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**S-K 1300 Simplified for Consultants  
Presented as a Webinar for MMSA**

**December 11, 2020**

## Presenter



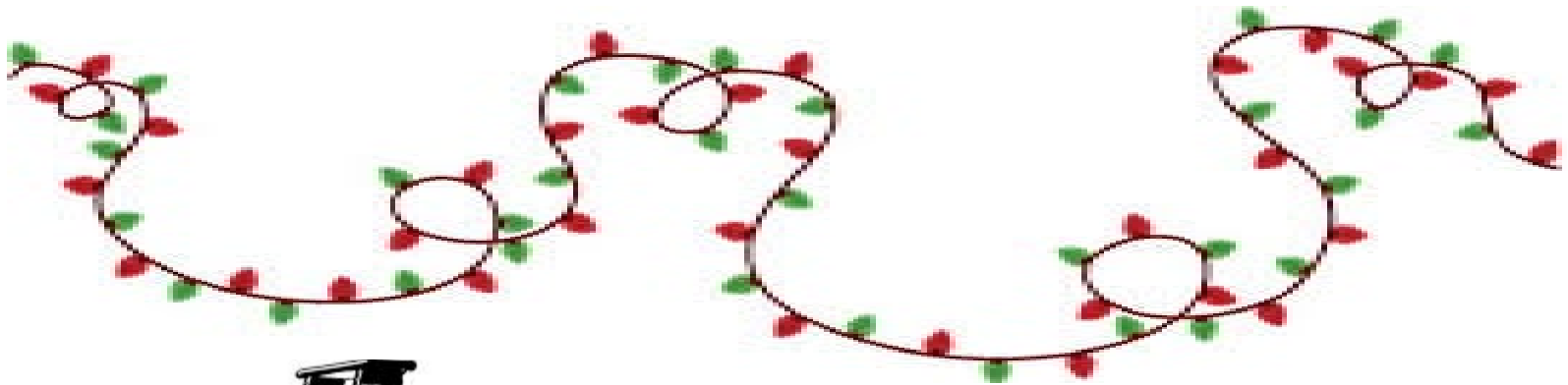
### **Dr. Robert E. Cameron**

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## Disclaimer

The following information has been abstracted from various publications and sources and is intended for this presentation and discussion purposes only and not for formal publication. Please do not republish. The opinions expressed in this presentation are of the author and should not be construed to constitute a valid or binding legal opinion.

# Safety Share



Holiday Lights

## What is S-K 1300?

- Regulation S-K is a prescribed regulation under the US Securities Act of 1933 that lays out reporting requirements for various SEC “K” filings (1-K, 10-K, 8-K, etc.) used by public companies
- S-K 1300 is the final rules to modernize the SEC’s “*mining property disclosure regime by improving the reliability of information to investors and by harmonizing disclosures with international standards*”<sup>1</sup>
- Found in CFR Title 17 § 229.**1300-1305**
- Mandatory as of January 1, 2021

<sup>1</sup> SEC, SEC Adopts Rules to Modernize Property Disclosures Required for Mining Registrants, Press Release 2018-248, October 31, 2018, <https://www.sec.gov/news/press-release/2018-248>

## SEC Changes for Mining Registrants

- Amended 17 CFR 229.102 (“Item 102 of Regulation S-K”)<sup>2</sup>
- Added new exhibit (96) to 17 CFR 229.601(b) (“Item 601 of Regulation S-K”),
- Added 17 CFR part 229, subpart 229.1300 (“subpart 1300 of Regulation S-K”),
- Amended 17 CFR 230.436 under the Securities Act,
- Amended Form 1-A, amending Form 20-F, and
- Rescinded 17 CFR 229.801(g) and 229.802(g) under the Securities Act and Exchange Act. (Industry Guide 7)

<sup>2</sup> SEC, <https://www.sec.gov/rules/final/2018/33-10570.pdf>, page 1

## Publication by SEC of their Final Rule

### “Final Rule: Modernization of Property Disclosures for Mining Registrants”

<https://www.sec.gov/rules/final/2018/33-10570.pdf>

- Includes:
  - Commenter’s concerns – as discussion and footnotes interspersed within the text
  - Discusses why changes were made from the proposed rules to the final
  - Paperwork Reduction Act discussion
  - Final Regulatory Flexibility Act Analysis
- Good document to understand the changes but it is **450 pages** in length

## Where Should I Start?

I would not recommend a consulting engineer or geologist start with the SEC Final rules document. Why?

