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Key Details on SEC's New Climate Disclosure Rule

On March 6, 2024, the SEC approved by a 3-to-2 vote a long-awaited final rule, *The Enhancement and Standardization of Climate-Related Disclosures for Investors*, standardizing climate-related disclosures in SEC registration and financial statement filings. The final rule requires information about a registrant's climate-related risks that materially[1] impacted or are reasonably likely[2] to have a material impact on its strategy, results of operations, or financial condition. The rules would apply to all SEC reporting companies, even those with no publicly listed securities, and include business development companies, real estate investment trusts, and issuers of non-variable insurance contracts.

While the SEC scaled back on many of the proposal's mandates, added several materiality thresholds, and lengthened and staggered compliance dates, the final rule may significantly increase reporting costs and complexity. Requirements may include increased data collection and development of significant internal processes and controls. Large Accelerated Filers (LAFs) and Accelerated filers (AFs) will be required to report Scope 1 and 2 greenhouse gas (GHG) emissions and have those amounts assured. Here is what you need to know about the almost 900-page preamble and rule.

Highlights

The final rule adds new sections to both Regulation S-K and Regulation S-X; required disclosures are listed below. Changes from the proposal include an extended phase-in period (highlighted in the table below), as well as new safe harbors, and some relief for smaller reporting companies (SRCs). The SEC commissioners compromised on the location of the disclosures within annual Form 10-K filings and whether information would be subject to audit or attestation.

Regulation S-K Amendments Section 1500 (17 CFR 229)

The final rule will require a registrant to disclose information about the following:

A. **Risks**. 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 – §1502(a)

B. **Impacts**. 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

[1] As defined by the SEC and consistent with U.S. Supreme Court precedent, a matter is **material** if there is a substantial likelihood that a reasonable investor would consider it important when determining whether to buy or sell securities or how to vote or such a reasonable investor would view omission of the disclosure as having significantly altered the total mix of information made available. Materiality is fact-specific and requires both qualitative and quantitative considerations.

[2] "**Reasonably likely**" is consistent with other management's discussion and analysis (MD&A) disclosures on known trends, events, and uncertainties and is grounded in whether disclosure of the climate-related risk would be material to investors and requires that management evaluate the consequences of the risk as it would any known trend, demand, commitment, event, or uncertainty.

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and material impacts on financial estimates and assumptions that directly result from such mitigation or adaptation activities – §1502(b) (c) (d)

C. **Plans**. Activities, if any, to mitigate or adapt to a material climate-related risk, including the use of transition plans, scenario analysis, or internal carbon prices – §1502(e) (f) (g)

D. **Governance**. Oversight by the registrant's board of directors of climate-related risks and any role by management in assessing and managing material climate-related risks. Processes a registrant uses to identify, assess, or manage material climate-related risks – §1501(a) (b)

E. **Goals**. Any targets or goals that have materially affected or are reasonably likely to materially affect the registrant's business, results of operations, or financial condition – §1504(d)

F. **Emissions**. GHG emissions for Scope 1 and Scope 2 if material for LAF and AF – §1505

G. **Attestation**. Timing, report, and service provider requirements – §1506

Regulation S-X Amendments Article 14 (17 CFR 210.14)

A. Financial statement footnote disclosure (subject to audit and internal control over financial reporting (ICFR) requirements) of the following:

B. **Expenditures**. Includes both severe weather events subject to applicable 1% and de minimis disclosure thresholds and 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

Registrant Type	Disclosure & Attestation Compliance Dates (assuming December 31 fiscal year-end)				
	Disclosures		Scope 1 & 2 Emissions[3]	Attestation – Scope 1 & 2	
	Reg. S-K & S-X	Material Expenditures & Impacts (Mitigation, Transition, & Targets)		Limited Assurance	Reasonable Assurance
LAF	Fiscal year 2025	Fiscal year 2026	Fiscal year 2026[4]	Fiscal year 2029[4]	Fiscal year 2033[4]
AF	Fiscal year 2026	Fiscal year 2027	Fiscal year 2028[4]	Fiscal year 2031[4]	N/A

[3] A scope exception for Scopes 1 and 2 emissions was provided to an agricultural producer or other registrant that operates manure management systems to comply with a provision in the 2023 Consolidated Appropriations Act.

[4] A domestic registrant can delay filing the GHG emissions disclosures for the most recent fiscal year as part of their 10-Q for the second quarter or as an amendment to their annual report on the 10-K.

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Registrant Type	Disclosure & Attestation Compliance Dates (assuming December 31 fiscal year-end)				
Non-Accelerated, SRC & EGC	Fiscal year 2027	Fiscal year 2028	N/A	N/A	N/A
In a change from the proposal—and to not discourage business combinations—the final rules will not apply to private companies that are parties to business combination transactions, as defined by Securities Act Rule 165(f), 2481 involving a securities offering registered on Forms S-4 and F-4.					

