United States Government Accountability Office

Report to Congressional Committees

July 2021

CONFLICT MINERALS

2020 Company SEC Filings on Mineral Sources Were Similar to Those from Prior Years

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GAO-21-531

GAO Highlights

Highlights of GAO-21-531, a report to congressional committees

July 2021

CONFLICT MINERALS

2020 Company SEC Filings on Mineral Sources Were Similar to Those from Prior Years

Why GAO Did This Study

The United States has sought to improve security in the DRC for over 2 decades. However, according to the Department of State and the United Nations, conflict has persisted and contributed to severe human rights abuses and the displacement of people. Armed groups continue to profit from the mining and trade of "conflict minerals," according to State. Provisions in the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act required, among other things, the SEC to promulgate disclosure and reporting regulations regarding the use of conflict minerals from the DRC and adjoining countries. In 2012, the SEC adopted a conflict minerals disclosure rule requiring companies to file specialized disclosure reports beginning in 2014 and annually thereafter. The act also included a provision for GAO to assess, among other things, the SEC regulations' effectiveness in promoting peace and security in the DRC and adjoining countries.

This report examines how companies responded to the SEC conflict minerals disclosure rule when filing in 2020. GAO analyzed a generalizable sample of 100 SEC filings; reviewed SEC documents; and interviewed SEC officials and other stakeholders, including representatives from the private sector and nongovernmental organizations.

View GAO-21-531. For more information, contact Kimberly M. Gianopoulos at (202) 512-8612 or gianopoulosk@gao.gov.

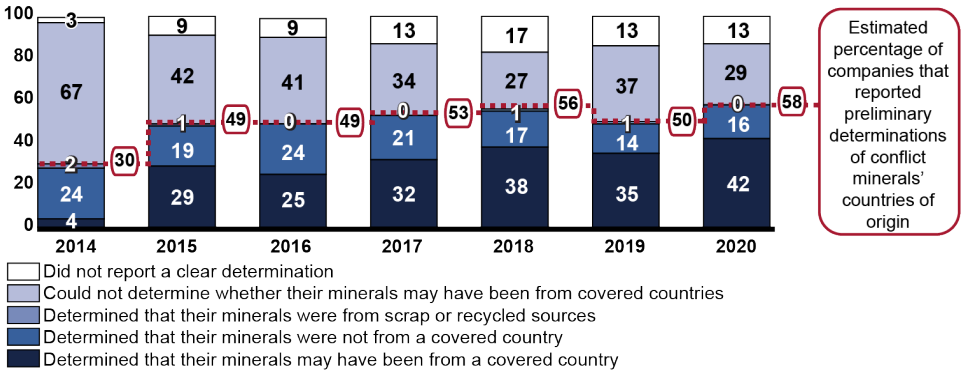
What GAO Found

The Securities and Exchange Commission (SEC) disclosure rule on conflict minerals broadly requires that certain companies submit a filing that describes their efforts to determine the source of their conflict minerals—tin, tungsten, tantalum, and gold. As part of this process, these companies must conduct a reasonable country-of-origin inquiry (RCOI). Depending on the determination reached through this inquiry, some companies must then conduct due diligence to further investigate the source of their minerals.

According to GAO's analysis, companies' RCOI determinations have not changed significantly since 2015. In 2020, an estimated 58 percent of the companies that conducted an RCOI reported preliminary determinations regarding whether the conflict minerals in their products may have come from the Democratic Republic of the Congo (DRC) or adjoining countries (covered countries), as the figure shows. Of those companies, an estimated 42 percent reported that they had preliminarily determined that at least some of their minerals may have originated in covered countries, and an estimated 16 percent determined that their minerals were not from a covered country.

