



AMERICAN PETROLEUM INSTITUTE

Kyle B. Isakower

Vice President, Regulatory and Economic Policy

1220 L Street, NW
Washington, DC 20005-4070
Telephone (202) 682-8314
Fax (202) 682-8408
Email isakowerk@api.org
www.api.org

U.S. Department of State
DRL/EAP
Suite 7817, Burma Human Rights Officer
2201 C Street, NW,
Washington, DC 20520

Re: Reporting Requirements for Responsible Investment in Burma
Public Notice 7971 (77 Federal Register 46786, August 6, 2012)

The American Petroleum Institute (API) is pleased to provide comments on the State Department's proposed Reporting Requirement for Responsible Investment in Burma. API is a national trade organization representing over 500 companies involved in all aspects of the domestic and international oil and natural gas industry, including exploration, production, refining, marketing, distribution and marine activities.

API strongly supports the Administration's easing of sanctions on new investment in Burma for all companies, including those in the energy sector. The issuance of General License No. 16 (export of financial services) and General License 17 (new investment) will provide U.S. companies the opportunity to participate in the development of energy resources in Burma and to level the playing field with our competitors from Asia and Europe, who are not prohibited from such activities. Economic development in general and the development of new energy resources in particular will help reinforce the positive political changes that are taking place in Burma.

American energy companies can play an important and positive role in the economic development of Burma. American energy companies bring best practices in health and safety and cutting edge technology that can help Burma develop its resources efficiently. American energy companies have a strong record of positive community engagement and social investments, and an excellent track record for training and developing local staff. Our companies can contribute to Burma's economy by helping produce the energy Burma will require to rebuild its economy by building capacity in the workforce, and by contributing significant revenues to the government for needed infrastructure projects.

While we have no objection in principle to reporting on the topics listed in the proposed rule, we believe that the reporting requirement should apply to all entities investing in Burma. If the purpose of the reporting requirements is to provide information to the U.S. Government on the impact of U.S. investment, then all investors should be subject to these requirements, including foundations and non-governmental organizations involved in investments such as land acquisition and the like. The U.S. Government will not be able to assess the full impact of U.S. economic activity in Burma if only part of that economic activity is reported. Moreover, it would be helpful for companies to learn about best practices from reports provided by

foundations and non-governmental organizations with respect to such matters as fair payment for acquired or leased land, personnel security, social welfare programs, and the like.

Also, as a general matter, we believe the reporting requirement should remain in place only as long as sanctions on Burma continue and should be lifted when the sanctions are suspended or eventually repealed, assuming the positive political changes in Burma continue. Thus, the reporting requirement for new investment should be renewed annually under the International Emergency Economic Powers Act when Executive Order 13047 prohibiting new investment (which has been suspended by General License No. 17) is renewed. The reporting requirement should not extend beyond the expiration of sanctions on the export of financial services (renewed annually under Executive Order 13310) or the ban on the importation of goods from Burma (which was extended until 2015 by H.R. 5986 signed into law on August 10, 2012). The reporting requirement should not continue indefinitely beyond the sanctions time frame.

Beyond these two general points, we seek clarification of a number of specific issues related to the reporting requirement. These issues are relevant to companies in the petroleum industry and may affect other industries as well.

- We would appreciate confirmation that the reporting requirement applies only to “new investment” as that term is used in the Burmese Sanctions Regulations (31 C.F.R. Part 537)(“BSR”) relating to the economic development of resources located in Burma (*see* BSR §§ 537.311, 537.302 and 537.316). If that is the case, we would also appreciate confirmation that if economic activity does not involve new investment as defined, then the activity would not be subject to the new reporting requirement. Thus, for example, leasing space to open a sales or representative office would not be subject to the reporting requirement because that activity would not fall within the definition of new investment.
- We understand that the facilitation of new investment that was previously prohibited by BSR § 537.204 is now authorized by General License No. 17. We would appreciate confirmation that the reporting requirement applies only to new investment and not to facilitation, for example a mining concession rather than selling equipment or providing consulting services for such a project.
- We would appreciate confirmation that the reporting requirement applies only to new investment made after the date of General License No. 17 (July 11, 2012) and not to grandfathered investments, which are not subject to the new reporting requirement. It is our understanding that grandfathered investments continue to be authorized as before.
- Does the requirement to notify Myanmar Oil and Gas Enterprise (MOGE) within 60 days of any new investment undertaken pursuant to an agreement or pursuant to the exercise of rights under an agreement apply at the time of the agreement or when the first payment under such an agreement is made? Also, does the requirement apply to ancillary activities, such as an agreement to undertake exploratory activities like seismic soundings, before any actual commitment to develop resources?

Finally, we seek clarification of an issue unique to petroleum companies related to the importation of data and core samples for evaluation. Any new investment by petroleum companies will necessarily require extensive examination and evaluation of data before

committing the significant resources required for oil and gas projects. This would include a review of seismic information that may already have been prepared, contracting to conduct new seismic testing, and laboratory analysis of core samples taken from the potential development site.

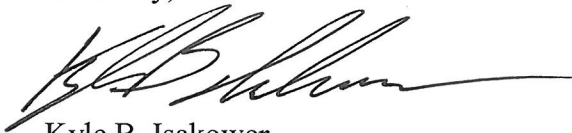
Seismic data acquired from MOGE (or any other party) that is already in existence would presumably be covered by the Berman Amendment exemption for information and informational materials at BSR § 560.210(b). Contracting with another party to generate seismic data would not be covered by the Berman Amendment exemption, which pertains only to informational materials that are already fully created and in existence at the time of the transaction. This activity, however, should be encompassed by General License No. 17, assuming the general license extends to facilitation, as discussed above. Also, as discussed above, we seek clarification as to whether a payment to MOGE for such information, or contracting with MOGE to generate such information, would be encompassed by the MOGE investment notification requirement.

It is our understanding that a core sample would not qualify as information within the meaning of the Berman Amendment. Rather, it appears that a core sample would be a product of Burma. Section 3(a)(1) of the Burmese Freedom and Democracy Act requires the President to ban the importation of products from Burma unless he makes certain certifications, which have not been made. This statutory ban on the importation of Burmese products can, however, be waived. Section 3(b) of the Burmese Freedom and Democracy Act provides for a waiver if the President determines and notifies a number of congressional committee that to do so is in the national interest of the United States. This waiver authority has been delegated to the State Department under Executive Order 13310.

We would appreciate clarification and guidance on this waiver process from the State Department. For petroleum companies interested in considering any new investment in Burma, it will be necessary for the State Department to issue a general waiver under Section 3(b) of the Burmese Freedom and Democracy Act authorizing the importation of core samples and any other products of Burma necessary for the evaluation of any new investment in Burma. A general waiver would be appropriate since it is impossible to know in advance what specific items will need to be imported for evaluation or which companies may have an interest in making such imports. Requiring a waiver for each import would be time consuming and would inhibit any new investment in the petroleum sector.

Thank you for the opportunity to comment on the proposed investment reporting requirement.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. B. Isakower', with a long horizontal flourish extending to the right.

Kyle B. Isakower
Vice President
Regulatory and Economic Policy