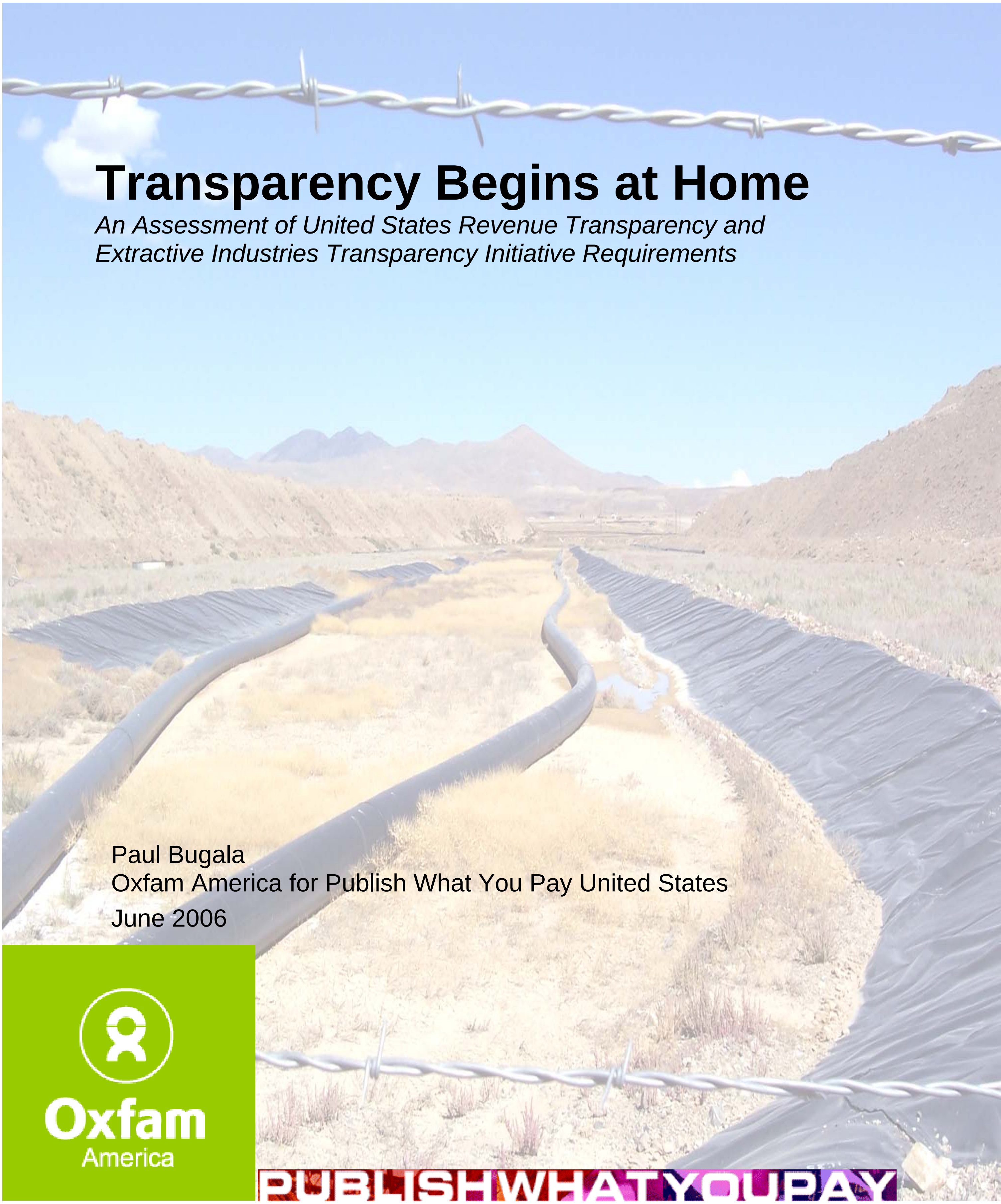

Transparency Begins at Home

An Assessment of United States Revenue Transparency and Extractive Industries Transparency Initiative Requirements

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Oxfam America for Publish What You Pay United States

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Terms Used in This Report

10-K—An annual report that provides a comprehensive overview of a company's business and financial condition and includes audited financial statements. Submission of a 10-K is required of publicly traded companies by the Securities and Exchange Commission (SEC).
AFS—Auditing and Financial System
BLM—Bureau of Land Management
CFR—Code of Federal Regulations
DOA—Department of Agriculture
DOI—Department of the Interior
EI—Extractive Industries
EITI—Extractive Industries Transparency Initiative
FASB—Federal Accounting Standards Board
FOGRMA—Federal Oil and Gas Royalty Management Act of 1982
FOIA—Freedom of Information Act
IIM—Individual Indian Money
IRC—Internal Revenue Code
IRS—Internal Revenue Service
MMS—Minerals Management Service
MRM—Mineral Revenue Management
OMM—Offshore Mineral Management
NAICS—North American Industry Classification System
OSM—Office of Surface Mining
OCS—Outer Continental Shelf
OGOR—Oil and Gas Operations Report
RIK—Royalty-in-Kind
SEC—Securities and Exchange Commission
USCS—United States Code Service or U.S. Code

Executive Summary

The United States has an extensive, if not comprehensive, bureaucratic system intended to collect, verify and disclose the benefit streams it is due from its extractive industries (EI) and to compel EI firms to disclose their payments. The components of this system were created under different circumstances with the intention of either assuring the proper collection and disbursal of mineral proceeds or protecting the interests of investors in mineral development concerns. The result is a system that meets some of the transparency requirements put forth in the Extractive Industries Transparency Initiative's (EITI) reporting templates[1], but falls short in both the spirit and letter of reporting standards in areas such as corporate reporting.

