companies that may be required to report under California and/or EU standards.

During the open meeting, Commissioner Peirce asked the SEC Staff whether the final rules preempt the requirements in California. The Staff highlighted that nothing in the rule expressly preempts any

state law and, on the issue of whether there is implied preemption, that would be determined by a court in a future judicial proceeding that would come up under the specific facts and circumstances of that proceeding, including how the state laws would be applied and enforced.

– **Meredith Ervine**

Posted by Meredith Ervine
Permalink: https://www.thecorporatecounsel.net/blog/2024/03/final-climate-rules-key-changes-from-the-proposed-form.html

March 12, 2024

Climate Disclosure Compliance: Where Do You Start?

With the SEC's adoption of its climate disclosure rules, many companies are now confronting the need to comply with a not entirely consistent set of climate disclosure obligations imposed by the EU, California, and the SEC. Since that's the case, the question for many companies is – "Where do we start?" This Proskauer memo may not be a bad place.

The memo contains a chart the key requirements of the EU's CSRD and California's reporting regimes, and also lays out the disclosure requirements set forth in the SEC's original proposal. Now, since Meredith did everybody a solid by cataloging what aspects of the SEC's proposal didn't make the cut in final regs, I think it's a fairly easy matter to go through and cull those aspects from the chart when you are identifying what's required. Once you've got the chart of requirements in front of you, the memo offers the following thoughts on next steps:

> As an initial step, a scoping exercise is recommended to analyse carefully which parts of your group or entities may be subject to the California Rules, CSRD and the proposed SEC Rules, respectively. If there is actual or potential capture, the next step would be to understand when the reporting requirements apply. Following the scoping and timing assessment, an analysis of the content required to be reported on can begin with an evaluation of whether any existing sustainability reporting and underlying policies and processes can be utilized, particularly for the California Rules where there is the potential to rely on other national and international sustainability reporting obligations and requirements.
>
> In particular, companies are recommended to develop or revisit existing compliance frameworks that support the calculation of their GHG emissions data in accordance with the GHG Protocol 5 and TCFD, as that component is unlikely to change even if the California Rules are to be amended, and also will be useful to leverage for any capture under CSRD and the SEC Rules.

– **John Jenkins**

Posted by John Jenkins
Permalink: https://www.thecorporatecounsel.net/blog/2024/03/climate-disclosure-compliance-where-do-you-start.html

POST

GHG Emissions Disclosures in the SEC's New Climate Rule

Mar 8 2024 #climate, #compliance, #environment, #esg, #investors

The final SEC climate disclosure rule differs significantly from the 2022 proposed release. The section on the GHG emissions disclosures was revised heavily. Let's look at what the final release now requires (Pages 222 -261). For technical GHG consultants and others not familiar with US securities lingo, you might need to do some homework.

Exclusions

The most talked-about feature of SEC's final release is of course, that Scope 3 emissions disclosures are not required. Questions are already arising about how to deal with California requirements for Scope 3 emissions disclosure. Companies are free to voluntarily disclose Scope 3 to the SEC, but it isn't mandatory. It is far too soon to know whether companies will create separate SEC and California disclosures, or one document "to rule them all."

Exempt emerging growth companies ("EGCs") and smaller reporting companies ("SRCs") are excluded from having to report even Scopes 1 and 2 emissions.

Determining if you must file emissions disclosures

Scope 1 and Scope 2 emissions must be disclosed by large accelerated filers ("LAF") or accelerated filers ("AF") if such emissions are "material" as the term is defined in U.S. securities law. The final release contains a lot of discussion on the concept of materiality. For this blog – intended more for technical environmental and sustainability folks – we don't need to get into that. The truth is, the determination won't (or shouldn't) be made by technical GHG emissions consultants or in-house climate or environmental staff. The decision needs to be left to securities counsel, accountants, boards and executives:

> "we intend that a registrant apply traditional notions of materiality under the Federal securities laws when evaluating whether its Scopes 1 and/or 2 emissions are material. Thus, materiality is not determined merely by the amount of these emissions."

Presenting emissions data

Perhaps the easiest (or most straightforward) elements of emissions data/inventory reporting are the following:

- All emissions must be expressed in the aggregate in terms of CO_2e. Emissions intensity metrics or disclosure are not required.

- Emissions must be disclosed in gross terms by excluding the impact of any purchased or generated offsets.
- A registrant may use reasonable estimates when disclosing its GHG emissions, but the assumptions underlying, and reasons for using, the estimates must be disclosed.
- The methodology, significant inputs, and significant assumptions used to calculate the GHG emissions must also be described.

