

Regulation S-K (Subpart 1300)

What Every Minerals Geologist Needs to Know

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Cautionary Statement

Since the roll-out of the new SEC regulations, there has been an explosion of consultants offering services to help companies implement the new regulations in their filings with the US SEC.

This presentation is only a partial summary of the new SEC regulation S-K 1300 and is not intended to be complete and it is not intended to give, nor should it be taken as, legal advice. The reader should consult their own legal advisors when navigating the new SEC regulations.

The manuscript (Birak and Earnest, 2020) to support this presentation was included in the GSN Symposium proceedings.

For more information, refer to the SEC website: <https://www.sec.gov/corpfin/secg-modernization-property-disclosures-mining-registrants>.

The Short Version of a Long Story

- With Regulation S-K, Subpart 1300 (“S-K 1300”), investors in US mining industry equities now have a template, similar to those of other jurisdictions (i.e., NI 43-101 and JORC), to help them evaluate investment opportunities within different jurisdictions.
- Implementation of the new rule, adopted by the US SEC in October 2018, was delayed by the novel coronavirus pandemic until January 1, 2021.
- Applies to all SEC Registrants (**“an issuer with a class of equity securities registered under the Securities Act of 1933”**).
- Also applies to Foreign Private Issuers.

The Short Version of a Long Story

- S-K 1300 is substantially the same as other regulations with important differences (terms and concepts like “mineral resources”, “inferred”, “mineral reserves” and “qualified person” are now accepted).
- The “**Technical Report Summary**” (TRS) is the main vehicle to disclose material changes to a registrant’s material mineral properties under S-K 1300.
 - Similar to an NI 43-101 Technical Report (TR).
- A registrant may not simply “rebrand” an existing NI 43-101 Technical Report as a TRS - nor may a registrant submit an NI 43-101 Technical Report to the SEC to satisfy their need for a TRS.

A Bit of History

- Previously, all disclosures by US publicly traded companies (SEC Registrants) needed to conform to US SEC Industry Guide 7 (<https://www.sec.gov/about/forms/industryguides.pdf>)
- Guide 7, all of 2 ¼ pages of it, was loosely based on USGS Bulletin 1450-A (1976) and USGS Circular 831 (1980).
 - Compare that to NI 43-101 PLUS all of NI 43-101F1.

Commencing 01-January-2021, SEC Registrants must now follow the new rules.

<https://www.sec.gov/corpfin/secg-modernization-property-disclosures-mining-registrants>

Principles of the Mineral Resource Classification System of the U.S. Bureau of Mines and U.S. Geological Survey

MINERAL RESOURCE CLASSIFICATION SYSTEMS OF THE
U.S. BUREAU OF MINES AND U.S. GEOLOGICAL SURVEY

GEOLOGICAL SURVEY BULLETIN 1450-A

*A report published jointly by the
U.S. Bureau of Mines and
U.S. Geological Survey*

*Definitions of mineral resource classification
terms used by the U.S. Bureau of Mines and
U.S. Geological Survey*



How Did We Get Here?

- Previously, all disclosures by SEC Registrants needed to conform to SEC' short and simple list of “do’s” and “don’ts” (within Guide 7). **The beauty of Guide 7 was its brevity.**
- A major “**don’t**” was the prohibition of the disclosure of **Resources**.
 - The term “**Mineralized Material**” (sum of additional M+I) was eventually adopted but not Inferred.
- Many registrants also had, and have, stock listed on foreign exchanges subject to different disclosure rules - the different rules presented challenges to the global, stock-buying public.
- In 2003, the effort to “rationalize” Guide 7 with other jurisdictional systems kicked into high gear at a Reston, VA, USA meeting between the SEC and various experts and interested parties.



Though the Reston meeting was useful to air ideas, it would take more than a decade to change Industry Guide 7.

A Deeper Dive into S-K 1300

- As of 01-January-2021, registrants must provide disclosures specified in S-K 1300 for all their “**material**” property filings (i.e., 10-Ks, 20-Fs, etc.).
- What is a “material property”?
 - ✓ One that constitutes $\geq 10\%$ of a company’s total assets. (17CFR_229)
- Information is material if there is “***a substantial likelihood that a reasonable investor would attach importance to such information in determining whether to buy or sell securities***”.
 - ✓ The **registrant** is to decide on materiality but information that may be considered material includes exploration results – even negative results.
 - ✓ Material information must be disclosed individually **as well as** in aggregate (when a registrant has more than one material property).

A Deeper Dive

- Like the concept of “reasonable prospects for economic extraction” inherent to NI 43-101, a mineral resource within S-K 1300 must be ***“a reasonable estimate of mineralization”***.
- Mineral reserves no longer need to be supported **ONLY** by a feasibility study; a pre-feasibility study is acceptable (same in NI 43-101).
- Commodity price assumptions no longer need to be based on a trailing yearly average. The **registrant** must now show the assumption provides a reasonable prospect for economic extraction (Federal Register **83 FR 66346**)
 - This may be a historically-based or via a forward contract price.



A Deeper Dive

- Per SEC, registrants must provide disclosures prepared by a “Qualified Person(s).”
 - ✓ A mineral industry professional with at least five years of relevant experience in the type of mineralization and type of deposit under consideration and in the specific type of activity that person is undertaking on behalf of the registrant and
 - ✓ an eligible member or licensee in good standing of a recognized professional organization at the time the technical report summary is prepared (same as “Effective Date” of an NI 43-101 TR).
- Does not require QPs to be independent of the registrant.
- Registrants must submit a Technical Report Summary (“TRS”) prepared by a QP(s).
 - A TRS is required when the Registrant is disclosing a material change to its material property(s).
 - A TRS is similar to an NI 43-101 TR with differences.