The opportunity to bridge the gaps between data available from U.S. Government and corporate sources and the EITI requirements is limited due to the Freedom of Information Act (FOIA) exemption that prohibits access to "trade secrets," limitations in Federal Accounting Standards Board (FASB) reporting requirements, and the prerogative of private firms to not disclose revenue, payment and contract information.

For the United States reporting standards to be brought in line with EITI baseline requirements, these exemptions should be adapted and a government body should be created to consolidate the data that now resides in several different locations and, in some cases, is disbursed only at the relevant department's convenience.

The Structure of this Assessment

The following analysis of U.S. compliance with EITI reporting standards begins with an overview of the departments and reports that are relevant to transparency at the federal level and, to a more limited extent, the state and county levels. The report then provides a comparative analysis of the details available from these sources and the information that is required of host government and corporate EITI participants.

The Evolution of U.S. Mineral Regulation

The General Mining Law of 1872

The General Mining Law of 1872 (30 USCS §§ 22 et seq.) and the Mineral Leasing Act of 1920 (30 USCS § 181 et seq.) are the foundation of the United States mineral management regime. The Mining Law of 1872 gives free access to individuals and corporations to prospect for minerals on open public domain lands, with the exception of protected areas, and allows them to stake claims on the deposits they find at virtually no cost, and thus considerably below market value[2].

Under the Mining Law of 1872's claim-patent system, mineral production can take place without a patent, there is no limit on the number of claims a person can locate, claims can be held indefinitely, there is no requirement that mineral production ever take place, and no royalties are charged for hard rock mining.

The Mineral Leasing Act of 1920

The Mineral Leasing Act removed oil, gas, oil shale, phosphates, and other minerals from the Mining Law of 1872's claim-patent system. Instead, these minerals are subject to a leasing system in which the federal government retains ownership of leased lands, has greater control over development, and imposes royalties.

Current Federal and Native American Mineral Lease Management

Federal Land and Offshore Management

Federal onshore mineral leasing activities are managed by The Department of the Interior (DOI) through the Bureau of Land Management (BLM) and by the Department of Agriculture (DOA) through the United States Forest Service.

Under 43 Code of Federal Regulations (CFR) Subchapter C[3], the BLM tends to mineral leasing on its public lands, those of other DOI agencies and all other federal landowners. In total, the BLM is responsible for managing the mineral activities on approximately 600 million acres.

The Forest Service responsibilities, under 36 CFR § 228[4], are limited to requiring submission of plans of mineral-related operations and do not involve revenue or contract reporting. The Minerals Management Service (MMS), a bureau with the DOI, manages the revenue streams from mineral leases on Forest Service land.

Under 30 CFR Subchapter B, the MMS also manages all offshore mineral leasing within the Outer Continental Shelf, including signing leases, enforcement of lease provisions and revenue management. The offshore leasing program is pursuant to the Outer Continental Shelf Lands Act of 1953 (43 USCS §§ 1331 et seq.).

The DOI's Office of Surface Mining also regulates licensing, bonding, and reclamation of coal mining operations under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

Native American Land Management

Through the Bureau of Indian Affairs, the BLM manages approximately 4,300 Native American mineral leases. It distributed $334.3 million to Native American Tribes and allottees in FY2004.[5] Proceeds for Native American leases are to be turned over in their entirety to the appropriate Native American Tribes and allottees through the BLM Office of Trust Fund Management.

Establishment of the DOI's Minerals Management Service

In 1981, the Commission on Fiscal Accountability of the Nation's Energy Resources (the Linowes Commission) found that the U.S. Geological Survey, then in charge of royalty management, mismanaged reported royalty data, lease account information, and audit procedures. The release of the Linowes Commission's report prompted DOI to create a branch responsible for royalty management called the Mineral Management Service[6]. Within MMS, Mineral Revenue Management (MRM) program manages and accounts for all revenues associated with both federal offshore and onshore mineral leases.

The following year, Congress also responded to the Linowes Commission with The Federal Oil and Gas Royalty Management Act (FOGRMA) of 1982 (30 USCS §§ 1701 et seq.)[7], which sought to improve auditing, inspection, collection, and enforcement for oil and gas leases.

Early on, the MMS itself was faulted for flawed data implementation, especially of its Auditing and Financial System (AFS). The Service also may have had a limited role in the mismanagement of Individual Indian Money (IIM) Trust that is the basis for *Cobell v. Norton*[8]. Table 1 lists some of the BLM's and MMS's recent controversies.

Table 1.
Recent BLM and MMS Controversies

1993 – The MMS initiates alternative dispute resolution and global settlements with oil and gas companies that have underpaid royalties[9]. The Project on Government Oversight (POGO) alleges the global resettlements significantly underestimate oil values and resultant overdue royalties[10]. **1995 –** A POGO investigation finds that oil companies, including BP, Chevron, and ExxonMobil may have owed the federal government up to $1.5 billion in underpaid royalties[11]. **1996 –** Elouise Cobell, a citizen of Montana's Blackfeet Reservation, and four other plaintiffs sue the DOI claiming it had mismanaged the IIM trust fund since 1887. (Cobell's lawyers have estimated that $100 billion is owed to Native American landowners.)[12]. **1998** – Cobell v. Norton is certified as a class action on behalf of at least 300,000 individual Native American beneficiaries[13]. **1999 –** Then-Interior Secretary Bruce Babbitt, Treasury Secretary Robert Rubin and BIA director Kevin Grover are cited for contempt of court for failure to comply with document production orders relating to furnishing information necessary to attempt a statistical analysis of 300 individual accounts in question as part of the *Cobell v. Norton* proceedings. The citations were later overturned on appeal.

