

March 7, 2024

SEC Adopts Final Climate-Related Disclosure Rules for Public Companies

Public Companies Required to Disclose Expansive Information on Climate-Related Risks, Impacts, Transition Plans, Scenario Analysis, Internal Carbon Prices, Targets/Goals, Governance and Risk Management Processes

Proposed Scope 3 Reporting Requirements Eliminated, Scope 1 & 2 Reporting Subject to Materiality and May Be Filed on a Delayed Basis, and Disclosures in Audited Financial Statements Narrowed

Related [Webinar](#) hosted on March 13, 2024

SUMMARY

On March 6, 2024, the Securities and Exchange Commission (the “SEC”) on a 3-to-2 vote adopted its long-awaited climate-related disclosure rules (the “Final Rules”), which will require U.S. public companies and foreign private issuers (other than Canadian issuers reporting on Form 40-F) to significantly expand the climate-related disclosures in their SEC periodic reports and registration statements. The Final Rules were adopted following intense debate¹ and after the SEC received a record-breaking 24,000 comment letters.²

Set forth in an 886-page [adopting release](#), the Final Rules reflect significant changes from those proposed by the SEC in March 2022 (the “Proposed Rules”).³ These include, among others, meaningful modifications from the Proposed Rules that: (i) qualify many of the disclosure requirements (including Scope 1 and 2 greenhouse gas (GHG) emissions) by materiality and remove several prescriptive and detailed disclosure requirements, (ii) eliminate the proposed requirement to report Scope 3 GHG emissions, and (iii) narrow the climate-related disclosures required to be included in the notes to the audited financial statements. Nevertheless, the Final Rules represent a significant departure from the SEC’s traditional principles-based

SULLIVAN & CROMWELL LLP

framework and a move towards a prescriptive climate-related disclosure regime that will meaningfully increase the cost and complexity of public reporting.

Key provisions of the Final Rules include:

- Qualitative and quantitative statements in registration statements and annual reports (new subpart 1500 of Regulation S-K) on:
 - material climate-related risks and their material impacts;
 - activities to mitigate or adapt to such risks, including the use, if any, of transition plans, scenario analysis or internal carbon prices;
 - information about their boards' oversight of climate-related risks and management's role in managing material climate-related risks; and
 - information on any climate-related targets or goals that are material to the company's business, results of operations, or financial condition.
- Disclosure of Scope 1 and/or Scope 2 GHG emissions, together with an attestation report covering such disclosures:
 - only required when those emissions are material;
 - only required for large accelerated filers and accelerated filers; and
 - GHG emissions disclosures may be provided on a delayed basis (i.e., at the time that a US registrant would be required to file their Form 10-Q for the second quarter in the fiscal year after the relevant reporting year).
- Disaggregated financial information (new Article 14 of Regulation S-X), to be presented in the notes to the audited financial statements, on:
 - the amount of expenditures expensed as incurred and losses and the amount of capitalized costs and charges incurred as a result of severe weather events and other natural conditions, subject in each case to a 1% and *de minimis* disclosure threshold (measured against the absolute value of pre-tax income or loss for expenditures expensed as incurred and losses, and the absolute value of stockholders' equity or deficit for capitalized costs and charges incurred); and
 - with respect to carbon offsets and renewable energy credits or certificates (RECs), the amounts expensed and recognized, and the amount of losses incurred thereon, to the extent that such offsets and RECs are used as a material component of a company's plans to achieve its disclosed climate-related targets or goals.

A summary of the key provisions of the Final Rules, as well as how they compare to the Proposed Rules, is presented in the tables below. We will distribute a more detailed memorandum analyzing the Final Rules and their implications in the coming days.

The Final Rules will become effective 60 days following the publication of the rules in the Federal Register. Compliance will be phased in, with reporting for large accelerated filers beginning in 2026 with respect to fiscal year 2025 (see "Compliance Timeline" below for more information). To comply with the Final Rules, companies will need to ensure they have in place adequate data collection and verification processes, as well as appropriate internal controls and procedures, which in the case of large accelerated filers should be in place and tested on January 1, 2025. The Final Rules are expected to attract legal challenges from

SULLIVAN & CROMWELL LLP

environmental and industry groups. A group of 10 state attorneys general have already filed a petition in the U.S. Court of Appeals for the Eleventh Circuit asking the court to vacate the Final Rules.⁴

On March 13, 2024, Sullivan & Cromwell hosted a webinar (view [here](#)) discussing the Final Rules, as well as key takeaways to facilitate compliance with the Final Rules.

