



United States Department of the Interior

OFFICE OF NATURAL RESOURCES REVENUE

Washington, DC 20240

FEB 17 2015

U.S. Securities and Exchange Commission
100 F Street Northeast
Washington, D.C. 20549

To Whom It May Concern:

Thank you for the opportunity to comment on the Securities and Exchange Commission (SEC) Release No. 34-76620, File No. S7-25-15, Disclosure of Payments by Resource Extraction Issuers. The Office of Natural Resources Revenue (ONRR) supports the proposed rule.

In 2011, President Obama appointed the Department of the Interior (Department) as the lead Federal Agency tasked with implementing the Extractive Industries Transparency Initiative (EITI) in the United States. Since that time, the Department has relied on ONRR's leadership and expertise to implement USEITI. After reviewing the proposed rule, ONRR believes that it furthers the transparency goals of and aligns with the international EITI Standard. In addition, the proposed rule generally aligns with the laws of a growing number of countries and supports the consensus-based decisions of the USEITI Multi-Stakeholder Group (MSG).

The rule, as proposed, provides greater certainty regarding the need for companies to report certain tax payments. We believe this provision, along with the definition of project level reporting, will enhance our ability to fully implement and meet the requirements of the EITI Standard. We were pleased to see the alternative reporting proposal. It is an important step toward harmonizing the efforts of USEITI with the requirements of the Dodd-Frank Act and reducing the reporting burden for companies involved in the extractive industries.

Thank you again for the opportunity to comment. We have enclosed responses to a number of specific requests for comments. If you have questions or need additional information, please contact me at [REDACTED] or [REDACTED].

Sincerely,

Jennifer L. Goldblatt
Chief of Staff

Enclosure

ENCLOSURE – ONRR Comments by Section

Request for Comment 1. *Should we exempt certain categories of issuers from the proposed rules, such as smaller reporting companies, emerging growth companies, or foreign private issuers? If so, which ones and why? If not, why not? Should we exempt companies that are unlikely to make payments above the proposed de minimis threshold of \$100,000? For example, should we provide that a resource extraction issuer with annual revenues and net cash flows from investing activities below the de minimis threshold in a fiscal year would not be subject to the proposed disclosure rules for the subsequent fiscal year? Should we use a threshold that is different from the de minimis threshold or some other measure of an issuer’s ability to make such payments to make this determination?*

ONRR Response to Request for Comment 1: The Office of Natural Resources Revenue (ONRR) believes the de minimis threshold is an appropriate standard for determining companies subject to the proposed rule. The United States Extractive Industries Transparency Initiative (USEITI) reporting covers all companies that conduct extractive activities in the United States on public and tribal lands, without exemption. ONRR suggests that the disclosure rules apply to any company that makes the de minimis payment in a given year and that the rules do not preemptively exempt a company the following year. Given the cyclical nature of extractive commodity prices, failure to meet the threshold one year is not necessarily a good indicator of failure to meet it in future years.

Request for Comment 2. *Should we provide for a delayed implementation date for certain categories or types of issuers in order to provide them additional time to prepare for the disclosure requirements and the benefit of observing how other companies comply?*

ONRR Response to Request for Comment 2: ONRR does not believe a delay is necessary. USEITI has conducted extensive outreach to the Industry community regarding similar reporting requirements under USEITI and that outreach will continue during 2016. While the overlap between companies covered by the rule and those within the scope of USEITI is not exact, many companies that would be required to disclose information under the new SEC rules are aware of the requirement, and/or have already disclosed revenue under USEITI.

Request for Comment 6. *Should we, as proposed, define “commercial development of oil, natural gas, or minerals” as the term is described in the statute? Should it be defined more broadly or more narrowly? If more broadly, should the definition of “commercial development of oil, natural gas, or minerals” include any additional activities not expressly identified in the statute? If so, what activities should be covered? Would including additional activities impose any significant additional costs on issuers? Does our proposed definition further the U.S. Government’s foreign policy objective of battling corruption and, in so doing, potentially improve governance and accountability in resource-rich countries? If not, what would?*

