Experience of working with Section 18 and the S-K1300 TRS, a review.

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Presented by
Rob Ingram

Ingram Consulting

Sources and Acknowledgements

Sources and Credits:

S-K 1300 Simplified for Consultants' ; Dr Robert Cameron (used with the consent of the author).
JSE Requirements Section 18 Issue 27.

Disclaimer.

The information used in this presentation is believed to be accurate at the time of the presentation.
The views and opinions expressed in this presentation are the author's own and do not necessarily reflect the views of the GSSA, SAIMM, the JSE, the SSC, or the members of the Panel of Readers.

Up till now the Panel has reviewed one submission in terms of S-K1300 for a company intending a main listing on the NYSE with a secondary listing on the JSE and one CPR which was JORC-compliant, for a company intending a main listing on the ASX with a secondary listing on the JSE.

Regarding these submissions we should pay attention to the JSE Listing Requirements that apply to such listings.

The JSE Requirements Section 18 applies to:

Dual Listings and Listings by External Companies.

You can download the most recent version of the JSE Requirements; Service Issue 27, from the SAMCODES website.

I suggest you familiarise yourselves with Section 18, but today I shall only refer to those parts of Section 18 relevant to mineral companies.

Section 18.4

18.4 Secondary listing status means that once an applicant issuer is listed, it will only be required to comply with the Listing Requirements of the exchange where it has its primary listing, save as otherwise specifically stated in the Listings Requirements.

Section 18.17

18.17 **For purposes of the pre-listing statement, the JSE will accept a competent person's report (as required by Section 12) which has been prepared within the 12 months prior to listing on the JSE, provided that it has been prepared in accordance with SAMREC, Joint Ore Reserves Committee Code or National Instrument 43-101 and that there have either been no changes since that date or that any changes are reported on by the Competent Person.**

Applicant issuers who do not comply with the aforementioned must produce a new Competent Person's Report in compliance with one of the aforementioned reporting codes and this report must be approved by the JSE's Readers Panel.

Section 18.20; Continuing obligations

18.20 The JSE will allow the requirements of the primary exchange to take precedence in relation to applicant issuers with a secondary listing on the JSE, with the following exceptions: …………

It was not necessary in terms of 18.17 for the mineral companies to submit the TRS or the CPR for review as they were all dated less than 12 months prior to submission.

In the case of the TRS, the Panel was asked to review the TRS for compliance with the SAMREC Code. This request caused confusion as the S-K1300 TRS reporting format is not a reporting code.

Its contents can however be based on, or drawn from a code-compliant CPR. It should be noted though that the S-K 1300 has been designed around the NI 43-101 format.

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*"[1]**
- **Found in CFR Title 17 § 229.1300-1305**
- **Mandatory as of January 1, 2021**

[1] 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

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 the following: (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 regulates both the initial disclosure and the on-going disclosure requirements of mineral assets. The later may not involve a consulting engineer or geologist.

<u>Remember</u> (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 TRS 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.**

Reports

Technical Report Summary (§229.1302) – Required for first time reporting/disclosure of Mineral Resources or Mineral Reserves.

Consultants need to be familiar with requirements and structure of this report.

S-K 1300 Regulations

Main Regulations (~ 27 pages)

- **§ 229.1300 (Item 1300) Definitions**
- **§ 229.1301 (Item1301) 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

- **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(ies) 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) – is the ame as Summary Disclosure but, there is just one property. It needs a QP signature.**

- ❖ **Information for Annual Reports.**
- ▪ **Requires a brief description of the project(s) or property(ies) as containing the information outlined in the section.**
- ▪ **This also is an annual update of the Mineral Resource and Mineral 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][1]

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

[1]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)	1. Disclosure typically optional 2. Tonnage and grade/quality if disclosed must only be expressed as ranges
Resources: Measured Indicated Inferred	Resource Estimate Scoping Study Preliminary Economic Assessment (PEA)	Technical Report Summary which **must** include an Initial Assessment	1. All parameters in Table 1 of § 229.1302(d) must be addressed 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 3. Inferred may be used in a cash flow for the economic assessment provided: (a) a cash flow without the inferred is also presented, and (b) the cost estimates used in the cash flow must have an accuracy of +/- 50% and a contingency of <= 25%
Reserves: Proven Probable	Preliminary Feasibility Study Feasibility Study	Technical Report Summary	1. Must meet parameters discussed in Table 1 of § 229.1302(d) 2. Must have cash flow for the economic analysis and Inferred resource must be considered waste. 3. Capital and Operating costs must meet the accuracy and contingency range specified in Table 1

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 are 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 TRS 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 TRS by one or more QPs 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 TRS from a QP that identifies and summarizes the information reviewed and conclusions reached by the QP about the Registrant's exploration results. Refer to § 229.1302(b) (Item 1302(b) of Regulation S-K) for when a Registrant must file the TRS 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 TRS 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 TRS 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 n 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 TRS 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 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 QP 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 modelling.

(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 QP may not disclaim responsibility for any information or documentation prepared by a third party specialist upon which the QP 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 QP, such as statutory and regulatory interpretations affecting the mine plan;**

- **Environmental matters outside the expertise of the QP;**

- **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 QP.**

QP Requirements

§ 229.1300 (Item 1300) Definitions: ***"A 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; Note; this could also include the SAIMM, GSSA, SAGC.**

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 QP, that the party has experience in the specific type of activity that the person is undertaking on behalf of the registrant. ….. For a QP 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 TRS 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 QPs 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][1]

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

[1]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][1]

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

[1]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

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 TRS 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 a 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

- The S-K 1300 regulations are available via the links below: put them into 2 files:

- CFR Title 17 § 229.1300-1305
- Main Regulations (~ 27 pages)
- 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

Thank you, any questions?