COMPLIANCE TIMELINE

Compliance with the Final Rules will be phased in as follows:⁵

Filer Type	Disclosure and Financial Statement Effects Audit		GHG Emissions / Assurance			Electronic Tagging
	<i>All Requirements (Except As Otherwise Specified)</i>	<i>Financial Statement Disclosures Pertaining to Material Expenditures⁶</i>	<i>Scope 1 and 2 Metrics</i>	<i>Limited Assurance⁷</i>	<i>Reasonable Assurance⁸</i>	
Large Accelerated Filer	Fiscal Year 2025	Fiscal Year 2026	Fiscal Year 2026	Fiscal Year 2029	Fiscal Year 2033	Fiscal Year 2026
Accelerated Filer	Fiscal Year 2026	Fiscal Year 2027	Fiscal Year 2028	Fiscal Year 2031	N/A	Fiscal Year 2026
Smaller Reporting Company, Emerging Growth Company and Non-Accelerated Filer	Fiscal Year 2027	Fiscal Year 2028	N/A	N/A	N/A	Fiscal Year 2027

In the above table, “Fiscal Year” refers to any fiscal year beginning in the specified calendar year. The length of the phase-in periods for the general reporting requirements did not change from the Proposed Rules, although the SEC provided longer phase-in periods for certain aspects of the financial statement disclosures (further described below) and for GHG emissions metrics and assurance.

KEY PROVISIONS RELATED TO SCOPE, TIMING AND FORM

Topic	Final Rules	Comparison with Proposed Rules
In-Scope Companies	<p>All SEC reporting companies, including foreign private issuers (other than Canadian issuers reporting on Form 40-F)</p> <p>Unlike Proposed Rules, Final Rules would not require a private company that is a party to a business combination transaction registered on Form S-4 or Form F-4 to provide the climate-related disclosures</p>	Consistent with Proposed Rules
Periodic Reports and Registration Statements	<p><i>GHG emissions disclosures and attestation:</i> May be provided on a delayed basis in a quarterly report on Form 10-Q for the second quarter in the fiscal year after the relevant reporting year (domestic issuers) or in an amendment to a Form 20-F no later than 225 days after the end of the relevant reporting year (foreign private issuers)</p> <p><i>Disaggregated climate-related financial disclosures:</i> In the notes to the audited financial statements included in Form 10-K and Form 20-F</p> <p><i>All other disclosures:</i> Included in annual reports on Form 10-K and Form 20-F in a separate section captioned “Climate-Related Disclosure” (although responsive disclosures may be included in other parts and cross-referenced in the new section)</p>	Proposed Rules would have required all responsive disclosures to be included in annual reports on Form 10-K and Form 20-F in a separately captioned “Climate-Related Disclosure” section or in the financial statements
Liability	Made on a “filed” (not “furnished”) basis	Consistent with Proposed Rules
Safe Harbor	Specifically provides that all information required by the sections relating to transition plans, scenario analysis, the use of an internal carbon price, and targets and goals (except for historical facts) is considered a forward-looking statement for the purposes of the statutory safe harbor for forward-looking statements	Proposed Rules did not specify a safe harbor except with respect to Scope 3
Substituted Compliance	No substituted compliance with requirements in other jurisdictions	Consistent with Proposed Rules