Then things get more complicated:

- If any single greenhouse gas is individually material, that gas must be disclosed disaggregated from the others. "The required disaggregated disclosure of an individually material gas will help inform investors about the degree to which a registrant is exposed to transition risk as governments and markets may treat the individual GHG components differently"- such as methane.
- Registrants must disclose "the method used to determine organizational boundaries used in making GHG disclosures, and if the organizational boundaries materially differ from the scope of entities and operations included in the registrant's consolidated financial statements."
- Registrants must provide a "*brief* description of, in sufficient detail for a reasonable investor to understand, the protocol or standard used to report the GHG emissions, including the calculation approach, the type and source of any emission factors used, and any calculation tools used to calculate the GHG emissions… [r]ather than potentially requiring a lengthy explanation of the calculation approach used, the final rule will not require the disclosure of any quantitative emission factors used."

Keep in mind that the soonest emissions data is required is 2027, reflecting fiscal year 2026 – and that is only for LAFs. There is time get ducks in a row and make key decisions, let alone see where the litigation chips may fall.

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The Editor

Lawrence Heim has been practicing in the field of ESG management for almost 40 years. He began his career as a legal assistant in the Environmental Practice of Vinson & Elkins working for a partner who is nationally recognized and an adjunct professor of environmental law at the University of Texas Law School. He moved into technical environmental consulting with ENSR Consulting & Engineering at the height of environmental regulatory development, working across a range of disciplines. He was one... View Profile

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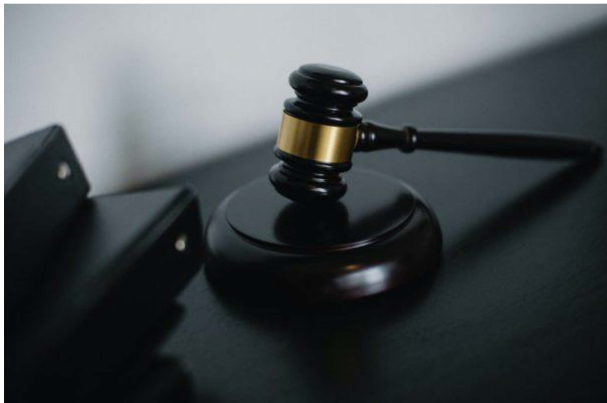

Mar 14 2024 #climate, #compliance, #environment, #esg, #investors, #supply-chain

Why We Don't Know Much About Climate Rule Litigation

Just as we expected, there are already pending lawsuits against the SEC Climate-related Disclosures Rule. With at least five lawsuits in total, three come from collections of ten states, nine states, and three states, and the others from the Texas...

Zachary Barlow

March 8, 2024

Final Climate Rules: Location of Disclosures

Some readers may recall that the proposed climate rules required the new Reg. S-K disclosures be included in a separately captioned section titled "Climate-Related Disclosure" in a registration statement or annual report. In the final release, the SEC opted to give registrants some flexibility as to the placement of the climate-related disclosures under Reg. S-K but suggested that cross references in a separately captioned section may improve usability. For example, here is the addition to Form 10-K:

> Part II
> * * * * *
> Item 6. Climate-Related Disclosure
> Provide the disclosure required by subpart 1500 of Regulation S-K (17 CFR 229.1500 through 229.1507) in a part of the annual report that is separately captioned as Climate-Related Disclosure. A registrant may include disclosure that is responsive to the topics specified in Items 1500 through 1507 of Regulation S-K in other parts of the annual report (e.g., Risk Factors, Business, or Management's Discussion and Analysis), in which case it should consider whether cross-referencing the other disclosures in the separately captioned section would enhance the presentation of the climate-related disclosures for investors.

In support of this decision to allow flexibility in placement, the SEC noted that the structured data requirements will facilitate investors' ability to identify and compare climate-related disclosures, regardless of where they are placed — since, of course, the disclosures are required to be tagged in Inline XBRL.

– **Meredith Ervine**

Posted by Meredith Ervine
Permalink: https://www.thecorporatecounsel.net/blog/2024/03/final-climate-rules-location-of-disclosures.html

POST

A Bitter Pill: SEC is Right About ISSB Disclosure Standards

Mar 14 2024 #climate, #compliance, #environment, #esg, #investors

There is much momentum behind the ISSB sustainability disclosure standards, but that doesn't guarantee governments are falling over each other to adopt the framework. In the US, the SEC's final climate disclosure rules bluntly addressed ISSB standards in footnote 147:

> "While we acknowledge that there are similarities between the ISSB's climate-related disclosure standards and the

> final rules, and that registrants may operate or be listed in jurisdictions that will adopt or apply the ISSB standards in whole or in part, those jurisdictions have not yet integrated the ISSB standards into their climate-related disclosure rules. Accordingly, at this time we decline to recognize the use of the ISSB standards as an alternative reporting regime."

To some, that may be a bitter pill to swallow but it could be prescient. In an article from *Responsible Investor*, Norges Bank Investment Management (NBIM) Chief Governance and Compliance Officer Carine Smith Ihenacho suggested that

> "jurisdictions adopting the ISSB standards should aim for 'relief rather than carving out anything'... if jurisdictions are not 'totally ready' to implement the ISSB standards they should avoid carve-outs 'in order to really go for that global baseline.'"

