Evolving Regulatory Landscape for Net-Zero and Other Corporate Climate Commitments
October 2024
Sara Dewey

Companies are facing growing risks from climate change, including worsening natural disasters, changing consumer preferences, and an evolving regulatory landscape. These climate-related risks can create financial risks for companies. At the same time, many companies have set greenhouse gas reduction targets, including net-zero goals, but it is often difficult to obtain information about progress companies are making toward those goals. Globally and domestically, regulators are taking steps to require companies to disclose the climate-related risks they face and to provide more information about target setting and planning within the company.

While there is a shift toward mandatory climate-risk and greenhouse gas (GHG) emissions reporting in many jurisdictions, the net-zero regulatory space is highly dynamic. In this paper, we provide an overview of mandatory reporting schemes relevant to many US companies (including those that may operate internationally): the US Securities and Exchange Commission's (SEC) climate-related risk disclosure rule, California's climate disclosure laws, and the European Union's (EU) Corporate Sustainability Reporting Directive (CSRD).

The SEC finalized its climate-related risk disclosure rule in 2024. However, compliance with the rule is on hold as it is litigated in the Eighth Circuit. California passed new laws in late 2023 that require companies doing business in the state to disclose information about their greenhouse gas emissions, climate risks, and use of carbon offsets. The California laws, which are also facing a legal challenge, await implementing rules by the California Air Resources Board (CARB). US companies doing business abroad also need to comply with a growing number of disclosure requirements in other countries, including in the EU as early as 2025.

Below we summarize each of these three rules and the status of the litigation.

US Securities & Exchange Commission climate-related risk disclosure rule
Requirements
In March 2023, the SEC finalized its climate-related risk disclosure rule.[1] The SEC explained that it developed the rule to ensure that investors have information about the business and financial impacts of climate-related risks on companies that may affect the price of securities. The rule requires public companies to disclose information about material climate-related risks in SEC filings to elicit comparable, decision-useful information for investors. Under the rule, companies will need to report on the impacts of climate-related risks on the company's strategy, business model, outlook, and on steps the company has taken to mitigate or adapt, if material. Additionally, companies will report on their governance of climate-related risks, risk management, and climate targets and goals. Companies will report financial information about climate-related risks the company faces, including their costs, expenditures, and losses related to severe weather events. A subset of large companies must also disclose their scopes 1 and 2

---

[1] See Harvard Environmental and Energy Law Program (EELP), The Securities and Exchange Commission Finalizes a Narrower Climate-Related Risk Disclosure Rule.

greenhouse gas emissions, if material. The rule also establishes a safe harbor from private litigation for some of the disclosures.

Legal Challenge
An onslaught of litigation followed the release of the final rule. In March 2024, nine circuit court challenges from industry groups, states, and NGOs were consolidated in the Eighth Circuit.[2] The SEC announced that it would pause compliance with the rule while the litigation proceeds. Petitioners, including conservative states, the US Chamber of Commerce, and energy producer groups, argue that the SEC lacks authority to promulgate the rule under the Securities Act and Exchange Act and that the rule violates the Administrative Procedure Act, which governs the process of federal rulemakings. They also argue that the rule violates the First Amendment because requiring these disclosures amounts to compelled speech on a controversial topic. The SEC argues that it has the legal authority to require companies to disclose information that is necessary for protecting investors, including information about a company's climate risks and related planning. A group of states intervened in support of the rule. Oral argument will be held in coming months and a decision is likely in 2025.

California climate disclosure laws
Requirements
In late 2023, California passed new laws that will require public and private companies that do business in California to disclose their greenhouse gas emissions and climate-related financial risks.[3] The Climate Corporate Data Accountability Act (SB-253), requires entities with annual revenues over $1 billion to disclose their GHG emissions. Regulated companies will start disclosing their scope 1 and 2 emissions in 2026, with scope 3 reporting set to begin in 2027. A second law, Greenhouse Gases: Climate-Related Financial Risk (SB-261), requires entities with total annual revenues over $500 million to post their climate-related financial risks on their websites and describe how they plan to reduce or adapt to those risks. These reporting requirements are set to take effect in 2026.[4] As a first step, the state agency, CARB, will need to write regulations implementing the laws by July 2025.[5]

Legal Challenge
On January 30, 2024, business and industry groups including the US Chamber of Commerce, the California Chamber of Commerce, and the American Farm Bureau Federation filed a complaint in the Central District of California challenging the new laws. The groups argue that the laws violate the First Amendment, principles of federalism, and the dormant Commerce Clause doctrine.[6] California and intervenor states have argued that the state has legal authority to pass

