

## **EPA Comment on SEC Proposed Rule**

EPA appreciates the opportunity to comment on the SEC Proposed Climate Risk Disclosure Rule and specifically to clarify our role and distinguish it from what SEC is proposing.

Some stakeholders have indicated that EPA already requires some of the information called for in the SEC Proposed SEC Climate Risk Disclosure rule. For example, the Mercatus Institute states that “[t]he natural question is why the SEC feels compelled to require its own GHG emissions disclosures when the EPA already has a public reporting program that covers 85-90% of all GHG emissions from over 8,000 facilities in the United States.”<sup>1</sup> EPA is providing comments to clarify the substantial differences between the goals and requirements of its Greenhouse Gas Reporting Program (GHGRP) and the program proposed in the SEC Proposed Rule.

Section IV.A.3 of the SEC Proposed Rule discusses existing state and Federal laws that require climate-related reporting, including the EPA’s GHGRP. Although that section briefly discusses some of the differences between the proposed climate disclosures and EPA’s GHGRP (as well as EPA’s GHG Inventory), it is useful to further outline the differences. In short, the two programs have different statutory authorizations and purposes, regulate different entities, collect different information, and would use that data in different ways. We summarize several key differences below to better characterize these distinctions.

### **GHGRP Background**

As directed by Congress<sup>2</sup> and under Clean Air Act authority,<sup>3</sup> the EPA’s Greenhouse Gas Reporting Program (GHGRP) currently collects greenhouse gas data from certain sources including large direct greenhouse gas emitters, fuel and industrial gas suppliers, and carbon dioxide injection sites in the United States. EPA is authorized to collect this data “[f]or the purpose of developing or assisting in the development of” standards, regulations, and plans to control air pollution under the CAA. 42 U.S.C. 7414(a); *see* 42.U.S.C. 7521; 74 Fed. Reg. 56260 (Oct. 30, 2009) (final rule establishing EPA’s greenhouse gas reporting program and explaining purpose: “because such data will inform and are relevant to EPA’s carrying out a wide variety of CAA provisions”). The Clean Air Act provides EPA broad authority to require the information mandated by the GHGRP regulations, as such data informs and is relevant to EPA’s administration of a wide variety of Clean Air Act provisions. The Clean Air Act authority for reporting and the purpose of the GHGRP are distinct from those of the SEC’s proposed rule.

Facilities in a total of 41 source categories (i.e., industrial sectors and GHG suppliers) are currently covered by the GHGRP. Facilities or suppliers are generally required to submit annual reports if they meet the requirements specified in 40 CFR Part 98, which as described below, include a reporting threshold generally based on the quantity of emissions from the facility. Facilities calculate their emissions or supplies using methodologies that are specified at 40 CFR Part 98 and they report their data to EPA electronically. The specified methodologies are uniquely tailored to each individual industrial sector. Annual reports covering emissions or supplies from the prior calendar year are due by

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<sup>1</sup> <https://www.mercatus.org/publications/financial-regulation/adopting-secs-proposed-climate-change-disclosure-rules-would-be>

<sup>2</sup> Fiscal Year 2008 Consolidated Appropriations Act.

<sup>3</sup> *See, e.g.*, Clean Air Act section 114.

March 31 of each year. Once data are submitted, EPA conducts a multi-step verification process to ensure reported data are accurate, complete, and consistent. The reported data are made available to the public in the fall of each year through several data portals accessible via the EPA's website. For more information, see: <https://www.epa.gov/ghgreporting>.

On April 29, 2022, EPA Administrator Michael Regan signed a proposed action to revise specific provisions of the GHGRP to improve the quality of the data collected under the program by addressing changes in industry practices; adopting updated calculation and monitoring methodologies; and collecting new data to address data gaps. The proposal also includes a request for comment on potentially expanding the GHGRP to several new source categories. These proposed amendments would enhance the quality of the data collected so that the GHGRP can continue to inform the development of greenhouse gas policies and programs under the Clean Air Act and serve as an important tool for the Agency and the public to understand greenhouse gas emissions from facilities covered by the GHGRP nationwide. For more information, see: <https://www.epa.gov/ghgreporting/rulemaking-notice-ghg-reporting>.

### **GHG Inventory Background**

The EPA has prepared the Inventory of U.S. Greenhouse Gas Emissions and Sinks (GHG Inventory) since the early 1990s. This annual report provides a comprehensive accounting of total greenhouse gas emissions for all anthropogenic sources in the United States. The most recent GHG Inventory covers 1990–2020 and was published in April 2022. The GHG Inventory is submitted to the United Nations to meet annual commitments under the United Nations Framework Convention on Climate Change (UNFCCC). In 1988, preceding the creation of the UNFCCC, the World Meteorological Organization (WMO) and the United Nations Environment Programme (UNEP) jointly established the Intergovernmental Panel on Climate Change (IPCC). One of the roles of the IPCC is to develop guidelines for national greenhouse gas inventories to ensure that the emission inventories submitted to the UNFCCC are consistent and comparable between nations.