She brings forward a critical point – there is no guarantee that national bodies will (or are ready to) adopt the ISSB standards whole-hog. Relief rather than carve-outs is a preferable approach, but the political nature of policymaking means it is inherently unpredictable – and sometimes free of the burden of common sense. Individual jurisdictions can choose their own paths that diverge from the ISSB standards and from each other. Transitioning voluntary standards to governmental mandates means reopening debates and decisions that were concluded in the voluntary standard context. There is no certainty here, so give the SEC some credit for trying to avoid additional uncertainty – at least for the time being.

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The Editor

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EU Parliament Moves Green Claims Directive Forward

The EU Green Claims Directive passed another major milestone recently as Parliament adopted its position on the legislation. While Parliament adopted its first reading position, the legislation still has some development to go and will have to be picked up...

Zachary Barlow

POST

SEC's New GHG Emissions Rule: Non-Financial Auditors Beware

Mar 7 2024 #assurance, #climate, #compliance, #environment, #esg, #investors

Yesterday, of course, the SEC passed their final climate disclosure rule (886 pages as sent to the *Federal Register*). PracticalESG.com members can access the full rule here and a fact sheet here. My colleague Meredith Ervine penned a few of her thoughts on the rule in today's blogs over on TheCorporateCounsel.net. There will certainly be many, many other analyses, summaries and commentaries in the

coming days (One post on LinkedIn quipped "If you don't post something today on LinkedIn about the climate rule, are you even an ESG professional?").

Instead of an overview of the entire rule, I'm going to focus on a few specific elements in the next few blogs. Let's start with the assurance requirements (pages 262 – 387). Non-financial auditors/consultants thinking that SEC's new Scope 1 and Scope 2 assurance mandates offer "gold in them thar hills" need to be careful. For starters, the first year for assurance is not until fiscal year 2029 reporting (due in 2030). Moreover, you may not be prepared to qualify as an assurance provider under SEC's rules. The final release offers this slightly ominous statement:

> "we acknowledge that some of the requirements in the final rules, such as the independence requirements, may be more familiar to accounting firms versus non-accounting firms...[yet] two of the four standards we are explicitly permitting assurance providers to use under the final rules (as discussed in more detail below), are not restricted to CPAs."

The good news is you have several years to review, evaluate and prepare. The bad news is you have several years to wait before you start seeing the revenue. It is absolutely critical for potential GHG disclosure assurance providers to read the final release, but here are a few highlights perhaps most meaningful for non-financial auditors:

Independence

> "The independence requirements in the final rules are more rigorous and may differ in scope from the requirements included in [AICPA SSAE No. 18, AT-C § 105.26; IAASB ISAE 3000 (Revised) § 20; and ISO 14064-3: 2019 § 4.2.]. It is possible that the application of the independence requirements in the final rules may result in a GHG emissions attestation provider no longer being able to provide certain non-assurance services to its assurance client that may be permissible to provide outside the context of the final rules.
>
> ... it would be difficult for an expert that has assisted a registrant in calculating or preparing its GHG emissions data to meet the independence requirements because such

> an engagement would presumably place the attestation provider in the position of attesting to its own work and may create a mutual interest between the attestation provider and the registrant…"

Attestation report standards

> "The attestation report must be provided pursuant to standards that are established by a body or group that has followed due process procedures, including the broad distribution of the framework for public comment… in addition to being developed using due process, are either (i) publicly available at no cost, or (ii) widely used for GHG emissions assurance… PCAOB, AICPA, and IAASB standards meet the due process requirements and are publicly available at no cost to investors. In addition, in light of our modifications to the final rules, we also believe that the ISO standards related to the attestation of GHG emissions disclosures would meet these requirements… ISO standards are not available for free. The ISO standards are, however, widely used for GHG emissions assurance…
>
> To the extent that a particular attestation standard does not include elements sufficiently similar to those commonly included in an assurance report, the GHG emissions attestation provider should consider including such information in its attestation report to facilitate investors' understanding of the nature and scope of the engagement."

Don't take these issues lightly. This is something I know about as one of only a very small number of non-financial auditors who became qualified to perform Independent Private Sector Audits (IPSAs) under the SEC's conflict minerals rules. The stakes (and necessary controls and procedures) are completely different when working under SEC rules versus in a voluntary context.

Tomorrow, I'll look into the GHG emissions disclosures.

