



# United States Department of the Interior

## OFFICE OF NATURAL RESOURCES REVENUE

Washington, DC 20240

NOV 06 2015

Mr. Barry N. Summer  
Associate Director, Division of Corporation Finance  
U.S. Securities and Exchange Commission  
100 F Street Northeast  
Washington, DC 20549

Dear Mr. Summer:

The purpose of this letter is to transmit comments from the Department of the Interior's Office of Natural Resources Revenue on the Securities and Exchange Commission rule implementing Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Thank you for the opportunity to comment on how the Department of the Interior's (DOI) experience in implementing the United States Extractive Industries Transparency Initiative (USEITI) can inform the ongoing Securities and Exchange Commission (SEC) rulemaking process for Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Section 13q of the Exchange Act).

When the SEC published the Section 1504 Dodd-Frank rule on September 12, 2012, (Final Rule), USEITI was in its infancy, with DOI having just completed an initial stakeholder assessment in July 2012. Although the Final Rule referred to EITI, no concrete USEITI developments were available to provide you with guidance or context on substantive issues covered in the Final Rule.

Since the Final Rule, both the global EITI initiative and USEITI implementation have expanded and evolved. Concerning USEITI, DOI formally created the USEITI Multi-Stakeholder Group (MSG) in December 2012, consisting of 21 members and 20 alternates from the industry, government, and civil society sectors, with decisions made by way of consensus. The MSG first met in February 2013, and as of September 2015, has convened for 14 additional meetings. The MSG reached consensus on a variety of revenue reporting issues that are, in many respects, identical to the revenue disclosure matters addressed under your Final Rule. These include consensus decisions on, among other matters, materiality thresholds, applicable revenue streams, and a process for reporting corporate income taxes paid to the Department of the Treasury by C corporations. Because of this work, in March 2014, the international EITI Board granted the United States "Candidate Country" status, making us the first G7 country to become an EITI implementing country. Following our lead, the United Kingdom, France, Germany, the Netherlands, and Italy announced their intention to implement EITI.

In December 2014, as part of USEITI implementation, DOI's Office of Natural Resources Revenue (ONRR), created an online data portal and unilaterally released non-tax revenue data by

company, commodity, and revenue type for calendar year 2013, for companies making payments to ONRR exceeding \$100,000 for extractive activities (<https://useiti.doi.gov/>). In December 2015, USEITI will release its first annual report, consisting of an executive summary, and an expanded data portal that will include non-tax revenue information for companies making payments to ONRR, the Bureau of Land Management and the Office of Surface Mining, Reclamation and Enforcement. The report will also feature reconciled non-tax revenue data for 31 companies that voluntarily participated in USEITI reporting and tax data for 11 companies that voluntarily disclosed tax payments for the reporting period.

Globally, the growth of EITI has been equally robust. There are currently 49 implementing countries, 31 complaint countries, and 40 countries that have published revenue data (<https://eiti.org/countries>). One main area of development internationally has been around the definition of “project.” The European Union, Norway, and the United Kingdom have all defined project through statute, regulation, or directive. In each instance, albeit using different language, project is defined at the agreement or contract level.

[As examples: (1) EU Accounting Directive (8328/13), Sec. 33, April 12, 2013, at <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%208328%202013%20INIT>; (2) Norwegian regulations, Section 2, Definitions, effective January 1, 2014, translation at <http://www.publishwhatyoupay.no/en/node/16414>; and (3) United Kingdom, The Reports on Payments to Government Regulations 2014, December 1, 2014, Section 2, Interpretation, implementing the European Union Accounting Directive and Transparency Directive, at [http://www.legislation.gov.uk/uksi/2014/3209/pdfs/uksi\\_20143209\\_en.pdf](http://www.legislation.gov.uk/uksi/2014/3209/pdfs/uksi_20143209_en.pdf).]

Given the maturation of USEITI since you published the Final Rule, we believe that a significant opportunity now exists to leverage the U.S. government’s EITI and Section 1504 investments designed to bring more meaningful transparency to natural resource revenue disclosure. Our recommendation is that the revised Section 1504 Dodd-Frank regulations establish a system where reporting under USEITI satisfies compliance with the SEC regulations for domestic revenues and set minimum reporting standards that companies must meet if they do not report under the USEITI process.

In addition, the DOI Data Portal, which hosts the USEITI annual reports and data disclosure, can serve as the publication mechanism for the domestic data reporting required by the Dodd-Frank Act. At least annually, the data portal will present company-reported, in-scope revenue data for companies that voluntarily report under USEITI, as well as government-reported non-tax revenue data for all companies paying more than \$100,000 per year to DOI. This approach provides investors with a great deal of data, in one place, and in an easily accessible electronic format, while simultaneously reducing the duplicative reporting burden on companies, DOI and the SEC.

We believe it is crucial that the SEC define “project” in your forthcoming rule. While the USEITI MSG has not reached consensus on the definition of project for establishing the disaggregated level at which revenue reporting must occur, the MSG has agreed to rely on the definition that the SEC promulgates in its revised Dodd-Frank rule. This agreement is consistent with the EITI Standard’s specific reference to Dodd-Frank Section 1504 in explaining the

requirement for project-level reporting. We support the definition of project at the contract or agreement level (if not in violation of the Trade Secrets Act) and believe this is not only consistent with the language used by the European Union (cited above) but also feasible when applied in the context of natural resource development on federal lands in the United States. We interpret this definition to mean that for oil, gas, and renewables a project is at either the lease or the agreement level and for coal and other hardrock mining, it would mean that a project was at the permit, claim, or plan of operation level.

In addition, we believe that the SEC should require the disaggregation of company-reported revenue streams by payment type (e.g., corporate income taxes, royalties, bonuses, rents, fees, etc.), which is consistent with USEITI reporting requirements. We agree with the provision in the Final Rule that companies should report corporate income taxes at an entity, not project, level.

Finally, the Final Rule established that reporting should occur on a fiscal year basis. While we are not at this point commenting on what the SEC should propose, we do want to share our USEITI experience with you. Our analysis showed great variability in the definition of fiscal year across companies and government entities participating in USEITI reporting, which would have made comprehensive annual reporting and analysis difficult. After a great deal of discussion and input from the industry, civil society, and government sectors, the MSG established calendar year as the basis for annual USEITI reporting. An important factor in reaching this consensus was the information from the industry sector confirming that many companies use the calendar year as their fiscal year and that those with different fiscal years did not indicate difficulty in calendar year reporting.

Thank you for your consideration. We appreciate the opportunity to comment and look forward to commenting further after you issue the revised rule in December. ONRR is more than happy to answer any follow-up questions you may have. Please let me know if I can be of further assistance.

Sincerely,



Jennifer L. Goldblatt  
Chief of Staff