National Retail Federation®

The Voice of Retail Worldwide

CONFLICT MINERALS LAW AND REGULATIONS

A Guide for Retailers on
Implementation and Compliance

Background:
The Conflict Minerals Statute

The Conflict Minerals Statute was passed by Congress as sec. 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act

- Signed into law on July 21, 2010
- Amends sec. 13 of the Securities Act of 1930

Implementing Regulations (1)

The Securities and Exchange Commission (SEC) approved the final rules implementing the conflict minerals law on August 22, 2012 by a vote of 3-2.

- The three Democratic commissioners (Chairman Mary Schapiro, Luis Aquilar, and Elisse Walter) voted in the affirmative.
- The two dissenting Republican commissioners (Troy Peredes and Daniel Gallagher) objected that the final rules should have lessened the impact on business including by exempting small business and/or *de minimis* amounts.
- The effective date of the final rules is 60 days after publication in the Federal Register – *i.e.*, Oct. 21, 2012.

Implementing Regulations (2)

Retail Impact: Some in the press reported that "big retailers may escape" the conflict minerals law under the final SEC rules. That conclusion is clearly erroneous and appears to have originated from NGOs unhappy that the final rule had been scaled back in ways that appeared to benefit retailers.

What Does The Law Require?

- Companies that are “issuers”
- Must disclose annually to the SEC
- Whether conflict minerals
- That are necessary to the functionality or production of products
- Manufactured or contracted to be manufactured by the issuer
- Originated in a “Covered Country” – *i.e.*, the Democratic Republic of Congo (DRC) or bordering countries (Angola, Burundi, Central African Republic, Rwanda, South Sudan, Tanzania, Uganda, and Zambia)

What Are The Disclosure Requirements? (1)

- The final rules require companies:
  - to "file" (rather than "furnish") conflict mineral disclosures, reports, and audits to the SEC
  - on a new "Form SD" (instead of their annual 10-K reports)
  - using the SEC's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system.

- **Retail Impact**: Recognizing possible unreliability of supplier information, SEC assuaged company concerns by exempting CEOs and CFOs from personal liability for the veracity of the information filed. Liability is created only if filer is shown to have acted in bad faith and had knowledge statement was false or misleading.

What Are The Disclosure Requirements? (2)

- A company must also place its conflict minerals disclosure (Form SD) and, if it must file one, its conflict minerals report on its website for one year.

- **Retail Impact**: As a best practice, companies should also post on their website a statement of their conflict minerals policy, including their compliance expectations for their suppliers.

What Is The Timing For Filing?

- Companies must begin complying with the final rule starting calendar year 2013, with the first conflict minerals disclosures for reporting year 2013 due to the SEC on May 31, 2014, and on that date every subsequent year (*i.e.*, on a calendar, rather than fiscal-year basis).

- A company must provide the required conflict minerals information for the calendar year in which the manufacture of a product containing any conflict minerals is completed, rather then when it takes possession of the product.

- If a company that was not subject to the reporting requirement acquires another company that is, the acquiring company may delay the reporting period until the first calendar year no sooner than eight months after the effective date of the acquisition (*e.g.*, if the acquisition is April 30, 2013, the first reporting period is calendar year 2014; if the acquisition is on May 31, 2013, the first reporting period is calendar year 2015).

- **Retail Impact**: The delay in implementation is intended to give companies time to put together their compliance programs.

How Will The Law Be Enforced?

- Enforcement of company compliance falls under sec. 18 of the Exchange Act, which allows for penalties assessed by the SEC and investor lawsuits for filings containing false or misleading information with respect to a material fact.
- **Retail Impact**: By declining to define key terms in the law, the SEC opened the door to stakeholder (*i.e.*, NGO) challenges to company compliance by allowing them to "assess the reasonableness of the [company's] efforts . . . and advocate for different approaches."

What Are The Costs of Compliance?

- Compliance costs will be "significant" for companies with conflict minerals in their supply chains, main costs being:
  - Due diligence measures;
  - Audits (average $25K for small companies; $100K for large companies); and
  - Updating IT compliance systems.
- The SEC revised its preliminary estimate on total annual compliance costs to $3B – $4B initially and $207M – $609M ongoing.
  - Higher than preliminary cost estimate, but much lower than private-sector estimates of $8B.
- **Retail Impact**: It is unclear the extent to which retail companies were included in the cost analyses.

When Do The Reporting Requirements Expire?

The conflict minerals disclosure requirements of Exchange Act Section 13(p) shall remain in effect until the President determines and certifies that "no armed groups continue to be directly involved in and benefitting from commercial activity involving conflict minerals."

- **Note**: An "armed group" is defined as a group identified as perpetrators of serious human rights abuses in annual Country Reports on Human Rights Practices under the Foreign Assistance Act of 1961 relating to the DRC or an adjoining country.

STEP ONE

Is The Company an "Issuer" Contracting to Manufacture Products Containing Conflict Minerals Necessary to the Product's Functionality or Production?

