

**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 Exchange Act Release No. 34-90679 (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”).¹ 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 Commission previously adopted rules under Section 13(q) in 2016,² but those rules were disapproved by a joint resolution of Congress in 2017.³ Although the joint resolution vacated the 2016 Rules, the statutory mandate under Section 13(q) of the Exchange Act remained in effect. Therefore, the Commission proposed new Section 13(q) rules in December, 2019,⁴ and adopted those rules largely as proposed in December, 2020.

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).

¹ *Disclosure of Payments by Resource Extraction Issuers*, Release No. 34-90679 (Dec. 16, 2020).

² See Release No. 34-78167 (June 27, 2016) [81 FR 49359 (July 27, 2016)] (“2016 Rules Adopting Release”).

³ See H.R.J. Res. 41, 115th Cong. (2017) (enacted).

⁴ See Release No. 34-87783 (Dec. 18, 2019) [85 FR 2522 (Jan. 15, 2020)].

2. PURPOSE AND USE OF THE INFORMATION COLLECTION

Form SD is currently used by certain companies to disclose their use of conflict minerals if those minerals are “necessary to the functionality or production of a product” manufactured by those companies. This conflict minerals disclosure is required by Rule 13p-1 of the Exchange Act which implemented Section 1502 of the Dodd-Frank Act. The amendments do not affect the Form SD disclosure requirements that relate to conflict minerals.

The Adopting Release amends Form SD to also accommodate disclosures required by new Rule 13q-1. The purpose of this rule 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 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 U.S. forms or rules that conflict with or substantially duplicate the requirements of Form SD. Although some foreign jurisdictions have adopted rules that require similar disclosure by resource extraction issuers, the final rules permit an issuer to submit such disclosure in satisfaction of the Commission’s rules as long as the Commission has determined that the requirements of the foreign jurisdiction (referred to as an “alternative reporting regime”) satisfy the transparency objectives of Section 13(q). Consequently, we believe that the final rules will result in little duplication of information.

5. REDUCING THE BURDEN ON SMALL ENTITIES

Form SD applies to 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. However, the final rules exempt smaller reporting companies and emerging growth companies from the Section 13(q) requirements as long as they are not subject to an alternative reporting regime that the

Commission has determined satisfies the transparency objectives of Section 13(q). Most small entities will fall within the scope of this exemption and, therefore, will not be subject to the final rules. Moreover, if a small entity is subject to an alternative reporting regime and, therefore, is not eligible for the exemption, that entity may satisfy its Section 13(q) reporting obligations by submitting to the Commission its home country report, subject to certain conditions. Those small entities will incur only minor costs of translating the home country report into English, if necessary, and formatting the report into XBRL. Accordingly, the Commission believes that the final rules will not have a significant economic impact on a substantial number of small entities.

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) to 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 will 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

There are no special circumstances.

8. CONSULTATIONS WITH PERSONS OUTSIDE THE AGENCY

The Commission issued Securities Exchange Act Release No. 34-87783 (“Proposing Release”) to solicit comment on the new “collection of information” requirements and associated paperwork burdens.⁵ Issuers, investors, industry groups, civil society organizations, and other market participants provided comments in response to the solicitation for comment in the Proposing Release. In addition, the Commission and staff participated in ongoing dialogue with representatives of various interested parties through meetings and telephone conferences. Comments received on the proposal are available at: <https://www.sec.gov/comments/s7-24-19/s72419.htm>. The Commission did not receive any comments that specifically addressed the estimated paperwork burdens of the proposed rules, although some parties commented generally on whether the proposed rules would impose a lesser compliance burden than the Section 13(q) rules that the Commission adopted in 2016 and that were subsequently disapproved by Congress in 2017.

⁵ See, e.g., Section IV of Release No. 34-87783 (Dec. 18, 2019).

9. PAYMENT OR GIFT TO RESPONDENTS

No payment or gift to respondents.

10. CONFIDENTIALITY

The collection of information is a public document.

11. SENSITIVE QUESTIONS

Form SD has no information of a sensitive nature, including social security numbers that will be required under this collection of information. The information collection collects basic Personally Identifiable Information (PII) that may include name, telephone number, and job title. However, the agency has determined that the information collection does not constitute a system of record for purposes of the Privacy Act. Information is not retrieved by a personal identifier. In accordance with Section 208 of the E-Government Act of 2002, the agency has conducted a Privacy Impact Assessment (PIA) of the EDGAR system, in connection with this collection of information. The EDGAR PIA, published on February 5, 2020, is provided as a supplemental document and is also available at <https://www.sec.gov/privacy>.

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

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.