ONRR Response to Request for Comment 6: ONRR believes that the definition in the statute is appropriate. As noted in the proposed rule, EITI in general, and USEITI specifically, is concerned with revenues generated by the “upstream” activities of exploration and extraction. Regarding “the acquisition of a license for any such activity” language in the statute and the

proposed regulations, the USEITI Report already discloses permit fees industry pays to the Bureau of Land Management (BLM), cost recovery fees paid to the Bureau of Ocean Energy Management (BOEM), and Abandoned Mine Land fees paid to the Office of Surface Mining Reclamation and Enforcement (OSM). We note that the scope of USEITI does not cover revenues from processing or exporting or the acquisition of licenses to engage in those activities. Nonetheless, from our perspective, it is not necessary for the SEC to define the term more or less broadly than proposed.

Request for Comment 10. *As noted above, “extraction” would mean the production of oil and natural gas as well as the extraction of minerals. Are the activities covered too narrow or too broad?*

ONRR Response to Request for Comment 10: ONRR believes that the activities as proposed are appropriate and consistent with USEITI.

Request for Comment 11. *As noted above, “processing” would include midstream activities such as (a) the processing of gas to remove liquid hydrocarbons, (b) the removal of impurities from natural gas prior to its transport through a pipeline, (c) the upgrading of bitumen and heavy oil, through the earlier of the point at which oil, gas, or gas liquids (natural or synthetic) are either sold to an unrelated third party or delivered to a main pipeline, a common carrier, or a marine terminal, and (d) the crushing and processing of raw ore prior to the smelting phase. Are these examples of “processing” too narrow or too broad? Why or why not?*

ONRR Response to Request for Comment 11: Processing activities are not specifically within the scope of USEITI. However, depending on when these activities occur, deductions for these costs are already factored into the royalty payments paid to ONRR and from that standpoint are reflected in the revenue numbers published in the USEITI Report.

Request for Comment 13. *Should we add other payment types, such as social or community payments, or remove certain payment types from the proposed list of covered payment types? If so, please explain which payment types should or should not be considered part of the commonly recognized revenue stream for resource extraction issuers and why. If we exclude social or community payments from the list of covered payment types, as proposed, should we provide additional guidance concerning how an issuer would distinguish social or community payments from infrastructure payments? Why or why not?*

ONRR Response to Request for Comment 13: ONRR believes that the proposed definition of payment types is appropriate.

Request for Comment 17. *Should we define “not de minimis” differently than as proposed? For example, are there any data or have there been any recent developments suggesting that a \$100,000 threshold is too low or too high? What would be the effect if we adopted a threshold significantly different from those established by other countries for their payment disclosure regimes? Should we include a mechanism to adjust periodically the de minimis threshold to reflect the effects of inflation? If so, what is an appropriate interval for such adjustments and what should the basis be for making any such adjustments in light of our understanding that the*

appropriate focal point for determining whether a payment is “not de minimis” is in relation to host countries?

ONRR Response to Request for Comment 17. ONRR believes that the definition of “not de minimis” as proposed is appropriate, and is the same standard that ONRR uses in its unilateral disclosure of revenue data. ONRR does not believe an adjustment mechanism is necessary, as it will be easier for USEITI, and industry, to plan for ongoing disclosures if the de minimis amount remains the same over time.

Request for Comment 19. *Should we include any provisions to lessen the potential reporting costs for smaller reporting companies or emerging growth companies? For example, should we provide a higher “de minimis” threshold for certain categories of issuers generally or for a certain length of time? Would doing so be consistent with Section 13(q)?*

ONRR Response to Request for Comment 19. ONRR believes the definition as proposed is appropriate. For its unilateral reporting, ONRR uses the same threshold for all companies, regardless of size.

Request for Comment 20. *Should we define the term “control” based on applicable accounting principles, rather than using Rule 12b-2 of the Exchange Act? Why or why not? If so, should we allow resource extraction issuers to report eligible payments made by proportionately consolidated entities on a proportionate basis, as proposed, or modify this requirement? Please provide your supporting rationale. Is there some other definition we should use? If so, why?*

ONRR Response to Request for Comment 20. Companies operating on Federal lands and waters often employ or identify specific entities or “payors” to submit payments on their behalf. When ONRR unilaterally published revenues by company for the first time in December 2014, it considered “control” to determine how to allocate revenues paid by these “payors” to a specific Company. ONRR accomplished this consolidation using information from Company websites, SEC 10-K filings, LexisNexis and Westlaw corporate affiliation data, ONRR’s internal company reference data information, and web data research. ONRR did not attempt to ascertain the level of Company “control” based on any applicable accounting standards. Many of the larger paying companies verified ONRR’s Payor Company roll-up during the USEITI Reconciliation process. In future reporting, company designations will be based on improved self-reporting by companies in compliance with recent updates to ONRR’s reporting requirements.