NO

The company is not required to take any further action, make any disclosures, or file any reports.

YES

The company moves to Step Two (Reasonable Country-of-Origin Inquiry)

Definition – What Is An “Issuer”?

- A retailer is an issuer if it is a company required to file reports with the SEC under sections 13(a) or 15(d) of the Securities Act.
- A retailer that is a privately-held company and does not issue corporate bonds subject to SEC reporting requirements is not considered an issuer, and is not subject to the law.
- However, privately-held companies (including retailers/consumer brands) could still be impacted by the law to the extent they are suppliers and have to provide compliance information to a company that is subject to the law’s reporting requirements.
- **Retail Impact**: Smaller retailers are much less likely to meet the “issuer” definition.

Definition – What Constitutes "Contract To Manufacture"? (1)

- The SEC rules do not define "contract to manufacture" (or the term "manufacture")
  - Is left up to the best judgment of companies to determine based on their individual facts and circumstances
  - The SEC will also construe the term through guidance to companies on a case-by-case basis
- **Retail Impact**: As a general rule, retailers do not manufacture products, but rather procure their merchandise from a supplier.

Definition – What Constitutes "Contract To Manufacture"? (2)

Retail Impact: For products manufactured by a third party and sold at retail, a retailer must exercise some control over the manufacturing and content of the product (materials, parts, ingredients, or components) containing conflict minerals or their derivatives (*i.e.*, the metals smelted from those minerals) in order to be deemed to be contracting to manufacture. Thus, retailers will not fall under the definition of "contract to manufacture" if they:

- Do not sell products under their brand name or a separate brand they had established, or do not have those products manufactured specifically for them;
- Sell products of third parties in which they had no involvement in the manufacture of those products;
- Only establish contractual terms with the supplier that are not directly related to the manufacturing of the product;
- Merely affix their brand, mark, logo, or label to a generic product (*i.e.*, operate solely as a "sales channel"); or
- Service, maintain, or repair a product.

Definition – What Constitutes "Contract To Manufacture"? (3)

- **Retail Impact**: The SEC's construction of the "contract to manufacture" requirement will primarily impact branded/private label merchandise. It is unclear, whether specifying components or setting performance standards for suppliers that could result in the inclusion of one or more subject metals in a product will meet the test for "contracting to manufacture."

- **Retail Impact**: Promotional products (*e.g.*, thumb drives, inexpensive electronics, or costume jewelry with a company logo distributed free at trade shows) would likely be exempt as not meeting the "contract to manufacture" definition.

- **Retail Impact**: Lack of a clear definition leaves individual companies with flexibility, but also some uncertainty in determining whether the law applies to them. As a result, the agency may face a substantial number of guidance letters from companies seeking further clarification based on their specific circumstances. It remains to be seen whether, the SEC's guidance will be consistent across identical or similar fact situations, unlike the case with ruling letters from the Internal Revenue Service.

Definition – What Is A "Product"? (1)

- The SEC rules do not define the term "product."
- However, the SEC clarified that materials, prototypes, and demonstration devices are not "products" under the law because they are not offered for sale to third parties. (Final rule, p. 91)
- **Retail Impact**: This exclusion suggests that other items, such as store fixtures, contracted for manufacture primarily for personal use or consumption, and not for sale to third parties, would also not be considered products, and would not fall under the requirements of the statute. This reasoning may also support excluding packaging as a product.

Definition – What Is A "Product"? (2)

Retail Impact: The types of consumer products that would likely fall under the law include any branded/private label consumer products containing gold and/or the 3Ts or alloys of these metals (bronze, pewter, phosphor bronze, soft solder, tin plating, tin fluoride)

Definition – What Is A "Product"? (3)

Retail Impact: Consumer goods likely falling under the conflict minerals statute:

- Wearing apparel
- Sporting goods
- Handbags, travel cases, & wallets
- Belts & accessories
- Shoes
- Home textiles
- Home furnishings
- Fashion & costume jewelry
- Men's cufflinks, collar stays & tie clips
- Watches
- Cookware
- Food prep gadgets
- Electronics
- Cutlery & cutting boards
- Tabletop décor
- Kitchen utensils (dinnerware & serveware)
- Outdoor entertaining
- Bath Accessories
- Toys (talking & dancing plush; holiday tree plush)
- Holiday tree ornaments & home décor
- Hardware
- Spray recipients
- Toothpaste
- Musical instruments
- Metal & PVC furniture

Definition – What Are "Conflict Minerals"?

- "Conflict Minerals" are Gold, Columbite-Tantalite, Cassiterite, and Wolframite and their respective metal derivatives – Gold (Au), Tantalum (Ta), Tin (Sn), and Tungsten (W) [aka "G+3Ts"].
- The SEC's final rule exempts as being "outside the supply chain" any minerals smelted, refined (gold), or located outside Covered Countries prior to January 1, 2013 (*i.e.*, existing stockpiles).
- **Retail Impact**: Because there is no *de minimis* provision, <u>any quantity</u> of a conflict mineral in a product is sufficient to trigger compliance obligations under statute.