The current paperwork burden estimates for Form SD include burden estimates associated with complying with the conflict mineral disclosure requirements that are not affected by the final amendments as well as burden estimates for the disapproved 2016 Rules, as discussed below. We currently estimate for Form SD that there are 1,481 responses per year, and that 75% of the burden per response is prepared internally by the issuer and 25% of the burden per response is prepared by outside professionals retained by the issuer at a cost of \$400 per hour. We currently estimate that the preparation and filing of Form SD requires a total of 528,846 internal hours and outside professional costs of \$113,012,752 on average per year.

This current OMB inventory for Form SD includes the paperwork burden for the 2016 Rules under Section 13(q) that were later disapproved by Congress. That paperwork burden included an increase of 617 responses, an increase of 289,878 internal burden hours, and an increase of \$71,487,820 in professional costs.

We estimate that the burden to prepare and file Form SD for purposes of the new rules will be 500 burden hours per respondent for the 237 issuers that we estimate will bear the full costs of compliance with the rules, for an aggregate of 88,875 hours,⁶ and approximately 25

⁶ 237 x 500 hrs. = 118,500 hrs. 118,500 hrs. x 0.75 = 88,875 hrs.

burden hours per respondent for the 177 issuers that we estimate will bear some, but not the full, costs of compliance due to their compliance with similar rules in alternative reporting regimes, for an aggregate of 3,319 hours.⁷ Thus, for purposes of the Paperwork Reduction Act, we estimate that the final rules will result in a total of 414 responses⁸ and an incremental internal burden of 92,194 hours.⁹

We estimate that an issuer bearing the full costs of the final rules will incur outside professional costs of \$11,850,000.¹⁰ We also estimate that those issuers will incur additional initial compliance costs for IT consulting, training and travel of \$100,000 per respondent, for an aggregate of \$23,700,000.¹¹ Thus, issuers bearing the full costs of compliance will incur incremental outside costs of \$35,550,000.¹² We estimate that issuers subject to alternative reporting regimes in foreign jurisdictions that the Commission has determined meet the transparency objectives of Section 13(q) will incur outside professional costs of \$442,400.¹³ We do not believe that those issuers will incur additional initial compliance costs because those issuers should already have IT systems in place to comply with the foreign regimes. Accordingly, we estimate that affected issuers will incur an aggregate of \$35,992,400 in outside professional costs as a result of the final rules.¹⁴

Because the current OMB inventory for Form SD includes the paperwork burden for the 2016 Rules, which was higher in all respects than the paperwork burden for the new rules, we are submitting a program adjustment that will decrease the number of responses by 203.¹⁵ 188 of those responses incurred the full costs of the 2016 Rules¹⁶ and 15 incurred some, but not the full, burden as a result of being subject to similar requirements in alternative reporting regimes.¹⁷ The decrease in the number of responses under the new rules is the result of a conditional exemption for smaller reporting companies and emerging growth companies, which the 2016 Rules did not

⁷ $177 \times 25 \text{ hrs.} = 4,425 \text{ hrs.}$ $4,425 \text{ hrs.} \times 0.75 = 3,319 \text{ hrs.}$

⁸ $237 + 177 = 414.$

⁹ $88,875 \text{ hrs.} + 3,319 \text{ hrs.} = 92,194 \text{ hrs.}$

¹⁰ $118,500 \text{ hrs.} \times 0.25 = 29,625 \text{ hrs.}$ $29,625 \text{ hrs.} \times \$400/\text{hr.} = \$11,850,000.$

¹¹ $237 \times \$100,000 = \$23,700,000.$

¹² $\$11,850,000 + \$23,700,000 = \$35,550,000.$

¹³ $4,425 \text{ hrs.} \times 0.25 = 1,106 \text{ hrs.}$ $1,106 \text{ hrs.} \times \$400/\text{hr.} = \$442,400.$

¹⁴ $\$35,550,500 + \$442,400 = \$35,992,400.$

¹⁵ $617 - 414 = 203.$

¹⁶ See 2016 Rules Adopting Release at Section IV.B (stating that 425 issuers will bear the full costs of compliance). $425 - 237 = 188.$

¹⁷ See *id.* (Stating that 192 issuers will bear significantly lower costs because they are already subject to similar requirements in foreign reporting regimes). $192 - 177 = 15.$

include. Having fewer responses under the new rules will result in a decrease in the number of responses from 1,481 to 1,278.¹⁸

There will also be a corresponding decrease in internal burden hours. Because there will be 188 fewer issuers that will incur full compliance costs compared to the paperwork burden estimates for the 2016 Rules, there will be a decrease of 70,500 hours for those issuers.¹⁹ In addition, because there will be 15 fewer issuers that are subject to alternative reporting regimes, there will be a decrease of 281 hours for those issuers.²⁰ Consequently, the total number of internal burden hours will decrease from 528,846 hours to 458,065 hours (a decrease of 70,781 hours).²¹

Finally, there will be a corresponding decrease in professional costs. Because there will be 188 fewer respondents incurring the full compliance burden, professional costs for those respondents will decrease by \$9,400,000.²² Because there will be 15 fewer issuers that are subject to alternative reporting regimes, there will be a decrease of \$37,600 for those issuers.²³ Consequently, the total amount of professional costs will decrease from \$113,012,752 to \$103,575,152 (a decrease of \$9,437,600).