Estimates & Assumptions. Details on whether estimates and assumptions used for the financial statements were materially impacted by exposures to risks and uncertainties associated with—or known impacts from—any severe weather events or disclosed climate-related targets or transition plans

I. Regulation S-K Updates

The final rule adds new §1500 to Regulation S-K that requires a registrant to disclose any climate-related risks that have materially impacted or are reasonably likely to have a material impact on the registrant, including on its business strategy, results of operations, or financial condition.

The rule includes both a disclosure and an attestation requirement for AFs and LAFs filers for the GHG emissions metrics. Further, a registrant must disclose certain information concerning the board's oversight of climate-related risks and management's role in assessing and managing those risks.

The final rule leaves the placement of the climate-related disclosures—other than the financial statement disclosures—largely up to each registrant. Structured data requirements will enable automated extraction and analysis of the information required by the final rule, regardless of where they are presented. A registrant may elect to place most of the Regulation S-K disclosures in a separately captioned "Climate-Related Disclosure" section. Alternatively, a registrant may elect to include these climate-related disclosures in applicable, currently existing parts of the registration statement or annual report, *e.g.*, Risk Factors, Description of Business, or Management's Discussion and Analysis of Financial Condition and Results of Operations (MD&A). The registrant should consider whether cross-referencing the other disclosures in the separately captioned section would enhance the presentation of the climate-related disclosures for investors.

A registrant also may incorporate by reference some of the climate-related disclosures from other filed registration statements or Exchange Act reports if the incorporated disclosure is responsive to the topics specified in the Regulation S-K climate-related disclosure items and if the registrant satisfies the existing incorporation by reference requirements.[5] In addition, any climate-related disclosure that is being incorporated by reference must include electronic tags that meet the final rules' structured data requirement.

A. Climate-Related Risks §1502(a)

Disclosure is required for any climate-related risks reasonably likely to have a **material impact on the registrant's business or consolidated financial statements**. A registrant should describe whether such risks are reasonably likely to manifest in the short term, *i.e.*, the next 12 months, and separately in the long term, *i.e.*, beyond the next 12 months, which is consistent with other MD&A disclosure standards.

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[5] A registrant is not permitted to cross-reference to Regulation S-K disclosures in their financial statements, unless otherwise specifically permitted or required by the SEC rules or by U.S. GAAP or International Financial Reporting Standards as issued by the International Accounting Standards Board, whichever is applicable.

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Climate-related risks are defined as the actual or potential negative impacts of climate-related conditions and events on a registrant's consolidated business, results of operations, or financial condition.

Climate-related risks include both physical risks and transition risks. **Physical risks** include both **acute** (shorter-term severe weather events—hurricanes, floods, tornadoes, and wildfires) and **chronic** risks (longer-term weather patterns—sustained higher temperatures, sea level rise, drought, increased wildfires, decreased arability of farmland, decreased habitability of land, and decreased availability of fresh water).

Transition risks mean the actual or potential negative impacts on a registrant's business, results of operations, or financial condition attributable to regulatory, technological, and market changes to address the mitigation of or adoption to climate-related risks. These include, but are not limited to:

- Increased costs attributable to climate-related changes in law or policy
- Competitive pressures associated with the adoption of new technologies
- Devaluation or abandonment of assets
- Reduced demand for carbon-intensive products leading to decreased sales, prices, or profits, and the devaluation or abandonment of assets
- Risk of legal liability and litigation defense costs
- Reputational impacts (including those stemming from a registrant's customers or business counterparties) that trigger changes to market behavior, consumer preference, or a registrant's behavior

In a change from the proposal, the final rule does not include acute or chronic risks to the operations of those with whom a registrant does business.

For each identified climate-related risk, a registrant must disclose whether the risk is a physical or transition risk, along with the information necessary to understand the nature of the risk and the extent of the registrant's exposure to the risk.

- A physical risk should be categorized as an acute or chronic risk, and details should include the geographic location and nature of the properties, processes, or operations subject to the physical risk. The final rule dropped the proposal's requirement for zip-code-level detail.
- A transition risk must be categorized as to whether it relates to regulatory, technological, market (including changing consumer, business counterparty, and investor preferences), or other transition-related factors, and how those factors impact the registrant.

A registrant must describe the climate-related physical risks it faces clearly and consistently. For complex and overlapping physical risks, registrants can determine how best to categorize the physical risk as either acute or chronic.

In addition, a registrant that has significant operations in a jurisdiction that has made a GHG emissions reduction commitment should consider whether it may be exposed to a material transition risk related to the implementation of the commitment.