Definition – What Does "Necessary to Functionality" Mean? (1)

- The SEC did not define the terms "necessary to the functionality," and "necessary to production" of a product, but will construe the term through guidance to companies on a case-by-case basis.

- However, the SEC limited the scope of the term by clarifying that a conflict mineral is not "necessary to the functionality or production" if it is:
  - A naturally-occurring by-product
  - Not contained in the final product;
  - Used for ornamentation, decoration, or embellishment, unless that is the primary purpose of the product;
  - Not intentionally added to the product or any component; or
  - Not necessary to the product's generally-expected function, use, or purpose.

Definition – What Does "Necessary to Functionality" Mean? (2)

Retail Impact: Exclusion of ornamentation, decoration, or embellishment as necessary to functionality:

- Could exempt certain functional consumer goods that may be highly ornamented or decorated (*e.g.*, apparel with metal beadwork; light-up footwear)
- Will have little or no impact on inherently ornamental products (*e.g.*, jewelry) or products that contain little ornamentation or decoration (*e.g.*, consumer electronics).

STEP TWO

Do Conflict Minerals Originate in the Democratic Republic of Congo or Adjoining Countries; or From Recycled or Scrap Sources?

Country-Of-Origin Inquiry

Once a retailer determines that it contracts to manufacture a product containing conflict minerals that are necessary to that product's functionality or production, it must undertake a reasonable country-of-origin inquiry to determine whether those conflict minerals originated in a Covered Country (or are exempted as originating from recycled or scrap sources).

Country-Of-Origin Inquiry Outcome (Scenario One)

- Following its reasonable country-of-origin inquiry, the company:
  - Knows its conflict minerals did not originate in a Covered Country; or
  - Knows its conflict minerals came from recycled or scrap sources; or
  - Has no reason to believe its conflict minerals may have originated in a Covered Country; or
  - Reasonably believes its conflict minerals came from recycled or scrap sources.

- **Result** – The company only needs to disclose that determination on Form SD along with:
  - A brief description of the reasonable country-of-origin inquiry it performed,
  - A brief description of the results of that inquiry, and
  - A link to its internet website where the disclosure is publicly available.

Country-Of-Origin Inquiry Outcome (Scenario Two)

- Following its reasonable country-of-origin inquiry, the company:
  - Knows its conflict minerals originated in a Covered Country; and
  - Knows its conflict minerals did not come from recycled or scrap sources; or
  - Has reason to believe that its conflict minerals may have originated in the Covered Countries, and
  - Has reason to believe that its conflict minerals may not come from recycled or scrap sources.

- **Result** – The company must exercise due diligence on the source and chain of custody of its conflict minerals (Step Three).

Country-Of-Origin Inquiry Outcome (Scenario Three)

- Following its reasonable country-of-origin inquiry, the company:
  - Cannot determine if its conflict minerals originated or may have originated in a Covered Country; and
  - Cannot determine if its conflict minerals did not come or may not come from recycled or scrap sources.

- **Result** – The company must exercise due diligence on the source and chain of custody of its conflict minerals (Step Three).

Definition – What Is A "Reasonable Country-Of-Origin Inquiry"? (1)

The SEC rules do not define the term "reasonable country-of-origin inquiry" other than the requirement is satisfied if a company:

- "Reasonably designs" the inquiry to determine whether its conflict minerals originated in a Covered Country, or from recycled or scrap sources; and
- Undertakes the inquiry "in good faith."

Definition – What Is A "Reasonable Country-Of-Origin Inquiry"? (2)

Whether the inquiry is deemed "reasonable" depends on a company's individual circumstances and facts, including:

- Company size;
- Products;
- Relationship with suppliers (*i.e.*, comparative leverage as a larger or smaller customer);
- Availability at a given time of compliance infrastructure (traceability, certification, etc.)

Definition – What Is A "Reasonable Country-Of-Origin Inquiry"? (3)

Grounds on which a company would have reason to believe the truth of supplier representations on the origin of conflict minerals:

- Receipt of reasonably reliable information (based on surrounding facts and circumstances) directly from processing facilities or indirectly from immediate suppliers indicating that conflict minerals did not originate in a Covered Country or came from recycled or scrap sources.

- If a processing facility (smelter or refiner) received a "conflict-free" designation by a recognized industry group (*e.g.*, EICC-GeSI) that requires an independent private-sector audit of the facility.

- Obtained an independent, and publicly-available private-sector audit of the facility.

Note: It is unnecessary for a company to receive representations from all its suppliers, as long as it does not ignore warning signs or other circumstances indicating the remaining amount of its conflict minerals originated or may have originated in a Covered Country.

Definition – What Is A "Reasonable Country-Of-Origin Inquiry"? (4)

Retail Impact: As part of its reasonable country-of-origin inquiry, a company must disclose on Form SD its policy on conflict mineral sourcing.

