

**SUPPORTING STATEMENT FOR THE PAPERWORK REDUCTION ACT  
INFORMATION COLLECTION SUBMISSION FOR FINAL RULES UNDER THE  
SECURITIES EXCHANGE ACT OF 1934 AND DODD-FRANK WALL STREET  
REFORM AND CONSUMER PROTECTION ACT**

This supporting statement is part of a submission under the Paperwork Reduction Act of 1995, 44 U.S.C. §3501, *et seq.*

**A. JUSTIFICATION**

**1. CIRCUMSTANCES MAKING THE COLLECTION OF INFORMATION  
NECESSARY**

In Securities Act Release No. 34-78167 (the “Adopting Release”), the Commission adopted amendments to Form SD to implement Section 13(q) of the Securities Exchange Act of 1934 (the “Exchange Act”).<sup>1</sup> Section 13(q) was added by Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”). Section 13(q) requires the Commission to issue rules requiring resource extraction issuers to include in an annual report information relating to certain payments made by the issuer, a subsidiary of the issuer, or an entity under the control of the issuer, to a foreign government or the federal government for the purpose of the commercial development of oil, natural gas, or minerals. Section 13(q) requires a resource extraction issuer to provide information about the type and total amount of certain payments made for each project related to the commercial development of oil, natural gas, or minerals, and the type and total amount of payments made to each government. In addition, Section 13(q) requires a resource extraction issuer to provide information regarding those payments in an interactive data format.

The amendments contain “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995. The title of the collection of information is:

- “Form SD” (OMB Control No. 3235-0697).

**2. PURPOSE AND USE OF THE INFORMATION COLLECTION**

The purpose of the new regulation is to implement Section 1504 of the Dodd-Frank Act, which added new Section 13(q) to the Exchange Act. As discussed above, Section 13(q) requires the Commission to issue rules requiring resource extraction issuers to include in an annual report information relating to any payment made by the issuer, a subsidiary of the issuer, or an entity under the control of the issuer, to a foreign government or the federal government for the purpose of the commercial development of oil, natural gas, or minerals. A primary goal of such transparency is to help empower citizens of those resource-rich countries to hold their governments accountable for the wealth generated by those resources. To accomplish this goal, Congress created a disclosure regime in Exchange Act Section 13(q) that would support the

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<sup>1</sup> Disclosure of Payments by Resource Extraction Issuers, Release No. 34-78167 (June 27, 2016).

commitment of the U.S. federal government to international transparency promotion efforts relating to the commercial development of oil, natural gas, or minerals.

### **3. CONSIDERATION GIVEN TO INFORMATION TECHNOLOGY**

Form SD is filed electronically with the Commission using the Commission's Electronic Data Gathering and Retrieval (EDGAR) system.

### **4. DUPLICATION OF INFORMATION**

The Commission makes every effort to coordinate with other regulatory entities when necessary or appropriate in the public's interest and for the protection of investors and to streamline regulations to enhance the production of capital. We are not aware of any forms or rules that conflict with or substantially duplicate the requirements of Form SD.

### **5. REDUCING THE BURDEN ON SMALL ENTITIES**

Form SD applies to all issuers that are required to file annual reports with the Commission under Section 13(a) or Section 15(d) of the Exchange Act, and that are engaged in the commercial development of oil, natural gas, or minerals. The requirements of the regulation do not vary based on the size of the issuer. The Commission believes that the rules will impact some small entities that meet the definition of resource extraction issuer under Section 13(q).

### **6. CONSEQUENCES OF NOT CONDUCTING COLLECTION**

Congress elected to use the disclosure requirements in the securities laws to increase the transparency of payments made by oil, natural gas, and mining companies to governments for the purpose of the commercial development of their oil, natural gas, and minerals. A primary goal of such transparency is to help empower citizens of those resource-rich countries to hold their governments accountable for the wealth generated by those resources. To accomplish this goal, Congress created a disclosure regime in Exchange Act Section 13(q) that would support the commitment of the U.S. federal government to international transparency promotion efforts relating to the commercial development of oil, natural gas, or minerals. The new rule and amendment to Form SD implement Exchange Act Section 13(q) by setting forth the disclosure requirements for resource extraction issuers. Failure to require the collection of information would frustrate the statutory intent of Section 1504 of the Dodd-Frank Act and Exchange Act Section 13(q).

### **7. SPECIAL CIRCUMSTANCES**

None.

### **8. CONSULTATIONS WITH PERSONS OUTSIDE THE AGENCY**

The Commission issued Securities Act Release No. 34-76620 (the "Proposing Release") soliciting comment on the new "collection of information" requirements and associated

paperwork burdens.<sup>2</sup> In response to the solicitation for comment in the Proposing Release, issuers, investors, industry groups, civil society organizations and other market participants provided comments. The Commission did not receive any comments that addressed the overall burden estimates for the proposed amendments, but one commenter questioned the basis for using \$400 per hour as the cost for outside professionals retained by issuers.<sup>3</sup> This commenter used \$150 per hour in its analysis based on a rounded multiple of the hourly mean wage for accountants and auditors in the field of Management, Scientific, and Technical Consulting Services (\$37.27 x 3 = 111.81, rounded up to \$150). In the Adopting Release we disagreed with this \$150 estimate because that rate did not factor in the outside professional costs associated with preparing a document subject to potential liability under applicable securities laws. Resource extraction issuers likely will seek the advice of attorneys to mitigate the risks associated with such liability, as well as to help them comply with the rule and form requirements. Thus, we continue to use the \$400 per hour estimate.

In addition, the Commission and staff participated in ongoing dialogue with representatives of various interested parties through public conferences, roundtables and meetings. The Commission considered all comments received prior to publishing the final rule as required by 5 C.F.R. 1320.11(f). Comments received on the proposal are available at <https://www.sec.gov/comments/s7-25-15/s72515.shtml>.

