

SEC Adopts Scaled-Back Version of Its Proposed Climate Risk Rules

On March 21, 2022, the Securities and Exchange Commission (SEC) proposed rules intended to enhance and standardize climate-related disclosures provided by public companies.

Nearly two years later, on March 6, 2024, the SEC adopted its climate risk rules that require public companies to provide certain climate-related disclosures in their registration statements and annual reports, with notable modifications due to comments received by interested parties.

Key Differences Between Proposed and Final Rules

Removed the Scope 3 emission disclosure requirement entirely, which would have required the disclosure of indirect emissions from upstream and downstream activities in the company's value chain.

Amended mandatory Scope 1 and Scope 2 emission disclosure requirements to only require disclosures if material.

Smaller reporting companies (SRC) and emerging growth companies (EGC) are exempt from Scope 1 and Scope 2 emission disclosure requirements.

Removed the financial impact metrics disclosure requirement, which would have required disclosure of impacts of severe weather events and transition activities on the consolidated financial statements unless the impact was less than 1% of the total line item for the relevant fiscal year.

Amended the reporting timeline for disclosing Scope 1 and Scope 2 emission disclosures.

New Climate-Related Disclosure Requirements

The adopted climate risk rules require issuers to:

- Disclose information related to direct and indirect greenhouse gas (GHG) emissions, if material.
- Disclose how the board of directors oversees climate-related risks and identify any committees or subcommittees responsible for such oversight, as well as management's role in assessing and managing climate-related risks.

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- Disclose how any climate-related risks have had or are likely to have a material impact on business and financial statements.
- Disclose how any climate-related risks have affected or are likely to affect strategy and outlook.
- Disclose information about the registrant's climate-related risks and risk management processes.
- Disclose any recoveries recognized during the fiscal year as a result of severe weather events and other natural conditions.

Direct and indirect GHG emissions

Issuers that are large accelerated or accelerated filers are required to disclose information about their Scope 1 and Scope 2 emissions, if material. An issuer's Scopes 1 and 2 emissions may be material if they are reasonably likely to materially impact its business, results of operations, or financial condition in either the short or long term or if their calculation and disclosure are necessary to disclose to investors whether the issuer has made progress toward achieving an emissions target or goal.

- Scope 1 – Direct GHG emissions from operations owned or controlled by the issuer.
- Scope 2 – Indirect GHG emissions from purchased or acquired energy that is consumed by operations owned or controlled by the issuer.

Oversight and governance

Issuers are required to identify any board committee or subcommittee responsible for any oversight of climate-related risks if the issuer has such a committee or subcommittee. Additionally, the final rules require applicable issuers to disclose any climate-related target or goal if the target or goal has materially affected or is reasonably likely to materially affect the issuer's business, results of operations, or financial condition.

Material impact on business

Issuers are required to disclose whether any climate-related risk is reasonably likely to have a material impact on an issuer's business or consolidated financial statements, including the risks that may manifest in the short and long terms. Issuers would also have to provide their assessment of the materiality of climate-related risks over the short and long terms.

Effect on strategy and outlook

After identifying climate-related risks reasonably likely to have a material impact, issuers are required to describe the actual and potential impacts of those risks on their strategy, business model, and outlook. Issuers are required to discuss how they considered the identified impacts, as well as provide disclosures that help to understand whether the implications of the identified risks have been integrated into the issuers' business model or strategy. The disclosure must include how any of the metrics or targets relate to the issuers' business model or strategy. Issuers may adopt transition plans to reduce or adapt to climate-related risks, and if so, they must update their annual report disclosure each fiscal year by describing any actions taken during the year relating to the transition plan.

Climate risks and risk management

Issuers are required to describe any processes for identifying, assessing, and managing material climate-related risks. When describing the processes for identifying and assessing risks, issuers are required to disclose, as applicable, which factors are more significant, and thus which factors should be addressed, based on their specific facts and circumstances. When describing the processes for managing climate-related risks, issuers are required to disclose, as applicable, how they decided whether to mitigate, accept, or adopt to a particular risk and how they prioritize addressing risks. If an issuer has not identified a material climate-related risk, no disclosure is required.

Recoveries

The final rules require issuers to disclose any recoveries, such as insurance proceeds, as a result of severe weather or natural conditions for which costs, expenditures, charges, or losses have been disclosed. Here, the issuer must identify where the recoveries are presented in the income statement and balance sheet.

Disclosure Requirements

- Issuers are required to provide the climate-related disclosure in their registration statements and annual reports, under separate, appropriately captioned sections.
- Issuers are required to provide the climate-related financial statement effects disclosure in a note to their consolidated financial statements.
- Issuers are required to electronically tag both narrative and quantitative climate-related disclosures in Inline XBRL.
- For accelerated or large accelerated filers, issuers are required to obtain an attestation report covering the disclosure of Scopes 1 and 2 emissions.

Compliance Dates

The adopted rules include phase-in periods for all registrants and for the assurance and level of assurance requirements for large accelerated filers and accelerated filers.

Registrant Type	All Reg S-K and S-X disclosures other than those noted in this table	Items 1502(d)(2), 1502(e)(2), and 1504(c)(2)*	GHG Emissions/ Assurance (Scopes 1 and 2 GHG emissions)	Limited Assurance	Reasonable Assurance	Electronic Tagging
LAFs	FY 2025	FY 2026	FY 2026	FY 2029	FY 2033	FY 2026
AFs (other than SRCs and EGCs)	FY 2026	FY 2027	FY 2028	FY 2031	N/A	FY 2026
SRCs, EGCs, and NAFs	FY 2027	FY 2028	N/A	N/A	N/A	FY 2027

* **Item 1502(d)(2)** requires issuers to describe quantitatively and qualitatively material expenditures incurred and material impacts on financial estimates and assumptions that directly result from activities to reduce or adapt climate-related risks.

Item 1502(e)(2) requires issuers to disclose material expenditures incurred and material impacts on financial estimates and assumptions as a direct result of a disclosed transition plan.

Item 1504(c)(2) requires issuers to discuss whether and how actual and potential impacts of physical and transition risks are considered as part of their business strategy, financial planning, and capital allocation.

What Should We Do Now?

To best prepare for the new rules, companies should:

- Review internal controls of financial reporting, disclosure controls, and related procedures to ensure that they comply with the enhanced climate-related disclosure.
- Prepare to provide additional disclosure on climate-related risks and risk management, along with their impact on business, strategy, and outlook.
- Understand the enhanced disclosure requirements related to Scopes 1 and 2 emissions, including whether such emissions are material to the company and its business.

Since the rules' adoption, 10 states have filed a petition in the Eleventh Circuit challenging the new regulations requiring public companies to provide enhanced climate-related disclosure. Additional challenges from other states and from business groups are expected. Companies should monitor the progress of the petitions against these newly adopted rules.

Effective Date

The final rules will become effective 60 days after the rules are published in the *Federal Register*.

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