Retail Impact: Since recycled gold accounts for 40 percent and recycled tungsten 55 percent of global trade in these metals, the "recycled and scrap" exemption could significantly ease the compliance burden on retailers of consumer goods containing these metals (*e.g.*, jewelry and electronics).

Definition – What Is A "Reasonable Country-Of-Origin Inquiry"? (5)

Retail Impact: The SEC's use of a design, rather than performance standard to comply with the reasonable country-of-origin requirement:

- Provides companies flexibility in structuring the inquiry;
- Reduces compliance costs;
- Avoids forcing companies to prove a negative (*i.e.*, that conflict minerals did not originate in Covered Countries);
- Avoids an exhaustive inquiry to establish to a certainty the origin of conflict minerals or recycled or scrap sources;
- But creates unpredictability and the risk that an NGO may raise a challenge based on its own interpretation of reasonableness.

Definition – What Is "Recycled or Scrap?"

Conflict minerals are considered to be from recycled or scrap sources if they are entirely from:

- Recycled metals, which are reclaimed end-user or post-consumer products;
- Scrap processed metals created during product manufacturing; or
- Excess, obsolete, defective, and scrap metal materials containing refined or processed metals appropriate for recycling in the production of tin, tantalum, tungsten and/or gold.

Note: The term "recycled or scrap" does not include minerals partially processed, unprocessed, or a byproduct from another ore.

What Are The Labeling and Record-Keeping Requirements For The Country-Of-Origin Inquiry?

- SEC rules do not require the physical labeling of products.
- A company is not required to keep reviewable business records supporting conclusions derived from its reasonable country-of-origin inquiry.
- **Retail Impact**: As a best practice, companies should consider retaining appropriate records for at least two years that document their decisions, detail their decision-making process, including factual, technical, and risk-oriented factors, upon which their decisions were based.

STEP THREE

Exercising "Due Diligence"; Filing A Conflict Minerals Report; Filing An Audit

Due Diligence

If a retailer knows, has reason to know, or does not know that its conflict minerals originate in a Covered Country or are not from recycled or scrap sources, it must undertake due diligence to determine the origin of the minerals and whether those minerals directly or indirectly benefited armed groups in a Covered Country.

Definition – What Constitutes "Due Diligence" (1)

In exercising due diligence, companies must:

- Make a "sufficiently reasonable inquiry" into the origin of their conflict minerals;
- Go beyond the reasonable country-of-origin inquiry by taking further steps to establish the truth or accuracy of relevant information;
- Describe the measures taken to ascertain the source and chain of custody of their conflict minerals;
- Use a nationally or internationally-recognized due diligence framework (*e.g.*, OECD), if one is available for a particular conflict mineral.

Definition – What Constitutes "Due Diligence" (2)

Key components of due diligence include:

- Conformity to an available nationally or internationally-recognized due diligence framework, established following due-process procedures (including distribution for public comment); consistent with government auditing standards (GAGAS) established by the U.S. Comptroller General.
- An independent, private-sector audit (when required)
- receipt of assurances from a processor (smelter/refiner) on origin of minerals, and company has reasonable basis to believe processor is being truthful.

Note: A company has not met its due diligence obligation through reliance solely on the U.S. Department of State's conflict minerals map or report.

Note: Whether a company may rely on reasonable representations from its suppliers in meeting its due diligence obligation depends on requirements of the nationally or internationally recognized due diligence framework it uses.

Note: Whether a company has met its due diligence obligations depends on a company's specific facts and circumstances, differences among its products.

What Constitutes "Due Diligence" for Scrap and Recycled Sources?

- The only current national or internationally-recognized due diligence frameworks for recycled or scrap is for gold (OECD; World Gold Council).
- For other minerals, issuers must exercise due diligence in determining that their conflict minerals were from recycled or scrap sources without the benefit of a due diligence framework, but are not required to file an audit with respect to those minerals.
- Once a nationally or internationally recognized recycled or scrap due diligence framework is available for any of the remaining conflict minerals, a company must utilize that framework for that mineral if developed prior to June 30 preceding the reporting year, and to file an audit if required.

Due Diligence Outcome (Scenario One)

- Based on its due diligence, the company:
  - Knows its conflict minerals did not originate in a Covered Country; or
  - Knows its conflict minerals did not directly or indirectly benefit armed groups in a Covered Country; or
  - Knows its conflict minerals came from recycled or scrap sources.
- **Result** – File Form SD reporting its minerals as "DRC Conflict Free" with a description of the inquiry that led to that conclusion, and post the information on its website. There is no requirement to file a Conflict Minerals Report or conduct an audit.

Due Diligence Outcome (Scenario Two)

- Based on its due diligence, the company:
  - Knows its conflict minerals originated in a Covered Country; and
  - Knows its conflict minerals did not come from recycled or scrap sources; or
  - Has reason to believe that its conflict minerals may have originated in the Covered Countries, and
  - Has reason to believe that its conflict minerals may not come from recycled or scrap sources.