- It is 450 pages and it has a lot of commentary and discussion that is unimportant for a consultant's work
- While regulators and attorneys may find this document interesting, most consultants are not particularly interested in items relating to:
  - paperwork reduction
  - compliance cost
  - why decisions were or were not made
  - differences between the proposed and final rules
  - etc.



**After about an hour of reading your head will probably explode and you will give up**



## So, Where to Start?

- S-K 1300 is not that complicated especially if you have been working with NI 43-101 as they are similar
- Download and read: **(see links at the end)**
  - **CFR Title 17 § 229.1300-1305**
    - Main Regulations (~ 27 pages)
  - **CFR Title 17 § 229.601(b)(96)**
    - Prescriptive requirements for the Technical Report Summary with notes and instructions (~ 10 pages, similar to Form 43-101F1)

## Remember

- S-K 1300 is about disclosure requirements and regulations for mineral assets, i.e., mineralized material, Mineral Resources and Mineral Reserves.
- S-K1300 is written for Mining Registrants and their attorneys who are required to submit certain SEC filings (10-K, 8-K, etc.) and not for the average consultant.
- S-K 1300 regulations both the initial disclosure and the on-going disclosure requirements of mineral assets. The later may not involve a consulting engineer or geologist.

## Remember (cont.)

- Filings are the **responsibility** of the **Registrant** (company) and their securities attorneys.
- The actual filing is **NOT** the obligation of a consulting engineer or geologist but the Registrant.
- A consulting engineer's or geologist's duty is to provide the company or their attorneys a Technical Report Summary which can be included or appended to a filing and ascertain that the contents accurately reflects the Mineral Resources or Reserves at the time of the report.

# S-K 1300 Regulations

- **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

<https://ecfr.io/Title-17/Part-229/Subpart-229.1300>

## Reports

- **Technical Report Summary** (§229.1302) – Required for **first time** reporting/disclosure of Mineral Resources or Reserves
  - Consultants need to be familiar with requirements and structure of this report

## Reports

- **Summary Disclosure** (§229.1303) – Periodic summary if reporting on two or more mining properties, e.g., annual reports (10-K). Engineering and geologic consultants are generally not involved with this sort of disclosure, but it does require a QP signature.
  - Required Information for Annual Report
  - Requires a brief description of the project(s) or property(s) containing the information outlined in the section
  - Summary reporting with two separate tables to report Resources and Reserves at the end of the fiscal year. The summary tables consolidate reporting by geographic areas (by individual country, regions of a country, state, groups of states, mining district, or other political units and then by individual mine.

	Measured mineral resources		Indicated mineral resources		Measured + indicated mineral resources		Inferred mineral resources	
	Amount	Grades / qualities	Amount	Grades / qualities	Amount	Grades / qualities	Amount	Grades / qualities
Commodity A:								
Geographic area A								
Geographic area B								
Mine/Property A								
Mine/Property B								
Other mines/properties								
Other geographic areas								
Total								
Commodity B:								
Geographic area A								
Geographic area B								
Mine/Property A								
Mine/Property B								
Other mines/properties								
Other geographic areas								
Total								

## Reports

- **Individual Property Disclosure** (§229.1304) – Same as Summary Disclosure but, there is just one property. It needs a QP signature.
  - Information for Annual Report
  - Requires a brief description of the project(s) or property(s) as containing the information outlined in the section.
  - This also is an annual update of the Mineral Resource and Reserves and requires two tables.



# Mineral Resource Disclosure

Table 1 to Paragraph (D)(1)—[Individual Property Name]—Summary of [Commodity/Commodities] Mineral Resources at the End of the Fiscal Year Ended [Date] Based on [Price]<sup>1</sup>

	Resources		Cut-off grades	Metallurgical recovery
	Amount	Grades / qualities		
Measured mineral resources				
Indicated mineral resources				
Measured + Indicated mineral resources				
Inferred mineral resources				

<sup>1</sup>The registrant must use a reasonable and justifiable price, which it must disclose, together with the time frame and point of reference used, when estimating mineral resources for this Table 1