Source of Conflict Minerals in Products as Determined by Companies' Reasonable Country-of-Origin Inquiries, Reporting Years 2014–2020

Estimated percentage (of company filings)



Source: GAO analysis of Securities and Exchange Commission filings. | GAO-21-531

DRAFT

Data table for Source of Conflict Minerals in Products as Determined by Companies' Reasonable Country-of-Origin Inquiries, Reporting Years 2014–2020

	2014	2015	2016	2017	2018	2019	2020
Determined that their minerals might have been from a covered country	4	29	25	32	38	35	42
Determined that their minerals were not from a covered country	24	19	24	21	17	14	16
Determined that their minerals were from scrap or recycled sources	2	1	0	0	1	1	0
Could not determine whether their minerals might have been from covered countries	67	42	41	34	27	36	29
Did not report a clear RCOI determination	2.5	9	9	13	17	14	13

Source: GAO analysis of SEC filings. | GAO-21-531

In 2020, an estimated 78 percent of the companies that conducted an RCOI went on to conduct due diligence to further investigate the source of their minerals. After conducting due diligence, an estimated 44 percent of these companies reported that they could not determine whether their minerals originated in covered countries. An estimated 38 percent of the companies reported that their minerals may have originated in covered countries, and the remaining 18 percent did not clearly report their due diligence determination.

Most filings indicated that companies used standardized tools and programs to attempt to determine the source of their minerals, but filings and industry experts noted challenges relating to these tools and programs. For example, an estimated 96 percent of company filings indicated use of a supplier survey to collect information, but many companies did not receive responses from all their suppliers, of which there could be hundreds in some companies' supply chains.

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Abbreviations

Dodd-Frank Act	2010 Dodd-Frank Wall Street Reform and Consumer Protection Act
DRC	Democratic Republic of the Congo
EDGAR	Electronic Data Gathering, Analysis, and Retrieval
Form SD	specialized disclosure report
IPSA	independent private-sector audit
OECD	Organisation for Economic Co-operation and Development
RCOI	reasonable country-of-origin inquiry
SEC	Securities and Exchange Commission
SEC disclosure rule	SEC conflict minerals disclosure rule
UN	United Nations

441 G St. N.W.
Washington, DC 20548

July 12, 2021

Congressional Committees

Over the past 2 decades, the United States and the international community have sought to improve security in the Democratic Republic of the Congo (DRC). However, according to the Department of State and the United Nations (UN), conflict has persisted and contributed to severe human rights abuses and the displacement of people. State also reported that armed groups from the eastern region of the DRC profit from the mining and trade of "conflict minerals"—in particular, tin, tungsten, tantalum, and gold.

The 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act[1] (Dodd-Frank Act) addresses, among other things, trade in conflict minerals.[2] Section 1502 of the act required several U.S. agencies, including the Securities and Exchange Commission (SEC), to take certain actions to implement its conflict minerals provisions.[3] The act required the SEC to promulgate disclosure and reporting regulations regarding the use of conflict minerals from the DRC and adjoining countries (collectively referred to as "covered countries" in this report).[4] In response, the SEC adopted a conflict minerals disclosure rule (SEC disclosure rule) in

[1]Pub. L. No. 111-203, § 1502, 124 Stat. 1376, 2213-18.

[2]The Dodd-Frank Act defines conflict minerals as columbite-tantalite (coltan), cassiterite, gold, wolframite, or their derivatives, or any other mineral or its derivatives that the Secretary of State determines to be financing conflict in the DRC or an adjoining country. See Pub. L. No. 111-203, § 1502(e)(4). Columbite-tantalite, cassiterite, and wolframite are the mineral ores from which tantalum, tin, and tungsten, respectively, are processed.

[3]The act required State, in consultation with the U.S. Agency for International Development, to submit a conflict minerals strategy to the appropriate congressional committees to address the linkages between human rights abuses, armed groups, mining of conflict minerals, and commercial products. Pub. L. No. 111-203, § 1502(c). The act also requires the Department of Commerce to report, among other things, a list of all known conflict minerals processing facilities worldwide. Pub. L. No. 111-203, § 1502(d).

[4]The Dodd-Frank Act defines the term "adjoining country" as a country that shares an internationally recognized border with the DRC. Pub. L. No. 111-203, § 1502(e)(1). When the SEC issued its conflict minerals rule, such countries included Angola, Burundi, Central African Republic, Republic of the Congo, Rwanda, South Sudan, Tanzania, Uganda, and Zambia. For the purposes of the SEC disclosure rule, the SEC refers to these countries, along with the DRC itself, as "covered countries."

