



Yesterday, the SEC adopted a final climate disclosure rule. Here's the [press release](#); the [fact sheet](#) – and the [886-page adopting release](#). Yep, 886 pages. As expected, the open Commission meeting was heated, resulting in a 3-2 vote. [Statements](#) made by the SEC Chair and the other Commissioners are available on the SEC's website. The rule becomes effective 60 days after it is published in the Federal Register.

We'll be blogging plenty about this rulemaking in the coming days – but the rumors were true, there are no Scope 3 emissions disclosure requirements in the final rule. Here are the top 14 things to know now:

### 1. **Compliance Dates, Exemptions & Exceptions**

1. **Five Separate Compliance Dates** – There are five separate compliance dates for the new rulemaking, broken out by Regulation S-K or Regulation S-X item. The compliance dates depend on the category of company that you are, either:

- Large accelerated filer (LAF)
- Accelerated filer (AF), other than a smaller reporting company or emerging growth company
- Smaller reporting company (SRC), non-accelerated filer, or emerging growth company (EGC)

The earliest compliance date for most of the disclosures (other than GHG emissions and certain quantitative and qualitative disclosures regarding mitigation of climate risks and transition plans) is for Large Accelerated Filers and will be applicable for reporting on fiscal years that begin in calendar 2025. Page 4 of the [fact sheet](#) has a simple matrix displaying the various compliance dates.

2. **Safe Harbor from Private Liability** – Under Item 1507 of Regulation S-K, there's a safe harbor from private liability for disclosures (excluding historical facts) provided pursuant to Item 1502(e) of Regulation S-K (transition plans), Item 1502(f) of Regulation S-K (scenario analysis), Item 1502(g) of Regulation S-K, and Item 1504 (targets and goals).

The safe harbor goes beyond the usual forward-looking statement safe harbors in that it applies even to disclosures made in IPO registration statements and certain other situations that are generally excluded from the safe harbor. Notably, this rule expressly covers disclosures that might otherwise technically not be covered by existing forward-looking statement safe harbors because they consist of a mix of factual and forward-looking statements, such as scenario analysis.

3. **GHG Exemption for SRCs and EGCs** – Under Item 1505(a)(3)(i) of Regulation S-K, there's an exemption from the GHG Scope 1 and/or Scope 2 emissions disclosure requirements for SRCs and EGCs.

4. **Scope 1 & 2 Annual Disclosure Delay Possible** – Under Item 1505(c) of Regulation S-K, there's an accommodation that allows Scope 1 and/or Scope 2 emissions disclosure, if required, to be filed on a delayed basis each year. This provision addresses concerns about the time it can take for a company to prepare this information. A domestic company can provide GHG emissions disclosure for a fiscal year in its Form 10-Q for the second fiscal quarter in the immediately following fiscal year (foreign private issuers would have until 225 days after the end of their fiscal year to make the disclosure through an amendment to their annual report on Form 20-F).

For Securities Act or Exchange Act registration statements, GHG emissions disclosure will be required for the most recently completed fiscal year that is at least 225 days prior to the date of effectiveness of the registration statement.

## **B. Disclosure Content**

5. **Material Risks** - Under Item 1502(a) of Regulation S-K, disclosure is required of any climate-related risks that have had - or are reasonably likely to have - a material impact on a company's business strategy, results of operations, or financial condition. Separately, Item 1503 requires disclosures regarding the company's risk identification, assessment and management process for climate-related risks.

6. **Material Impacts on Strategy, Business Model and Outlook** - Under Items 1502(b) and (c) of Regulation S-K, disclosure is required of the actual and potential material impacts of any identified climate-related risks on a company's *strategy, business model, and outlook*, and how the company considers these impacts as part of strategy, financial planning, and capital allocation.

**7. Material Impacts on Business, Results of Operations or Financial Condition** - Under Item 1502(d) of Regulation S-K, disclosure is required of how identified climate-related risks have materially impacted - or are reasonably likely to materially impact - the company's *business, results of operations or financial condition*. In addition, subject to a longer phase-in period, a quantitative and qualitative description will be required of material expenditures incurred and material impacts on financial estimates and assumptions that directly result from activities undertaken to mitigate or adapt to climate-related risks.

**8. Transition Plans, Scenario Analyses and Internal Carbon Prices** - Under Item 1502(e)-(g) of Regulation S-K, specified disclosures are required regarding transition plans to manage material transition risks, scenario analysis to assess the impact of climate-related risks, and the use of internal carbon prices, to the extent applicable and material.

**9. Board and Management Oversight** - Under Item 1501 of Regulation S-K, disclosure is required regarding oversight by the board of directors of climate-related risks and the role of management in assessing and managing a company's material climate-related risks. Like the SEC's new cybersecurity rule, this management oversight disclosure will include the relevant expertise of responsible members of management.

**10. Targets and Goals** - Under Item 1504 of Regulation S-K, companies are required to disclose information about the company's climate-related targets or goals if such targets or goals have materially affected - or are reasonably likely to materially affect - a company's business, results of operations, or financial condition. Disclosures would include detailed information regarding the target or goal and the company's progress toward meeting such target or goal.

**11. Scope 1 and Scope 2, If Material** - Under Item 1505 of Regulation S-K, for LAFs and AFs that are not otherwise exempted, disclosure of information about *material* Scope 1 emissions and/or Scope 2 emissions is required. Disclosure will also be required regarding the methodology, significant inputs and significant assumptions used in calculating these metrics.

**12. Assurance Reports** – Under Item 1506 of Regulation S-K, for those required to disclose Scope 1 and/or Scope 2 emissions, an assurance report will be required at the limited assurance level three years after the GHG disclosures are first required, and, for an LAF following an additional transition period, will need to be at the reasonable assurance level.

**13. Financial Statement Notes** – Under Items 14-01-14-02 of Regulation S-X, these three items will need to be disclosed in a note to the 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 one percent and de minimis disclosure thresholds.

- If a company uses carbon offsets or renewable energy credits or certificates (RECs) to achieve disclosed climate-related targets or goals, the aggregate amount expensed, aggregate capitalized amount recognized, and aggregate amount of losses incurred on capitalized carbon offsets and RECs.

- If the estimates and assumptions a registrant uses to produce the financial statements were materially impacted by exposures to 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.

14. **XBRL Tagging** – Under Item 1508 of Regulation S-K, in-line XBRL tagging is required with a phase-in schedule noted on page 4 of the fact sheet.

---

## **Authors**



### **Joe Bailey**

Partner

[JoeBailey@perkinscoie.com](mailto:JoeBailey@perkinscoie.com) [503.727.2173](tel:503.727.2173)



### **Allison C. Handy**

Partner

[AHandy@perkinscoie.com](mailto:AHandy@perkinscoie.com) [206.359.3295](tel:206.359.3295)



## **Andrew B. Moore**

Partner

[AMoore@perkinscoie.com](mailto:AMoore@perkinscoie.com) [206.359.8649](tel:206.359.8649)

### **Explore more in**

[Corporate Law](#)

Blog series

## **Public Chatter**

Public Chatter provides practical guidance—and the latest developments—to those grappling with public company securities law and corporate governance issues, through content developed from an in-house perspective.

[Subscribe ?](#)

[Visit Public Chatter Resources for Guides, Quick Alerts and Programs](#)

[View the blog](#)