Note! You cannot submit an **existing** NI 43-101 Technical Report to SEC as your TRS.

- Look for TRSs on file on EDGAR – SEC’s file repository – to help you prepare yours.

The Mineral Project Pipeline and the TRS

Exploration

Mineral
Resources

Mineral
Reserves

Production

- As it applies to the mineral pipeline, there are different levels of a TRS to disclose the spectrum of:
 1. Exploration results (**permitted but not required**);
 2. Results of an Initial Assessment - like a PEA (**required to state initial mineral resources**);
 3. Results of a Preliminary Feasibility Study (**the minimal required in order to state mineral reserves**); and
 4. Results of a full or final Feasibility Study (**required**).
- *Per Section 229.601 (b) (96) (ii)*
 - *“The technical report summary must not include large amounts of technical or other project data, either in the report or as appendices to the report. The qualified person must draft the summary to conform, to the extent practicable, with the plain English principles set forth in section 230.42 or 240.13a-20”.*

TRS vs TR

Similarities and Differences

See NI 43-101 F1 for specifics of a TR.

See SEC §§ 229.601(b)(96) for specifics of a TRS.

Tabulation from Mining Plus

TRS

SEC Table of Contents (229.601)	
1	Executive Summary
2	Introduction
3	Property Description
4	Accessibility, Climate, Local Resources, Infrastructure and Physiography
5	History
6	Geological Setting, Mineralisation and Deposit
7	Exploration
8	Sample Preparation, Analyses, and Security
9	Data Verification
10	Mineral Processing and Metallurgical Testing
11	Mineral Resource Estimates
12	Mineral Reserve Estimates
13	Mining Methods
14	Process and Recovery Methods
15	Infrastructure
16	Market Studies
17	Environmental Studies, Permitting, and Plans, Negotiations, or Agreements with Local Individuals or Groups
18	Capital and Operating Costs
19	Economic Analysis
20	Adjacent Properties
21	Other Relevant Data and Information
22	Interpretation and Conclusions
23	Recommendations
24	References
25	Reliance on Information Provided by the Registrant
	Advanced Properties Only

TR

NI43-101F1 Table of Contents	
1	Summary
2	Introduction
3	Reliance on Other Experts
4	Property Description and Location
5	Accessibility, Climate, Local Resources, Infrastructure and Physiography
6	History
7	Geological Setting and Mineralisation
8	Deposit Types
9	Exploration
10	Drilling
11	Sample Preparation, Analyses and Security
12	Data Verification
13	Mineral Processing and Metallurgical Testing
14	Mineral Resource Estimates
15	Mineral Reserve Estimates
16	Mining Methods
17	Recovery Methods
18	Project Infrastructure
19	Market Studies and Contracts
20	Environmental Studies, Permitting and Social or Community Impact
21	Capital and Operating Costs
22	Economic Analysis
23	Adjacent Properties
24	Other Relevant Data and Information
25	Interpretation and Conclusions
26	Recommendations
27	References

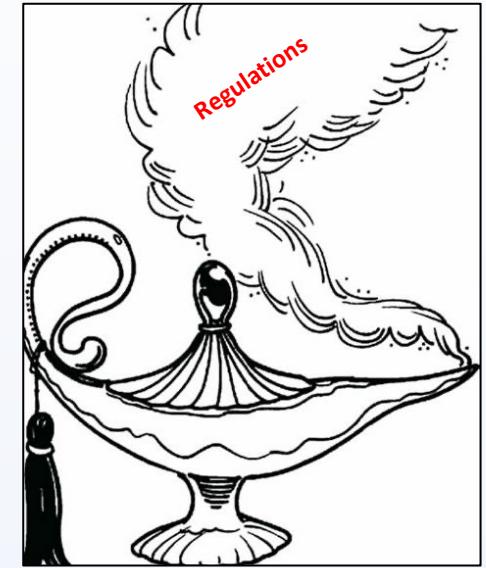
QP Liability

An Aspect of Great Interest - Consult your Counsel

The new rules provide that a “qualified person” will not be subject to expert liability under Section 11 of the Securities Act for certain aspects of specified modifying factors outside the expertise of the qualified person that are based on information provided by the registrant and are discussed in the technical report summary or other parts of the registration statement (more available)

Final Comments

- ✓ After years of lobbying the SEC, Guide 7 was replaced.
 - The lesson – “**Be careful what you wish for**”
- ✓ S-K 1300 went into effect with a registrant’s first SEC filings on or after 01-January-2021.
- ✓ The new rules are generally compatible in form and content to other rules but, they are **not** interchangeable.
- ✓ It embodies the concepts of Materiality, Competence and Transparency – key factors for geologists!



Final Comments

- ✓ Companies with both US and Canadian stock listings are required to prepare both a TRS **and** a TR!
 - ✗ No Reciprocal Recognition.
- ✓ There is no requirement for an independent QP(s) – as long as the QP(s) meets the specified conditions.
- ✓ QP conditions are similar to those of other jurisdictions, but a firm can serve as QP for a client under S-K 1300.
- ✓ Consult your counsel!



Thank you.
Locate more here!

CFR Title 17 § 229.1300-1305

- Main Regulations (~ 27 pages)
- § 229.1300 (Item 1300) Definitions
- § 229.1301 (Item 1301) General instructions
- § 229.1302 (Item 1302) Qualified person, technical report summary, and technical studies
- § 229.1303 (Item 1303) Summary disclosure
- § 229.1304 (Item 1304) Individual property disclosure
- § 229.1305 (Item 1305) Internal controls disclosure

And <https://www.sec.gov/divisions/corpfin/internatl/foreign-private-issuers-overview.shtml#II>