The table below illustrates the incremental change to the annual compliance burden of the affected form, in hours and in costs, together with the total requested reporting burden and costs, under the final amendments.

Table 1. Requested Paperwork Burden under the Proposed Amendments

Form	Current Burden			Program Adjustment			Requested Adjustment in Burden		
	Current Annual Responses	Current Burden Hours	Current Cost Burden	Number of Affected Responses	Number of Company Hours (Internal)	Professional (External) Costs	Annual Responses	Burden Hours	Cost Burden
	(A)	(B)	(C)	(D)	(E)	(F)	(G) = (A) - (D)	(H) = (B) - (E)	(I) = (C) - (F)
SD	1,481	528,846	\$113,012,752	203	70,781	\$9,437,600	1,278	458,065	\$103,575,152

14. COSTS TO FEDERAL GOVERNMENT

¹⁸ 1,481 – 203 = 1,278.

¹⁹ 188 x 500 hrs. = 94,000 hrs. 94,000 hrs. x .75 = 70,500 hrs.

²⁰ 15 x 25 hrs. = 375 hrs. 375 hrs. x .75 = 281 hrs.

²¹ 70,500 hrs. + 281 hrs. = 70,781 hrs. 528,846 hrs. – 70,781 hrs. = 458,065 hrs.

²² 188 x 500 hrs. = 94,000 hrs. 94,000 hrs. x .25 = 23,500 hrs. x \$400/hr. = \$9,400,000.

²³ 15 x 25 hrs. = 375 hrs. 375 hrs. x .25 = 94 hrs. 94 hrs. x \$400/hr. = \$37,600.

The annual cost of reviewing and processing disclosure documents, including registration statements, post-effective amendments, proxy statements, annual reports and other filings of operating companies amounted to approximately \$103,479,690 in fiscal year 2019, based on the Commission's computation of the value of staff time devoted to this activity and related overhead.

15. REASON FOR CHANGE IN BURDEN

As explained in further detail in Items 12 and 13 above, the final rules implement anew Section 13(q) by requiring resource extraction issuers to include on Form SD certain payments made to foreign governments and the U.S. Federal Government. Thus, Form SD will again be used to satisfy the disclosure requirements under both Sections 13(p) and 13(q) of the Exchange Act and the OMB inventory for this collection of information will include burden estimates to comply with both statutes. However, because the new Section 13(q) rules include a conditional exemption for smaller reporting companies and emerging growth companies that was not included in the 2016 Rules, the burden estimates for the new rules are less than the burden estimates for the 2016 Rules. We are therefore submitting a program adjustment to decrease the current OMB inventory by: 203 responses, internal burden hours by 70,781 hours, and professional costs by \$9,437,600.

The new internal burden and professional cost estimates for Form SD represent the maximum annual internal burden and professional costs for this collection of information. The actual annual internal burden and professional costs for Form SD may vary because not all issuers will submit Form SD to satisfy disclosure obligations under both Sections 13(p) and 13(q) of the Exchange Act. We expect that some issuers will file Form SD only to meet their disclosure obligations under Rule 13p-1 and others will submit Form SD only to satisfy their disclosure obligations pursuant to Rule 13q-1, although we cannot quantify these issuers with any degree of certainty.

16. INFORMATION COLLECTION PLANNED FOR STATISTICAL PURPOSES

The information collection does not employ statistical methods.

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

There are no exceptions to certification for Paperwork Reduction Act submissions.

B. STATISTICAL METHODS

The information collection does not employ statistical methods.

Form SD Short Statement

Form SD is the specialized disclosure form that is currently used to file Conflict Minerals Reports pursuant to Rule 13p-1 of the Exchange Act. The current OMB inventory also includes burden estimates for the 2016 Rules that implemented Section 13(q) of the Exchange Act but were later disapproved by Congress. The Adopting Release amends Form SD to re-implement Section 13(q) by including on that collection of information the disclosures required by resource extraction issuers under Section 13(q) pursuant to Rule 13q-1. For purposes of the Paperwork Reduction Act, and after taking into account a program adjustment to the burden estimates of the 2016 Rules, we estimate that, for this collection of information, the final amendments will result in a decrease in annual responses from 1,481 to 1,278 responses; a decrease in internal burden hours 70,781 hours; and a decrease in professional costs of \$9,437,600.