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The Editor

Lawrence Heim has been practicing in the field of ESG management for almost 40 years. He began his career as a legal assistant in the Environmental Practice of Vinson & Elkins working for a partner who is nationally recognized and an adjunct professor of environmental law at the University of Texas Law School. He moved into technical environmental consulting with ENSR Consulting & Engineering at the height of environmental regulatory development, working across a range of disciplines. He was one... View Profile

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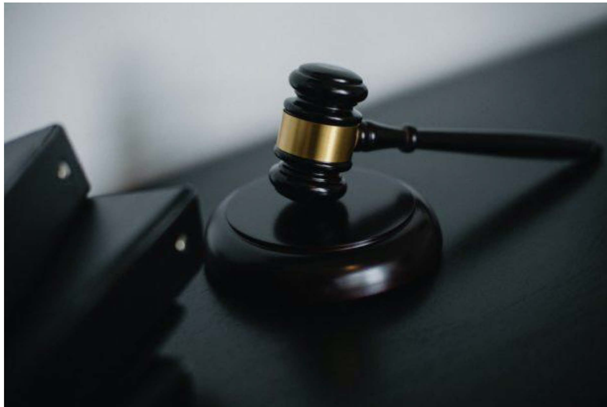

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Why We Don't Know Much About Climate Rule Litigation

Just as we expected, there are already pending lawsuits against the SEC Climate-related Disclosures Rule. With at least five lawsuits in total, three come from collections of ten states, nine states, and three states, and the others from the Texas...

← SEC Adopts Highly-Anticipated Climate Disclosure Rules! | Main | Final Climate Rules: Location of Disclosures →

March 8, 2024

Final Climate Rules: Already Challenged In Court!

Well, that didn't take long. As reported by The Hill, within hours of adoption — while thousands of lawyers, accountants and sustainability professionals were just starting to read the 886 pages of the release — ten Republican-led states filed a petition for review in the 11th Circuit. The petition states that "the final rule exceeds the agency's statutory authority and otherwise is arbitrary, capricious, an abuse of discretion, and not in accordance with law" and asks the 11th Circuit to declare the rule "unlawful and vacate the Commission's final action."

During the open meeting, Commissioner Lizárraga noted in his supporting statement, "With the broad interest this rulemaking has received, inevitably, some will view it as having gone too far, while others will see it as not having gone far enough." That may have been prescient. The Hill gives the perspectives of two environmental groups and notes that legal challenges may come from both sides of the aisle:

> The influential environmental groups Sierra Club and Earthjustice also announced they are weighing their own legal challenge to the SEC's "arbitrary removal" of the so-called "Scope 3" provisions that would have required disclosure of emissions from a company's supply chain and the use of its products.

– **Meredith Ervine**

Posted by Meredith Ervine
Permalink: https://www.thecorporatecounsel.net/blog/2024/03/final-climate-rules-already-challenged-in-court.html

POST

Why We Don't Know Much About Climate Rule Litigation

Mar 14 2024 #climate, #compliance, #environment, #esg, #investors, #supply-chain

Just as we expected, there are already pending lawsuits against the SEC Climate-related Disclosures Rule. With at least five lawsuits in total, three come from collections of ten states, nine states, and three states, and the others from the Texas Alliance of Energy Producers and Liberty Energy and Nomad Proppant Services. If you're anything like myself (a hopeless litigation nerd), you were excited to dig into these

lawsuits and see where the battle lines were drawn. You were likely similarly disappointed by the lack of substantive detail contained in both filings.

Normally, when a lawsuit is filed, it gives us quite a lot to speculate on. This is because a traditional Complaint must meet detailed pleading standards describing core facts of the case and legal arguments alleged by the Plaintiff. However, the lawsuits against the rules were filed as Petitions for Review. The pleading standard for a Petition for Review is substantially lower than that of a Complaint and is controlled by Rule 15 of the Federal Rules of Appellate Procedure which states:

> "(2) The petition must:
>
> (A) name each party seeking review either in the caption or the body of the petition—using such terms as 'et al.,' 'petitioners,' or 'respondents' does not effectively name the parties;
>
> (B) name the agency as a respondent (even though not named in the petition, the United States is a respondent if required by statute); and
>
> (C) specify the order or part thereof to be reviewed."

Meeting this standard is straightforward and requires little detail. Therefore, the Petitions really only tell us the names of the parties and that the petitioners would like the rule reviewed in its entirety. It leaves legal arguments and grounds for the Court's decision up for speculation. However, it is worth noting that the suits were brought directly to the Circuit Court level pursuant to 15 U.S. Code § 78y, with the lawsuits being filed across the 11th Circuit, 8th Circuit, and 5th Circuit. The fact that the trial court level can be circumvented means that the litigation timeline and ultimate showdown at the Supreme Court should happen on an accelerated timeline. Although in reality, that may not be particularly fast.

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The Editor

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A Bitter Pill: SEC is Right About ISSB Disclosure Standards

There is much momentum behind the ISSB sustainability disclosure standards, but that doesn't guarantee governments are falling over each other to adopt the framework. In the US, the SEC's final climate disclosure rules bluntly addressed ISSB standards in footnote 147:...