**From § 229.1304 (Item 1304) Individual property disclosure**

## Disclosure Reports

Mineralization Category	Common Report Types	SEC Filing	Author's Comments
Mineralized Material	Exploration Results Drilling Results	Technical Report Summary (Filing Optional)	<ol style="list-style-type: none"> <li>1. Disclosure typically optional</li> <li>2. Tonnage and grade/quality if disclosed must only be expressed as ranges</li> </ol>
Resources: Measured Indicated Inferred	Resource Estimate Scoping Study Preliminary Economic Assessment (PEA)	Technical Report Summary which <b>must</b> include an Initial Assessment	<ol style="list-style-type: none"> <li>1. All parameters in Table 1 of § 229.1302(d) must be addressed</li> <li>2. Must have an economic analysis (not necessarily a cash flow) to disclose a mineral resource which shows that with the assumed technical and economic conditions, there are reasonable prospects for economic extraction</li> <li>3. Inferred may be used in a cash flow for the economic assessment provided:               <ol style="list-style-type: none"> <li>(a) a cash flow without the inferred is also presented, and</li> <li>(b) the cost estimates used in the cash flow must have an accuracy of +/- 50% and a contingency of &lt;= 25%</li> </ol> </li> </ol>
Reserves: Proven Probable	Preliminary Feasibility Study Feasibility Study	Technical Report Summary	<ol style="list-style-type: none"> <li>1. Must meet parameters discussed in Table 1 of § 229.1302(d)</li> <li>2. Must have cash flow for the economic analysis and Inferred resource must be considered waste.</li> <li>3. Capital and Operating costs must meet the accuracy and contingency range specified in Table 1</li> </ol>

## Comments on the Initial Assessment

- The term “Initial Assessment” is used in the regulations to define a preliminary technical and economic study in order to disclose Mineral Resources or studies disclosing or updating Mineral Resources.
- It is just a Technical Report Summary on the property or deposit.
- A special case of an Initial Assessment is when Inferred Resources is used in a cash flow to show potential of economic viability which is similar to what is called a Preliminary Economic Assessment (PEA) under NI 43-101. It cannot be used to disclose Mineral Reserves.
- The term is also used frequently to refer the technical and economical analysis used by the QP to demonstrate at the time of reporting that there are reasonable prospects for economic extraction of the Mineral Resource.
- The actual report filed is just a Technical Report Summary as specified by § 229.601(b)(96)

## Technical Report Summary

**§ 229.601(b)(96)(i)** states “A registrant that, pursuant to §§ 229.1300 through 229.1305 (subpart 229.1300 of Regulation S-K), discloses information concerning its **mineral resources or mineral reserves must file a technical report summary** by one or more qualified persons that, **for each material property**, identifies and summarizes the scientific and technical information and conclusions reached concerning an initial assessment used to support disclosure of mineral resources, or concerning a preliminary or final feasibility study used to support disclosure of mineral reserves. At its election, a registrant may also file a technical report summary from a qualified person that identifies and summarizes the information reviewed and conclusions reached by the qualified person about the registrant's exploration results. Please refer to § 229.1302(b) (Item 1302(b) of Regulation S-K) for when a registrant must file the technical report summary as an exhibit to its Securities Act registration statement or Exchange Act registration statement or report.” (emphasis added)

i.e., If you want to present to your shareholders or the public a Mineral Resource (Measured, Indicated or Inferred) or a Mineral Reserve (Proven or Probable) you need to file a Technical Summary Report that shows there is a technical and economic basis for your claim

## Technical Report Summary

§ 229.601(b)(96)(ii) states *“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 § 230.421 or § 240.13a-20 of this chapter.”*

- This is a “summary”
  - Don’t include 100 pages of how the deposit was formed
  - Don’t include page after page of assays
  - Don’t include 100’s of cross-sections or plan maps (but they require some)
- Write so it is understandable to a reasonably informed person

The SEC wants short summary reports but if you read the description of what they want included, you find they require some extremely detailed information. The challenge will be to summarize it without sacrificing content.

## Technical Report Summary

**§ 229.601(b)(96)(iii)(A)** states “A technical report summary that reports the results of a preliminary or final feasibility study must provide all of the information specified in paragraph (b)(96)(iii)(B) of this section. A technical report summary that reports the results of an initial assessment **must**, at a minimum, provide the information specified in paragraphs (b)(96)(iii)(B)(1) **through (11)** and **(20) through (25)** of this section, and may also include the information specified in paragraph (b)(96)(iii)(B)(19) of this section. A technical report summary that reports exploration results must, at a minimum, provide the information specified in paragraphs (b)(96)(iii)(B)(1) through (9) and (20) through (25) of this section.”

Note - The Technical Report Summary is prescriptive in nature with 25 major headings or chapters. You should have all 25 chapters (see next slide). Don't skip a chapter as you might confuse a reader if you are the economic analysis in chapter 12 instead of chapter 19. If any are not applicable just say so and why after the chapter heading.