B. Impacts §1502 (b) (c) (d)

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A registrant must describe the actual and potential **material impacts of any climate-related risk identified above on the registrant's strategy, business model, and outlook**. The final rule contains a non-exhaustive list of potential material impacts of climate-related risks, including:

- Business operations, including the types and locations of its operations
- Products or services
- Suppliers, purchasers, or counterparties to material contracts, to the extent known or reasonably available
- Activities to mitigate or adapt to climate-related risks, including adoption of new technologies or processes
- Expenditure for research and development

If a registrant has identified a relevant impact that is not specifically listed above, the impact will need to be disclosed. If none of the listed types of impacts or any other impacts are material, a registrant need not disclose them.

A registrant also must discuss whether and how the registrant considers any material impacts as part of its strategy, financial planning, and capital allocation as follows:

- Whether the impacts of the climate-related risks identified have been integrated into the registrant's business model or strategy, including whether and how resources are being used to mitigate climate-related risks
- How any targets or transition plans relate to the registrant's business model or strategy

The final rule drops the proposal's requirement to include both current and forward-looking disclosures for the impacts disclosures. A registrant may now choose to include forward-looking information or discuss any climate-related metrics or financial information. The final rule leaves it up to each registrant to determine—based on its particular facts and circumstances—what disclosure is necessary to help investors understand whether and how management has incorporated the material impacts of its climate-related risks into its business strategy, financial planning, and capital allocation.

Under §1502(d)(2), a registrant must provide a narrative discussion of whether and how any climate-related risks identified under §1502(a) have affected or are reasonably likely to **materially affect the registrant's business, results of operations, and financial condition.** A registrant is to describe quantitatively and qualitatively the material expenditures incurred and material impacts on financial estimates and assumptions that, in management's assessment, directly result from activities to mitigate or adapt to climate-related risks identified in §1502(b)(4). **This requirement has a staggered effective date to allow for the development of tracking and reporting systems and disclosure controls and procedures (DCP)**.

This disclosure is intended to capture actual material expenditures, both capitalized and expensed, made during the fiscal year for the purpose of climate-related risk mitigation or adaptation.

The final rule moved this requirement from a Reg S-X requirement to a Reg S-K requirement to reflect that the intended type of disclosure is more similar to MD&A disclosures than disclosures in the notes to the financial statements and to reduce auditing challenges.

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C. Mitigation

Transition Plan §1502(e)

A registrant must describe a transition plan if it has adopted the plan to manage a **material transition risk**. A **transition plan** is a registrant's strategy and implementation plan to reduce climate-related risks, which may include a plan to reduce its GHG emissions in line with its own commitments or commitments of jurisdictions within which it has significant operations. The final rule dropped the proposal's prescriptive mandates and registrants will have flexibility to provide disclosure that addresses the particular facts and circumstances of their material transition risk. Transition plan disclosures will have a safe harbor as noted below.

A registrant is not required to adopt a transition plan and if a registrant does not have a plan, no disclosure is required.

A registrant must update its annual report disclosure about the transition plan each fiscal year by describing any actions taken during the year under the plan, including how such actions have impacted the registrant's business, results of operations, or financial condition.

Under §1502(e)(2), this should include quantitative and qualitative disclosure of **material expenditures incurred and material impacts on financial estimates and assumptions as a direct result of the disclosed actions taken under the transition plan**. This is intended to elicit disclosure about material expenditures (both capitalized and expensed) and material impacts on financial estimates and assumptions that directly result from actions taken under a transition plan, *e.g.*, material expenditures made for climate-related research and development.

When considering which expenditures related to actions taken under a disclosed plan are material over the relevant period and, therefore, require disclosure, the expenditures should be considered whether they are **material both individually or in the aggregate** and, if so, provide appropriate disclosure. **This requirement has a staggered effective date to allow for the development of tracking and reporting systems and DCP**.

If a registrant's disclosure made in response to §1502(d) or §1502(c) overlap with each other or with disclosure required under any other §1500 provision, the registrant need not repeat the disclosure.

Scenario Analysis §1502(f)

The final rule does not mandate scenario analysis or a specific risk management model. However, if a registrant uses scenario analysis to assess the impact of climate-related risks on its business, results of operations, or financial condition, and if, based on the results of scenario analysis, a registrant determines that a climate-related risk is reasonably likely to have a **material impact on its business, results of operations, or financial condition**, then the registrant must describe each such scenario, including a **brief** description of the parameters, assumptions, and analytical choices used, as well as the expected material impacts, including financial impacts, on the registrant under each such scenario.