Request for Comment 24. *Should we, as proposed, define “project” as operational activities that are governed by a single contract, license, lease, concession, or similar legal agreement, which form the basis for payment liabilities with a government? Why or why not? Given the U.S. foreign policy interests reflected in Section 13(q), does our proposed definition advance the governmental interests in promoting transparency and combating global corruption? Should we define “project” in a different manner? If yes, how should we define the term? For example, should we adopt a definition of “project” that is identical to that found in the EU Directives and the ESTMA Specifications?*

ONRR Response to Request for Comment 24. Yes. ONRR believes that the proposed definition is consistent with the transparency objectives of the statute and government, and generally aligns with the emerging international standard for this definition.

Request for Comment 27. *Should we permit two or more agreements that are both operationally and geographically interconnected to be treated by the issuer as a single project, as proposed? What are the advantages or disadvantages of such a treatment? Should we instead require that these agreements have substantially similar terms as in the EU Directives and the ESTMA Specifications?*

ONRR Response to Request for Comment 27. Yes. ONRR believes that the SEC definition should allow certain agreements to be treated as a single project. The advantage of this approach is that it allows for disclosure of revenue aggregated at a level that correlates with on the ground operations on U.S. Federal lands.

Request for Comment 30. *Should we adopt the approach we took in the 2012 Rules and not define “project?” If so, please explain why.*

ONRR Response to Request for Comment 30. No. For consistency with international standards and for USEITI to comply with the EITI Standard, it is critical that the SEC define “project” in its rules.

Request for Comment 34. *Should we provide any additional guidance on the statutory terms “foreign government” and “Federal Government?” If so, what guidance would be helpful?*

ONRR Response to Request for Comment 34. ONRR does not believe that any additional guidance on the term “Federal Government” is needed.

Request for Comment 37. *As noted above, Section 13(q) mandates that a resource extraction issuer provide the required payment disclosure in an annual report, but it does not specifically mandate the time period for which a resource extraction issuer must provide the disclosure. Is it reasonable to require resource extraction issuers to provide the mandated payment information for the fiscal year covered by the applicable annual report, as proposed? Why or why not? Should the rules instead require disclosure of payments made by resource extraction issuers during the most recent calendar year?*

ONRR Response to Request for Comment 37. After considerable research and discussion, the USEITI MSG decided to use the calendar year for USEITI reporting because it reduced the burden on reporting companies, many of which used the calendar year as their fiscal year.

Request for Comment 40. *Should the rules permit an issuer to submit the required payment disclosure on a confidential basis? Why or why not?*

ONRR Response to Request for Comment 40. No. ONRR believes that permitting confidential disclosure would contravene the transparency objectives of the statute and the EITI Standard. Moreover, as the SEC has noted in its proposed rule, the United States is a Candidate

country under the EITI and is currently pursuing full compliance. Consistent with the EITI Standard, continued successfully USEITI implementation requires the public disclosure of payments for all revenue streams and by project.

Request for Comment 41. *Should the rules provide an exemption from public disclosure for existing or future agreements that contain confidentiality provisions? Would such an exemption be consistent with the purpose of Section 13(q) or would it frustrate it? Would it be necessary or appropriate in the public interest and consistent with the protection of investors?*

ONRR Response to Request for Comment 41. No. Federal leases for natural resource development on Federal lands and waters are public and do not contain confidentiality provision. Consistent with the contract transparency provisions under the EITI Standard, USEITI reporting includes disclosure of these leases. Accordingly, ONRR believes that providing an exemption would contravene the transparency objectives of the statute and the government.