August 2012.[5] The SEC required companies to file specialized disclosure reports for the first time by June 2, 2014, and annually thereafter by May 31.[6]

The SEC disclosure rule requires companies to (a) file a specialized disclosure report known as a Form SD if they manufacture, or contract to have manufactured, products that contain conflict minerals necessary to the functionality or the production of those products, and (b) as applicable, file a conflict minerals report.[7] The Form SD provides general instructions to companies for filing the conflict minerals disclosure and specifies the information that each Form SD and conflict minerals report must include. In this report, we examine how companies responded to the SEC disclosure rule for conflict minerals when filing in 2020.[8]

To examine how companies responded to the SEC disclosure rule for conflict minerals when filing in 2020,[9] we downloaded disclosure reports from the SEC's publicly available Electronic Data Gathering, Analysis, and Retrieval (EDGAR) database. We determined that the EDGAR database was sufficiently reliable for identifying the universe of Form SD

[5]77 Fed. Reg. 56,274 (Sept. 12, 2012) (codified at 17 C.F.R. § 240.13p-1).

[6]The first filing date was set for June 2, 2014, because May 31, 2014 occurred on a weekend. As explained in the SEC adopting release published in the *Federal Register*, if the deadline for filing the conflict minerals disclosure report occurs on a weekend, or a holiday on which SEC is not open for business, then the deadline shall be the next business day.

[7]As adopted, the final rule applies to any issuer that files reports with the SEC under Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(a) and 78o(d)) and uses conflict minerals that are necessary to the functionality or production of a product manufactured or contracted by that issuer to be manufactured. For the purposes of our report, we refer to those issuers affected by the rule as "companies."

[8]The Dodd-Frank Act also included a provision for us to report on, among other things, the effectiveness of the SEC rule in promoting peace and security in the DRC and adjoining countries. Pub. L. No. 111-203, § 1502(d), as amended by the GAO Mandates Revision Act, Pub. L. No. 114-301, § 3, 130 Stat. 1514 (2016). This provision, as amended, requires us to report annually from 2012 through 2020, with additional reports in 2022 and 2024. This report contributes to our body of work in response to these reporting requirements in Section 1502 of the Dodd-Frank Act. To date, we have issued 12 reports in response to these requirements. For a complete list of our previous work in this area, see the Related GAO Products page at the end of this report.

[9]Conflict minerals disclosures filed with the SEC in a given year contain information about conflict minerals used in the previous year. For example, for this report we reviewed disclosures that companies filed with the SEC in 2020 about conflict minerals used in 2019. All years cited in this report are calendar years, unless otherwise noted.

filings. To verify the completeness and accuracy of the EDGAR database, we reviewed relevant documentation, interviewed knowledgeable SEC staff, and reviewed prior GAO reports on internal controls related to the SEC's data systems.

We randomly sampled 100 Forms SD out of a total of 1,057 submitted to create estimates generalizable to the population of all companies that filed in response to the SEC disclosure rule in 2020.[10] We selected this sample size to achieve a margin of error of no more than plus or minus 10 percentage points at the 95 percent confidence level, which applies to all our estimates. We reviewed the Dodd-Frank Act and the requirements of the SEC disclosure rule to develop a data collection instrument that guided our analysis of the Form SD filings. We also interviewed a nongeneralizable selection of stakeholders—including representatives from the private sector and nongovernmental organizations—to obtain additional perspectives on meeting disclosure requirements. See appendix I for more information on our objectives, scope, and methodology.

We conducted this performance audit from October 2020 to July 2021 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

History of Conflict and the Role of Conflict Mineral Mining in the DRC and the Region

The DRC is a vast, mineral-rich nation with an estimated population of more than 85 million people and an area that is roughly one-quarter the size of the United States, according to the UN. Since gaining its independence from Belgium in 1960, the DRC has undergone political upheaval and armed conflict. From 1998 to 2003, the DRC and eight other African countries fought in what some have called "Africa's World

[10]Two companies submitted both a Form SD and an amended Form SD. In those cases, we excluded the original Forms SD and used the amended forms.