To further streamline the scenario analysis disclosure requirement, the final rule drops the proposal's requirement for disclosure of both quantitative and qualitative information in scenario analysis disclosures.

The scenario analysis disclosure is covered by a safe harbor.

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Internal Carbon Price §1502(g)

An internal carbon price is an estimated cost of carbon emissions used internally within an organization. If a registrant's use of an internal carbon pricing **is material to how it evaluates and manages a climate-related risk** identified in §1502(a), required disclosures include:

- The price per metric ton of carbon dioxide equivalent (CO2e)
- The total price, including how the total price is estimated to change over time
- If a registrant uses more than one internal carbon price to evaluate and manage a material climate-related risk, it must provide the required disclosures for each internal carbon price, and disclose its reasons for using different prices
- An explanation of the scope of the entities and operations involved in the use of an internal carbon price is materially different than the organizational boundaries used for calculating a registrant's GHG emissions

Except for historical facts, if a registrant's disclosure of any internal carbon price includes assumptions about future events, it would be covered by the existing safe harbor on forward-looking statements, if all conditions are satisfied.

The final rule drops the proposal's requirements to disclose the rationale for selecting the internal carbon price applied.

D. Governance & Oversight

Board Oversight §1501(a)

A registrant should disclose the following items:

- Board committee or subcommittee responsible for the oversight of climate-related risks
- Process by which the board is informed about climate-related risks
- For any climate-related targets, goals, or transition plans that require disclosure, how the board oversees progress against those targets, goals, or transition

Management Oversight §1501(b)

The required management oversight disclosure mirrors the board mandate above. A registrant should address the following non-exhaustive items:

- Management positions or committees are responsible for assessing and managing climate-related risks
- The relevant expertise of such position holders or committee members in such detail as necessary to fully describe the nature of the expertise
- The processes by which such positions or committees assess and manage climate-related risks
- Whether such positions or committees report information about such risks to the board of directors or a committee or subcommittee of the board of directors

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The final rule does not require registrants that do not engage in the oversight of material climate-related risk to disclose any information.

Risk Management §1503

A registrant is required to describe any processes it has for identifying, assessing, and managing material climate-related risks. If a registrant has not identified a material climate-related risk, no disclosure is required.

When describing any processes for managing climate-related risks, a registrant would be required to disclose, as applicable, the following non-exclusive list of items:

- How it identifies whether it has incurred or is reasonably likely to incur a material physical or transition risk
- How it decides whether to mitigate, accept, or adapt to a particular risk
- How it prioritizes addressing climate-related risks

If a registrant is managing a material climate-related risk, it must disclose whether and how its processes described for identifying, assessing, and managing the material climate-related risk have been integrated into the registrant's overall risk management system or processes.

E. Targets & Goals §1504

The final rule requires a registrant to disclose any climate-related target or goal if such target or goal has materially affected or is reasonably likely to materially affect the registrant's business, results of operations, or financial condition. Required information includes:

- The scope of activities included in the target
- The unit of measurement
- The defined time horizon by which the target is intended to be achieved, and whether the time horizon is based on one or more goals established by a climate-related treaty, law, regulation, policy, or organization
- If the registrant has established a baseline for the target or goal, the defined baseline time period and the means by which progress will be tracked
- A qualitative description of how the registrant intends to meet its climate-related targets or goals
- Progress toward meeting the goal or target and how such progress has been achieved. This should be updated each fiscal year by describing the actions taken during the year to achieve its targets or goals
- Any material impacts to the registrant's business, results of operations, or financial condition as a direct result of the target or goal or the actions taken to make progress toward meeting the target or goal.
- Under §1504(c)(2), this must include quantitative and qualitative disclosure of any material expenditures that have a material impact on financial estimates and assumptions as a direct result of the target or goal. The qualitative and quantitative impact requirement has a staggered effective date to allow for the development of tracking and reporting systems and DCP.

Carbon Offsets & Renewable Energy Credits §1504(d)

If carbon offsets or RECs are used as a **material component in a registrant's plan to achieve climate-related goals or targets**, certain disclosures are required, including:

- The amount of carbon avoidance

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- Reduction or removal represented by the offsets, or the amount of generated renewable energy represented by the RECs
- The nature and source of the offsets or RECs
- A description and location of the underlying projects
- Any registries or other authentication of the offsets or RECs
- The cost of the offsets or RECs

Registrants will need to make a determination—based upon their specific facts and circumstances—about the importance of such carbon offsets and credits to their overall transition plan and provide disclosure accordingly.

F. GHG Emissions §1505

Required disclosure include **Scope 1** and **Scope 2** GHG emissions of greenhouse gases. Scope 1 emissions are **direct GHG emissions** from operations that are owned or controlled by a registrant. Scope 2 emissions are **indirect GHG emissions** from the generation of purchased or acquired electricity, steam, heat, or cooling that is consumed by a registrant's owned or controlled operations.