- **Result** – A company must report its minerals on Form SD as "Not DRC Conflict Free"; file a conflict minerals report; obtain an independent private-sector audit of the report; and post the report on its website.

Due Diligence Outcome (Scenario Three)

- Based on its due diligence, the company is unable to determine whether conflict minerals in its products:
  - Originated in a Covered Country;
  - Came from recycled or scrap sources; or
  - Originating in a Covered Country, financed or benefited armed groups.

- **Result** – Phase-In Period – For a temporary two-year period (reporting years 2013 and 2014) for all companies, and four years (through reporting year 2016) for smaller companies (*i.e.*, $5m or less in assets), a company may report its minerals on Form SD as "DRC Conflict Undeterminable"; and post the report on its website; but is not required to conduct an audit.

  Post Phase-In Period - A company must report its minerals on Form SD as "Not Having Been Found To Be DRC Conflict Free"; file a conflict minerals report; obtain an independent private-sector audit of the report; and post the report on its website.

Phase-In Period

During the Phase-In Period, a company reporting necessary minerals in its products on Form SD as "DRC Conflict Undeterminable," must still:

- Exercise due diligence on source and chain of custody of its necessary conflict minerals;
- File a Conflict Minerals Report; and
- Describe the steps it has taken or will take to mitigate the risk that necessary conflict minerals in its products benefit armed groups, including any steps to improve its due diligence

- **Comment** : Phase-in period intended to allows time to develop due-diligence mechanisms, more accurate disclosures and adoption of due care in sourcing; avoid stigma of stating the minerals "are not DRC conflict-free"; address constitutional concerns about impermissibly-compelled speech; forestall possibility of a *de facto* embargo of sub-Saharan Africa.

- **Retail Impact**: It is unlikely a retailer meeting the definition of a "smaller company" ($5m or less in assets) would be directly subject to the law as an "issuer" that files reports to the SEC under Sec. 13(a) or 15(d) of the Securities Act.

Post Phase-In Period

During the post Phase-In Period, a company reporting necessary minerals in its products on Form SD as "DRC Conflict Undeterminable" must also:

- Describe those products;
- Identify the facilities used to process those minerals (if known);
- Identify the country of origin of those minerals (if known); and
- Describe the efforts to determine the mine or location of origin with the greatest possible specificity, if applicable (not required if the company is unable to determine the origin of the minerals)

Definition – "Conflict Minerals Report"

A Conflict Minerals Report is a declaration entitled "Conflict Minerals Disclosure" filed as an exhibit with Form SD and posted on the company's website, which must contain:

- A description of the nationally or internationally-recognized framework used by the company (if one is available);
- A description of the measures taken to exercise due diligence on the source and chain of custody of conflict minerals (to be based on the available nationally or internationally-recognized due diligence framework used);
- A description of the issuer's products "that are not DRC conflict free";
- A description of the facilities used to process the conflict minerals in those products (if known);
- A description of the country of origin of those minerals (if known);
- A description of efforts to determine the mine or location of origin of those minerals with the greatest possible specificity (if known).
- A disclosure that it has filed a Conflict Minerals Report, and that it is publicly available on the company's website with a link to that site.
- A certification in the form of a statement that the company obtained an independent, private-sector audit of its Conflict Minerals Report.

Definition: What is a Conflict Minerals Audit?

An audit conducted by an independent, third-party auditor that expresses an opinion or conclusion whether:

1. The design of the due diligence framework described by a company in its Conflict Minerals Report;
2. Is, in all material respects, in conformity with the criteria set forth in the nationally or internationally-recognized due diligence framework the reporting company used; and
3. The description of the due diligence measures the company stated in its Conflict Minerals Report that it undertook, is consistent with the due diligence process the company actually performed.

Note: The audit only assesses the design of a company's due diligence measures and its description of those measures, not the accuracy of the information, whether due diligence measures were effective, or whether the minerals are conflict free. This inquiry reduces the cost of the audit by focusing on information available from the reporting company, rather than information available only from smelters/refiners.

Conflict Minerals Audit Requirements (1)

- A Conflict Minerals Audit must be conducted in accordance with standards established by the Comptroller General of the United States.
- The existing GAO Generally Accepted Government Auditing Standards (GAGAS) can be used to determine whether:
  - The audit meets the required auditing standards, and
  - An auditor is deemed to be independent.

  Note: An independent auditor may also be engaged to conduct other audits for the reporting company.

