

AIAG CONFLICT MINERALS

Frequently Asked Questions

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1. What laws and rules govern conflict minerals?

- On July 16, 2010, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”), which was primarily designed to address financial reform and regulation for U.S. corporations. Section 1502 of this new law directed the U.S. Securities and Exchange Commission (the “SEC”) to establish rules requiring companies that file certain reports with the SEC to provide an annual **disclosure as to the source of certain materials designated as “conflict minerals” in their products.**
- The SEC adopted new rules, as required by this law, on August 22, 2012.
- The new rules provide that companies who file certain reports with the SEC must file SEC-mandated conflict minerals **disclosures by May 31, 2014**, covering **products manufactured starting January 1, 2013**, which incorporate conflict minerals that were not in the supply chain prior to January 31, 2013. **Disclosures will be required every May 31st thereafter, and will cover products manufactured in the prior calendar year.**

2. What is the purpose of this new legislation and these SEC rules?

- Congress included this provision in the Dodd-Frank Act **in an effort to further the humanitarian goal of ending violent conflict in the Democratic Republic of the Congo (the “DRC”)** and the adjoining region. This conflict has been partially financed by the trade of certain minerals, known as “conflict minerals,” in the DRC and in adjoining countries, which include Angola, Burundi, Central African Republic, the Republic of the Congo, Rwanda, South Sudan, Tanzania, Uganda and Zambia (the “**Covered Countries**”).
- Congress chose to use the U.S. securities laws disclosure requirements to promote the exercise of due diligence on the source of conflict minerals in supply chains, and to persuade companies to procure conflict minerals from sources that do not finance or benefit armed groups in the Covered Countries.

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3. What minerals are “conflict minerals”?

- **“Conflict Minerals”** currently include **gold, as well as tin, tantalum and tungsten**, the derivatives of cassiterite, columbite-tantalite, and wolframite, respectively. These conflict minerals are referred to as **“3TG.”**
- The Dodd-Frank Act authorizes the U.S. Secretary of State to designate additional minerals if it is determined that trade related to those minerals is being used to finance conflict in the Covered Countries.
- The term **“conflict minerals”** applies to **all 3TG minerals, whether or not they originated in the Covered Countries.**

4. What products typically contain the 3TG conflict minerals?

- **Conflict Minerals are used in a wide range of products**, including but not limited to mobile phones, computers, digital cameras, video game consoles, jewelry, light bulbs, pipes, electronic circuits and automobiles.

5. Do the Dodd-Frank Act or the SEC rules make it illegal for us to use conflict minerals if they originate in the DRC or from the other Covered Countries?

- **No. The Dodd-Frank Act and the new SEC rules relate to disclosure only, and they do not prohibit the use of conflict minerals in your products**, even if those conflict minerals originated in the DRC or other Covered Countries.
- The SEC has provided specific guidance that it does not intend for companies to cease all procurement of conflict minerals in the DRC and other Covered Countries, which could ultimately cause economic collapse in the DRC region. Rather, it is the SEC’s goal to target the procurement of conflict minerals from sources that can verify its funds are not used to fund armed conflict in the region.
- You, your direct customers, or your indirect customers may be obligated to make disclosures regarding the source of conflict minerals in your products, and companies may therefore establish company standards or policies requiring that conflict minerals be procured only from sources that can demonstrate that they do not fund or benefit armed conflict in the DRC and the other Covered Countries.
- **You should be vigilant as to your customers’ expectations related to conflict minerals, as embodied in company policies, standards or terms and conditions**, as these may be changing in response to these new disclosure requirements.

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6. We do not file reports with the SEC. Is my company affected by the conflict minerals rules?

- **Probably, yes.** The disclosure requirements are aimed at companies who file certain public reports with the SEC, but in order for those SEC filers to make those disclosures, they will need information from the companies who supply them with materials and/or components. Therefore, even if your company is private and/or does not file reports with the SEC, **as long as you are a direct or indirect supplier to a company that files certain reports with the SEC, you may be asked to provide information regarding the uses and sources of conflict minerals in your products.**
- **Products that are manufactured beginning January 1, 2013,** are subject to disclosure, and therefore may be the subject of inquiry, but products that incorporate conflict minerals already in the supply chain prior to January 31, 2013, are excluded from disclosure.
- Depending on your customer base and the type of products you manufacture or distribute, you may be asked to cascade an inquiry to your own suppliers as a means to investigate the source of your materials and components, and to complete a questionnaire based upon the results of your inquiry. **If you do not manufacture or assemble any products** but are merely a service provider, you may not be asked to make any disclosures. **If, however, you are a distributor or reseller of products,** you may be asked by your customer to assist them in seeking information from your suppliers regarding the use of conflict minerals in the products you procure on their behalf.
- You must make a reasonable inquiry to determine the source of conflict minerals in your company's products. **Customer expectations as to what constitutes "reasonable" will vary.** Questions as to whether or not the responses you receive from your suppliers are sufficient (as in the quality of the answers or the response rate) should be directed to your customer. It should be noted, however, that you **cannot ignore signs that conflict minerals were sourced from the Covered Countries,** even if a supplier does not disclose that information in response to an inquiry.