War," which resulted in the death of an estimated 5 million people in the DRC, according to State. In 1999, the UN deployed a peacekeeping mission to the DRC, and since then the United States and the international community have sought to improve security in the country. However, according to the UN, eastern DRC continues to be plagued by violence—including numerous cases of sexual violence—that is often perpetrated against civilians by nonstate armed groups and some members of the Congolese national military and police.

In 2019, the UN reported that state and nonstate armed groups, as well as criminal networks, continued to tax or control mining activities in eastern DRC.[11] Armed groups use revenue from the illegal taxation and sale of conflict minerals to survive and to purchase arms and ammunition. The UN also reported that armed groups traffic minerals to neighboring countries, including Burundi, Rwanda, and Uganda. Some of the nonstate armed groups continue to grow, sometimes recruiting from and expanding to neighboring countries, according to the UN.

Uses of Conflict Minerals

Various industries, particularly in manufacturing, use the four conflict minerals—tin, tungsten, tantalum, and gold—in a variety of products. For example:

- Tin is used to solder metal pieces and is found in food packaging, steel coatings on automobile parts, and some plastics.
- Tungsten is used in automobile manufacturing, drill bits, cutting tools, and other industrial manufacturing tools and is the primary component of light bulb filaments.
- Most tantalum is used to manufacture capacitors that enable energy storage in electronic products, such as cell phones and computers, or to produce alloy additives used in turbines in jet engines.
- Gold is used as money reserves, in jewelry, and by the electronics industry, including in cell phones and laptops.

[11]United Nations Security Council, *Midterm Report of the Group of Experts on the Democratic Republic of the Congo, S/2019/974* (December 2019).

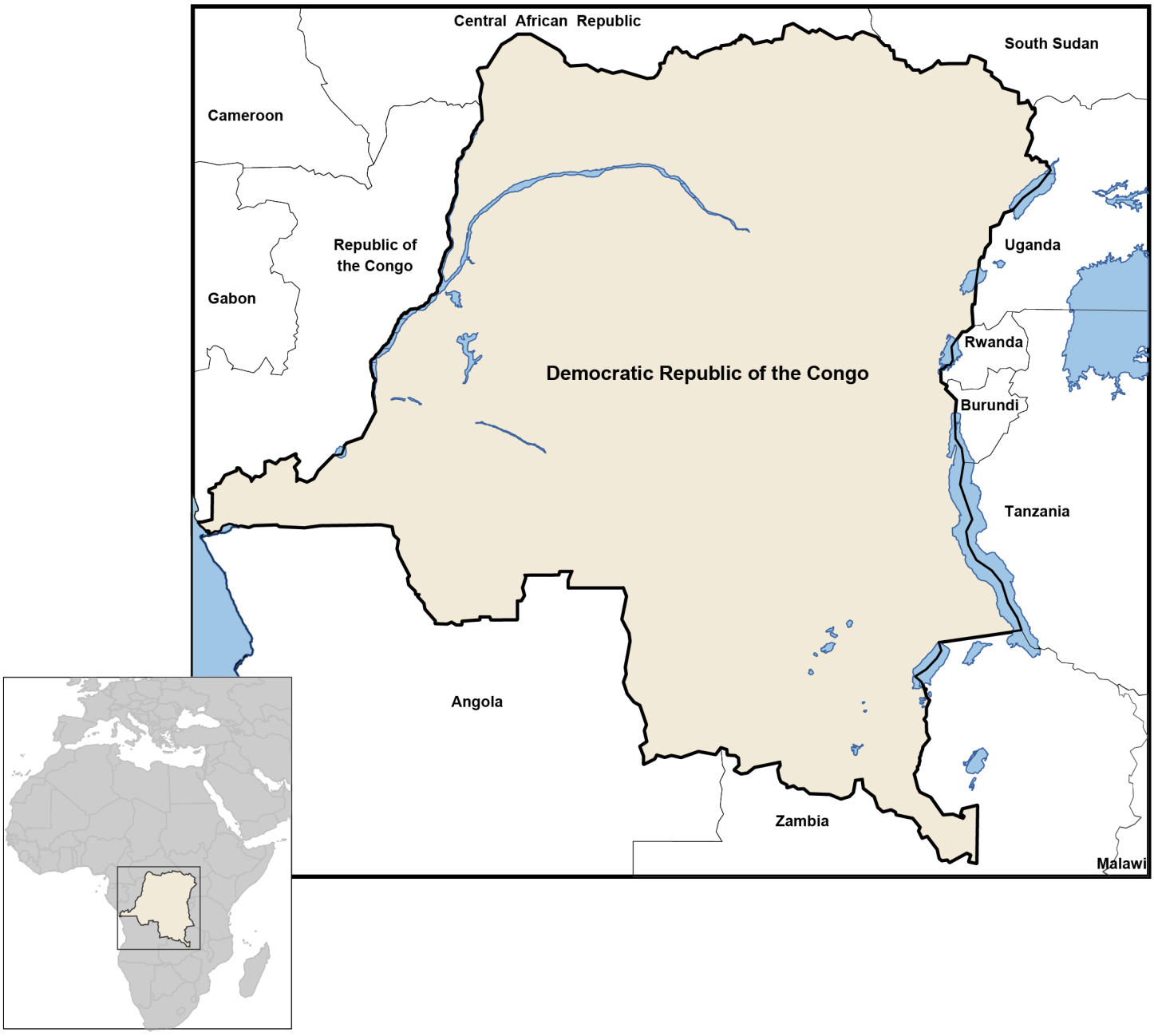
SEC Disclosure Rule for Conflict Minerals and SEC Staff Guidance