---

[2] *State of Iowa et al. v. SEC*, 8th Circuit Docket No. 24-01522.
[3] The Climate Corporate Data Accountability Act, S.B. 253, 2023-2024 Leg. (Cal. 2023); Greenhouse gases: climate-related financial risk, S.B. 261, 2023-2024 Leg. (Cal. 2023). California also passed a related third law that requires companies to disclose their voluntary carbon offsets and provide evidence supporting their net-zero emissions claims. Voluntary carbon market disclosures, A.B. 1305, 2023-2024 Leg. (Cal. 2023).
[4] See Harvard EELP, The Implementation and Legal Risks of California's New Climate Disclosure Laws.
[5] The California legislature passed S.B. 219 in August 2024 adjusting some of the interim timelines and requirements for implementation. S.B. 219, 2023-2024 Leg. (Cal. 2024).
[6] *Chamber of Commerce v. Randolph,* C.D. Cal., Case No. 2:24-cv-00801. For an overview of these legal arguments, see Harvard EELP's Litigation Updates on California's New Climate Disclosure Laws.

these news laws and that the challengers lack standing to sue because the regulations have not yet been implemented.

European Union and other jurisdictions' climate-related risk disclosure

The EU CSRD requires companies to report broadly on Environmental, Social, and Governance (ESG) issues, including climate change. Companies will report on the social and environmental risks they face and how company actions affect people and the environment. This is a concept known as double materiality — meaning that companies must report not only the impact of climate change on their operations but also how their operations affect the environment, including how they contribute to climate change. Companies will also have to report their scopes 1, 2, and 3 greenhouse gas emissions if they are material under the double materiality standard. Each EU member country sets its own specific reporting rules consistent with the CSRD. The reporting requirements, which went into effect in 2023, will apply to some US companies doing substantial business in the EU in 2025 if they meet two of the three following criteria: they have 250 or more EU-based employees, they have 20 million or more euros in assets, and have 40 million or more euros in revenues in the EU,[7] and the requirements will apply to other non-EU companies in the future.

Other countries, including the United Kingdom, Brazil, Canada, and Japan, have established climate-related risk disclosure requirements as well. Additional countries, including China and India, have proposed requirements. The interoperability of these reporting regimes for companies doing business across the globe is unknown.

Uncertainties

Looking ahead, corporations face uncertainty about what reporting will be required and how it will affect their climate ambitions. Questions include how companies will comply with new requirements and whether ongoing litigation and a shifting political landscape will affect the scope and legal vulnerability of these requirements.

Potential effects of regulation

It is important to consider the possible effects of these emerging regulations on corporate climate ambition. For example, how will the increased transparency prompted by mandatory reporting encourage or discourage corporate climate target setting? Specifically, if the legal obligation to disclose information is triggered only when a company announces a climate target, will regulations create a chilling effect as companies hesitate to set climate targets and goals? Or could this increased transparency ensure that companies are confident about what must be disclosed and that they are providing investors with clear information on the business and financial impacts of climate-related risks? Similarly, for companies that were early movers in setting goals without clear plans to achieve them, will increased transparency from disclosure requirements lead some to weaken their ambitions or to be more candid about the policy or technology hurdles they face in achieving long-term targets?

Depending on the size and scale of operations, public and private companies may be reporting on both a mandatory and voluntary basis to different regulators in multiple jurisdictions on

[7] As of October 2024, this equated to US $21.64 million in assets, and/or US $43.3 million in revenues.

overlapping timelines. As the number of disclosure regimes expands, there is potential for inconsistency and duplication in company reporting. However, as the SEC, CARB, and EU member countries create implementing rules, there is an opportunity for policymakers to consider designing them in ways that align or recognize other reporting regimes.

The US legal and political landscape

There is uncertainty about the legal durability of the US and California regulations in the litigation and the political processes. The upcoming US elections deepen uncertainty about US climate-related risk reporting in the near term, especially given the political backlash on Capitol Hill and in state houses against ESG priorities.

In the challenge to the SEC rule, final briefs were filed in October 2024 with oral argument yet to be scheduled. Depending on the outcome of the November presidential election, the new administration could defend or do away with the SEC's rule. In the California litigation, briefing is complete and the judge is expected to issue a decision in the coming months. Regardless of this domestic uncertainty, many US companies already report voluntarily and many may need to report in the EU and other jurisdictions as mandatory reporting expands.

The Harvard Environmental & Energy Law Program's Financial Regulation, Climate Change, and Climate-related Risk Disclosure tracker provides timely regulatory and litigation updates.