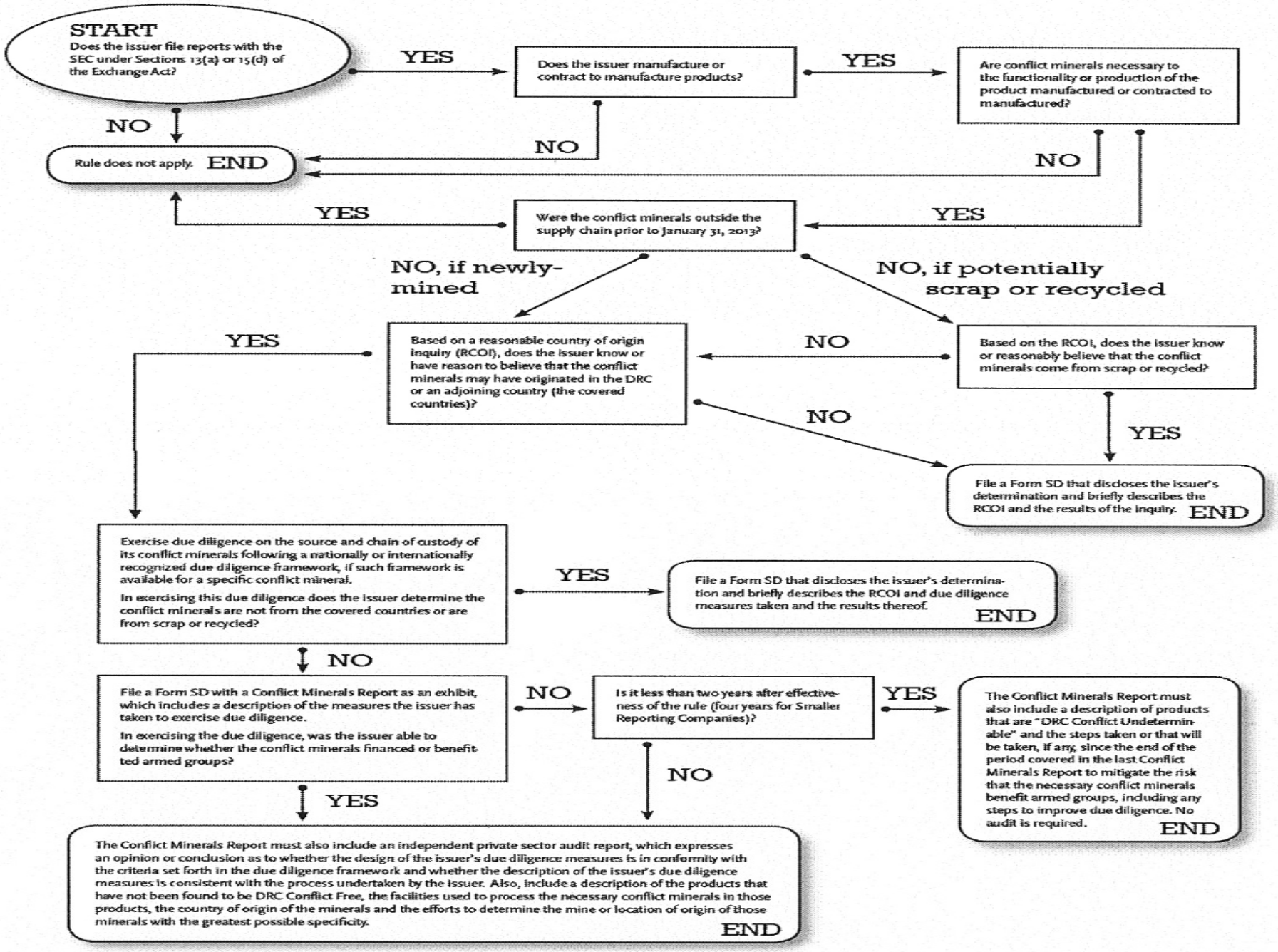
Conflict Minerals Audit Requirements (2)

- A conflict minerals audit must be certified:
  - An audit is deemed certified when the company includes a statement in its Conflict Minerals Report that it obtained an independent private sector audit.
  - Certification does not require that the audit be signed by a corporate officer.
- A company must also file a copy of the audit as an exhibit to the special declaration on Form SD; and identify the independent private-sector auditor.

Definition – “DRC Conflict Free”

A company may identify its products as “DRC conflict free” on Form SD:

- When those products contain minerals that were not mined in a Covered Country
- When those products do not contain conflict minerals that directly or indirectly finance or benefit armed groups in a Covered Country.
- The source mine of the minerals in a Covered Country was not under control of an armed group at the time they were purchased
- When those products contain minerals obtained from recycled or scrap sources