Federal and Native American Lease Royalty Disbursement

Proceeds from federal onshore oil and gas leases generally are split between the state where the lease is located (50 percent) and the federal government (50 percent). However, under the Alaska Statehood Act, 90 percent of mineral proceeds within its jurisdiction are distributed to the state and 10 percent to the federal government.

Offshore [Outer Continental Shelf (OCS)] lease proceeds are distributed to the Treasury General Fund by order of the Outer Continental Shelf Lands Act (43 USCS §§ 1301 et seq.). However, in cases in which federal leases are within three nautical miles (5.6 km) of a state's coastline the state receives all of the revenues under the Submerged Lands Act.[1]

As noted previously, all proceeds from oil and gas leases on Native American lands are distributed to the appropriate tribes and allottees.

[1] The Submerged Lands Act of 1953 (43 USCS §§ 1301 et seq.) grants individual states adjacent to the Atlantic, Pacific, the Arctic Oceans, and the Gulf of Mexico rights relating to mineral resources. Texas and the west coast of Florida have rights to mineral resources three marine leagues or 16.2 km into the Gulf of Mexico.

U.S. Federal Data Collection and Reporting Requirements

MMS Data Collection

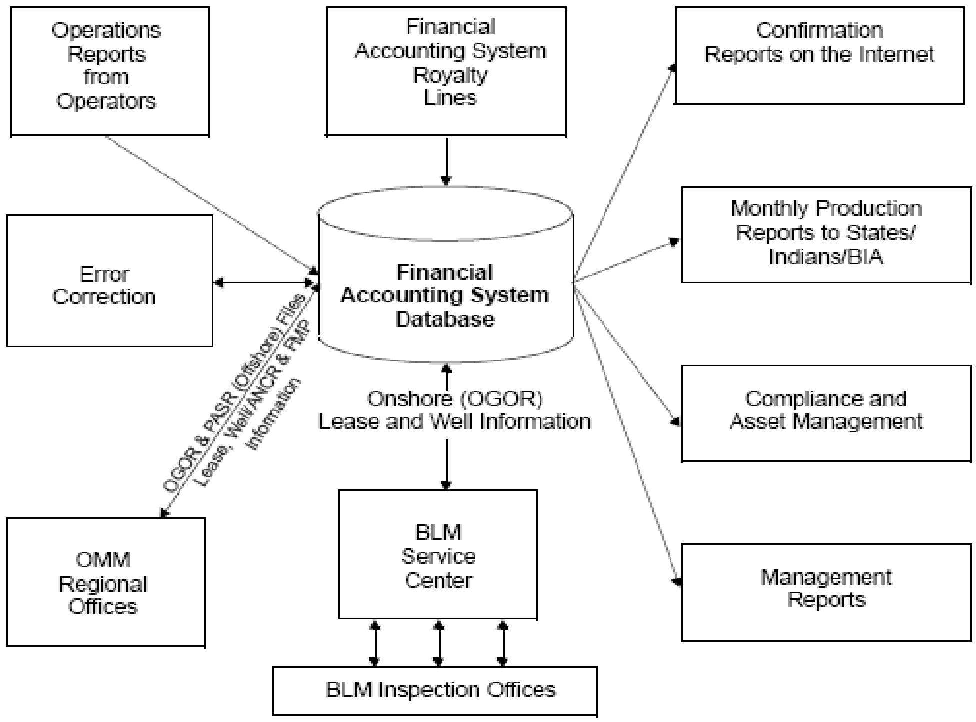
MMS requires various reports[14] on oil, gas, and hard rock production, income and royalty payments [required under FOGRMA Section 1751(a), the Mineral Leasing Act Section 189 and others[15]]. Although royalty fees are negotiable for private leases, royalty rates on federal leases typically range from 12.5 to 16.67% of revenues on oil sales. Oil, gas and mining operations are required to file the Report of Sales and Royalty Remittance (Form: MMS-2014, referenced in 30 CFR § 210.10) monthly. On the MMS-2014[16], EI firms report sales volume and prices, and royalty payments on each well under each lease. The MMS-2014 form also requires firms to report all payments to MMS and Native American lease holders.

The other MMS reports with significant relevance to revenue and contract transparency at oil and gas operations are MMS-4053 (an audit form used to confirm sales data) and MMS-4054 (a monthly report on production by lease). The MMS-4430 (a monthly report on production and sales on all federal and Native American leases) is the only other required form with significant relevance to revenue and contract transparency at solid mineral operations. All reports are to be filed electronically, except for hardship situations where case-by-case permission to file paper reports is granted.

MMS Audit Procedures and Transparency

It is worth noting that although the MMS has methods for verifying reported royalties; its stated purpose is to confirm that the federal government is being fairly compensated for its leases.