As proposed, Scopes 1 and 2 emissions disclosures would have been required by all registrants, regardless of materiality. Under the final rule, Scope 1 and 2 metrics will only be required for LAFs and AFs that are not SRCs or emerging growth companies (EGCs) if such emissions are material and will have staggered effective dates.

The final rule drops the proposal's requirement for some registrants to disclose Scope 3 emissions.

A registrant that is a LAF or an AF, but not a SRC or EGC, must disclose its Scope 1 emissions and/or Scope 2 emissions **if the emissions are material** for its most recently completed **fiscal year.** Scope 1 or Scope 2 emissions previously disclosed in a filing must be included for the historical fiscal year(s) included in the consolidated financial statements. For any GHG emissions required to be disclosed, registrants are required to disclose the following:

- Scope 1 emissions and/or Scope 2 emissions separately, each expressed in the aggregate, in terms of CO_2e
- If any constituent gas of the disclosed emissions is individually material, such constituent gas disaggregated from the other gases
    - The rule's GHG definition includes seven constituent gases: carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), nitrogen trifluoride (NF_3), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF_6)
- Scope 1 emissions and/or Scope 2 emissions in gross terms excluding the impact of any purchased or generated offsets

There is an exemption allowing registrants to exclude manure management systems emissions based on a restriction in the *2023 Consolidated Appropriations Act*, so long as a restriction remains in effect.

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The final rule does not require the disclosure of any quantitative emission factors used. Instead, a registrant must disclose the type and source of any emission factors used, such as the EPA's emission factors for stationary combustion and/or mobile combustion of various fuel types.

Materiality

Impacted registrants should not consider materiality just by the amount of these emissions; the guiding principle for this materiality determination is whether a reasonable investor would consider the disclosure of an item—in this case, the registrant's Scope 1 and/or its Scope 2 emissions—important when making an investment or voting decision or such a reasonable investor would view omission of the disclosure as having significantly altered the total mix of information made available. A registrant's Scopes 1 and/or 2 emissions may be material because their calculation and disclosure are necessary to allow investors to understand whether those emissions are significant enough to subject the registrant to a transition risk that will or is reasonably likely to materially impact its business, results of operations, or financial condition in the short or long term.

For example, if a registrant faces a material transition risk that is a result of a requirement to report its GHG emissions metrics under foreign or state law because such emissions are currently or are reasonably likely to be subject to additional regulatory burdens through increased taxes or financial penalties, the registrant should consider whether such emissions metrics are material under the final rule. A registrant's GHG emissions also may be material if their calculation and disclosure are necessary to enable investors to understand whether the registrant has made progress toward achieving a target or goal or a transition plan that the registrant is required to disclose under the final rule.

The SEC acknowledges that registrants could incur costs to assess and monitor the materiality of their emissions—even when they ultimately determine that they do not need to provide disclosure—and that for some registrants, these costs could be significant, especially if firms are not already tracking this information for internal purposes.

The final rule drops the proposal's requirement to disclose GHG emissions in terms of intensity.

Methodology, Inputs, & Assumptions §1505(b)(1)

A registrant must describe the methodology, significant inputs, and assumptions used to calculate GHG emissions metrics. The discussion is to be brief with sufficient detail for a reasonable investor to understand; the methodology description must include the following:

- The organizational and operational boundaries used when calculating the registrant's disclosed GHG emissions
- The method used to determine those boundaries

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- If the organizational boundaries used when calculating the disclosed GHG emissions materially differ from the scope of entities and operations included in the registrant's consolidated financial statements, a brief explanation of this difference
- The protocol or standard used to report the GHG emissions, including:
    - Calculation approach
    - Type and source of any emissions factors used
    - Any calculation tools used to calculate the GHG emissions

A registrant may use reasonable estimates when disclosing its GHG emission if it also describes the assumptions underlying and the reasons for using the estimates.

Organizational boundaries are the boundaries that determine the operations a registrant owns or controls when calculating its GHG emissions. **Operational boundaries** are the boundaries that determine the direct and indirect emissions associated with the business operations owned or controlled by a registrant. The proposal would have mandated that organizational boundaries include the same entities, operations, assets, and other holdings within a registrant's business organization as those included in and based upon the same set of accounting principles applicable to its consolidated financial statements. Under the final rule, a registrant must disclose the method used to determine the organizational boundaries, and if the organizational boundaries materially differ from the scope of entities and operations included in the registrant's consolidated financial statements, the registrant must provide a brief explanation of this difference in sufficient detail for a reasonable investor to understand. A registrant must describe the method used to determine its operational boundaries (in sufficient detail for a reasonable investor to understand), which should include its approach to categorizing its emissions and emissions sources (Scope 1 or Scope 2).