KEY PROVISIONS RELATED TO GHG EMISSIONS REPORTING

Topic	Final Rules	Comparison with Proposed Rules
<p>Scope 1 & 2 Metrics</p>	<p><i>Trigger:</i> Disclose Scope 1 & 2 emissions if such emissions are material; smaller reporting companies and emerging growth companies are exempted</p>	<p><i>Trigger:</i> Proposed Rules would have required that all companies provide Scope 1 & 2 emissions disclosures without regard to materiality and without exemptions</p>
	<p><i>Constituent gas reporting:</i> GHG emissions must be (i) expressed on a carbon dioxide-equivalent basis and (ii) if any constituent gas is individually material, disclose such gas on an disaggregated basis</p>	<p><i>Constituent gas reporting:</i> Proposed Rules would have required Scope 1 & 2 reporting disaggregated among seven separate gases without regard to materiality</p>
	<p><i>Initial compliance date:</i> For large accelerated filers, disclosure required from the first year after the initial compliance date; for accelerated filers, disclosure required from the second year after initial compliance date for the general disclosure requirements (see above)</p>	<p><i>Initial compliance date:</i> Proposed Rules would have required disclosure of Scope 1 & 2 metrics on the same initial compliance date as the general reporting requirements</p>
	<p><i>Attestation:</i> Limited assurance required from the third year after the initial Scope 1 & 2 reporting compliance date (for both large accelerated filers and accelerated filers)</p> <p>Reasonable assurance only required for large accelerated filers, and will be required from the seventh year after the initial Scope 1 & 2 reporting compliance date</p>	<p><i>Attestation:</i> For both large accelerated filers and accelerated filers, limited assurance would have been required one year after initial compliance date</p> <p>Reasonable assurance would have been required three years after initial compliance date</p>
<p>Fiscal Years</p>	<p>Apply to all years included in the company's audited consolidated financial statements, unless historical periods prior to the current fiscal year have not been previously disclosed or were not required to be disclosed</p>	<p>Proposed Rules would have required GHG emissions metrics to be presented for all historical periods included in the company's consolidated financial statements, if reasonably available</p>
<p>Methodology</p>	<p>None prescribed</p>	<p>Consistent with Proposed Rules</p>
<p>Scope 3 Metrics</p>	<p>Not required under the Final Rules</p>	<p>Proposed Rules would have required Scope 3 reporting if (i) such emissions are material or (ii) the company has set a GHG emissions reduction target or goal that includes Scope 3 emissions</p>

KEY PROVISIONS RELATED TO FINANCIAL STATEMENT DISCLOSURES

Topic	Final Rules	Comparison with Proposed Rules
Severe Weather Events and Other Natural Conditions¹⁰ (SWEs)	<p>Disclose aggregate expenditures expensed as incurred and losses, and capitalized costs and charges, excluding recoveries, incurred as a result of SWEs (e.g., amounts required to restore operations, relocate assets or operations affected by the event)</p> <p>A cost, expenditure, charge, loss or recovery is a result of a SWE when the event or condition is a significant contributing factor in incurring such cost, expenditure, charge, loss or recovery</p>	<p>Proposed Rules would have imposed disclosure of financial impacts on a line-by-line basis and more expansive disclosure obligations with respect to expenditures related to the risk of severe weather events and transition activities</p>
Carbon Offsets/RECs	<p>Disclose aggregate amounts expensed and recognized, and the amount of losses incurred thereon, related to carbon offsets and RECs to the extent used as a material component of a company's plans to achieve its disclosed climate-related targets or goals</p>	
Financial Estimates and Assumptions	<p>Disclose whether the estimates and assumptions used in preparing the financial statements are materially impacted by exposure to risks and uncertainties associated with, or known impacts of, SWEs</p>	
Disclosure Threshold	<p><i>Expenditures expensed as incurred and losses resulting from SWEs:</i> 1% or more of the absolute value of income or loss before income tax expense or benefit for the relevant fiscal year, with a \$100,000 <i>de minimis</i> exception</p> <p><i>Capitalized costs and charges resulting from SWEs:</i> 1% or more of the absolute value of stockholders' equity or deficit at the end of the relevant fiscal year, with a \$500,000 <i>de minimis</i> exception</p>	<p>Although both the Final Rules and Proposed Rules reference a 1% threshold, the 1% threshold in the Final Rules is calculated by reference to the absolute value of pre-tax income or loss for expenditures expensed as incurred and losses, and the absolute value of stockholders' equity or deficit for capitalized costs and charges incurred (vs. any financial statement line item impacted by a climate event as had been proposed)</p>
Fiscal Years	<p>Apply to all years included in the company's audited consolidated financial statements, unless historical periods prior to the current fiscal year have not been previously disclosed or were not required to be disclosed</p>	<p>Proposed Rules would have required financial statement disclosures to be presented for all historical periods included in the company's consolidated financial statements, if reasonably available</p>