Figure 1.
MMS/MRM Production Reporting Process[17]



MMS Data Reporting

In 2005, MMS reinstated the practice of reporting state, national, and resource specific production, sales, and royalty revenue on its Web site[18] (see, *Confirmation Reports on the Internet* in Figure 1). The MMS had been in the habit of posting similar data on its Web site until 2001, when the practice was suspended. Table 1 details the specific information available on MMS Web site.

Table 2.
Mineral Lease Data Reported On MMS/MRM Web Site for FY2001 to 2005

Disbursement	Leases	Royalties*
Total disbursement by commodity and receipt fund (American Indian Tribes and Allottees; Historic Preservation Fund; Land & Water Conservation Fund; Reclamation Fund; State Share: Offshore 8(g); State Share: Onshore; U.S. Treasury)	Nationwide lease data by regulatory category (American Indian, Federal Off-shore [2 categories], Federal On-shore, and Federal/Indian joint) commodity, number, acreage, and production status	Nationwide reported royalty revenue by commodity, sales volume, sales value, and lease category Royalty-in-kind is report in an annual document separate from the MRM royalty database
State and off-shore region disbursement amounts by commodity and lease type*	Total producing and non-producing leases by state and off-shore region	State and off-shore region reported royalty revenue by commodity, sales volume and sales value

* Royalties, rents and bonuses are reported as separate line items.

State-Level Reporting Limits

According to an MMS public affairs officer, disbursement data is not offered for each recipient category on the state level due to concerns about the privacy of recipients such as Native American tribes[19]. In some states, it is the case that only one tribe is a recipient of mineral resource disbursements.

Pre-2000 Mineral Lease Data

Mineral lease data from 1994 to 2000, in a very similar format to that detailed in Table 2, is available in a slightly different database on the MMS Web site. Various other data, including Native American mineral revenues dating to 1925, are also available in several individual reports that can be found on the Publications section of the MMS Mineral Commodity & Revenue Statistics PRE-2001 page[20].

Limits on MRM Data Reporting

Some MRM reporting data, such as that included in MMS-2014 Forms, is available through FOIA requests. FOIA generally holds that any citizen has a right to access federal agency records unless the records are protected by an exemption or exclusion.

Information Withheld by the MMS

According to the MRM *Guide to Royalty Information*, DOI representatives and FOIA officers, royalty, tax, and contract information that might be used to discern mineral pricing information, royalty revenue income of an individual Native American tribe, or otherwise be used to create a competitive corporate advantage can be withheld[2]. In coming to this conclusion, the MRM *Guide to Royalty Information* sites FOIA Exemption 4, which excludes "trade secrets[3], commercial, or financial information (confidential business information)" from disclosure requirements.

Section 203 of FORGMA (30 U.S.C. § 1733) also stipulates that while "trade secrets, proprietary and other confidential information" can be made available to states and tribes, the recipient is thereby subject to liability for wrongful disclosure. Further, the section states that no state law may require the release of confidential information disclosed by the Secretary of the Interior to a state or tribe.

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[2] "For requesters unrelated to the submitters of the original information, MRM withholds sales/royalty value data as commercial or financial information (confidential information) under exemption 4. Such data, when combined with widely available production information, can disclose a payor's pricing strategy and cause competitive harm. Similarly, solid minerals lease-level production data are considered confidential because such information may reveal cost structure information. Combined with value data, mine production data may disclose pricing strategies. We consult with the payors/reporters who submitted the information only if addressing unique situations. MRM *Guide to Royalty Information*, http://www.mrm.mms.gov/ReportingServices/PDFDocs/guide.pdf.

[3] "Trade secret means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy." National Conference of Commissioners of Uniform State Laws. *Uniform Trade Secrets Act*. http://www.law.upenn.edu/bll/ulc/fnact99/1980s/utsa85.htm.

Mineral Specific Reporting Requirements

Coal Exploration, Exploitation and Reclamation Requirements

Under the Office of Surface Mining (OSM) regulations (30 CFR § 840.14), coal mining exploration and reclamation requires a somewhat different degree of disclosure than other solid minerals, oil or gas. Specifically, 30 CFR § 840.14(b) requires the following.

> Copies of all records, reports, inspection materials, or information obtained by the (*State*) regulatory authority shall be made immediately available to the public in the area of mining until at least five years after expiration of the period during which the subject operation is active or is covered by any portion of a reclamation bond so that they are conveniently available to residents of that area.

However, the section goes on to offer similar exceptions to other minerals, including 30 CFR § 772.15(b).

> The regulatory authority shall keep information confidential if the person submitting it requests in writing, at the time of submission, that it be kept confidential and the information concerns trade secrets or is privileged commercial or financial information relating to the competitive rights of the persons intending to conduct coal exploration.

Financial Accounting and Federal Tax Requirements

FASB Requirements for Oil and Gas

Federal Accounting Standards Board (FASB) Standard 69, paragraph 12, requires that: "The results of operations for oil and gas producing activities shall be disclosed for the year. That information shall be disclosed in the aggregate and for each geographic area for which reserve quantities are disclosed."[21] FASB Standard 131, paragraph 38, requires all enterprises to report revenues from international operations in aggregate and by individual foreign countries in which total revenues are material[22].

Figure 2 illustrates how ExxonMobil fulfilled its obligations under FASB Standard 69 in its FY2004 10-K. It should be noted ExxonMobil aggregates its reporting by geographic area up to whole continents or groups of continents in the case of its Asia Pacific designation. It is also noteworthy that royalty revenue may be included with net profit disbursements and other expenses in a line item called "Production costs excluding taxes" in the Supplemental Information section of a public firm's annual 10-K report. Income and taxes other than income have their own categories.