In August 2012, the SEC adopted its disclosure rule for conflict minerals in response to Section 1502(b) of the Dodd-Frank Act.[12] In its adopting release for the rule, the SEC noted that Congress sought to accomplish the goal of helping to end the human rights abuses that the DRC conflict caused, by using the act's disclosure requirements to increase public awareness of the sources of companies' conflict minerals and promote the exercise of due diligence on conflict mineral supply chains.[13] According to the SEC, Congress also sought to promote peace and security and viewed reducing the use of conflict minerals as a way to decrease funding for armed groups and thereby put pressure on them to end the conflict. The map in figure 1 shows the countries covered by the SEC disclosure rule.

[12]77 Fed. Reg. 56,274.

[13]77 Fed. Reg. 56,274. According to the SEC, when the SEC proposes or adopts a set of rules, those rules are published in a document called a "proposing release" or "adopting release."

Figure 1: The Democratic Republic of the Congo and Adjoining Countries (Covered Countries)



Source: GAO, based on United Nations map data. | GAO-21-531

Note: The term “adjoining country” is defined in Section 1502(e)(1) of the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act as a country that shares an internationally recognized border with the Democratic Republic of the Congo (DRC), which included Angola, Burundi, Central

African Republic, the Republic of the Congo, Rwanda, South Sudan, Tanzania, Uganda, and Zambia, at the time that the Securities and Exchange Commission (SEC) issued its conflict minerals disclosure rule. Pub. L. No. 111-203, § 1502(e)(1), 124 Stat. 1376, 2217. For the purposes of the conflict minerals disclosure rule, the SEC refers to these countries adjoining the DRC, along with the DRC itself, as "covered countries."

The SEC disclosure rule addresses the four conflict minerals named in the Dodd-Frank Act originating from the covered countries. The rule requires companies to (a) file a specialized disclosure report, Form SD, if they manufacture, or contract to have manufactured, products that contain conflict minerals necessary to the functionality or the production of those products, and (b) file an additional conflict minerals report, if applicable. The Form SD provides general instructions to companies submitting a filing and specifies the information that a Form SD and a conflict minerals report must include. The conflict minerals report must be filed if a company after exercising due diligence has reason to believe its conflict minerals may have come from covered countries and may not be from scrap or recycled sources (for more information, see app. II).