The GHGRP dataset is an important resource for the GHG Inventory. EPA uses GHGRP data in a number of categories to improve the national estimates, consistent with IPCC guidance. Methodologies used in the GHGRP are consistent with methods in 2006 IPCC Guidelines, in particular “higher tier” methods which include collecting facility or plant-specific measurements. The GHGRP provides not only annual emissions information for reporting facilities and suppliers, but also other annual information, such as activity data and emission factors that can be used to improve and refine national emission estimates for the GHG Inventory and trends over time.

### **Authority and Purpose of Proposed SEC rule**

As discussed in the Proposed SEC Rule, the legal authority for the rule would derive from the Securities Act, the Exchange Act, and their subsequent amendments. Under Section 7 of the Securities Act [15 U.S.C. 77g] and Sections 12, 13, and 15 of the Exchange Act [15 U.S.C. 78l, 78m, and 78o], the Commission has broad authority to promulgate disclosure requirements that are “necessary or appropriate in the public interest or for the protection of investors.”

As discussed above, the GHGRP, developed by EPA under its Clean Air Act authority, informs the development of greenhouse gas policies and programs under the Clean Air Act, and serves as an

important tool for the Agency and the public to understand greenhouse gas emissions from facilities covered by the GHGRP nationwide. This is distinct from the purposes of the SEC’s Proposed Rule, which is intended to enhance and standardize climate-related disclosures to address investor needs and help issuers more efficiently and effectively disclose climate-related risks, benefitting both investors and issuers.<sup>4</sup>

### **Comparison of Reporting Requirements**

The nature of the information that would be reported under SEC’s proposed climate risk disclosure rule versus EPA’s GHGRP is notably different. The EPA GHGRP requires certain facilities to report their emissions of GHGs while the Proposed SEC Rule requires registrants to disclose information about climate-related risks, which includes information on GHG emissions.<sup>5</sup> The table below delineates distinctions in the reporting requirements.

	<b>SEC Proposal</b>	<b>EPA GHGRP</b>
<b>Level of reporting</b>	Firm-level	Facility-level for direct emitters and producers; firm-level for importers and exporters.
<b>Universe of facilities</b>	Publicly traded firms, regardless of their emissions level.	Facilities and GHG and fuel suppliers that fall into one or more of 41 industrial categories and that, in general, emit or supply 25,000 metric tons CO <sub>2</sub> equivalent or more (discussed further below).
<b>Third Party Verification</b>	Yes, for Scope 1 and 2	No, EPA verifies.
<b>Threshold for reporting</b>	Different categories or timelines depending on size and status – groups include: Large Accelerated Filers, Accelerated Filers, Non-Accelerated Filers, and Smaller Reporting Companies (SRCs)	Facilities or suppliers are generally considered to exceed the threshold if: <ul style="list-style-type: none"> <li>• GHG emissions from covered sources exceed 25,000 metric tons CO<sub>2</sub>e per year, or</li> <li>• Supply of certain products would result in over 25,000 metric tons CO<sub>2</sub>e of GHG emissions if those products were released, combusted, or oxidized.</li> </ul> For facilities and suppliers in some industrial categories, there is no threshold for initial reporting, but these facilities and suppliers may exit the program if their emissions or supplies fall under 15,000 metric tons CO <sub>2</sub> e for three consecutive years or under 25,000 metric tons CO <sub>2</sub> e for five consecutive years.

<sup>4</sup> U.S. Security and Exchange Commission Fact Sheet on Enhancement and Standardization of Climate-Related Disclosures <https://www.sec.gov/files/33-11042-fact-sheet.pdf>

<sup>5</sup> The SEC Proposed Rule requires climate-related information beyond emissions, like climate scenario risk analysis, to assess financial risk to investors more broadly from climate change transition and physical risks.

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<b>Scope of emissions</b>	Scope 1 and 2. Scope 3 for some firms.	At this time: Scope 1 for direct emitters, while suppliers report the quantities they supply, similar to downstream Scope 3 reporting. <sup>6</sup>
<b>Types of gases</b>	Carbon dioxide (CO <sub>2</sub> ); methane (CH <sub>4</sub> ); nitrous oxide (N <sub>2</sub> O); hydrofluorocarbons (HFCs); perfluorocarbons (PFCs); and sulfur hexafluoride (SF <sub>6</sub> ); nitrogen trifluoride (NF <sub>3</sub> )	Carbon dioxide (CO <sub>2</sub> ); methane (CH <sub>4</sub> ); nitrous oxide (N <sub>2</sub> O); hydrofluorocarbons (HFCs), perfluorinated compounds (PFCs); sulfur hexafluoride (SF <sub>6</sub> ), nitrogen trifluoride (NF <sub>3</sub> ) and multiple additional fluorinated greenhouse gases.
<b>Domestic vs international emissions</b>	Domestic and international firms (especially considering Scope 3).	Facilities and GHG suppliers located in the U.S. and its territories.

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<sup>6</sup> In addition, the proposed revisions to part 98 signed by EPA's Administrator on April 29 include a request for comment on potentially expanding the GHGRP to require reporters to submit information on their annual energy consumption at the facility level.