Figure 2.
Supplemental Information on Oil and Gas Exploration and Production Activities, Exxon Mobil Corporation FY200410-K, filed February 28, 2004[23]

Results of Operations	United States	Canada	Europe	Asia Pacific	Africa	Middle East	Other	Total
	(millions of dollars)							
2004 – Revenue								
Sales to third parties	$ 4,203	$ 2,460	$ 6,714	$ 2,200	$ 29	$ 91	$ 554	$ 16,251
Transfers	5,555	2,680	5,347	2,615	7,272	155	179	23,803
	$ 9,758	$ 5,140	$ 12,061	$ 4,815	$ 7,301	$ 246	$ 733	$ 40,054
Production costs excluding taxes	1,442	1,085	1,932	622	719	41	164	6,005
Exploration expenses	193	92	112	108	321	32	228	1,086
Depreciation and depletion	1,335	969	2,082	667	839	35	95	6,022
Taxes other than income	550	49	582	633	722	1	3	2,540
Related income tax	2,546	1,015	4,417	1,022	2,789	78	102	11,969
Results of producing activities for consolidated	$ 3,692	$ 1,930	$ 2,936	$ 1,763	$ 1,911	$ 59	$ 141	$ 12,432
Proportional interest in results of producing activities of equity companies	$ 810	$ —	$ 993	$ —	$ —	$ 635	$ 465	$ 2,903

FASB Requirements for Solid Minerals
The FASB Standard 39, paragraph 13, requires that enterprises that own mineral reserves other than oil and gas disclose information regarding their reserves and annual production. However, Oxfam America was unable to identify regulations requiring the release of regional production costs of mineral reserves other than oil and gas similar to those required under FASB Standard 69.

Some firms do disclose production and royalty information for reserves other than oil and gas on a regional or national basis. For example, in its FY2005 10-K Newmont reports royalties and production taxes for the geographic areas Nevada; Other North America; Yanacocha, Peru; Other South America; Australia/New Zealand; Batu Hijau, Indonesia; Other Indonesia; and Central Asia[24].

The Spirit of FASB and SEC Regulations
In that the primary purpose of both the FASB and SEC is to protect investors and maintain the integrity of the markets, it takes some interpretation to apply their standards to the end of sustainable development. Instead, regulations such as SEC Industry Guide 7 regarding mining operation disclosure deal specifically with reserve estimates and do not require any more than the same aggregate tax disclosure expected of other registered companies. Further, none of the aforementioned disclosure regulations apply to privately held companies.

Tax Deductions for Mineral Exploration and Development
Current tax law allows mining firms (does not include oil and gas interests) to recapitalize or deduct exploration and mining expenses in any year incurred following the determination that there is a commercially viable deposit (IRC section 616(a)). Those expenses are to be recaptured once the mine goes into production. According to the IRS Market Segment Specialization Program manual on Placer Mining Industry, the agency

believes those costs regarding many small-scale mining claims are rarely captured or paid accurately[25].

State and Local Data Collection and Reporting Requirements

State Data Collection

Data collection and reporting requirements are not uniform across states and counties. Instead, every state can assess its own property, severance, income, and excise taxes for mineral leases within its boarders. Consequently, regulations vary in application, scope and sophistication.

State and County Land Lease Management

Each state has its own eligibility requirements for leasing land. The leasing of private lands is left up to each individual landowner. However, state agencies are responsible for regulating solid mineral, oil and gas operations on both state and private lands.

Where lease management resides in state government varies from one location to the next. For example, Texas manages its mineral leases through its Railroad Commission, Nevada has a specific division of minerals, and Wyoming relies on a combination of its Oil and Gas Conservation Commission and Department of Revenue. In most cases, tax and royalty collection for mineral leases is managed by a state's tax or revenue department.

Case Study: Park County, Wyoming

Because state and county mineral data collection and reporting standards vary so widely, the following case study of Park County, Wyoming is provided as a representative example. The details of Park County regulations and procedures were assembled from county resources and tax and royalty reporting documents provided by ExxonMobil regarding their project in Elk Basin, Wyoming.

Wyoming has both a Mineral Tax Division in its Department of Revenue and a Mineral Division in its Department of Audit. Its mineral producers pay property tax on all mineral production, while most also pay severance tax to extract non-renewable resources, some pay royalties and an ad valorem (gross products) tax, and gas and oil producers pay sales or use tax. Each of these is collected by the Mineral Tax Division and audited by the Department of Audit. Wyoming does not levy a corporate income tax.

Wyoming mineral taxpayers pay on an honor system. Each firm reports its own production and sales value data, and the applicable tax rate. These inputs are compared to the production reports submitted to the state's Oil and Gas Conservation Commission.

Mineral tax disbursement statistics are reported on a quarterly basis on the Department of Revenue Web site[26]. These reports identify the county from which the revenues came by code, but do not reveal the relevant well, mine or firm.

Park County assesses a 4 percent sales tax, of which the state retains 55 percent. However, its tax base is largely supported by the oil and gas industry through property taxes, which account for approximately 75 percent of the assessed valuation of the county. County-level data on property tax payments is available in the treasurer's office, but sales tax data is withheld as standard practice used by all industries.