# S-K 1300 Technical Report Summary TOC

Chapter Description	Chapter Description
(1) Executive Summary	(14) Processing and recovery methods
(2) Introduction	(15) Infrastructure
(3) Property Description	(16) Market studies
(4) Accessibility, climate, local resources, infrastructure and physiography	(17) Environmental studies, permitting, and plans, negotiations, or agreements with local individuals or groups
(5) History	(18) Capital and operating costs
(6) Geological setting, mineralization, and deposit	(19) Economic analysis
(7) Exploration	(20) Adjacent properties
(8) Sample preparation, analyses, and security	(21) Other relevant data and information
(9) Data Verification	(22) Interpretation and conclusions
(10) Mineral processing and metallurgical testing	(23) Recommendations
(11) Mineral resource estimates	(24) References
(12) Mineral reserve estimates	(25) Reliance on information provided by the registrant
(13) Mining methods	

## Technical Report Summary

- This is not an NI 43-101 Technical Summary. NI43-101F1 has 27 items versus 25 for an S-K 1300
- **Read** the required chapter contents carefully in § 229.601(b)(96)(iii)(B) and make sure you include all the information required.
- The SEC is looking for different information in sections titled similar to those required in an NI 43-101. Remember that you need to state “If not then why not” if certain items don’t pertain.
- Most of the sections require a discussion of the adequacy of the data or risks – make sure you include those discussions where required.



## Example of Required Content - 1

### § 229.601(b)(96)(iii)(B)(6) *Geological setting, mineralization, and deposit.*

*“(i) Describe briefly the regional, local, and property geology and the significant mineralized zones encountered on the property, including a summary of the surrounding rock types, relevant geological controls, and the length, width, depth, and continuity of the mineralization, together with a description of the type, character, and distribution of the mineralization.*

*(ii) Each mineral deposit type that is the subject of investigation or exploration together with the geological model or concepts being applied in the investigation or forming the basis of the exploration program.*

*(iii) The qualified person **must include** at least one stratigraphic column and one cross-section of the local geology to meet the requirements of paragraph (b)(96)(iii)(B)(6) of this section.”*

## Example of Required Content - 2

### § 229.601(b)(96)(iii)(B)(7) *Exploration*

“ ... (iii) For characterization of **hydrogeology**, describe: The nature and quality of the sampling methods used to acquire data on surface and groundwater parameters; the type and appropriateness of laboratory techniques used to test for groundwater flow parameters such as permeability, and include discussions of the quality control and quality assurance procedures; results of laboratory testing and the qualified person's interpretation, including any material assumptions, which **must include descriptions of permeable zones or aquifers, flow rates, in-situ saturation, recharge rates and water balance; and the groundwater models used to characterize aquifers, including material assumptions used in the modeling.**

(iv) For **geotechnical** data, testing and analysis, describe: The nature and quality of the sampling methods used to acquire geotechnical data; the type and appropriateness of laboratory techniques used to test for soil and rock strength parameters, including discussions of the quality control and quality assurance procedures; and results of laboratory testing and the qualified person's interpretation, including any material assumptions...”

## Disclaimers

- § 229.1302(b)(6)(ii) *“The qualified person **may not disclaim responsibility** for any information or documentation prepared by a third-party specialist upon which the qualified person has relied, or any part of the technical report summary based upon or related to that information and documentation.”*
- The QP may rely upon information provided by the registrant (see instructions for Chapter 25) regarding:
  - Macroeconomic trends, data, and assumptions, and interest rates;
  - Marketing information and plans within the control of the registrant;
  - Legal matters outside the expertise of the qualified person, such as statutory and regulatory interpretations affecting the mine plan;
  - Environmental matters outside the expertise of the qualified person;
  - Accommodations the registrant commits or plans to provide to local individuals or groups in connection with its mine plans; and
  - Governmental factors outside the expertise of the qualified person.

# QP Requirements

## § 229.1300 (Item 1300) Definitions.

*“Qualified person is an individual who is:*

*(1) 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*

*(2) An eligible member or licensee in good standing of a recognized professional organization at the time the technical report is prepared...”*

- You are considered a QP for SEC purposes if you are:
  - AIPG member as a CPG
  - MMSA as a QP member
  - SME Registered Member (RM)
  - Licensed Professional Engineer (PE)
  - Member of a recognized professional organization like AusIMM, CIM with appropriate membership level

## QP Relevant Experience

- Just because you are a QP you may not have the relevant experience. S-K 1300 puts additional stipulations on a QP. **Read** the definition of QP including the notes in §229.1300.