7. What tools or forms are available to help our company comply with the conflict minerals rules?

- The automotive industry, through the Automotive Industry Action Group ("AIAG"), is currently working to design a common set of tools to perform the supply chain inquiries necessary to fulfill the obligations of automotive manufacturers who must file conflict minerals disclosures with the SEC. **AIAG has co-developed the iPCMP software tool with iPoint, a software solution provider. The**

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iPCMP tool will deliver a **pre-formulated questionnaire** to suppliers and to manage supplier responses.

- The automotive industry has modeled the **pre-formulated questionnaire** after the **Electronic Industry Citizenship Coalition (“EICC”)** and the **Global e-Sustainability Initiative (“GeSI”) Conflict Minerals Reporting Template, the leading template for conflict minerals data collection.**
- While it is optional for suppliers, iPCMP is widely recommended by industry leaders. Ultimately, the more suppliers that use the tool, the easier compliance will be for all automotive manufacturers. **More information on the iPCMP tool is available at <http://www.conflict-minerals.com/en/start-page/>.** If you opt not to use the iPCMP tool, you can manually complete the questionnaire. This is not a recommended approach, since it will not help to support the goal of the automotive industry to responsibly source minerals and to facilitate and standardize compliance with the disclosure requirements.

8. What are companies that report to the SEC required to do?

- If your company is an “SEC filer” that files periodic reports with the SEC such as Forms 10-K and 10-Q (including foreign private issuers who file Form 20-F, smaller reporting companies and emerging growth companies), **you will be required to disclose** information regarding conflict minerals in products you manufacture or contract to manufacture by filing a **new Form SD by May 31, 2014**, covering products manufactured in the entire 2013 calendar year.
- Compliance with these disclosure obligations is complicated, and **SEC filers are urged to seek legal guidance** in obtaining information from suppliers and preparing disclosures for the SEC. It should, in particular, be noted that the Form SD and its exhibits are “filed” and not “furnished” to the SEC. As a result, **heightened liability** under Section 18 of the Securities Exchange Act of 1934 applies for any fraud or misstatements.
- Your Form SD will have to be filed by every May 31 thereafter, and will be based on manufacturing activity that occurred in the prior calendar year, even if your fiscal year is different.
- The information contained in the Form SD that is filed with the SEC must also appear on your company’s publicly available website for one year, and the Form SD itself must contain a link to that website.
- The **content of the disclosures you make in the Form SD, as well as your company’s potential obligation to file an audited Conflict Minerals Report,**

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will depend upon your suppliers' responses as to the source(s) of conflict minerals they use in manufacturing products for your company.

- The rules do not define the term “contract to manufacture,” but the SEC has indicated in its guidance that the determination of **whether a company contracts to manufacture a product depends upon the extent to which the company influences the selection of the materials contained in the product.** For example, generic, off-the-shelf products to which you affix your company logo are likely outside the scope of the rule.
- Additional guidance for SEC filers is available at:
 - <http://www.kpmg.com/US/en/topics/Pages/conflict-minerals.aspx>
 - <http://www.pwc.com/us/conflictminerals>
 - http://www.dykema.com/resources-alerts-sec-adopts-final-rules-for-conflict-minerals-disclosure_9-2012.html

9. Do the results of our inquiry to our suppliers have to be audited?

- **Only SEC filers who make a definitive disclosure with the SEC that their products are “DRC Conflict Free” (or not) are required to obtain a third-party audit** of the inquiry made to suppliers. Even with such a definitive disclosure, the required third-party audit only evaluates whether the SEC filer has adequately performed due diligence by designing and disseminating an appropriate inquiry process and following that process. **The required audit is not designed to verify the content of the disclosure**, and need not necessarily be conducted by a certified public accountant.
- The standard for the adequacy of due diligence in a third-party audit must be measured in the context of an accepted due diligence framework. Currently, the **only accepted such framework was designed by the Organisation for Economic Cooperation (“OECD”)**. More information about the OECD framework may be obtained at:
 - <http://www.oecd.org/daf/internationalinvestment/guidelinesformultinationalenterprises/46740847.pdf>
 - <http://www.oecd.org/daf/internationalinvestment/guidelinesformultinationalenterprises/GoldSupplement.pdf> (gold supplement).