US Revenue Reporting Standards and the EITI

Because the United States has not signed onto the Extractive Industries Transparency Initiative (EITI), it would not be productive to evaluate U.S. EI revenue transparency on the merits of its EITI implementation. Instead, what follows is a comparison of the U.S. Government and corporate reporting standards outlined above and the EITI's transparency requirements (as listed in the Benefit Stream templates for host governments and companies). This comparison demonstrates that, although U.S. Government reporting regulations do cover most EITI obligations, the expectations for corporate reporting are significantly different.

Because they have different purposes, the EITI reporting guidelines and U.S. EI reporting regulations yield information that can be difficult to reconcile. It is conceivable that some FASB, SEC and IRC requirements could be extended to cover additional EITI considerations, but it is likely some changes would conflict with the FOIA trade secrets exemption discussed in *Limits on MMS Data Reporting*. Also, private firms are exempt from many of the reporting requirements that coincide with the EITI standards.

A Note Regarding Oil & Gas and Solid Minerals Reporting

Please note that the following reporting templates are to be completed by oil or gas producing host countries and by oil or gas producing companies. The template and corresponding U.S. reporting circumstances are very similar for solids mining, except that the United States does not collect royalties for hard rock mining (e.g., gold and silver) and the reserves and production of solid mineral operations are generally not scrutinized as thoroughly by the SEC as oil and gas assets and operations are.

Host Government Benefit Stream[4] Reporting

A Input template for Host Government Reporting Entity

Host Country reporting on: ____

Reporting Period: ____

Scope 1 Benefit Streams

Line ref		Guidelines section 6 ref	Volume	Value
1	**Benefit Stream from International Companies only**			
1a)	Host Government Production Entitlement from International Companies	i		
	i) Production Stream – in kind			
	* [specify nature of production and units]			
	* [specify nature of production and units]			
	ii) Production Stream – in cash			
2	**Benefit Stream from National State-Owned Companies**			
2a)	Host Government Production Entitlement from National State-Owned Company	i		
	i) Production Stream – in kind			
	* [specify nature of production and units]			
	* [specify nature of production and units]			
	ii) Production Stream – in cash			
3	**Benefit Streams from International and National State-Owned Company**			
3a)	Profit taxes	iii		
3b)	Royalties	iv		
	- in cash			
	- in kind			
3c)	Dividends	v		
3d)	Signing bonuses and production bonuses	vi		
3e)	License fees, rental fees, entry fees and other considerations for licenses/concessions	vii		
3f)	Other payments to Host Governments, specified as:	viii		
	____________________			
	____________________			
	____________________			

4 Taxes relating to consumption, such as value-added taxes and sales tax, payroll and social security taxes, and contributions to public infrastructure are exempted from benefit stream reporting requirements. Additionally, the EITI defines materiality as a payment that would be considered significant in quantitative term. It further defines a significant benefit stream one that exceeds US$5 million.

Line 1 – Benefit Streams from International Companies

1a) Through the reporting of MMS, the United States complies with Host Government Reporting requirements for Scope 1 Benefit Streams described in References Line 1.

Line 2 – Benefit Streams from National State-Owned Companies

2a) These questions are not relevant to the United States.

Line 3 – Benefit Streams for International and National State-Owned Companies

3a) Profit Taxes are available from the Internal Revenue Service[27] (IRS). However, the most recent IRS data is for tax year 2002 and solid mineral and oil/gas mining are combined in the North American Industry Classification System (NAICS) mining classification.

3b) In-cash royalties are disclosed by the MMS in the manner discussed in *MMS Data Reporting*. In May 2004, the status of MMS's Royalty-in-Kind (RIK) program for oil and gas obligations changed from a pilot to an operational project. An April 2004 MMS report details the performance of its RIK in detail sufficient for EITI disclosure requirements (i.e., it provided volume sold figures), but the document seems to be intended to rationalize the continuation of the program and not as a vehicle for ongoing transparency. It is possible RIK reporting may take on a different form in the future.

3c) Dividends are not relevant to the United States.

3d) Bonuses are disclosed by the MMS in the manner discussed in *MMS Data Reporting*.

3e) Rental fees are disclosed by the MMS in the manner discussed in *MMS Data Reporting*. Total leases and their acreage data are available in the MMS database. Lease revenue is a data point available under an MMS FOIA request.

3f) Taxes not related to profit (e.g., insurance taxes, municipal property taxes) must be reported in aggregate under FASB Standard 69. Municipalities and counties typically publish property and similar taxes. Reporting regulations exist for other considerations, such as certain political donations.

Corporate Benefit Stream[5]
Reporting

B Input template for Company Reporting Entities

Name of Company: ____

Host Country reporting on: ______________________________________

Reporting Period: ____

Scope 1 Benefit Streams

Line ref		Guidelines section 6 ref	Volume	Value
1	**Benefit Stream to be reported by International Companies only**			
1a)	Host Government Production Entitlement to Host Government	i		
	i) Production Stream – in kind			
	* [specify nature of production and units]			
	* [specify nature of production and units]			
	ii) Production Stream – in cash			
1b)	Host Government Production Entitlement to National State-Owned Company	i		
	i) Production Stream – in kind			
	* [specify nature of production and units]			
	* [specify nature of production and units]			
	ii) Production Stream – in cash			
2	**Benefit Stream to be reported by National State-Owned Companies only**			
2a)	i) National State-Owned Companies equity share of Host Government production entitlement – in kind	i		
	* [specify nature of production and units]			
	* [specify nature of production and units]			
	ii) National State-Owned Companies equity share of Host Government production entitlement – in cash	i		
2b)	Production received by National State-Owned Company	i		
	i) Production stream – in kind			
2c)	National State-Owned Company production			