A registrant will have flexibility to use, for example, one of the methods for determining control under the GHG Protocol, including the operational control approach as long as it discloses the method used, and provides investors with information material to understanding the scope of entities and operations included in the GHG emissions calculation as compared to those included in its financial statements.

GHG Reporting Timeline §1505(a)(1)

Any GHG emissions metrics required to be disclosed on Form 10-K may be incorporated by reference from the registrant's Form 10-Q for the second fiscal quarter in the fiscal year immediately following the year to which the GHG emissions metrics disclosure relates.

A registrant must include an express statement in its annual report indicating its intention to incorporate by reference or amend its filing for this information.

G. Attestation Requirement for Scope 1 & 2 Emissions §1506(a)(1)

AFs and LAFs will need an attestation report covering the disclosure of their Scope 1 and Scope 2 emissions for SEC filings.

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	Limited Assurance	Reasonable Assurance
When	Fiscal year 2029 for LAFs Fiscal year 2031 for AFs	Fiscal year 2033 for LAFs
	AFs and LAFs would not be prevented from obtaining reasonable assurance for climate disclosures earlier than required	
Objective	To express a conclusion about whether it is aware of any material modifications that should be made to the subject matter—Scopes 1 and 2 emissions disclosure—for it to be fairly stated or in accordance with the relevant criteria	To express an opinion on whether the subject matter is in accordance with the relevant criteria, in all material respects, *i.e.*, same as the audited financial statements
Procedures Performed	Analytical procedures and inquiry	Risk assessments and detail testing procedures
Conclusion	Provides **negative assurance** regarding whether any material misstatements have been identified	Provides **positive assurance** that the subject matter is free from material misstatement
	1506 will not apply to a private company that is a party to a business combination transaction, as defined by Securities Act Rule 165(f), involving a securities offering registered on Form S-4 or F-4.	

The SEC has concluded that current, voluntary environmental, social, and governance (ESG) assurance practices are too varied as to the levels of assurance provided, *e.g.*, limited versus reasonable, the assurance standards used, the types of service providers, and the scope of disclosures covered by the assurance. This fragmentation has diminished the comparability of the assurance provided.

GHG emissions disclosure would generally not be developed from information that is included in the registrant's books and records that are used to generate a registrant's audited financial statements and would not be subjected to audit procedures. So, the SEC felt it was appropriate to require GHG emissions disclosures to be subject to third-party attestation.

The final rule leaves the placement of the climate-related disclosures, other than financial statement disclosures, up to each registrant (the proposal would have required a separately captioned "Climate-Related Disclosure" section).

Attestation Provider Requirements §1506(b)

The final rule does not create a specific attestation standard for assuring GHG emissions; rather, the SEC set minimum standards for attestation services. A GHG emissions attestation provider must meet all the following characteristics:

- Is an expert in GHG emissions by virtue of having significant experience in measuring, analyzing, reporting, or attesting to GHG emissions. Significant experience means having sufficient competence and capabilities necessary to:
    - Perform engagements in accordance with professional standards and applicable legal and regulatory requirements

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- Enable the service provider to issue reports that are appropriate under the circumstances
- Is independent with respect to the registrant, and any of its affiliates, for whom it is providing the attestation report, during the attestation and professional engagement period

In a change from the proposal, a **limited assurance** attestation provider for Scope 1, 2, or 3 (voluntary) GHG emissions will not be subject to Section 7 or 11 liability under federal securities laws. Regulation S-K also was amended to include as an exhibit to the 10-K or 10-Q filings a letter from the attestation provider acknowledging it is aware of the use in certain registration statements of any of its reports which are not subject to the consent requirements of Section 7.

Attestation Report §1506(a)(2), (c), (d)

The final rule mandates the attestation report be prepared using standards established by a body or group that has followed due process procedures, including the broad distribution of the framework for public comment, and must be publicly available at no cost or widely used for GHG emissions assurance. This would include PCAOB, American Institute of CPAs (AICPA), International Auditing and Assurance Standards Board (IAASB), and International Organization for Standardization (ISO) attestation standards. The final rule dropped the proposal's minimum report requirements; instead, the attestation report must follow the form and content requirements of the attestation standard used.

