



# PERSPECTIVES

---

## **Crosscurrents: The SEC's Standardized Climate-Related Disclosures as Adopted**

Our perspectives feature the viewpoints of our subject matter experts on current topics and emerging trends.

## INTRODUCTION

After a significant delay, the Securities and Exchange Commission (SEC) adopted its final rule<sup>1</sup> on Wednesday, March 5, 2024, that requires companies who file registration statements and annual reports to [disclose material climate-related risks](#).<sup>2</sup> The new rules, which become effective 60 days after publication, are phased in for registrants depending on their filing status, with smaller companies having later compliance dates. As has been well reported, Scope 3 emissions, those greenhouse gas emissions calculated based on activities in a corporate value chain, have been removed from the final rule.

SEC Chairman Gary Gensler, in the press release associated with the passage, noted:

*These final rules build on past requirements by mandating material climate risk disclosures by public companies and in public offerings. The rules will provide investors with consistent, comparable, and decision-useful information, and issuers with clear reporting requirements. Further, they will provide specificity on what companies must disclose, which will produce more useful information than what investors see today. They will also require that climate risk disclosures be included in a company's SEC filings, such as annual reports and registration statements rather than on company websites, which will help make them more reliable.*

There are two key takeaways from the Chairman's comments: 1) everyone is now on the same playing field; and 2) the disclosures, because the information will now be consistent, can be used in a meaningful way.

## COMPANIES COVERED BY THE RULE

All registrants are required to comply with the rule; this includes large accelerated filers (LAFs), accelerated filers (AFs), non-accelerated filers (NAFs), smaller reporting companies (SRCs), and emerging growth companies

(EGCs). The SEC defines the categories of companies under Rule 12b-2 of the Securities and Exchange Act of 1934. While there are several triggers, public float and annual revenue thresholds provide good guidance to make the determination as to what category applies.

Smaller Reporting Companies and Non-Accelerated, Accelerated, and Large Accelerated Filers		
Status	Public Float	Annual Revenues
Smaller Reporting Company and Non-Accelerated Filer	Less than \$75 million	N/A
	\$75 million to less than \$700 million	Less than \$100 million
Smaller Reporting Company and Accelerated Filer	\$75 million to less than \$250 million	\$100 million or more
Accelerated Filer (not a Smaller Reporting Company)	\$250 million to less than \$700 million	\$100 million or more
Large Accelerated Filer (not a Smaller Reporting Company)	\$700 million or more	N/A

## COMPLIANCE DATE(S) BY COMPANY FINANCIAL SIZE

For large accelerated filers, compliance starts in fiscal year 2025, so the time to prepare for and comply with the new rule is short. Scope 1 & 2 Emissions Reporting is pushed to 2026 at the earliest, and small companies are exempt from that reporting requirement. As indicated in the SEC-provided chart below, compliance dates are staggered between FYB2025 and FYB2033.

Compliance Dates under the Final Rules <sup>1</sup>						
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	
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.

<sup>1</sup> <https://www.sec.gov/files/rules/final/2024/33-11275.pdf>

<sup>2</sup> <https://www.sec.gov/files/33-11275-fact-sheet.pdf>

## HOW IS DISCLOSURE MADE?

Fortunately, the method of disclosure required by the rule is straightforward. The climate-related disclosures are simply additions to existing reporting requirements. The disclosure must appear in registration statements and annual reports and meet the electronic tagging requirements. While the rule allows for the disclosure to be made in “another appropriate section” of the filings, it is likely that climate-related disclosures will constitute their own section in most registrants’ reporting.

### What Must Be Disclosed?

Climate-related disclosures must include:

- 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 because 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.
- 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.

## UPCOMING LITIGATION

Both sides of the ESG argument appear to be lining up to challenge the SEC’s final rule.<sup>3</sup> As mentioned previously, West Virginia Attorney General Patrick Morrisey has already announced a 10-state challenge. Sierra Club and Earthjustice believe the rules as passed are not sufficient particularly because of the omission of Scope 3 from the reporting requirements. Because ESG has become more and more politicized, litigation will be an ongoing consideration for rulemaking.