[5] Taxes relating to consumption, such as value-added taxes and sales tax, payroll and social security taxes, and contributions to public infrastructure are exempted from benefit stream reporting requirements.

	entitlement[3]			
	i) Production entitlement – in kind	ii		
	* [specify nature of production and units]			
	* [specify nature of production and units]			
	ii) Production entitlement – in cash	ii		
2d)	Production entitlement received on behalf of the Host Government	i		
	i) Production stream – in kind			
	* [specify nature of production and units]			
	* [specify nature of production and units]			
	ii) Production entitlement received on behalf of the Host Government – in cash	i		
3	**Payments to Host Government/National State-Owned Company**			
3a)	Profit taxes	iii		
3b)	Royalties	iv		
	- in cash			
	- in kind			
3c)	Dividends	v		
3d)	Signing bonuses and production bonuses	vi		
3e)	License fees, rental fees, entry fees and other considerations for licenses/concessions	vii		
3f)	Other payments to Host Governments, specified as:	viii		
	____________________			
	____________________			
	____________________			

Line 1 – Benefit Streams Reported by International Companies

1a) and b) Are not relevant to the United States, because its does not engage in production sharing agreements.

Line 2 – Benefit Streams Reported by National State-Owned Companies

2a), b), c), and d) Are not relevant to the United States, because it has no state-owned oil, gas or mining companies.

Line 3 – Payments to Host Government/National State-Owned Company

3a) Under FASB 69, income and other taxes are to be included in the Supplemental Information section of a public firm's annual 10-K report. These taxes are to be reported for each geographical area for which reserve quantities are disclosed. This provision does not prevent firms from aggregation that could include reporting North American revenue, rather than that of each county in the continent. There is no tax disclosure requirement for private companies; however, states often report income from taxes other than sales for every mineral payor and lease.

3b) Under FASB 69, royalty revenue may be included with net profit disbursements and other expenses in a line item called "Production costs excluding taxes" in the

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Additionally, the EITI defines materiality as a payment that would be considered significant in quantitative terms. It further defines a significant benefit stream one that exceeds US $5 million.

Supplemental Information section of a public firm's annual 10-K report. There is no such requirement for private companies, except in the case of state and county reporting. There is no royalty disclosure requirement for private companies; however, royalty income is often reported for every payor and lease by states.
3c) This question is not relevant in the United States.
3d) Signing and production bonus may be included in "Production costs excluding taxes" under FASB 69.
3e) License and concession fees may be included in "Production costs excluding taxes" under FASB 69.
3f) This question is not relevant in the United States.

General EITI Criteria

In addition to its reporting requirements, the EITI has performance criteria that compliant countries must meet. Below current U.S. EI regulations are compared with those criteria.

The EITI Criteria[28]

1. Regular publication of all material oil, gas and mining payments by companies to governments ("payments") and all material revenues received by governments from oil, gas and mining companies ("revenues") to a wide audience in a publicly accessible, comprehensive and comprehensible manner.
These criteria are addressed in the preceding section.

2. Where such audits do not already exist, payments and revenues are the subject of a credible, independent audit, applying international auditing standards.
The U.S. Attorney General may audit or appoint an auditor to review the activities of the Department of Interior (DOI) relating to lease management and royalty collection under FOGRMA. Treasury documents, such as annual financial reports, are audited by independent firms.

In addition, MMS/MRM figures are regularly audited by the DOI auditors, and the Inspector General of the DOI has authority to examine the books and records of the agency on an as-needed basis. MMS/MRM figures are also subject to audit by states and Native American tribes. The Comptroller General may examine the financial records of any agency and Congress may subpoena information from public and private companies. Finally, Native American tribes and individual Native Americans have the right to sue the DOI and the BIA for failure to live up to their duties under the various trust arrangements established for their benefit. During this litigation, all agency records (with no exception for trade secrets) are subject to discovery. In some cases, private records held by mining companies could also be obtained.

3. Payments and revenues are reconciled by a credible, independent administrator, applying international auditing standards and with publication of the administrator's opinion regarding that reconciliation including discrepancies, should any be identified.
Royalty, tax and related EI payments and revenues are commonly reconciled in the manner described above. If found, discrepancies in royalty, tax, and related EI payments are investigated, but their publication depends on the circumstances.

4. This approach is extended to all companies including state-owned enterprises.
This is not relevant to the United States.

5. Civil society is actively engaged as a participant in the design, monitoring and evaluation of this process and contributes towards public debate.
Civil society has access to transparency data through public documents and FOIA requests, but much of Criterion 5 is not relevant to a country that is not implementing EITI.

6. A public, financially sustainable work plan for all the above is developed by the host government, with assistance from the international financial institutions where required, including measurable targets, a timetable for implementation, and an assessment of potential capacity constraints.
This is not relevant to the United States.

Cover photo: Water pumping system near the Mount Tenabo and Place Dome's Cortez mining project, Crescent Valley, Nevada. (Photo: Paul Bugala)

[1] Extractive Industries Transparency Inititive Source book. International EITI Secretariat in the UK Department for International Development (DFID). Page 49. http://www.eitransparency.org/docs/sourcebookmarch05.pdf.