KEY PROVISIONS RELATED TO STRATEGY

<u>Topic</u>	<u>Final Rules</u>	<u>Comparison with Proposed Rules</u>
Climate-Related Risks	Disclose climate-related risks that have materially impacted or are reasonably likely to have a material impact over the short (within the next 12 months) and long term (beyond the next 12 months), including whether such risk is a physical or transition risk	Proposed Rules would have required disclosure of such risks over the short, medium and long term (to be defined by companies); included certain prescriptive requirements relating to physical risk that have been removed
Impacts of Risks	Discuss any actual and potential material impacts of climate-related risks on the company's strategy, business model and outlook, and whether and how such impacts are considered part of the company's strategy, financial planning and capital allocation Discuss how material climate-related risks have materially impacted or are likely to materially impact the company's business, results of operation or financial condition	Proposed Rules did not qualify the discussion of impacts of climate-related risks by materiality
Transition Plan	If a company has adopted a transition plan to manage a material transition risk, describe the plan (must be updated annually to describe actions taken during the year and impacts thereof), including material expenditure incurred and material impacts on financial estimates and assumptions as a direct result of the plan	Proposed Rules generally did not qualify these requirements by materiality; included certain prescriptive requirements that have been removed
Scenario Analysis	If (i) a company uses scenario analysis, and (ii) based on the results of such scenario analysis, the company determines that a climate-related risk is reasonably likely to have a material impact, describe each such scenario as well as the expected material impacts on the company under each such scenario	
Internal Carbon Prices	If a company's use of an internal carbon price is material to how it evaluates and manages a material climate-related risk, for each internal carbon price used, disclose the price and estimated change over the short and long term	

KEY PROVISIONS RELATED TO TARGETS/GOALS

<u>Topic</u>	<u>Final Rules</u>	<u>Comparison with Proposed Rules</u>
<p>Climate-Related Targets or Goals</p>	<p>Disclose any climate-related target or goal if such target or goal has materially affected or is reasonably likely to materially affect the company's business, results of operations, or financial condition</p> <p>Disclose any progress made toward meeting the target or goal and how such progress has been achieved (must be updated annually to describe actions taken during the year and impacts thereof)</p> <p>Include (i) a discussion of any material impacts and (ii) quantitative and qualitative disclosure of material expenditures and material impacts on financial estimates and assumptions, in each case, as a direct result of the target or goal or the action taken to make progress toward meeting the target or goal</p> <p>If carbon offsets or RECs have been used as a material component of the company's plan to achieve a target or goal, disclose the amount of carbon avoidance, reduction or removal represented by the offsets and related information</p>	<p>Proposed Rules generally did not qualify these requirements by materiality; included certain prescriptive requirements that have been removed</p>

KEY PROVISIONS RELATED TO GOVERNANCE AND RISK MANAGEMENT

<u>Topic</u>	<u>Final Rules</u>	<u>Comparison with Proposed Rules</u>
Board	<p>Describe the board of directors' oversight of climate-related risks. If applicable:</p> <ul style="list-style-type: none"> Identify any responsible board committee or subcommittee and describe the process by which the board (or such committee or subcommittee thereof) is informed about such risks If the company is required to disclose any climate-related target/goal or transition plan, describe whether and how the board oversees progress against the target/goal or transition plan 	<p>Proposed Rules would have placed greater emphasis on particular directors, including identification of any board member (i) responsible for overseeing climate-related risks and (ii) who has climate-related expertise</p> <p>Would also have required a description, if applicable, of board oversight of climate-related opportunities, the board's process for discussing climate-related risks, and whether and how the board considers climate-related risks as part of its business strategy</p>
Management	<p>Describe management's role in assessing and managing climate-related risks, including, as applicable:</p> <ul style="list-style-type: none"> Whether and which positions or committees are responsible for assessing and managing such risks, and the relevant expertise¹¹ of such position holders or committee members The processes by which such positions or committees assess and manage such risks Whether such positions or committees report information about such risks to the board (or a committee or subcommittee thereof) 	<p>Generally consistent with Proposed Rules, but does not include the proposed discussion of management's oversight of climate-related opportunities</p>
Risk Management	<p>Describe any processes the company has for identifying, assessing, and managing material climate-related risks</p> <p>Disclose whether and how such processes are integrated into the company's overall risk management system or processes</p>	<p>Proposed Rules did not specify that risk management process disclosures should be made in connection with material climate-related risks; included certain prescriptive requirements that have been removed</p>

