

Chris Netram

*Vice President,
Tax and Domestic Economic Policy*

March 16, 2020

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: File No. S7-24-19: *Disclosure of Payments by Resource Extraction Issuers*

Dear Ms. Countryman:

The National Association of Manufacturers appreciates the opportunity to provide comments to the Securities and Exchange Commission on File No. S7-24-19, the SEC's proposed rule to require disclosure of payments made to foreign governments or the federal government by resource extraction issuers.¹

The NAM is the largest manufacturing trade association in the United States, representing small and large manufacturers in every industrial sector. These businesses often turn to the public market to finance the significant investments in equipment and research necessary for manufacturing success. The public market also empowers manufacturers to drive economic expansion and job creation across the country, enabling the industry to employ 13 million Americans across all 50 states.

Publicly traded manufacturers expend significant effort producing disclosures that give investors insight into the direction of their businesses, and each disclosure is made with an eye toward enabling decision-making that enhances long-term shareholder value creation. As such, disclosure obligations should only be imposed by the SEC if they are material to a shareholder's investment decision and can be implemented in a cost-efficient manner by issuers.

Within the context of the requirement that the Commission act to implement Section 13(q) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the NAM applauds the SEC for proposing a disclosure requirement for payments made to foreign governments or the federal government by resource extraction issuers that does not create an undue cost burden for impacted companies. Rather, the proposed rule represents a tailored implementation of the statute and includes numerous important reforms from the 2016 proposal that faced disapproval from Congress.

The NAM appreciates that the proposed rule is designed to reduce the cost burden on impacted companies as compared to previous versions promulgated by the Commission. However, we are concerned that the provision that would require companies to publicly report payments would create a competitive harm due to the disclosure of information on the value of a resource area, which could be used by others to free ride on the expertise and technology of the disclosing company. To avoid these harms, we respectfully urge the SEC to collect the required payment information non-publicly

¹ *Disclosure of Payments by Resource Extraction Issuers*, 85 Fed. Reg. 2522 (15 January 2020). Release No. 34-87783, available at <https://www.sec.gov/rules/proposed/2019/34-87783.pdf>. Hereinafter "proposed rule," "proposing release," "proposal," or "rule proposal."

and publish an aggregated, anonymized compilation of the data. An aggregated, anonymized compilation would be consistent with the language of the statute and would be sufficient to achieve Congress's dual goals of transparency and accountability – without imposing an undue competitive burden on resource extraction issuers.

With that proposed change in mind, the NAM otherwise applauds the SEC for proposing a rule that will provide certainty to resource extraction issuers that have seen proposals to implement Section 13(q) be struck down by courts and by Congress and are now hopeful for a resolution to this important issue. We respectfully urge the SEC work to expeditiously finalize the rule proposal.

Key Provisions in the Proposed Rule

As the proposing release notes, the SEC has a statutory obligation to implement Section 13(q) of Dodd-Frank. In the NAM's view, the proposed rule is consistent with legislative intent and responsive to concerns raised in the 2012 decision by the U.S. District Court for the District of Columbia and the 2017 joint resolution of Congress pursuant to the Congressional Review Act. We applaud the SEC for taking feedback into account in reforming the rule proposal, and we support its adoption.

- The proposed rule allows resource extraction issuers to, for the purposes of the disclosure obligation, aggregate payments made at the major subnational jurisdiction level (which would have to be identified by the specific payee), as well as payments at levels below the major subnational level (which could be described more generically). The NAM supports these changes, which would address the concerns some market participants have raised about overly descriptive disclosures revealing competitive information. Allowing for aggregation in these instances would also reduce the cost burden of the disclosure requirement.
- The proposed rule includes important exemptions from the disclosure requirement for instances in which compliance would violate foreign law or pre-existing contract terms that prohibit disclosure. The NAM supports these conditional exemptions, which would allow companies to avoid being forced into a choice between complying with the new disclosure requirement vs. complying with laws promulgated by and/or agreements entered into with foreign governmental partners. Importantly, companies would not have to apply to the Commission for exemptive relief to take advantage of these exemptions.
- The proposed rule maintains the 2016 rule's exemption for payments related to exploratory activities, which would allow reporting on any such payments to be delayed for one year. The NAM supports the proposed delayed reporting paradigm, which is critical to protecting commercially sensitive information about resource extraction issuers' exploratory activities.
- The proposed rule includes exemptions for smaller reporting companies and emerging growth companies. The NAM supports these targeted exemptions for small businesses, which would allow for important cost savings for growing companies.
- The proposed rule clarifies the statute's "not de minimis" language by requiring disclosure only if a project exceeds \$750,000 in total payments *and* the payment in question exceeds \$150,000. The NAM supports the proposed "not de minimis" definition, which would provide important clarity to resource extraction issuers and reduce compliance costs by allowing companies to forego reporting on payments that are insignificant to the project and to their investors.
- The proposed rule clarifies that the required disclosures would be "furnished to" the Commission rather than "filed with" the Commission. The NAM supports this welcome

change from the 2016 rules, which would significantly reduce liability for resource extraction issuers.

- The proposed rule includes a reasonable extended deadline for furnishing the required disclosures. The NAM supports the proposed reporting timeframe, which would mitigate the compliance burden of the requirement and address concerns that public disclosure of payment information could cause competitive harm.

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The NAM applauds the SEC for proposing a disclosure requirement that fulfills its statutory obligation under Section 13(q) of Dodd-Frank without unnecessarily burdening resource extraction issuers nor exposing them to competitive harm. The NAM requests that the SEC modify the proposed rule to provide for non-public reporting of payments to the SEC followed by publication of an aggregated, anonymized compilation of the data. Otherwise, manufacturers support the proposed rule, and we encourage the Commission provide certainty to resource extraction issuers by taking steps to finalize the proposal.

On behalf of the NAM and the 13 million men and women who make things in America, thank you for your attention to these concerns.

Sincerely,

A handwritten signature in black ink, appearing to read 'Chris Netram', with a stylized flourish at the end.

Chris Netram
Vice President, Tax & Domestic Economic Policy