

The SEC's Climate Disclosure Rules



On March 6, 2024, the U.S. Securities and Exchange Commission released final "Climate Disclosure Rules," requiring registrants to disclose certain climate-related information in registration statements and annual reports. While companies who own, develop, or finance real estate are directly subject to these rules, non-registered companies seeking debt/equity from registered financial institutions should become familiar with their implications. The final rules requires a registrant to disclose: material climate-related risks; company mitigation/adaptation activities to climate-related risks; details on board of directors' oversight and management's role in managing material climate-related risks; information on climate-related targets/goals; and disclosure of larger registrants Scope 1 and/or Scope 2 material greenhouse gas emissions on a phased-in basis; an attestation report on registrants' Scope 1 and/or Scope 2 emissions; and disclosure of financial impacts resulting from severe weather events and other natural conditions.

Pages 3-4 below depict the SEC's highlights from the "Climate Disclosure Rules," including further details on the contents of the disclosure, presentation of the disclosure, phase-in periods, accommodations, and compliance timeline.

SEC Final Rules Background

These final rules are part of the SEC's continued effort to meet investor needs for consistent, comparable, and reliable information about the financial impacts of climate-related risks on a registrant's business, as well as information about how the registrant manages those risks. Since the initial proposal, they received 24,000 public comments. Prior to its finalization, the notable decision was made to omit any requirements on Scope 3 greenhouse gas emission disclosure. In the weeks following the release of the rules, several states and other entities have filed suit challenging the rules.

Content of the Disclosures

The final rules will require a registrant to disclose:

- 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;
- The actual and potential material impacts of any identified climate-related risks on the registrant's strategy, business model, and outlook;
- If, as part of its strategy, a registrant has undertaken activities to mitigate or adapt to a material climate-related risk, a quantitative and qualitative description of material expenditures incurred and material impacts on financial estimates and assumptions that directly result from such mitigation or adaptation activities;
- Specified disclosures regarding a registrant's activities, if any, to mitigate or adapt to a material climate-related risk including the use, if any, of transition plans, scenario analysis, or internal carbon prices;
- Any 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;
- Any processes the registrant has for identifying, assessing, and managing material climate-related risks and, 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;
- 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. Disclosures would include 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;
- For large accelerated filers (LAFs) and accelerated filers (AFs) that are not otherwise exempted, information about material Scope 1 emissions and/or Scope 2 emissions;
- For those required to disclose Scope 1 and/or Scope 2 emissions, an assurance report at the limited assurance level, which, for an LAF, following an additional transition period, will be at the reasonable assurance level;
- 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 one percent and de minimis disclosure thresholds, disclosed in a note to the financial statements;
- The capitalized costs, expenditures expensed, and losses related to carbon offsets and renewable energy credits or certificates (RECs) if used as a material component of a registrant's plans to achieve its disclosed climate-related targets or goals, disclosed in a note to the financial statements; and

- 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, disclosed in a note to the financial statements.
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Presentation of the Disclosures

The final rules will require a registrant (including a foreign private issuer) to:

- File the climate-related disclosure in its registration statements and Exchange Act annual reports filed with the Commission;
 - Provide the Regulation S-K mandated climate-related disclosures either in a separate, appropriately captioned section of its registration statement or annual report or in another appropriate section of the filing, such as Risk Factors, Description of Business, or Management's Discussion and Analysis, or, alternatively, by incorporating such disclosure by reference from another Commission filing as long as the disclosure meets the electronic tagging requirements of the final rules; and
 - Electronically tag climate-related disclosures in Inline XBRL.
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Phase-In Periods and Accommodations

The final rules will be phased in for all registrants with the compliance date dependent upon the status of the registrant as an LAF, an AF, or non-accelerated filer (NAF), smaller reporting company (SRC), or emerging growth company (EGC), and the content of the disclosure and provides several accommodations, including:

- Additional phase-in periods for disclosures pertaining to material expenditures, GHG emissions, the assurance requirement, and the electronic tagging requirement if the registrant is an LAF (see compliance date table);
- A safe harbor from private liability for climate-related disclosures (excluding historical facts) pertaining to transition plans, scenario analysis, the use of an internal carbon price, and targets and goals;
- An exemption from the GHG emissions disclosure requirement for SRCs and EGCs; and
- An accommodation that allows Scope 1 and/or Scope 2 emissions disclosure, if required, to be filed on a delayed basis as follows:
 - If a domestic registrant, in its Form 10-Q for the second fiscal quarter in the fiscal year immediately following the year to which the GHG emissions disclosure relates;

- If a foreign private issuer, in an amendment to its annual report on Form 20 F, which shall be due no later than when such disclosure would be due for a domestic registrant; and
- If filing a Securities Act or Exchange Act registration statement, as of the most recently completed fiscal year that is at least 225 days prior to the date of effectiveness of the registration statement.

What's Next

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/Assurance			Electronic Tagging
	<i>All Reg. S-K and S-X disclosures, other than as noted in this table</i>	<i>Item 1502(d)(2), Item 1502(e)(2), and Item 1504(c)(2)</i>	<i>Item 1505 (Scopes 1 and 2 GHG emissions)</i>	<i>Item 1506 - Limited Assurance</i>	<i>Item 1506 - Reasonable Assurance</i>	<i>Item 1508 - Inline XBRL tagging for subpart 1500²</i>
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
<p>1 As used in this chart, "FYB" refers to any fiscal year beginning in the calendar year listed.</p> <p>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.</p>						