Lawrence Heim

SEC Climate Disclosure: What Companies Need to Know

Article Overview

On March 6th, the U.S. Securities and Exchange Commission finalized a rule requiring publicly traded companies reporting in the US markets to disclose climate-related information in their financial filings. The rule aims to provide investors with consistent, comparable, and reliable information about the financial implications of climate change for businesses. Affected entities must now share information about their scope 1 and 2 greenhouse gas emissions, identification, management and oversight, along with financial statement disclosures of the impacts of severe weather. The SEC rule cements the transition from an era of voluntary reporting to one of regulated reporting — climate data now needs to be handled with the same rigor as other information included in a company's Form 10-K.

—

The wait is over. On March 6, 2024, the U.S. Securities and Exchange Commission (SEC) released its long-anticipated final Climate Disclosure Rule, "The Enhancement and Standardization of Climate-Related Disclosures for Investors."

The rule, which calls for publicly traded companies to report climate information in their annual reports, was first proposed in 2022. The proposal sparked widespread debate and fostered speculation as to how the final rule might differ — leaving businesses in limbo as they awaited guidance. With the latest announcement, the uncertainty has come to an end. The final SEC rule directs organizations to report their climate data in a standardized, rigorous, and globally-aligned manner. Now that firms have a clear direction of travel, they can take decisive action as they move from voluntary to regulated climate reporting.

In this article, we'll cover the key requirements of the final rule, timing for reporting, and the steps businesses can take to prepare for filing with the SEC.

What is the Purpose of the SEC Climate Disclosure Rule?

The SEC rule aims to provide investors with data about the financial risks businesses face as a result of climate change.

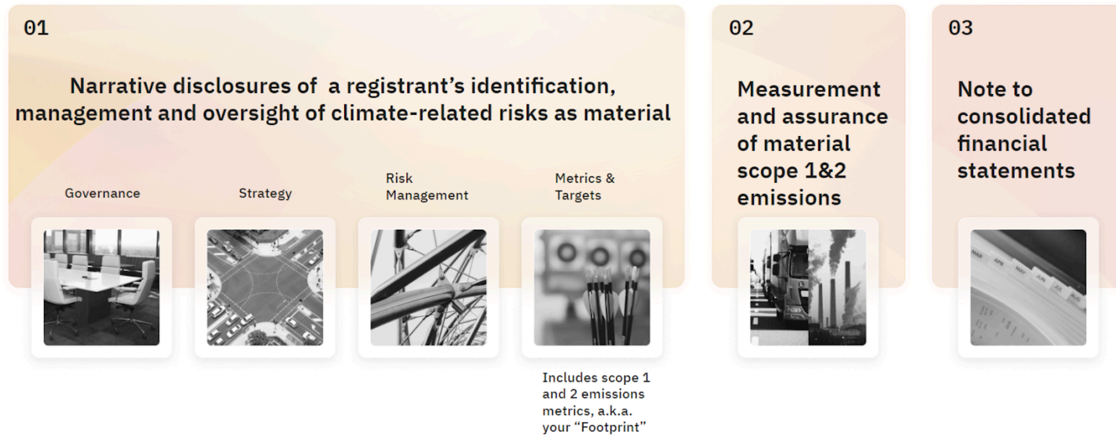
With its final climate disclosure rule, the SEC answers the growing demand from investors for credible, comparable, reliable information about how climate change affects the financial performance of organizations and the steps they are taking to address climate-related risks.

The rule signals that the SEC recognizes climate risk as material as other information included in a company's Form 10-K, and it has broad implications moving forward. It represents a significant step towards providing consistency and clarity as companies respond to a wave of new disclosure expectations from the European Union, California, and the rest of the world. Ultimately, the standardized disclosures required by the SEC promise to better inform investors and help U.S. businesses compete in a global marketplace.

Key Requirements of the Final SEC Climate Rule

Affected companies must provide narrative disclosures, emissions data, and information on financial risks

In order to provide investors with decision-useful information, the SEC wants to see a range of information about the climate-related risks publicly traded companies face. Businesses affected by the law must now incorporate three categories of disclosure into their SEC filings:



1. Narrative Disclosure

All SEC registrants must now include a narrative discussion of their identification, management, and oversight of climate-related risks. The final rule updates regulation S-K to require organizations to report on the material impacts of climate-related financial risks, their strategies to address those risks, and their governance structures, all in alignment with the recommendations of the Task Force on Climate-Related Financial Disclosures (now under the International Financial Reporting Standards).

This section of the final rule remains largely the same as the language in the original proposal, though it is now less prescriptive, subject to materiality, and no longer includes a provision requiring disclosure of board members' climate expertise.

In the narrative, companies must disclose:

- Climate-related risks that have either had or are reasonably likely to have a material impact on the company's business strategy, results of operations, or financial condition, as well as on the company's business model and outlook.
- The board's oversight of climate-related risks and management's role (if any) in assessing and managing the company's material climate-related risks.
- Company processes, if any, for assessing and managing material climate-related risks, and how any such processes are integrated into the company's overall risk management systems.
- Impacts resulting from actions taken under a transition plan, if used.