## **9. PAYMENT OR GIFT TO RESPONDENTS**

Not applicable.

## **10. CONFIDENTIALITY**

The rules do not prevent requests for confidential treatment from being made under the Commission's existing rules. Otherwise, the collection of information is a public document.

## **11. SENSITIVE QUESTIONS**

No information of a sensitive nature would be required under this collection of information. The information collection collects basic Personally Identifiable Information ("PII") that may include: name; business address; residential address (for sole proprietor only); telephone/cellular/facsimile number; email address; and Tax ID Number ("TIN"). The information collection is covered under the Systems of Records Notice (SORN), which may be found at the following link: <https://www.sec.gov/about/privacy/sorn/secsorn6.pdf>. The Privacy Impact Assessment ("PIA") is provided as a supplementary document.

## **12/13. BURDEN OF INFORMATION COLLECTION AND COSTS TO RESPONDENTS**

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<sup>2</sup> See Release No. 34-76620.

<sup>3</sup> See letter from Claihan Environmental (Feb. 16, 2016).

The estimated burden hours and cost burden are made solely for the purposes of the Paperwork Reduction Act and represent the average burden for all issuers. The cost burden is not derived from a comprehensive or even a representative survey of the costs of Commission rules and forms.

Form SD is currently estimated to have a total burden of 311,437 hours with 864 responses per year. The current estimate includes burden estimates for Form SD associated with complying with Section 13(p). Table 1 illustrates the current estimated total annual compliance burden, in hours and in costs, of the collection of information pursuant to Form SD.

**Table 1. Estimated paperwork burden under Form SD, prior to amendments relating to Form SD**

	Number of responses	Burden hours/form	Total burden hours	Internal issuer time	External professional time	Professional costs
Form SD	864	480.61	311,437	233,577.75	77,859.25	\$41,523,840

We believe that the amendments relating to Form SD will increase the current estimated paperwork burden of the form shown in Table 1 above by adding the estimated burden associated with complying with Section 13(q). For purposes of the Paperwork Reduction Act, we estimate that the burden to prepare and file Form SD for purposes of the rules is 667 hours for the 425 issuers that we estimate would bear the full costs of compliance with the rules and approximately 33 hours for the 192 issuers that we estimate would not bear the full costs of compliance due to their compliance with similar rules in foreign jurisdictions. We also estimate that the overall number of Form SD filings would increase from the current estimate of 864 per year to 1,481 per year.

We estimate that, for the amendments, 75% of the hours per response is prepared internally by the issuer for an annual total internal reporting burden for the amendments of approximately 217,408.65 hours ( $\{[667 \text{ hours per response} \times 425 \text{ responses}] + [33.35 \text{ hours per response} \times 192 \text{ responses}]\} \times 0.75$ ). When adding this to the existing internal reporting burden associated with complying with Section 13(p) (see Table 1 above), the total internal reporting burden for Form SD is 450,986.4 ( $233,577.75 + 217,408.65$ ). We estimate that, for the amendments, 25% of the hours per response is prepared by outside professionals retained by the issuer at a cost of \$400 per hour. In addition, we estimate that initial compliance costs would include \$100,000 for IT consulting, training, and travel costs. These additional IT costs would not apply to the 192 issuers that we estimate would not bear the full costs of compliance, because those issuers would already have IT systems in place to comply with foreign laws. Thus, we estimate a total cost burden for the amendments of \$71,487,820 ( $((667 \text{ hours per response} \times 425 \text{ responses}) + (33.35 \text{ hours per response} \times 192 \text{ responses})) \times 0.25 \times \$400 + (\$100,000 \times 425)$ ). When adding this to the existing total cost burden associated with complying with Section 13(p), the total cost burden is \$113,011,660 ( $\$41,523,840 + \$71,487,820$ ). Table 2 illustrates the estimated total annual compliance burden, in hours and in costs, of the collection of information pursuant to Form SD following these amendments, including compliance with both Section 13(p) and Section 13(q).

**Table 2. Estimated paperwork burden under Form SD, post-amendments relating to Form SD**

	Number of responses	Burden hours/form	Total burden hours	Internal issuer time	External professional time	Professional costs
Form SD	1,481	406	601,315.2	450,986.4	150,328.8	\$113,011,660

#### **14. COSTS TO FEDERAL GOVERNMENT**

We estimate that the cost of preparing the amendments would be approximately \$150,000.

#### **15. REASON FOR CHANGE IN BURDEN**

As explained in further detail in Items 12 and 13 above, the increase in burden for Form SD corresponds to new disclosure requirements for resource extraction issuers. These disclosure requirements implement Section 13(q) by requiring resource extraction issuers to include in an annual report information about certain payments made to foreign governments and the U.S. federal government. As discussed above, the approximately 1,481 issuers required to file on Form SD annually would increase the current paperwork burden under Form SD from 311,437 hours to 601,315.2 hours, an increase of 289,878 hours. There would be a corresponding increase of \$71,487,820 in cost burden.

#### **16. INFORMATION COLLECTION PLANNED FOR STATISTICAL PURPOSES**

Not applicable.

#### **17. APPROVAL TO OMIT EXPIRATION DATE**

We request authorization to omit the expiration date on the electronic version of Form SD for design and scheduling reasons. Including the expiration date on the electronic version of the form will result in increased costs, because the need to make changes to the form may not follow the EDGAR application's scheduled version release dates. The OMB control number will be displayed.

#### **18. EXCEPTIONS TO CERTIFICATION FOR PAPERWORK REDUCTION ACT SUBMISSIONS**

Not applicable.

### **B. STATISTICAL METHODS**

Not applicable.