START
Does the issuer file reports with the SEC under Sections 13(a) or 15(d) of the Exchange Act?
YES
Does the issuer manufacture or contract to manufacture products?
YES
Are conflict minerals necessary to the functionality or production of the product manufactured or contracted to manufactured?
NO
Rule does not apply. END
NO
NO
YES
Were the conflict minerals outside the supply chain prior to January 31, 2013?
YES
NO, if newly-mined
NO, if potentially scrap or recycled
YES
Based on a reasonable country of origin inquiry (RCOI), does the issuer know or have reason to believe that the conflict minerals may have originated in the DRC or an adjoining country (the covered countries)?
NO
Based on the RCOI, does the issuer know or reasonably believe that the conflict minerals come from scrap or recycled?
NO
YES
File a Form SD that discloses the issuer's determination and briefly describes the RCOI and the results of the inquiry. END
Exercise due diligence on the source and chain of custody of its conflict minerals following a nationally or internationally recognized due diligence framework, if such framework is available for a specific conflict mineral.
In exercising this due diligence does the issuer determine the conflict minerals are not from the covered countries or are from scrap or recycled?
YES
File a Form SD that discloses the issuer's determination and briefly describes the RCOI and due diligence measures taken and the results thereof. END
NO
File a Form SD with a Conflict Minerals Report as an exhibit, which includes a description of the measures the issuer has taken to exercise due diligence.
In exercising the due diligence, was the issuer able to determine whether the conflict minerals financed or benefitted armed groups?
NO
Is it less than two years after effectiveness of the rule (four years for Smaller Reporting Companies)?
YES
The Conflict Minerals Report must also include a description of products that are "DRC Conflict Undeterminable" and the steps taken or that will be taken, if any, since the end of the period covered in the last Conflict Minerals Report to mitigate the risk that the necessary conflict minerals benefit armed groups, including any steps to improve due diligence. No audit is required. END
YES
NO
The Conflict Minerals Report must also include an independent private sector audit report, which expresses an opinion or conclusion as to whether the design of the issuer's due diligence measures is in conformity with the criteria set forth in the due diligence framework and whether the description of the issuer's due diligence measures is consistent with the process undertaken by the issuer. Also, include a description of the products that have not been found to be DRC Conflict Free, the facilities used to process the necessary conflict minerals in those products, the country of origin of the minerals and the efforts to determine the mine or location of origin of those minerals with the greatest possible specificity. END

What Compliance Steps Can Companies Take?

1. Prepare a high-level presentation to educate business partners and senior executives.
2. Get senior management involved because resources and personnel will need to be allocated to the compliance program.
3. Develop a compliance policy and post it on the company website and communicate it to your suppliers.
4. Survey your suppliers to determine whether and to what extent they are putting compliance measures in place.
5. Assemble an internal team to gather information on how the company makes and delivers its products. The team must include representatives from procurement, research and development, the company's supply chain, sales, and other departments.
6. Request that procurement and R&D review product specifications to see whether conflict minerals are used.
7. Conduct due diligence to understand the company's products, packaging, sales organization, and supply chains, including a supplier questionnaire to determine the origin of conflict minerals in your products.
8. Request that the relevant supply chains ensure they can canvass all first-level suppliers to the company.
9. Review all information gathered during the due diligence process.
10. Consider whether the company has adequate resources to handle data gathered by the supply chains, and to maintain annual tracking of the data.
11. Develop a questionnaire to gather source information from suppliers.
12. Consider including language in contracts with suppliers and third-party providers to help you in your “reasonable country of origin” inquiries.

Compliance Initiatives

- Organization for Economic Cooperation and Development (OECD) – guidance on supply chain due diligence; gold due diligence supplement
  http://www.oecd.org/fr/daf/investissementinternational/principesdirecteurspourlesentreprisesmultinationales/mining.htm
  http://www.oecd.org/daf/internationalinvestment/investmentfordevelopment/goldsupplementtotheduediligenceguidance.htm
- EICC-GeSI - conflict-free smelter program
  http://www.conflictfreesmelter.org/cfshome.htm
- World Gold Council (WGC) – conflict-free gold standard
  http://www.gold.org/about_gold/sustainability/conflict_free_standard/
  http://www.pwc.co.uk/mining/publications/golden-opportunity-building-an-industry-commitment-to-conflict-free-fold-production.jhtml
- IPC (electronics) – Conflict Minerals Data Exchange Standard
  http://www.ipc.org/ContentPage.aspx?pageid=Conflict-Minerals-Resources-for-the-Electronics-Industry
- Source 44 – Supply Chain Traceability Program
  http://source-44.com/content/conflict-minerals-disclosure
- Business for Social Responsibility (BSR)
  https://www.bsr.org/en/our-work/initiatives/conflict-minerals
- London Bullion Market Assn (LBMA) – Responsible Gold Programme
  http://lbma.org.uk/pages/index.cfm?page_id=137&title=responsible_gold
- iTSCi – region traceability/tracking (bag & tag) initiative
  https://www.itri.co.uk/index.php?option=com_zoo&task=item&item_id=2192&Itemid=189
- Conflict Minerals Consortium discussion group on Linkedin

OECD
5-Step Due Diligence Framework (1)

(1) To establish strong company management systems, companies should:

A) Adopt, and clearly communicate to suppliers and the public, a company policy for the supply chain of minerals originating from conflict-affected and high-risk areas. This policy should incorporate the standards against which due diligence is to be conducted, consistent with the standards set forth in the model supply chain policy in Annex II.

B) Structure internal management to support supply chain due diligence.

C) Establish a system of controls and transparency over the mineral supply chain. This includes a chain of custody or a traceability system or the identification of upstream actors in the supply chain*. This may be* implemented through participation in industry-driven programs.