- Activities (if any) to mitigate or adapt to material climate-related risks, including transition plans, scenario analysis, and carbon pricing, if used.
- Climate-related targets or goals, if any, that have affected or are reasonably likely to affect the company's business, financial condition, or results of operations. This includes material expenditures and impacts on financial estimates resulting from the target or actions taken to meet such target or goal.

2. Scope 1 and 2 Emissions Data (with Attestation)

Under the rule, Large Accelerated Filers (LAFs) and Accelerated Filers (AFs) must share their scope 1 and 2 emissions, when those emissions are deemed material. In other words, if a reasonable investor would find the data important in making decisions, the company must disclose it. As part of their reports, companies will also need to provide certain information related to the key assumptions, data, and figures underlying their scope 1 and scope 2 data. The SEC requires attestation of emissions data using a phased approach, which we describe in more detail below.

Importantly, the final rule does not require reporting on scope 3 emissions, which typically account for the lion's share of a company's overall emissions profile. However, many businesses will still need to report their scope 3 data to Europe, California, and jurisdictions worldwide that incorporate ISSB standards into their regulations, and this category should not be overlooked.

Calculating Emissions

The SEC draws from the Greenhouse Gas Protocol (GHGP) categories of emissions. Scope 1 and 2 emissions are defined as:

Scope 1: Direct GHG emissions from sources owned or controlled by the reporting company. This includes emissions from sources like the combustion of fossil fuels in company-owned vehicles and on-site industrial processes.

Scope 2: Indirect GHG emissions from the generation of purchased or acquired electricity, steam, heat, or cooling that is consumed by operations owned or controlled by a registrant.

Cheat Sheet: Calculating Scope 1 and 2 Emissions

- The SEC rule does not require gases to be disaggregated unless any one of the six is material as disaggregated — for example, if you've set an emissions reduction target to reduce methane.
- Scope 1 and 2 emissions are to be expressed in the aggregate in terms of CO_2e.
- You must disclose scope 1 and 2 emissions in gross terms by excluding the impact of any purchased or generated offsets.
- You have flexibility in selecting organizational boundaries, as long as you disclose your approach.
- You can use one of the methods for determining control under the GHG Protocol, including the operational control approach – as recommended by some commenters – as long as you disclose the method used and provide investors with information material to understanding the scope of entities and operations included in the GHG emissions calculation as compared to those included in financial statements.
- You will not be required to disclose GHG emissions in terms of intensity — just absolute.
- Description of the methodology, significant inputs, and significant assumptions used are still required, but are now more streamlined. Essentially, you must answer these questions:
    - Were the GHGs calculated using the GHG Protocol's Corporate Accounting and Reporting Standard, EPA regulation, an applicable ISO standard, or another standard?
    - Was scope 2 measured using the location-based method, market-based method, or both?
    - Which calculation tools were used? These might include those provided by the GHG Protocol or pursuant to GHG emissions calculation under the ISO standards.
    - What type and source of emission factors were used? The final rule will not require the disclosure of any quantitative emission factors used. Instead, it requires you to disclose the type and source of any emission factors used, such as the EPA's emission factors for stationary combustion and/or mobile combustion of various fuel types.
- Estimates are allowed as long as underlying assumptions are described, along with the reason for using them.

Determining Materiality

The SEC Climate Rule is grounded in the concept of materiality, following the longstanding definition from the Supreme Court. This includes tests of whether the company believes the information would be important to a reasonable investor in

making an investment decision and whether the information would substantially alter the total mix of information available to investors.

It will be up to each organization to conduct a materiality assessment and make a determination about which emissions they have to report. In order to determine materiality, we recommend companies first gather the necessary data to back up their decisions, including emissions metrics. This is critical — every affected company will quickly need to establish a reliable system for calculating GHG data.

While the SEC did not provide detailed guidance on determining materiality, the rule uses two examples in which GHG emissions may be material. First, if a registrant faces a material transition risk that has manifested as a result of another jurisdiction's GHG emissions metrics requirement, then the registrant should consider whether such emissions metrics are material. Also, if a registrant has set a carbon reduction target, goal, or transition plan, they must determine if their calculations and disclosures are necessary to enable investors to understand their progress toward those goals.

Attestation Requirements

The rule requires Large Accelerated Filers and Accelerated Filers (excluding SRCs and EGCs) to submit attestation reports for their scope 1 and 2 emissions data. Starting three years after they begin disclosing, both groups will have to submit attestation reports based on “limited assurance.” In 2033, LAFs will have to upgrade to more rigorous “reasonable” assurance.

Notably, the rule stipulates that assurance can be performed by providers as long as they are “expert” and “independent” — so the service will not be limited to auditing firms. Providers will have to apply standards that are publicly available at no cost or widely accepted and subject to public comment.

