

Dodd-Frank Conflict Minerals Provision Summary

The Dodd-Frank Conflict Minerals Provision imposes new requirements on public companies that use tin, tantalum, tungsten, or gold in any of their products. Suppliers that utilize any of these conflict minerals will be affected as well since SEC-filing customers will need to establish the chain of custody for all conflict minerals. Final rules have not yet been implemented; however it is important to get started.

First you need to determine if you use any of these four materials. If you do, then you need to determine whether any part of your supply chain includes material originating in the Democratic Republic of the Congo or adjoining countries. Due diligence in this effort is required by law and could start with letters and emails to suppliers that provide necessary tin, tungsten, tantalum, or gold. Particularly if your organization has a wide source network, you may want to appoint someone to be in charge of this process, as the reporting requirements are detailed.

Section 1502 (the “Conflict Minerals Provision”) of the Dodd-Frank Wall Street Reform and Consumer Protection Act amends the 1934 Securities Exchange Act by adding new Section 13(p). The disclosure requirements are part of a U.S. effort to reduce the market for minerals that may directly or indirectly finance armed conflict in the Democratic Republic of Congo and adjoining countries (DRC countries).

Under the proposed rules, any issuer for which conflict minerals are “necessary to the functionality or production of a product manufactured, or contracted to be manufactured, by that issuer” would be required to disclose in the body of its annual report whether those conflict minerals originated in any DRC country.

If a company is an issuer that files reports with the SEC (form 10-K, 20-F, or 40-F) and if any conflict minerals (or their derivatives) are necessary for the production or functionality of products they manufacture, then the company is required to perform the due diligence and disclosure required in Dodd-Frank.

Once the company determines that Dodd-Frank applies, the due diligence involved is to find whether the conflict minerals originated in the DRC or an adjoining country through a “reasonable country of origin inquiry.” The standard for the “country of origin inquiry” is “performing the investigative measures that a reasonably prudent person would perform in the management of his or her own property.” One method of establishing “DRC conflict free” status is a third-party determination that the smelter in question uses only conflict free minerals.

There are two categories of results that can emerge from the supply chain due diligence.

1. The company determines that the conflict minerals did not originate from the DRC or adjoining countries. In this case, the company must disclose that information along with a description of the process it used to reach this conclusion:

- on its website; and
- in its annual report to the SEC form 10-K, 20-F, or 40-F

2. The company determines that conflict minerals DID originate in DRC countries or it is unable to conclude the conflict minerals DID NOT originate in DRC countries. In this case, the company must submit a “Conflict Minerals Report” to the SEC which must include a description of:

- the products manufactured or contracted to be manufactured that are not DRC conflict free
- the facilities used to process the conflict minerals;
- the country of origin of the conflict minerals; and
- the effort to determine the mine or location of origin with the greatest possible specificity.

Additionally, issuers required to furnish a Conflict Minerals Report must “certify that they obtained an independent private sector audit of the report” and include the audit as part of the Conflict Minerals Report.

FJATA expects the SEC to issue final implementation rules later this year. Disclosure, due diligence, and reporting requirements become effective during the first full fiscal year after the date the final rules are published. FJATA will keep you apprised of any new information as it emerges.