The registrant will need to disclose the following:

- Whether the GHG emissions attestation engagement is subject to **any** oversight inspection program, and if so, which program. The SEC would consider a GHG emissions attestation engagement to be subject to an oversight inspection program if it is possible that the assurance services could be inspected pursuant to the oversight program, even if it is not certain that the services will be inspected in a particular inspection cycle. An example of such an oversight inspection program is the AICPA's peer review program, which includes within its scope attestation engagements performed by a certified public accountant in accordance with AICPA standards. A registrant must disclose any oversight inspection program the GHG emissions attestation provider is subject to for any type of engagement, *e.g.*, a financial statement audit or other review.
- When there is a change in—or disagreement with—the registrant's GHG emissions provider. A registrant must disclose whether its former GHG emissions attestation provider resigned or was dismissed and the date. If so, the registrant must state whether during the performance of the attestation engagement for the fiscal year covered by the attestation report there were any disagreements with the former GHG emissions attestation provider over any measurement or disclosure of GHG emission or attestation scope of procedures. A description of each such disagreement should be disclosed and whether the registrant has authorized the former GHG emissions attestation provider to respond fully to the inquiries of the successor GHG emissions attestation provider concerning the subject matter of each such disagreement. This only applies to AFs and LAFs that are required to obtain an attestation report but not if their GHG emissions are not material for a particular year or for voluntary assurance reports.

A registrant is not required to obtain an attestation report specifically covering the effectiveness of internal controls over GHG emissions.

The final rule will apply on a prospective basis with disclosure for historical periods phased in over time. In the first year that an AF or LAF is required to provide an attestation report, the report is only required to cover the Scope 1

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and/or Scope 2 emissions for its most recently completed fiscal year. To the extent the AF or LAF disclosed Scope 1 and/or Scope 2 emissions for a historical period, it would not be required to obtain an assurance report covering such historical period in the first year of the attestation rule's applicability. However, for each subsequent fiscal year's annual report, the registrant will be required to provide an attestation report for an additional fiscal year until an attestation report is provided for the entire period covered by the registrant's GHG emissions disclosures. In circumstances where more than one GHG emissions provider may have provided an attestation report for the different fiscal years included in the filing, a GHG emissions attestation provider should be clear about its involvement with any historical information, including disclaiming any such involvement where applicable.

The consolidated information included in the parent company's SEC filing would need to comply with the final rule's requirements applicable to the parent company. This means that a subsidiary's information that is part of the consolidated reporting of its parent company will need to be assured as part of the assurance over the parent company's consolidated reporting, even if the consolidated subsidiary itself is not subject to assurance. This is consistent with how the auditing standards over consolidated financial statements generally apply.

Voluntary Reports §1506(e)

Any registrant that is not required to include a GHG emissions attestation report is required to disclose certain information about the assurance engagement if the registrant's GHG emissions disclosure was voluntarily subject to assurance. Details include:

- Identification of the service provider of such assurance
- Description of the assurance standard used
- Description of the level and scope of assurance services provided
- Brief description of the results of the assurance services
- Whether the service provider has any material business relationships with or has provided any material professional services to the registrant
- Whether the service provider is subject to any oversight inspection program, and if so, which program (or programs) and whether the assurance services over GHG emissions are included within the scope of authority of such oversight inspection program

This voluntary attestation disclosure would not apply to non-assurance services such as agreed-upon procedures.

Safe Harbor §1507

The final rule provides a safe harbor for climate-related disclosures pertaining to transition plans, scenario analysis, the use of an internal carbon price, and targets and goals. The safe harbor provides that all required information, except for historical facts, is considered a forward-looking statement under the Private Securities Litigation Reform Act (PSLRA) safe harbors for forward-looking statements.

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II. Regulation S-X Updates – Audited Financial Statements Article 14

The final rule adds a new requirement to Regulation S-X that requires a registrant to disclose incurred capitalized costs, expenditures expensed, charges, losses, and recoveries related to severe weather events or other natural conditions. Disclosures related to carbon offsets and RECs also are required if the carbon offsets or RECs have been used as a material component of a registrant's plans to achieve its disclosed climate-related targets or goals.

The inclusion of these metrics in the financial statement notes means that the metrics are included in the scope of any required audit of the financial statements in the relevant disclosure filing, subject to audit by an independent registered public accounting firm, and within the scope of the registrant's ICFR.

Contextual Information

A registrant must provide contextual information, describing how each specified financial statement effect was derived, including a description of:

- Significant inputs and assumptions used
- Significant judgments made
- Other information that is important to understand the financial statement effect
- If applicable, policy decisions made by the registrant to calculate the specified disclosures

Registrants must calculate the financial statement effects using financial information that is consistent with the scope of the rest of the registrant's consolidated financial statements and to apply the same set of accounting principles that a registrant is required to apply in preparation of the rest of its consolidated financial statements.

