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## Conflict Mineral Rule 1502 – Here's the Skinny



By 3p Guest Author | August 29th, 2012 1 Comment



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### Troubled Bounty

A 3p Series on Conflict Minerals

By Patricia Jurewicz

Last week, the Securities and Exchange Commission (SEC) made a much-anticipated ruling on [conflict minerals](#). Rule 1502 was expected to increase transparency by requiring companies to report on the use of conflict minerals in the products they sell. While this is great news, the devil is in the details. Many people were looking to the SEC to give a final answer with the issuing of the Conflict Mineral Rule. This rule lays out the specifics on who must report, what they must report on, how they have to report and on what timeline.



A miner washing coltan at a conflict-free mine Jurewicz visited during her spring 2012 trip to the Democratic Republic of the Congo.

The final details are extremely important for folks who are now required to report (nearly every electronics manufacturer you can think of, for example), but people who are not sector specialists probably just want to know if it's a weak rule or a strong rule. That depends on who you are. The sustainable and ethical investors I work with "[welcome](#)" the rule... but were not necessarily pleased with it. Given the variety of stakeholders involved, there are, of course, diverse opinions on all of the different aspects of the rule. However, I would say that the majority of groups working on this issue, with the exception of the U.S. Chamber of Commerce, are indeed happy that the rule has finally been issued.

Now we can go about the real work at hand: setting up systems to guarantee that conflict minerals are not finding their way into our products and that the conflict-free minerals that *do* go into our products are providing safe, decent jobs to people in the Democratic Republic of the Congo (DRC) who so desperately need them.

Let's look back to the original questions:

### Who will have to file a Conflict Minerals Report and what will have to be filed?

These two questions are inextricably intertwined, since different types of companies will be required to do different types of reporting. The type of reporting required is determined by two steps.

The first step centers around two main factors:

1. If the company currently files an annual report with the SEC
2. If the company manufactures, or contracts to manufacture products that contain one of the four conflict minerals: tin, tantalum, tungsten, and gold

It doesn't matter if the company is domestic or foreign; both types will have to disclose information if they currently file annual reports with the SEC. Also, there is no *de minimis*, or a set minimum amount of mineral that needs to be present. This means that all companies are subject to this law, even if there are just miniscule amounts of tin or one of the other minerals embedded in their products.

The way the SEC defined "contracting to manufacture" does give a pass to many companies — especially retailers. To fulfill on this definition, the rule says that the company has to have some influence over the manufacturing of the product. Companies would be let off the hook if they are just affixing a name or label on a generic product manufactured by a third party. So if Verizon negotiated with HTC on specific attributes of the phone, then they will have to disclose. If Home Depot is just putting its name on a generic drill, it will not have to disclose.

The second step is determining if the minerals in your products originate from the Democratic Republic of the Congo (DRC) or any neighboring countries by conducting a “reasonable country of origin inquiry.” This chain of custody analysis “must be performed in good faith and be reasonably designed.” If the company knows the minerals do not originate in the region of the Congo, or the minerals are from recycled sources, a new form (Form SD for “Specialized Disclosures,”) must be filled out. Companies just have to describe the steps that were taken to try to find out the origin of materials and the result of that inquiry on their websites. A full Conflict Mineral Report does not have to be submitted to the SEC.

Only if a company has reason to believe that the minerals may have originated in the region of the DRC and are not scrap or recycled will it have to undertake “due diligence” and submit a Conflict Mineral Report as an exhibit to the Form SD.

#### **Where will companies report the information?**

The SEC was a little creative with this answer. It said that companies have to “file” the information with the SEC (which was one chief request from the sustainable investors), but it will be submitted in its own SD form, not in the 10-K, and the CEO or COO do not have to sign a certificate for it.

#### **When will companies have to file the information?**

The SEC did grant a single filing date, as many companies and other stakeholders requested. The date is set for May 31<sup>st</sup>. This means that the first Conflict Mineral reports will be filed on May 31, 2014, and will cover the data collected in 2013.

The controversial aspect of the timing is the two to four years that companies now have to determine where all of their minerals come from. The extra two years is given for smaller companies. Due to the year and a half delay in issuing the rule, many human rights advocates and investors feel these “phase in” years are excessive. Furthermore, no auditing is required for minerals with an “indeterminate” designation, which makes many NGOs fear that companies can just say they don’t know where their minerals originate and delay any serious reporting.

As rule 1502 begins to take effect, NGOs and investors will continue to play a vital role monitoring and analyzing what companies disclose about their efforts to build safe and conflict-free supply chains.

#### **Resources**

- **4 Keys to Conflict-Free Supply Chains:** A great article full of recommendations for companies looking to be conflict-free.
- **RSN’s Table of Products Using Minerals:** A selected list of common products that contain the four conflict minerals: tin, tantalum, tungsten and gold.

Industry	Tin	Tantalum	Tungsten	Gold
<b>IT</b>				
Cell Phones	X	X	X	X
Laptop Computers	X	X	X	X
Desktop Computers	X	X	X	X
GPS	X	X		X
Digital Cameras	X	X		X
Video Cameras	X	X		X
Calculators	X			X
Game Consoles	X	X		X
Pagers	X	X		X
MP3 Players	X	X		X
Copiers	X		X	X
Printers	X		X	X
Plasma Televisions	X	X		X
<b>Automotive</b>				
Computer Systems	X	X		X
Anti-Lock Braking Systems (ABS)	X	X		
Airbag Protection Systems	X	X		X
<b>Cans</b>				
Pet Food	X			
Food	X			
<b>Home Appliances</b>				
	X			X
<b>Jewelry</b>				
	X		X	X
<b>Medical</b>				
Hearing Aids		X		X
Pacemakers	X	X		X
Suture Clips		X		
Skull Plates		X		
Surgical Instruments	X	X		
Wire Meshes		X		
Prosthetic Devices		X		
Rods		X		
<b>Aerospace</b>				
Jet Engines	X	X	X	X
Rockets	X		X	X
<b>Energy</b>				
		X	X	
<b>Tools</b>				
Drill Bits	X	X	X	
Cutting Tools	X	X	X	
Rotary Burrs	X		X	
Sanding Disks	X		X	
Wear Restraint Tools			X	
<b>Apparel and Footwear</b>				
PVC in Soles of Shoes	X			
Buckles, Fasteners, Zippers & Buttons	X			
Fashion Jewelry (Solder)	X			

**Tin-** Used as a protective coating or as an alloy with other metals such as lead or zinc. Electronic components such as solders (44.1%), industrial (8.8%) (check these – Resolve – indicated 36% or 53%), tinplate (16.4%), chemicals (13.9%), bronze (5.5%) and float glass (2.1%). Tin solders are used to make jewelry.

**Tantalum-** Electronic components such as capacitors in portable phones, pagers, PCs, automotive electronics (60-70%), carbide cutting tools (~5%), super-alloys for jet engine components (10%), and chemical equipment (10%).

**Tungsten-** Cemented carbides (60%), and tungsten steel (20%). Also used in cutting tools, electron emitters tungsten wire in copiers & printers, electronic circuit boards & heat sinks, mens wedding bands etc

**Gold-** Primarily used in jewelry but also used in gold bonding wire, electroplating, solder alloys, finishes on contacts and conductors in electronics, dental restoration, wires in pacemakers, gold plated stents, etc

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This is a really helpful and informative article. Thanks, Patricia!

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