Request for Comment 49. *Should we include a provision in the rules that would allow for issuers subject to reporting requirements in certain foreign jurisdictions or under the USEITI to submit those reports in satisfaction of our requirements? Why or why not? If so, what criteria should we apply when making a determination that the alternative disclosure requirements are substantially similar to the disclosure requirements under Rule 13q-1? Are there additional criteria, other than those identified above, that we should apply in making such a determination? Are there criteria identified above that we should not apply? Should we align our criteria with criteria used in foreign jurisdictions, such as the EU Directives?*

ONRR Response to Request for Comment 49. Yes. For disclosure of payments to the Federal government, ONRR believes that allowing compliance with USEITI to satisfy compliance with the SEC section 1504 rule will reduce the burden on industry and support the statute's transparency goals. The proposed criteria for making the decision that the alternative disclosure requirements are substantially similar are appropriate. ONRR believes that the SEC alternative reporting proposal will allow us to harmonize the efforts of USEITI and the requirements of the Dodd-Frank Act, while allowing companies involved in extractive industries, and civil society, to help guide this process through the ongoing consensus based approach of the USEITI MSG. It also allows for the data reported by industry to be disclosed with a contextual narrative that makes it more meaningful to not only investors, but to the public which owns the resources being extracted from Federal lands and waters.

Request for Comment 50. *We propose to base our determination on a finding that the foreign jurisdiction's or the USEITI's requirements are substantially similar to our own. Is this the standard we should use? Should we consider other standards, for example, a determination that a foreign jurisdiction's or the USEITI's requirements are "equivalent" or "comparable?"*

ONRR Response to Request for Comment 50. ONRR believes that the "substantially similar" standard is appropriate for making a finding that a foreign jurisdiction or USEITI requirements satisfies the provisions of the proposed rule in all relevant particulars.

Request for Comment 52. *In making the determination that a foreign jurisdiction’s or the EITI’s disclosure requirements are substantially similar to our own, should we make the determination unilaterally on our own initiative, require an issuer to submit an application prior to making the determinations, allow jurisdictions to submit an application, or allow all of these methods? If we should require an application, what supporting evidence should we require? For example, should we require a legal opinion that the disclosure requirements are substantially similar?*

ONRR Response to Request for Comment 52. ONRR believes that the SEC can unilaterally make a “substantially similar” finding based on supporting documentation submitted by an issuer or, if requested, by the USEITI MSG.

Request for Comment 57. *The USEITI reporting framework only requires disclosure of payments made to the U.S. federal government while the proposed rules would require disclosure of payments to foreign governments and the Federal Government. Thus, as proposed, if the Commission were to find that the USEITI reporting standards are “substantially similar” to the requirements of the proposed rules, the Commission would permit issuers to file reports submitted in full compliance with the USEITI in lieu of the disclosure required by the proposed rules concerning payments made by resource extraction issuers to the Federal Government. In these circumstances, any payments made to foreign governments would still need to be reported in accordance with Form SD. In light of the reporting differences between the USEITI and our proposed rules, however, should the Commission preclude the use of USEITI reports under the alternative reporting provision when a resource extraction issuer would also have to disclose payments made to foreign governments pursuant to the proposed rules?*

ONRR Response to Request for Comment 57. No. ONRR strongly supports allowing the use of USEITI reports to satisfy the reporting requirements under the rule, even if the resource extraction issuer has to disclose payments to foreign governments directly to the SEC.

Request for Comment 63. *As we have noted, we believe that it is important that the project-level disclosures enable local communities to identify the revenue streams associated with particular extractive projects. When combined with the other tagged information, would our proposed approach to describing the geographic location of the project provide sufficient detail to users of the disclosure? Would users be able to identify the location of the project and distinguish that project from other projects in the same area? Would allowing resource extraction issuers flexibility in describing the location of their projects reduce comparability and the usefulness of the disclosure? Should we prescribe a different method for describing the location of a project? If so, what should that method be?*

ONRR Response to Request for Comment 63. ONRR supports the proposed approach to describe the geographic location of projects.

Request for Comment 69. *Should we provide a compliance date linked to the end of the nearest commonly used quarterly period following the effective date, as proposed? Should we adopt a shorter or longer transition period?*

ONRR Response to Request for Comment 69. ONRR believes that the proposed timelines are appropriate.