*“**Relevant experience** means, for purposes of determining whether a party is a qualified person, that the party has experience in the **specific type of activity** that the person is undertaking on behalf of the registrant. .... For a qualified person providing a technical report for **exploration results or mineral resource estimates**, relevant experience also requires, in addition to experience in the type of mineralization, sufficient experience with the sampling and analytical techniques, **as well as extraction and processing techniques**, relevant to the mineral deposit under consideration”*

**Comment - A QP should only sign-off on the information they feel comfortable that they can defend in a court of law.**

## QP – Other

- §229.1302(b)(1)(ii) ***“A third-party firm comprising mining experts, such as professional geologists or mining engineers, may date and sign the technical report summary instead of, and without naming, its employee, member or other affiliated person who prepared the technical report summary”***
- There is NO requirement that the QP be independent of the Registrant (Company) for any disclosure.

**Comment – Most companies have at least one top executive or board member that is a PE. That means they can serve as QP for any filing.**

## Liability and Materiality

- **Liability** - The final rules do not provide a complete exemption for qualified persons from expert liability under Section 11 of the Securities Act.

**Check your professional liability insurance**

- **Materiality of a property** – This determination should be the **responsibility of the Registrant and their attorneys**. Not the consultant. Generally, a property is considered material if it constitutes 10% of the either a company's revenue or its assets. However, if a sand and gravel operation has 20 mines although none generate more than 5% of their revenue, they are all considered material.

# Mineral Resource Disclosure

Table 1 to Paragraph (D)(1)—[Individual Property Name]—Summary of [Commodity/Commodities] Mineral Resources at the End of the Fiscal Year Ended [Date] Based on [Price]<sup>1</sup>

	Resources		Cut-off grades	Metallurgical recovery
	Amount	Grades / qualities		
Measured mineral resources				
Indicated mineral resources				
Measured + Indicated mineral resources				
Inferred mineral resources				

<sup>1</sup>The registrant must use a reasonable and justifiable price, which it must disclose, together with the time frame and point of reference used, when estimating mineral resources for this Table 1

From § 229.1304 (Item 1304) Individual property disclosure



## Mineral Reserve Disclosure

Table 2 to Paragraph (D)(1)—[Individual Property Name]—Summary of [Commodity/Commodities] Mineral Reserves at the End of the Fiscal Year Ended [Date] Based on [Price]<sup>1</sup>

	<b>Amount</b>	<b>Grades / qualities</b>	<b>Cut-off grades</b>	<b>Metallurgical recovery</b>
Proven mineral reserves				
Probable mineral reserves				
Total mineral reserves				

<sup>1</sup>The registrant must use a reasonable and justifiable price for each commodity, which it must disclose, together with the time frame and point of reference used, when estimating mineral reserves for this Table 2

From § 229.1304 (Item 1304) Individual property disclosure

## Summary

- **Download and read** CFR Title 17 §229.1300-1305 and CFR Title 17 §229.601(b)(96) (links on next page) paying attention to:
  - Technical Report Summary (§ 229.1302 and report outline and instructions §229.601(b)(96) )
  - Requirements for the economic analysis (Initial Assessment) for declaring resources and reserves
- Assemble the Technical Report Summary for property filings:
  - The TRS should be a summary of the technical work not the actual Resource study, PFS or FS
  - Pay close attention to the instructions in §229.601(b)(96)

## Summary

- Remember the principle “If not then why not”.
- If the Company is disclosing PEA style report which includes Inferred resources in the cashflow, a cashflow without using the Inferred Resources must be included.
- There is no requirement for an Independent QP, so when possible push the liability back unto the Company.
- Let the Company and their Attorneys deal with materiality of properties and what properties need a Technical Report Summary
- A brief description of annual reporting requirements are in §229.1303 and §229.1304

## Links

- I have downloaded the S-K 1300 regulations and put them into 2 files:
  - **CFR Title 17 § 229.1300-1305**
    - Main Regulations (~ 27 pages)
    - [http://www.recphd.com/SEC\\_1300.pdf](http://www.recphd.com/SEC_1300.pdf)
  - **CFR Title 17 § 229.601(b)(96)**
    - Prescriptive requirements for the Technical Report Summary with notes and instructions (~ 10 pages, similar to Form 43-101F1)
    - [http://www.recphd.com/SEC\\_601.pdf](http://www.recphd.com/SEC_601.pdf)

## Final Word

This presentation will be made available on the  
MMSA website

[www.mmsa.net](http://www.mmsa.net)

Have a Safe and Happy Holidays

## Questions or Discussion