D) Strengthen company engagement with suppliers. A supply chain policy should be incorporated into contracts and/or agreements with suppliers. Where possible, assist suppliers in building capacities with a view to improving due diligence performance*.*

E) Establish a company-level, or industry-wide, grievance mechanism as an early-warning risk-awareness system.

OECD
5-Step Due Diligence Framework (2)

(2) To identify and assess risk in the supply chain, companies should:

A) Identify risks in their supply chain as recommended in the Supplements.

B) Assess risks of adverse impacts in light of the standards of their supply chain policy consistent with Annex II and the due diligence recommendations in this Guidance.

OECD
5-Step Due Diligence Framework (3)

(3) To Design and implement a strategy to respond to identified risks. Companies should:

A) Report findings of the supply chain risk assessment to the designated senior management of the company.

B) Devise and adopt a risk management plan. Devise a strategy for risk management by either *i) continuing trade throughout the course of* measurable risk mitigation efforts; *ii) temporarily suspending trade* while pursuing ongoing measurable risk mitigation; or *iii) disengaging* with a supplier after failed attempts at mitigation or where a company deems risk mitigation not feasible or unacceptable. To determine the correct strategy, companies should review Annex II (*Model Supply Chain Policy for Responsible Global Supply Chains of Minerals from Conflict-Affected and High-Risk Areas) and consider their ability to influence, and where* necessary take steps to build leverage, over suppliers who can most effectively prevent or mitigate the identified risk. If companies pursue risk mitigation efforts while continuing trade or temporarily suspending trade, they should consult with suppliers and affected stakeholders, including local and central government authorities, international or civil society organisations and affected third parties, where appropriate, and agree on the strategy for measurable risk mitigation in the risk management plan. Companies may draw on the suggested measures and indicators under Annex III of the *Due Diligence Guidance to design* conflict and high-risk sensitive strategies for mitigation in the risk management plan and measure progressive improvement.

C) Implement the risk management plan, monitor and track performance of risk mitigation efforts and report back to designated senior management. This may be done in cooperation and/or consultation with local and central government authorities, upstream companies, international or civil society organisations and affected third-parties where the risk management plan is implemented and monitored in conflict-affected and high-risk areas.

D) Undertake additional fact and risk assessments for risks requiring mitigation, or after a change of circumstances.

OECD
5-Step Due Diligence Framework (4)

(4) Carry out independent third-party audit of supply chain due diligence at identified points in the supply chain.

Companies at identified points (as indicated in the Supplements) in the supply chain should have their due diligence practices audited by independent third parties. Such audits may be verified by an independent institutionalised mechanism.

OECD
5-Step Due Diligence Framework (5)

(5) Report on supply chain due diligence.

Companies should publicly report on their supply chain due diligence policies and practices and may do so by expanding the scope of their sustainability, corporate social responsibility or annual reports to cover additional information on mineral supply chain due diligence.

EICC-GeSI
Compliance Template

Provides a desktop tool called the MRPRO Dashboard that includes a reporting template (*i.e.*, supplier questionnaire)

http://www.conflictfreesmelter.org/ConflictMineralsReportingTemplateDashboard.htm

- Is available free to all registrants
- Can export XML files of the template to enable data to be uploaded to any proprietary database or software
- Can generate a bill of materials declaration based on the Product List declaration scope in the Template.

EICC-GeSI
Template Letter to Suppliers

<date>

Supplier Name
Address

Dear <Insert Supplier Name here>:

<Company> is committed to sourcing responsibly and considers mining activities that fuel conflict as unacceptable. <Company's> efforts related to conflict minerals are aligned to the work of the Electronic Industry Citizenship Coalition® (EICC®) and Global e-Sustainability Initiative (GeSI). The EICC's and GeSI's work includes the Conflict-Free Smelter Program and the Conflict Minerals Reporting Template ("Template").

Please be advised that an updated version of the Conflict Minerals Reporting Template, Revision 2.0, has been released and can be found, along with training materials, at www.conflictfreesmelter.org. The Template provides a common industry approach for the collection of sourcing information related to conflict minerals.

<Company's> suppliers currently using Revision 1.0 of the Template must transition to the new version of the Template; suppliers not yet completing the Template must do so by <date>. The information contained in the Template constitutes a critical part of <Company's> due diligence program.

When completing the Template, please note:

All of <Company's> global suppliers must complete and submit Revision 2.0 of the Template, even if you previously submitted the Revision 1.0
Complete mine and smelter location address must be submitted for any smelter that is not included in the dropdown menus in the Template
Training materials including a video and links to other support are available at www.conflictfreesmelter.org

The Template must be submitted to <name, title> (<email>) at <Company> within YY weeks of the date of this letter, no later than <date>.

Thank you for your cooperation and support.

Respectfully,

In July 2010, the U.S. Government signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). Section 1502 of the Dodd-Frank Act requires all US publicly traded companies to file disclosures and reports with the U.S. Securities and Exchange Commission related to the use of conflict minerals (tin, tantalum, tungsten and gold) in their products.