



Companies Face New Rules on Extraction Industry Payments

Resource extraction companies will need to disclose payments, or a series of payments, over \$100,000 made to governments related to the exploration and development of oil, natural gas, or mineral resources.¹ However, the SEC's final rules provide some relief to address concerns.

Key Facts

- The rules reflect changes from the SEC's December 2015 proposal and specifically:
 - Add additional payments that must be disclosed;
 - Give a one-year grace period for newly acquired businesses that were not previously subject to the reporting;
 - Delay the disclosure of payments for new exploratory activities for one year; and
 - Allow companies to submit disclosure reports prepared to comply with European Union or Canadian laws as acceptable alternatives to the SEC requirements.
- Companies must disclose the type and total amount of payments made to each government, for each project, including the type of natural resource. The rules 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."
- Companies that file annual reports on Forms 10-K, 20-F, or 40-F must provide the disclosures as an XBRL exhibit to Form SD.

Key Impacts

- While companies will not need to comply with the rules until 2018, they should begin preparing for the disclosures, including asking the SEC for an exemption if a local law prohibits the disclosures.
- For some resource extraction companies, compliance will require significant effort, including categorizing existing extraction assets into projects, and evaluating what systems and process changes will be required to capture payments made at the project level.

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¹ [SEC Release No. 34-78167](#), Disclosure of Payments by Resource Extraction Issuers, June 27, 2016, available at www.sec.gov.

Background

The Dodd-Frank Wall Street Reform and Consumer Protection Act directed the SEC to issue rules to require companies to disclose payments made to governments for the exploration and commercial development of oil, natural gas, or minerals. In August 2012, the SEC adopted Rule 13q-1, which was overturned by the U.S. District Court for the District of Columbia.² The SEC proposed new rules in December 2015 to address the issues identified in the court ruling.³

Key Changes from the SEC's Proposal

Additional Payments	The rule adds community and social responsibility payments required by local laws or contracts, such as funding for a hospital or school.
Transition Relief for Acquired Companies	The rule exempts acquired businesses, which were not previously subject to reporting, from the disclosures until the Form SD is filed for the fiscal year following the effective date of the acquisition.
Delayed Reporting for Exploratory Activities	<p>Companies can defer disclosures of payments related to new exploratory activities until they report for the year after they make the payments. These payments include seismic surveys and exploratory drilling costs incurred while looking for oil, gas, or mineral reserves.</p> <p>Payments made for similar activities on projects and properties with existing production, or any adjacent property, would not qualify.</p>
Allow Reports from the EU and Canada	<p>In a separate order, the SEC indicated it would accept reports under alternative laws that are substantially similar to the requirements of the rules.⁴ The SEC will accept reports prepared to comply with the European Union's Accounting Directive and Transparency Directive; Canada's Extractive Sector Transparency Measures Act; and the U.S. Extractive Industries Transparency Initiative (USITI).</p> <p>However, companies can only use the USITI for payments made to the U.S. federal government, and must still comply with the Form SD reporting requirements.</p>

² [KPMG's Defining Issues No. 12-42](#), SEC Issues Final Rule for Extractive Industry Payments, available at www.kpmg.com/us/frn.

³ [KPMG's Defining Issues No. 16-2](#), SEC Proposes Rules for Extractive Industry Payments, www.kpmg.com/us/frn.

⁴ [SEC Release 34-78169](#), Order Recognizing the Resource Extraction Payment Disclosure Requirements of the European Union, Canada and the U.S. Extractive Industries Transparency Initiative as Substantially Similar to the Requirements of Rule 13q-1 under the Securities Exchange Act of 1934, June 27, 2016, available at www.sec.gov.

Effective Date

Resource extraction companies must comply with the rules beginning with their fiscal year ending on or after September 30, 2018. Calendar year-end companies will be required to comply by May 30, 2019 for their December 31, 2018 annual filings.

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