<sup>3</sup> [Ten States Sue to Block the SEC’s Emissions Disclosure Rules \(3\) \(bloomberglaw.com\)](https://www.bloomberglaw.com/news/2023/09/10-states-sue-to-block-the-sec-s-emissions-disclosure-rules-3/)

## WHAT COMES NEXT?

Climate-related financial reporting and ESG will become like seatbelts. In the early 1980s Michigan Representative David Hollister proposed a seat belt law. He was threatened with recall by a fellow legislator and called terrible things.<sup>4</sup> At the time, only 14% of Americans used their seatbelt. Following a long push nationally, by 2020, national use of seatbelts has reached more than 90%.<sup>5</sup>

Over time, seatbelt use became ingrained in society. Public companies already have reporting obligations to report material concerns to their investors and the public. The SEC rule now just defines and harmonizes those obligations. That is better for public companies as compliance is easier when there are well established rules. It is also better for investors and the public as evaluations are easier because the data is uniform. The rule will become like seatbelts, just part of a normal, daily reality.

## CONCLUSION & REMAINING QUESTIONS

There seem to be a few unknowns remaining. Legal challenges are front and center to be sure. Existing reporting programs may need revision to comply with the new SEC rule. There are clear overlaps with other regulatory programs, particularly for multinationals, because of existing reporting obligations in, for example, the European Union through its Corporate Sustainability Reporting Directive. Similarly, California's climate disclosure laws, passed last year, imposed requirements both for public and private companies which reflects that the various programs have slightly different obligations. Ultimately, companies will need guidance from each of the existing requirements to understand how to comply with all the programs with a single reporting effort. That much-needed guidance will need to be developed.

## ACKNOWLEDGMENTS

We would like to thank our colleague [John Peiserich](#) for providing insight and expertise that greatly assisted this research.

[John F. Peiserich](#) is an Executive Vice President and Practice Lead in J.S. Held's [Environmental, Health & Safety](#) practice. With over 30 years of experience, John provides consulting and expert services for heavy industry and law firms throughout the country with a focus on Oil & Gas, Energy, and Public Utilities. He has extensive experience evaluating risk associated with potential and ongoing compliance obligations, developing strategies around those obligations, and working to implement a client-focused compliance strategy. Mr. Peiserich has appointments as an Independent Monitor through EPA's Suspension and Debarment Program. John routinely supports clients in a forward-facing role for rulemaking and legislative issues involving energy, environmental, Oil & Gas, and related issues.

John can be reached at [john.peiserich@jsheld.com](mailto:john.peiserich@jsheld.com) or +1 504 360 8373.

<sup>4</sup> <https://www.freep.com/story/money/cars/2015/07/30/michigan-seatbelt-law-anniversary-air-bags-takata/30242557/>

<sup>5</sup> <https://www.history.com/news/seat-belt-laws-resistance>

This publication is for educational and general information purposes only. It may contain errors and is provided as is. It is not intended as specific advice, legal, or otherwise. Opinions and views are not necessarily those of J.S. Held or its affiliates and it should not be presumed that J.S. Held subscribes to any particular method, interpretation, or analysis merely because it appears in this publication. We disclaim any representation and/or warranty regarding the accuracy, timeliness, quality, or applicability of any of the contents. You should not act, or fail to act, in reliance on this publication and we disclaim all liability in respect to such actions or failure to act. We assume no responsibility for information contained in this publication and disclaim all liability and damages in respect to such information. This publication is not a substitute for competent legal advice. The content herein may be updated or otherwise modified without notice.

J.S. Held, its affiliates and subsidiaries are not certified public accounting firm(s) and do not provide audit, attest, or any other public accounting services. J.S. Held is not a law firm and does not provide legal advice. Securities offered through PM Securities, LLC, d/b/a Phoenix IB, a part of J.S. Held, member FINRA/ SIPC or Ocean Tomo Investment Group, LLC, a part of J.S. Held, member FINRA/ SIPC. All rights reserved.