These assurance requirements underscore the need to handle your climate data with the same rigor and care as your financial data. Robust internal controls will demonstrate a commitment to transparency and accountability — ultimately strengthening stakeholders’ confidence in your reporting.

Placement of Data

Under the final rule, companies can make their GHG emissions disclosures either in their second quarter (Q2) Form 10-Q, or as an amendment to their Form 10-K, filed in Q2. This provides organizations with more time to gather their carbon data.

3. Financial Statement Disclosures

In a note to the financial statement, companies will have to disclose information about the capitalized costs, expenditures, charges, and losses incurred as a result of severe weather events and other climate-related disasters, including hurricanes, tornadoes, floods, drought, wildfires, extreme temperatures, and sea level rise, subject to a 1% threshold. They will also need to share the material financial impact of the use of carbon offsets and renewable energy credits (RECs) if they are used to meet the organization's stated climate goals.

If climate-related weather and events materially impact the estimates and assumptions the company uses for its financial statements, it will need to include a qualitative description of that impact. Reporting entities will no longer be required to share climate-related transition risks, as proposed in the original rule.

Who Does the Rule Apply To?

All companies registered with the SEC will be affected.

The final rule affects thousands of businesses. All SEC-registered companies, including foreign issuers, must provide a narrative discussion of climate risks. Large Accelerated Filers (those with a public float of $700M USD or more) and Accelerated Filers (those with a public float of $75M to $700M USD) will need to report their material scope 1 and 2 emissions. Companies that don't meet the $75M USD public float threshold will not have to report scope 1 and 2 metrics. If you're unsure about your status, consult with your legal or financial team. Here's more information on how the SEC categorizes filers.

Timeline for SEC Reporting

Disclosures will phase in starting in 2026.

The SEC's climate disclosure requirements will roll out over time depending on a company's filing category, with narrative disclosures first and emissions metrics coming later. Narrative disclosures and financial statement notes will be required starting in 2026 for LAFs, in 2027 for AFs, and in 2028 for smaller reporting entities and emerging growth companies. The first scope 1 and 2 emissions disclosures will start in 2027 for LAFs and in 2029 for AFs.

Compliance dates under the final rule[1]

Registrant type	Disclosure & financial statement effects audit		GHG emissions/assurance			Electronic tagging
	TCFD-based climate-related risk disclosure and financial statements related to severe weather events	Material expenditures and financial impacts resulting from actions taken under a transition plan, scenario analysis and/or carbon pricing (if used), efforts to mitigate or adapt to climate-related risks, and the impacts of meeting climate-related targets or goals	Scope 1 and 2 GHG emissions	Limited Assurance	Reasonable Assurance	XBRL tagging[2]
LAFs	FYB 2025	FYB 2026	FYB 2026	FYB 2029	FYB 2033	FYB 2026
AFs (other than SRCs and EGCs)	FYB 2026	FYB 2027	FYB 2028	FYB 2031	N/A	FYB 2026
SRCs, EGCs, and NAFs	FYB 2027	FYB 2028	N/A	N/A	N/A	FYB 2027

1. As used in this chart, "FYB" refers to any fiscal year beginning in the calendar listed.
2. Financial statement disclosures under Article 14 will be required to be tagged in accordance with existing rules pertaining to the tagging of financial statements. *See* Rule 405(b)(1)(i) of Regulation S-T.

How Does the Final SEC Rule Differ from the Proposed Rule?

Emissions data, timelines, and assurance requirements have changed.

While the final SEC rule mirrors the original proposal on many fronts, there are several areas of divergence — most notably the omission of scope 3 reporting requirements. Companies that have been preparing for reporting should take time to understand the key differences, which include:

1. **Less prescriptive TCFD-based disclosures.** While narrative disclosure requirements remain largely the same, the final rule is less prescriptive, with reporting subject to materiality. It also removes an earlier provision requiring disclosure of a board member's climate expertise.
2. **More limited emissions reporting.** The final rule does not require scope 3 disclosure. Further, it only requires scope 1 and 2 data for LAFs and AFs — NAFs, SRCs, and EGCs are exempt — and this data is subject to a materiality filter.
3. **Changes to assurance requirements.** The assurance provision from the proposal remains for LAFs and AFs where they have determined scope 1 and 2 emissions to be material. Both groups will have to obtain limited assurance within

three years of their initial disclosures, and reasonable assurance will be required for LAFs within seven years.

4. **Updated financial statement provision.** The proposed rule called for the inclusion of a note to the financial statements addressing climate impacts on line items. The final rule only requires a note to the financial statements related to severe weather events or the costs associated with the purchase of carbon offsets or RECs to meet the company's climate goals.

