

# Materiality in Regulation S-K 1300 Technical Reports

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# Background

- > Past and current SEC rules are based on Industry Guide 7, which was last revised in the early 1980s
- > Industry lobbied for change (e.g., SME's 2012 petition)
- > SEC proposed rules in 2016 with request for public comments
- > Final rules published Oct. 13, 2018 (FR version Dec. 26, 2018)



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October 1, 2012

Ms. Elizabeth M. Murphy  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549

Re: Amendment to Industry Guide 7—Petition for Rulemaking

Dear Ms. Murphy:

The Society for Mining, Metallurgy and Exploration, Inc. respectfully petitions the Securities and Exchange Commission, pursuant to Rule 192(a) of the Rules of Practice, to amend Industry Guide 7, which contains the SEC's basic disclosure policy for mining companies.

SME is a professional society (and nonprofit, Internal Revenue Code section 501(c)(3) corporation) whose nearly 15,000 members represent professionals serving the minerals industry in more than eighty-five countries. SME members are engineers, geologists, metallurgists, educators, students, and researchers. SME advances the worldwide minerals community through information exchange and professional development.

SME and the mining industry have been working diligently with the SEC for a number of years to try to clarify and update Guide 7 to no avail. It is vital for the SEC to move forward in the near-term to realign the U.S. reporting regime for mining companies both for the protection of investors and removal of competitive harm to U.S. mining companies.

SME stands at the ready to work with you and your staff to resolve this critically important issue for U.S.-based mining companies.

Please contact me if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "David L. Kanagy".

David L. Kanagy, CAE  
Executive Director

# Purpose of the Rule

1. To modernize the property disclosure requirements for mining registrants
2. To provide investors with a more comprehensive understanding of a registrant's mining properties
3. To more closely align the Commission's disclosure requirements and policies for mining properties with current industry and global regulatory practices and standards

# Summary of the new rule

- > Rescinds Industry Guide 7
- > Consolidates all mining property disclosure into one standard (Regulation S-K 1300 – 17 CFR 229.1300)
- > Requires certain disclosures by all registrants with material mining operations



# General framework

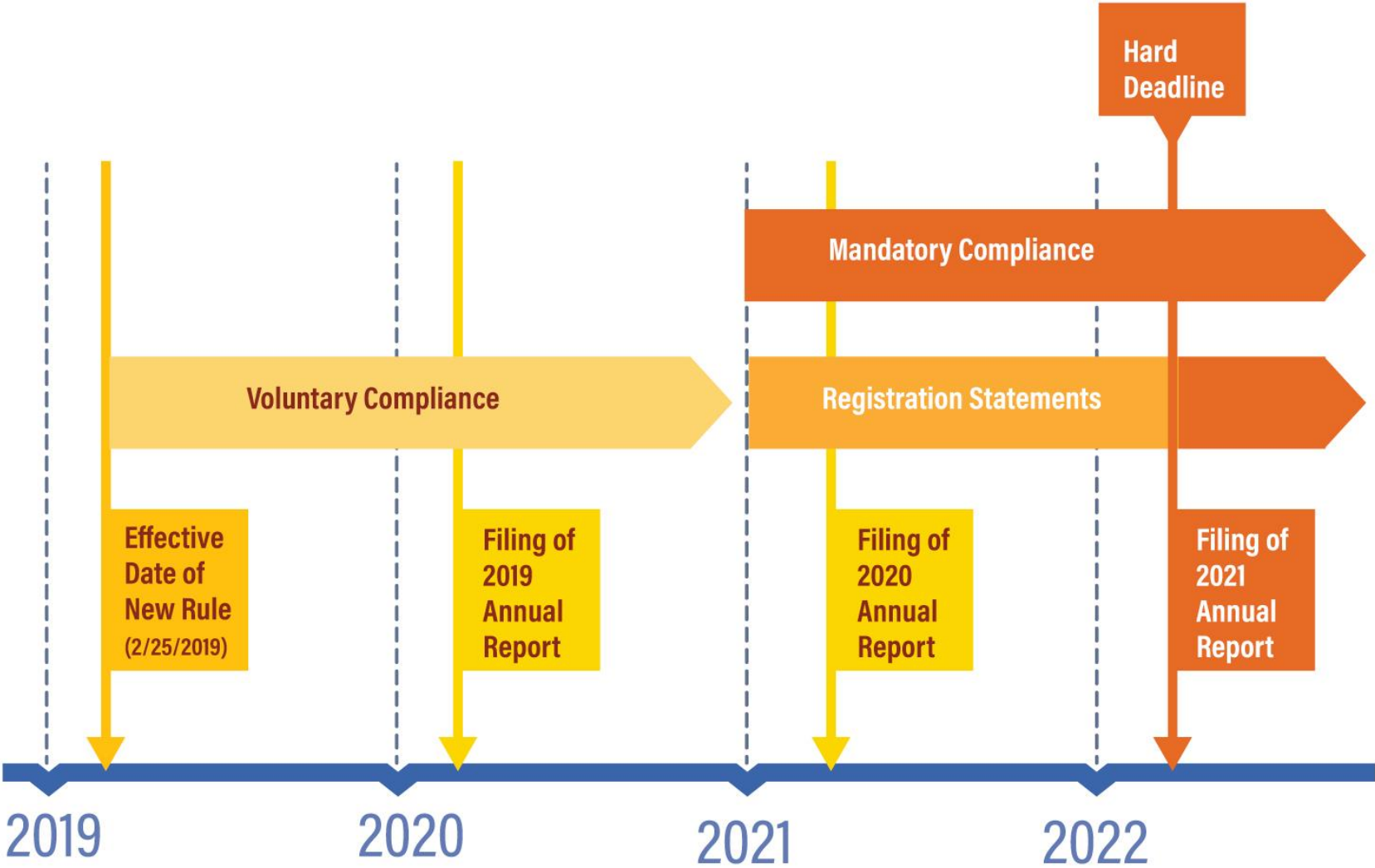
S-K 1300 requires registrant's with material mining operations to provide:

- > Summary disclosure on all of a registrant's mining properties
- > Individual property disclosure for each material property
  - Exploration activity & results (voluntary until it becomes material to investors)
  - Mineral resources
  - Mineral reserves
  - File a technical report summary as an exhibit to support disclosure of mineral resources & reserves (optional for disclosure of exploration results)
- > Internal controls disclosure

# Implementation timeline

Registrants must comply with the rule for the first fiscal year beginning on or after January 1, 2021.





# TRS Requirements

- > A registrant must file a TRS as an exhibit to the relevant filing when disclosing for the first time mineral reserves or resources or when there is a material change in the mineral reserves or mineral resources from the last TRS.
- > A registrant could elect to file a TRS in support of disclosure exploration results
  - If a registrant files a TRS to support the disclosure of exploration results, it must also file a TRS when there is a material change in the exploration results.



# TRS Requirements

Item	Description	Item	Description
1	Executive summary	9	Data verification
2	Introduction	10	Mineral processing and metallurgical testing
3	Property description	11	Mineral resource estimates
4	Accessibility, climate, local resources, infrastructure and physiography	12	Mineral reserve estimates
5	History	13	Mining methods
6	Geological setting, mineralization, and deposit	14	Processing and recovery methods
7	Exploration	15	Infrastructure
8	Sample preparation, analyses, and security	16	Market studies

# TRS Requirements

Item	Description	Item	Description
17	Environmental studies, permitting, and plans, negotiations, or agreements with local individuals or groups	21	Other relevant data and information
18	Capital and operating costs	22	Interpretation and conclusions
19	Economic analysis	23	Recommendations
20	Adjacent properties	24	References
		25	Reliance on information provided by the registrant (Item 1302(f)(2))



# TRS Requirements

17 CFR § 229.601(b)(96)(iii)(B)

“A qualified person must include the following information in the technical report summary, as required by paragraph (b)(96)(iii)(A) of this section, to the extent the information is material.”

# Materiality

- > Securities Act Rule 405 and Exchange Act Rule 12b-2: “a matter is material if there is a substantial likelihood that a reasonable investor would attach importance to it in determining whether to buy or sell the securities registered.”
- > Information is material if, in the total mix of information, it will affect a reasonable investor’s evaluation of the property
- > S-K 1300 already envisages certain information to be material
  - E.g., commodity prices

# Materiality in TRS

- > Materiality for TRS should be evaluated on the basis of what is material to the success of the particular project
- > The logic is, if it is material to the success of a material property then it is material to the business



# Materiality in TRS

- > QPs should apply this standard to each section in the TRS
- > What is material will depend on the particular facts and circumstances
- > The SEC recognizes this in the rule, e.g., market studies

“The provision further states that, in certain circumstances, the determination of mineral reserves may require the completion of at least a preliminary market study, in the context of a pre-feasibility study, or a final market study, in the context of a feasibility study, to support the qualified person’s conclusions about the chances of obtaining revenues from sales. For example, a preliminary or final market study would be required where the mine’s product cannot be traded on an exchange, there is no other established market for the product, and no sales contract exists.<sup>892</sup> Although one commenter opposed the proposed requirement to obtain a preliminary or final market study on the grounds that it could compel the disclosure in the technical report summary of commercially

# Materiality in TRS

## Adopting Release

“The provision further states that, in certain circumstances, the determination of mineral reserves may require the completion of at least a preliminary market study, in the context of a pre-feasibility study, or a final market study, in the context of a feasibility study, to support the qualified person’s conclusions about the chances of obtaining revenues from sales. For example, a preliminary or final market study would be required where the mine’s product cannot be traded on an exchange, there is no other established market for the product, and no sales contract exists.<sup>892</sup> Although one commenter opposed the proposed requirement to obtain a preliminary or final market study on the grounds that it could compel the disclosure in the technical report summary of commercially sensitive information,<sup>893</sup> the final rules do not require the disclosure of all of the details of a market study. As with exploration results, a registrant only has a duty to disclose the details that are material to investors.”

# Takeaways

S-K 1300 TRS requirements require QPs to include material information

QPs will carry liability for material omissions or mis-statements

Educate yourself



# Questions?

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Complying with the

## New SEC Mining Reporting Rule

Regulation S-K 1300

VIRTUAL SHORT COURSE

### DATES:

Instruction

March 23 – 26, 2021

9:00 am – 1:30 pm US Central Time Daily

Course Project Presentations

April 2, 2021

9:00 – 11:00 am US Central Time

### INSTRUCTOR:

Kwame Awuah-Offei, PhD, PE and SEC mining engineering academic fellow (2015-2016) involved in Regulation S-K 1300 rulemaking.

<https://sphinxminingsystems.com/courses/>