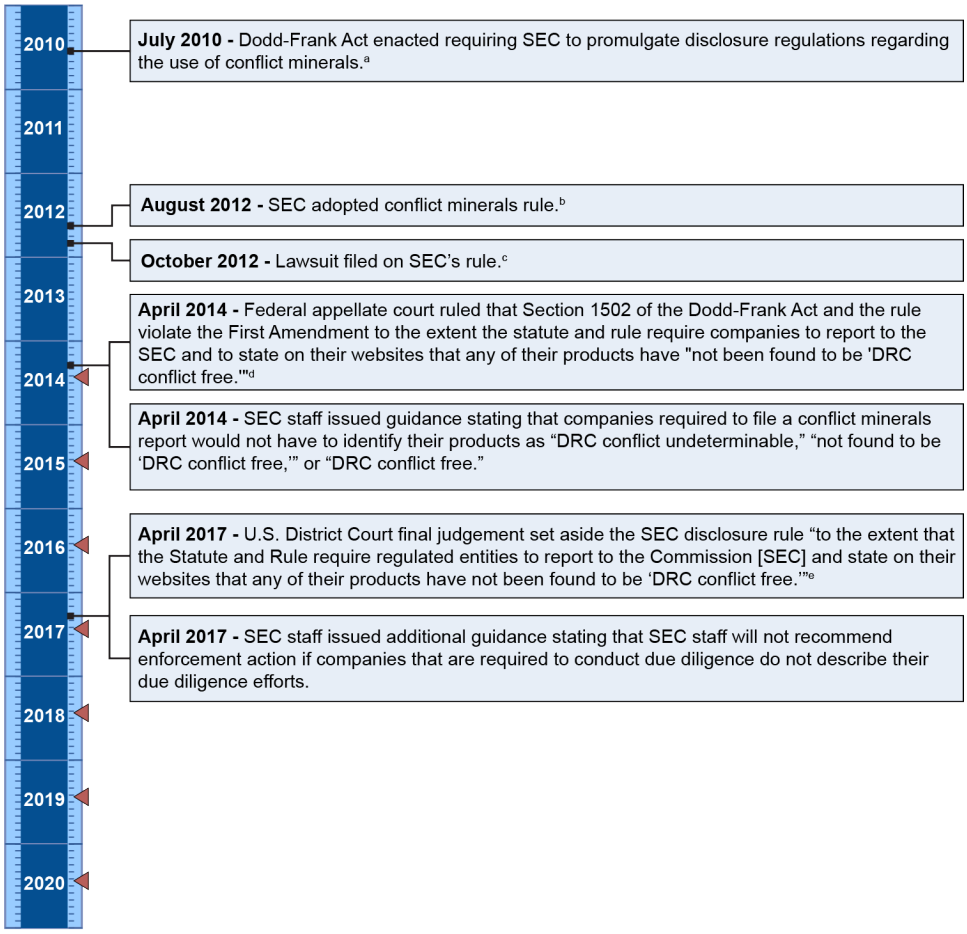
The rule outlines a process for companies to follow, as applicable, to comply with the rule. The process broadly requires a company to

1. determine whether it manufactures, or contracts to be manufactured, products with "necessary" conflict minerals;
2. conduct a reasonable country-of-origin inquiry (RCOI) concerning the origin of those conflict minerals; and
3. exercise due diligence, if appropriate, to determine the source and chain of custody of those conflict minerals, adhering to a nationally or internationally recognized due diligence framework, if such a framework is available for these necessary conflict minerals.[14]

In response to Section 1502(b) of the Dodd-Frank Act, the rule requires companies to file a conflict minerals report after performing the three steps outlined above, if necessary. The timeline in figure 2 shows events related to the implementation of the SEC disclosure rule.

[14]A company is required to perform due diligence on source and chain of custody and provide a description of the measures it took to exercise due diligence if, after completing an RCOI, it knows or has reason to believe that its conflict minerals may have originated in the covered countries and may not have been from scrap or recycled sources.