10. Do we need to develop a company policy regarding conflict minerals?

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- The decision as to the appropriate content for a conflict minerals policy will inevitably vary widely from company to company, and will take into account a myriad of factors, such as the company's industry, products, competitive position, customer base, supply chain complexity, size and location.
- **If you are an SEC filer**, any policy you have in place or that you choose to adopt may factor into your SEC disclosures, and you are therefore **strongly urged to seek legal guidance to assist you in deciding the appropriate policy decision(s)** for your company.

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11. Will every use of conflict minerals be covered by these rules?

- Conflict minerals are covered by these rules only if they are “**necessary to the functionality or production**” of a product. Therefore, whether you are an SEC filer who must make disclosures, or you are merely responding to a customer inquiry, you must make a determination as to whether the 3TG in the products that you manufacture or that you contract to manufacture are necessary to the functionality or production of that product.
 - While there is no definition of “necessary to the functionality or production” of a product, the SEC provides certain guidance, and more information may be forthcoming.
 - Current guidance provides that **conflict minerals are “necessary to the functionality of a product”** as long as they are: a) intentionally added to the product and not a naturally occurring by-product of the manufacturing process; b) necessary to the product's generally expected function, use, or purpose; and c) not incorporated primarily for the purpose of ornamentation or decoration.
 - Current guidance provides that **conflict minerals are “necessary to the production of a product”** as long as they are: a) intentionally included in the product's production process, but not in the form of a tool, machine or production equipment; b) contained in the final product; and c) necessary to produce the product. Conflict minerals contained in a catalyst would not be subject to the rules, unless those minerals were incorporated into the final product.
- You will be expected to provide information to your customers (or, if you are an SEC filer, in your disclosure to the SEC) as to the inquiry you made to determine whether the 3TG in your product(s) were or were not “necessary to the functionality or to the production” of your products. Make sure to document all

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steps you take in this inquiry, and to preserve that documentation. **If you are unsure as to the standard for this inquiry, you should seek further guidance from your customer(s).**

- Assuming you determine that conflict minerals are “necessary to the functionality or production” of your products, you will be expected provide information to your customers (or, if you are an SEC filer, in your disclosure to the SEC) as to whether the conflict minerals used in your products originated from the **Covered Countries**, came from **scrap or recycled** sources, or were **outside the supply chain prior to January 31, 2013**. Again, you should be sure to document all the steps you take in this inquiry and preserve that documentation. **If you are unsure as to the standard for this inquiry, you should seek further guidance from your customer(s).**
- It is important to note that the **rules do not exclude de minimis use of conflict minerals**. Even trace uses of conflict minerals are governed by the rules and are subject to disclosure.
- More guidance regarding the uses of conflict minerals that are and are not covered by these rules can be found at :
 - <http://www.kpmg.com/US/en/topics/Pages/conflict-minerals>.
 - <http://www.pwc.com/us/conflictminerals>
 - http://www.dykema.com/resources-alerts-sec-adopts-final-rules-for-conflict-minerals-disclosure_9-2012.html

12. A customer has asked us to indicate whether the conflict minerals obtained in our product(s) were sourced from conflict-free smelters. What is a conflict-free smelter?

- The Conflict-Free Smelter (“CFS”) Program is a certification program for smelters or refiners. The program was initiated by EICC and GeSI to assist the electronics industry in ensuring that conflict minerals used in their products do not originate from sources that fund armed conflict in the Covered Countries. **The automotive industry plans to support this program, which was also recognized by the SEC in its guidance on the conflict minerals rule.** The program requires that smelters or refiners represent the sources of the minerals they process as conflict-free, and those representations are then independently audited prior to certification.

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- If you are able to determine that your conflict minerals originated solely from a certified conflict-free smelter, your products may be “DRC Conflict Free” under the conflict minerals rules.
- Unfortunately, only a limited number of smelters are certified at this time. Details regarding the certification process, as well as a list of certified smelters are available at <http://www.conflictreesmelter.org>.

13. What should companies do now to prepare for compliance with the rules?

- Ensure that you have valid, updated contact information for all your suppliers.
- Review your product portfolio to determine which of your products may contain conflict minerals. **The IMDS database may be one resource for product content information, but that database will not likely contain all the information you need** since the purpose of that database is to report on the Global Automotive Declarable Substance List and is not (and will not be) tailored to report conflict minerals.
- Begin communicating with your suppliers regarding your expectations of them in helping you meet your obligations under these rules.
- Identify resources within your company who will engage with suppliers to obtain responses to inquiries.
- Explore the conflict minerals compliance tools AIAG has developed, and determine if those tools would be useful to your company. Information regarding these tools and training can be found at <http://www.conflict-minerals.com/en/start-page/>.
- Identify other resources outside your company as necessary to provide advice on policy, compliance, and disclosure issues.
- Direct any additional questions for AIAG, or volunteer to assist us with our efforts to coordinate an industry response to these rules, by contacting Tanya Bolden at conflictConflictMinerals@AIAG.ORG

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