Comparison of final rule to proposal

	SEC Rule	Proposal
GHG emission scopes	1 & 2	1, 2, 3
Materiality?	Yes	Only for Scope 3
Climate risk disclosure (TCFD)	Yes	Yes
Assurance	Yes	Yes
Financial statement note	Yes, on severe weather events	Yes

How Can Businesses Prepare for SEC Climate Disclosure?

Start by establishing a reliable methodology and internal controls.

The SEC's Climate Disclosure Rule cements the transition from an era of voluntary climate disclosure to one of regulated disclosure — and the bar for data quality continues to climb. First, Large Accelerated Filers and Accelerated Filers should prepare to calculate their scope 1 and 2 emissions as a method to determine whether those emissions are material. Also, to ensure this data is traceable, transparent, and reliable, companies must establish effective internal controls and bolster their capacity to collect, manage, and report accurate GHG data — whether it is their first time or tenth.

This can be a daunting task, but resources are available to help. To prepare for reporting scope 1 and 2 emissions, teams should develop a reliable accounting methodology, following three critical steps:

Steps for Developing a Reliable GHG Accounting Methodology

1. Establish a repeatable and transparent data collection process

Companies need a data collection process that is both transparent and repeatable, enabling accurate measurements and facilitating third-party verification. Documentation of the data collection process is essential to comply with the SEC proposal's disclosure requirements.

2. Organize and rigorously control GHG emissions calculations

You should treat GHG emissions calculations as a core function, employing the same rigor and technology infrastructure used in revenue and expense accounting. Carbon accounting software that presents calculations in an activity ledger can build confidence in the data you're reporting and streamline the auditing process. Auditors can review each activity line item and associated calculations, minimizing manual errors and ensuring data integrity. Just as financial accounting teams rely on financial enterprise resource planning (ERP) systems for revenue and expense accounting, SEC reporting teams can tap into carbon ERP systems to automate activity data submission and calculations — ultimately enhancing efficiency and accuracy.

3. Integrate GHG emissions into broader investor disclosures

To ensure consistency in both internal and external reporting, it's essential to integrate GHG emissions data into the broader investor disclosure process. By incorporating GHG calculations and verifiable data, companies can build robust disclosure management processes and seamlessly integrate these metrics into annual filings. Managing GHG emissions data within an IT-controlled environment allows for the integration of disclosures for different entities (like California, the EU, or voluntary CDP reports), as well as SEC filings.

Establishing Internal Controls

The inclusion of GHG emissions data in your SEC filings underscores the need for robust internal controls. CEOs and CFOs must now oversee a company's disclosure controls and procedures for preparing GHG reports. This means you need to treat GHG

reporting with the same discipline you apply to other aspects of your Form 10-K. Documenting the process of creating disclosures and assigning ownership of specific tasks is essential to mitigate risks. Audit and risk teams consistently implement controls around revenue and expense numbers, and the same practice should apply to GHG accounting.

A process that automates high-risk processes and ensures accurate data collection, end-to-end transparency, and traceability can ensure compliance and auditability. This approach is helpful when undergoing third-party verification, facing investor scrutiny, or preparing for regulatory review. By utilizing carbon accounting software within a controlled IT environment, businesses can input source data, perform emissions calculations, and significantly reduce the risk of manual errors — all while maintaining an audit trail of every data point.

How Persefoni Can Help You Get Ready for SEC Climate Disclosure

Carbon accounting software can be an invaluable tool for meeting the SEC's new climate disclosure requirements. Persefoni's AI-enabled carbon accounting platform is designed specifically for regulatory reporting to the SEC and other jurisdictions. Several features set it apart:

It ensures quality, audit-grade data.

Persefoni's tool includes advanced data controls, comprehensive GHGP-aligned calculations, and enterprise-grade security. All GHG measurements can be traced back to the calculation and source data used to determine the CO2e. Calculations are tied to appropriate emission factors, eliminating manual errors, and are verified by a controlled system with a SOC 1 attestation. They can be readily reviewed and validated by a third party, facilitating the assurance process. With our updated reporting tool, users who have completed their GHG inventory can also generate a report from a growing set of voluntary and regulatory quantitative frameworks, allowing them to fulfill their disclosure obligations to various entities, including the SEC.

It's self-guided and user-friendly.

The platform doesn't require extensive carbon accounting experience. Its easy-to-use interface taps into generative AI to provide in-platform support and expertise — cutting

down on frustration and making carbon accounting approachable for the wide range of teams that will likely be involved in SEC reporting.

You can calculate scope 1 and 2 emissions for free.

Before you can determine whether or not your scope 1 and 2 emissions are material under the SEC's definition, you will need a baseline measurement. Persefoni's free tool can be particularly beneficial here. Instead of spending thousands of dollars for an initial assessment, you can use Persefoni to calculate scope 1 and 2 emissions at no cost — using the same technology trusted by publicly traded companies like Xerox, Dropbox, Aramark, Citi, and others.

Get ready for SEC reporting. Calculate your emissions for free with Persefoni.