* * *

ENDNOTES

- ¹ See SEC Chair Gary Gensler’s “Statement on Final Rules Regarding Mandatory Climate Risk Disclosures”, available at <https://www.sec.gov/news/statement/gensler-statement-mandatory-climate-risk-disclosures-030624>. See also the statements from Commissioners [Caroline Crenshaw](#), [Jaime Lizárraga](#), [Hester Peirce](#) and [Mark Uyeda](#).
- ² See the SEC’s press release announcing the adoption of the Final Rules, available at <https://www.sec.gov/news/press-release/2024-31>.
- ³ For additional information on the Proposed Rules, see our [publication](#) dated March 28, 2022.
- ⁴ See the Petition for Review filed by the state attorneys general on March 6, 2024, available at <https://ago.wv.gov/Documents/SEC%20Climate%20Disclosure%20Petition%20for%20Review.pdf>.
- ⁵ See the SEC’s fact sheet on the Final Rules, available at <https://www.sec.gov/files/33-11275-fact-sheet.pdf>.
- ⁶ These provisions include Item 1502(d)(2) (material expenditures incurred and material impacts on financial estimates and assumptions from adaptive and mitigation activities), Item 1502(e)(2) (material expenditures incurred and material impacts on financial estimates and assumptions as a direct result of a disclosed transition plan), and Item 1504(c)(2) (material expenditures and material impacts on financial estimates and assumptions as a direct result of the target or goal or the actions taken to make progress toward meeting the target or goal).
- ⁷ Reasonable assurance is equivalent to the level of assurance provided in an audit of a company’s consolidated financial statements included in a Form 10-K or Form 20-F annual report.
- ⁸ Limited assurance is equivalent to the level of assurance (commonly referred to as a “review”) provided over a company’s interim financial statements included in a Form 10-Q quarterly report.
- ⁹ Financial statement disclosures under Article 14 will be required to be tagged in accordance with existing rules pertaining to the tagging of financial statements.
- ¹⁰ Although not defined, the Final Rules provide the following examples of severe weather events and other natural conditions: hurricanes, tornadoes, flooding, draught, wildfires, extreme temperatures and sea level rise.
- ¹¹ In Instruction 2 to Item 1501, the SEC notes, similar to its final cybersecurity rules, “[r]elevant expertise of management ... may include, for example: [p]rior work experience in climate-related matters; any relevant degrees or certifications; any knowledge, skills, or other background in climate-related matters.”

SULLIVAN & CROMWELL LLP

ABOUT SULLIVAN & CROMWELL LLP

Sullivan & Cromwell LLP is a global law firm that advises on major domestic and cross-border M&A, finance, corporate and real estate transactions, significant litigation and corporate investigations, and complex restructuring, regulatory, tax and estate planning matters. Founded in 1879, Sullivan & Cromwell LLP has more than 900 lawyers on four continents, with four offices in the United States, including its headquarters in New York, four offices in Europe, two in Australia and three in Asia.

CONTACTING SULLIVAN & CROMWELL LLP

This publication is provided by Sullivan & Cromwell LLP as a service to clients and colleagues. The information contained in this publication should not be construed as legal advice. Questions regarding the matters discussed in this publication may be directed to any of our lawyers, or to any Sullivan & Cromwell LLP lawyer with whom you have consulted in the past on similar matters. If you have not received this publication directly from us, you may obtain a copy of any past or future publications by sending an e-mail to SCPublications@sullcrom.com.