SmartSuite

Framework / Cybersecurity / Other

SEC Cybersecurity Disclosure Rule – Item 1.05 (Form 8-K) / Item 106 (Reg. S-K) – 2023

SEC rules (Release 33-11216) requiring Form 8-K Item 1.05 disclosure of material cybersecurity incidents within four business days and annual Regulation S-K Item 106 disclosure.



What it is

The SEC Cybersecurity Disclosure Rules are the amendments adopted in Release Nos. 33-11216 and 34-97989 on July 26, 2023 and published at 88 FR 51896 on August 4, 2023 that require every company reporting under the Securities Exchange Act of 1934 to disclose a material cybersecurity incident on Form 8-K Item 1.05 within four business days of determining that it is material, and to describe its cybersecurity risk management, strategy and governance each year under Regulation S-K Item 106 (foreign private issuers under Form 20-F Item 16K and Form 6-K). The rules took effect on September 5, 2023.

At a glance

PUBLISHER U.S. Securities and Exchange Commission (SEC)	TYPE Regulation	VERSION Release Nos. 33-11216 and 34-97989 (88 FR 51896, August 4, 2023)
EFFECTIVE September 5, 2023 (Item 106 and Item 16K for fiscal years ending on or after December 15, 2023; Item 1.05 from December 18, 2023, smaller reporting companies from June 15, 2024)	DOMAIN Cybersecurity	FAMILY Other
REGION United States	ADOPTION MODEL Regulatory Compliance	IMPLEMENTATION COMPLEXITY Medium

Source: federalregister.gov/documents/2023/08/04/2023-16194/cybersecurity-risk-management-strategy-governance-and-incident-disclosure

Why it matters

- **A fixed incident clock** Item 1.05 is due within four business days of determining that an incident is material; Instruction 2 requires an amendment within four business days once information that was undetermined at filing becomes known.
- **A narrow national security delay** Item 1.05(c) allows delay only if the U.S. Attorney General determines that disclosure poses a substantial risk to national security or public safety and notifies the Commission in writing: up to 30 days, a further 30, and 60 more in extraordinary circumstances.
- **Risk program disclosure (Item 106(b))** The registrant describes its processes, if any, for assessing, identifying and managing material risks from cybersecurity threats, and whether any such risk has materially affected or is reasonably likely to materially affect it.
- **Governance disclosure (Item 106(c))** Board oversight and any committee or subcommittee responsible, management positions or committees responsible and their relevant expertise, how they are informed of and monitor incidents, and whether they report to the board.

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How SmartSuite supports SEC Cybersecurity Disclosure Rules (Form 8-K Item 1.05 and Regulation S-K Item 106)

Incident Record and Materiality Workflow

Capture discovery, assessment, the materiality determination and its date, the four-business-day deadline and the Item 1.05 or Item 8.01 decision with the people who made it.

Attorney General Delay Tracking

Log any Department of Justice consultation, the written determination, the 30, 30 and 60 day periods and the filing date that follows, as C&DIs 104B.01 to 104B.03 describe.

Item 106(b) Program Evidence

Link the risk assessment, the assessors and auditors engaged and the controls to the sentences of the annual disclosure in Cyber & IT Risk.

Third-Party Service Provider Oversight

Track the providers whose systems hold company data, their assessments and incidents in Third Party Risk Management, the source of the Item 106(b)(1)(iii) disclosure.

Board and Management Governance

Record board and committee briefings, management roles and expertise and the reporting line Item 106(c) asks for, with minutes attached.

Amendments and Annual Refresh

Schedule Item 1.05 amendments when undetermined information arrives and the annual Item 106 and Item 16K review before each Form 10-K or 20-F.

Common framework mappings

CIS Controls v8.1 · COSO IC 2013 · ISO 27001:2022 · NIST CSF 2.0 · NIST 800-53 Rev.5 · NYDFS 23 NYCRR 500 · SOX · SOC 2

Official resources

SEC Cybersecurity Disclosure Rule Summary

Outlines the key requirements and implications of the SEC's 2023 Cybersecurity Disclosure Rule.

sec.gov/securities-topics/cybersecurity

Federal Register: Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure (88 FR 51896)

The SEC's adopting release of July 26, 2023 as published on August 4, 2023, with the effective and compliance dates.

federalregister.gov/documents/2023/08/04/2023-16194/cybersecurity-risk-management-strategy-governance-and-incident-disclosure

Frequently asked questions

When is a Form 8-K under Item 1.05 due?

Within four business days after the registrant determines that a cybersecurity incident is material, not four days after discovery. Instruction 1 to Item 1.05 requires the materiality determination to be made without unreasonable delay after discovery. If information required by Item 1.05(a) is not determined or is unavailable at filing, the registrant says so and files an amendment within four business days after it determines or receives that information (Instruction 2).

Can the disclosure be delayed for national security reasons?

Only under Item 1.05(c): if the U.S. Attorney General determines that disclosure poses a substantial risk to national security or public safety and notifies the Commission in writing, the registrant may delay for up to 30 days, a further 30 days on a second determination, and a final 60 days in extraordinary circumstances; beyond that only a Commission exemptive order can extend it. C&DIs 104B.01 to 104B.03 (December 2023) say that if the Attorney General declines or does not respond, the four-business-day deadline stands.

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What must the annual Item 106 disclosure cover?

Item 106(b)(1) asks for the registrant's processes, if any, for assessing, identifying and managing material risks from cybersecurity threats, addressing whether they are integrated into overall risk management, whether assessors, consultants, auditors or other third parties are engaged, and whether there are processes to oversee risks from third-party service providers; Item 106(b)(2) asks whether such risks, including from previous incidents, have materially affected or are reasonably likely to affect the registrant. Item 106(c) asks for board oversight, any responsible committee, management's role and expertise, how incidents are monitored and whether management reports to the board.

What are the compliance dates, including for smaller reporting companies?

The rules took effect on September 5, 2023. Item 106 and Form 20-F Item 16K applied from annual reports for fiscal years ending on or after December 15, 2023. Form 8-K Item 1.05 and the Form 6-K change applied from December 18, 2023 for all registrants other than smaller reporting companies, which had an additional 180 days, to June 15, 2024. Inline XBRL tagging began one year after each initial compliance date, for annual reports from fiscal years ending on or after December 15, 2024 (Section II.I of the release).

What if an incident has not yet been determined material, or a ransom has been paid?

The Division of Corporation Finance's statement of May 21, 2024 asks companies that choose to disclose an incident before a materiality determination, or one found immaterial, to use Item 8.01 rather than Item 1.05, and to file Item 1.05 within four business days if the incident is later determined material. C&DIs 104B.05 to 104B.08 (June 24, 2024) say that paying a ransom and ending the incident, or being reimbursed by insurance, does not remove the duty to assess materiality, and 104B.09 says a series of related immaterial incidents may together require Item 1.05 disclosure.

License included / downloadable: Yes The adopting release and the rule text are U.S. federal publications available free from the SEC and the Federal Register; the platform links to the official text.

Full framework page and mappings: smartsuite.com/frameworks/sec-cybersecurity-disclosure-rule-2023-item-105-form-8k-item-106-reg