[2] Federal Land Management. The Mining Law of 1872 Needs Revision. Report to the Chairman, Subcommittee on Mining and Resources, Committee on Interior and Insular Affairs, House of Representatives. Government Accountability Office. http://archive.gao.gov/d15t6/138159.pdf

[3] Code of Federal Regulations. Government Printing Office Web site. (Accessed, December 12, 2005) http://www.gaoaccess.gov/cfr/

[4] Code of Federal Regulations. Government Printing Office Web site. (Accessed, December 12, 2005) http://www.gaoaccess.gov/cfr/

[5] MMS Total Disbursement by Fund Fiscal Year 2004. Accessed December 9, 2005. http://www.mrm.mms.gov/MRMWebStats/Disbursements_Royalties.aspx?report=TotalDisbursementsbyFund&yeartype=FY&year=2004

[6] Royster, Judith V., MINERAL DEVELOPMENT IN INDIAN COUNTRY: THE EVOLUTION OF TRIBAL CONTROL OVER MINERAL RESOURCES, *29 Tulsa L.J. 541 (1994), at 594.*

[7] Federal Oil and Gas Royalty Management Act of 1982, Pub. L. 97-451, 96 Stat. 2447 (1983); http://www.mrm.mms.gov/Laws_R_D/PubLaws/PDFDocs/97-451.pdf

[8] Synopsis of case found at http://www.indiantrust.com/

[9] Internal DOI memo titled "COMPROMISE AND SETTLEMENT AGREEMENT." Regarding October 1, 1993 with Exxon. (Obtained by the Project on Government Oversight by FOIA request). http://www.pogo.org/m/ep/oil/WINK-app-C.pdf.

[10] "Drilling For The Truth: More Information Surfaces On Unpaid Oil Royalties." Project on Government Oversight. 1997. http://www.pogo.org/p/environment/eo-970101-oilroyalties.html.

[11] "Department Of Interior Looks the Other Way: The Government's Slick Deal For The Oil Industry." Project on Government Oversight. 1995. http://www.pogo.org/p/environment/eo-950101-oilDOI.html.

[12] *Cobell v. Babbitt*, 30 F. Supp. 2d 24 (D.D.C. 1998)

[13] "On February 4, 1997, the Court certified the named plaintiffs under *FED. R. CIV. P. 23(b) (1) (A)* and (b) (2) as representatives of a class consisting of all present and former beneficiaries of the IIM accounts. This class apparently includes over 300,000 Indian individuals." 30 F.Supp. 2d 24, 28 (D.D.C. 1998)

[14] Information relative to production, royalties, and other payments due to the Government from activities on leases on Federal and Indian land is required by the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. §§ 1701 et seq. for oil and gas; and by 30 U.S.C. § 189, 30 U.S.C. § 359, and by the Mineral Leasing Act of 1920, 30 USCS §§ 181 et seq. for solid mineral production.

[15] The requirement to file the forms under FOGRMA are found in 30 CFR § 210.52 (for oil, gas and geothermal) and under the Mineral Leasing Act are found in 30 CFR § 210.201 (for solid minerals).

[16] Report of Sales and Royalty Remittance Form MMS-2014. Accessed December 9, 2005. http://www.mrm.mms.gov/ReportingServices/PDFDocs/2014rf.pdf

[17] Minerals Revenue Management Transmittal Sheet. *Minerals Production Reporter Handbook*. http://www.mrm.mms.gov/ReportingServices/PDFDocs/ProductionHB.pdf

[18] MRM Statistical Information, Mineral Management Service Mineral Revenue Management. http://www.mrm.mms.gov/MRMWebStats/default.aspx

[19] Telephone interview with Patrick Etchart, Mineral Management Service Public Affairs Office. November 18, 2006.

[20] Mineral Commodity & Revenue Statistics PRE-2001. Mineral Management Service Mineral Revenue Management. http://www.mrm.mms.gov/Stats/statsrm.htm

[21] Statement of Financial Accounting Standards No. 69. *Disclosures about Oil and Gas Producing Activities*. Financial Accounting Standards Board. http://www.fasb.org/pdf/fas69.pdf.

[22] Statement of Financial Accounting Standards No. 131. Disclosures about Segments of an Enterprise and Related Information. FASB. June 1997. paragraph 38. http://www.fasb.org/pdf/fas131.pdf

[23] Exxon Mobil. SEC Form 10-K statement FY 2004. Issued February 28. 2005. http://www.sec.gov/Archives/edgar/data/34088/000119312505038144/d10k.htm

[24] Newmont Mining. SEC Form 10-K statement FY 2004. Issued March 2, 2006. http://www.sec.gov/Archives/edgar/data/1164727/000119312506043441/d10k.htm

[25] Internal Revenue Service. “Placer Mining Industry.” Market Segment Specialization Program. http://www.irs.gov/businesses/page/0,,id=7072,00.html

[26] Wyoming Department of Revenue Web site. Mineral Tax Distribution Reports. (Accessed December 13, 2005) http://revenue.state.wy.us/PortalVBVS/DesktopDefault.aspx?tabindex=3&tabid=10

[27] Internal Revenue Service Web site. “2002, Corporation Income Tax Returns: Selected Balance Sheet, Income Statement, and Tax Items, by North American Industry Classification System (NAICS) Sector and by Asset Size.” (Accessed December 13, 2005) http://www.irs.gov/pub/irs-soi/02co01as.xls

[28] EITI Homepage, http://www.eitransparency.org/about.htm