Historical Periods

Disclosure must be provided for the registrant's most recently completed fiscal year, and to the extent previously disclosed or required to be disclosed, for the historical fiscal year(s), for which audited consolidated financial statements are included in the filing. Registrants will be required to provide disclosure for the registrant's most recently completed fiscal year for which audited financial statements are included in the filing in any filings to which the final rules apply; however, registrants are not required to provide disclosure for historical fiscal year(s) included in that filing.

For example, subject to the compliance date, a registrant that files its annual report will only be required to provide the applicable disclosure for the registrant's most recently completed fiscal year for which audited financial statements are included in the filing. For each subsequent fiscal year's annual report, the registrant will be required to provide the applicable disclosure for an additional fiscal year until the required disclosure is provided for the entire period covered by the registrant's financial statements.

Disclosure is required for the registrant's most recently completed fiscal year and for the historical fiscal year(s) included in the registrant's consolidated financial statements in the applicable filing.

A. Expenditure Metrics

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1. Severe Weather Events §14-02(c) (d)

The final rule focuses on requiring the disclosure of 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. Following the attribution principal, disclosure is required when the weather event is a **significant contributing factor** in incurring the cost, expenditure, charge, or loss.

A registrant is not required to make a determination that a severe weather event or other natural condition was caused by climate change to trigger the disclosure. Rather, a registrant should consider geographic location, historical experience, and the financial impact of the event on the registrant. A particular weather event may be "severe" in one region but not in another region.

A registrant must disclose both:

- The aggregate amount of **expenditures expensed** as incurred and losses, excluding recoveries, incurred during the fiscal year as a result of severe weather events and other natural conditions
- The aggregate amount of **capitalized costs** and charges, excluding recoveries, recognized during the fiscal year as a result of severe weather events and other natural conditions

For example, a registrant may be required to disclose the amount of expense or capitalization costs to restore operations, relocate assets or operations affected by the event or other natural condition, retire affected assets, repair affected assets, recognize impairment loss on affected assets, or otherwise respond to the effect that severe weather events and other natural conditions had on business operations.

A registrant must separately disclose where on the income statement and balance sheet, as applicable, the capitalized costs, expenditures expensed, charges, and losses are presented.

Disclosure Threshold §14-02(b)

This requirement is subject to a 1% disclosure threshold calculated as follows:

- Expenditures expensed as incurred and losses if the aggregate amount of such expenditures expensed as incurred and losses equals or exceeds 1% of the absolute value of income or loss before income tax expense or benefit for the relevant fiscal year
- Capitalized costs and charges recognized if the aggregate amount of the absolute value of capitalized costs and charges recognized equals or exceeds 1% of the absolute value of stockholders' equity or deficit, at the end of the relevant fiscal year.

The rule now includes a de minimis threshold that exempt disclosure of amounts that aggregate to less than $100,000 in the income statement or less than $500,000 in the balance sheet.

Recoveries §14-02(f)

Registrants must separately disclose—as part of the required contextual information—any recoveries resulting from severe weather events and other natural conditions to reflect the net effect that severe weather events and other natural conditions have on a registrant's financial statements and identify where the recoveries are presented in the income statement and balance sheet.

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2. Carbon Offsets & RECs §14-02(e)

If carbon offsets or RECs have been used as a material component of a registrant's plan to achieve disclosed climate-related targets or goals, the registrant must disclose the following:

- The aggregate amount of carbon offsets and RECs expensed
- The aggregate amount of capitalized carbon offsets and RECs recognized
- The aggregate amount of losses incurred on the capitalized carbon offsets and RECs
- The beginning and ending balances of the capitalized carbon offsets and RECs

These amounts are not subject to the 1% or de minimis disclosure thresholds above. Registrants must separately identify where on the income statement or balance sheet the capitalized costs, expenditures expensed, and losses related to carbon offsets and RECs are presented.

If this disclosure is required, the accounting policy for carbon offsets and RECs also must be disclosed as part of the contextual information.

The expenditure metrics (both severe weather and carbon offsets) do not require any disclosure of the impacts to the statement of cash flows.

B. Financial Estimates & Assumptions §14-02(h)

A registrant would be required to disclose in a single financial statement footnote whether the estimates and assumptions used to produce the consolidated financial statements were **materially impacted by exposures to risks and uncertainties associated with—or known impacts from—any severe weather events and other natural conditions, disclosed climate-related targets, or transition plans**. If so, the registrant would be required to provide a **qualitative** description of how such events have impacted the development of the estimates and assumptions used when preparing financial statements.

Conclusion

Forvis Mazars will continue to follow this developing situation. For some entities, adoption of these climate disclosures will be complex and likely will require significant hours to implement correctly. Forvis Mazars can help educate your team, provide tools to accelerate implementation, and assist with analysis of internal controls, GHG emissions, and attestation. If you would like assistance complying with the final rule, contact one of our professionals.

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