Figure 2: Timeline of Events Related to the Implementation of the Securities and Exchange Commission (SEC) Conflict Minerals Disclosure Rule, 2010–2020



Source: GAO analysis of laws, regulations, court documents, and SEC documents. | GAO-21-531

Text of Figure 2: Timeline of Events Related to the Implementation of the Securities and Exchange Commission (SEC) Conflict Minerals Disclosure Rule, 2010–2020

- July 2010 - Dodd-Frank Act enacted requiring SEC to promulgate disclosure regulations regarding the use of conflict minerals./a/
- August 2012 - SEC adopted conflict minerals rule./b/
- October 2012 - Lawsuit filed on SEC's rule./c/
- April 2014 - Federal appellate court ruled that Section 1502 of the Dodd-Frank Act and the rule violate the First Amendment to the extent the statute and rule require companies to report to the SEC and to

state on their websites that any of their products have "not been found to be 'DRC conflict free.'"/d/

- April 2014 - SEC staff issued guidance stating that companies required to file a conflict minerals report would not have to identify their products as “DRC conflict undeterminable,” “not found to be ‘DRC conflict free,’” or “DRC conflict free.”
- April 2017 - U.S. District Court final judgement set aside the SEC disclosure rule “to the extent that the Statute and Rule require regulated entities to report to the Commission [SEC] and state on their websites that any of their products have not been found to be ‘DRC conflict free.’”/e/

Source: GAO analysis of laws, regulations, court documents, and SEC documents. | GAO-21-531

[a]Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Pub. L. No. 111-203, § 1502, 124 Stat. 1376, 2213-18.

[b]77 Fed. Reg. 56,274 (Sept. 12, 2012) (codified at 17 C.F.R. § 240.13p-1).

[c]In October 2012, stakeholders filed a lawsuit against the SEC regarding, among other things, whether SEC’s interpretations of certain key terms are consistent with congressional intent. Nat’l Ass’n of Mfrs. v. SEC, 956 F. Supp. 2d 43 (D.D.C. July 23, 2013).

[d]Nat’l Ass’n of Mfrs. v. SEC, 748 F.3d 359 (D.C. Cir. Apr. 14, 2014).

[e]Nat’l Ass’n of Mfrs. v. SEC, No. 13-cv-635 (D.D.C. Apr. 3, 2017).

2014 SEC Staff Guidance

Following an appellate court decision that found that a portion of the disclosure required by the SEC violated the First Amendment,[15] SEC staff issued guidance in April 2014. This guidance indicated that, pending further action by the SEC or a court, companies required to file a conflict minerals report would not have to identify their products as “DRC conflict undeterminable,” “not found to be ‘DRC conflict free,’” or “DRC conflict free.”[16] According to the 2014 SEC staff guidance, companies are not required to obtain an independent private-sector audit (IPSA) unless they

[15]According to SEC staff, the U.S. Court of Appeals in April 2014 rejected challenges to the bulk of the SEC conflict minerals rule. However, the court held that Section 1502 of the Dodd-Frank Act and the rule violated the First Amendment to the extent that they required regulated entities to report to the SEC and to state on their website that any of their products “have not been found to be DRC conflict free.” *Nat’l Ass’n of Mfrs. v. SEC*, 748 F.3d 359 (D.C. Cir. Apr. 14, 2014).

[16]See Keith F. Higgins, Director, SEC Division of Corporation Finance, *Statement on the Effect of the Recent Court of Appeals Decision on the Conflict Minerals Rule* (Apr. 29, 2014). According to SEC staff, the April 2014 guidance is still in effect.

choose to disclose that their products are "DRC conflict free" in a conflict minerals report.[17]

2017 SEC Staff Guidance

In April 2017, after the final judgment in the case,[18] the SEC staff issued revised guidance indicating that, because of uncertainty about how the SEC commissioners would resolve issues related to the court ruling, the staff had determined that it would not recommend enforcement action to the commission if companies did not report on specified disclosure requirements for due diligence.[19] However, SEC staff told us that the 2017 guidance is not binding on the commission, which could initiate enforcement action if companies do not report on their due diligence in accordance with the rule. The SEC Chairman released a statement in 2018 confirming that SEC staff statements are nonbinding and do not create enforceable legal rights or obligations of the commission. The statement clarifies that there is a distinction between the SEC staff's views and the commission's rules and regulations.[20] According to SEC staff, the Chairman's statement was a general statement regarding staff

[17]Under the SEC disclosure rule, an IPSA expresses an opinion or conclusion as to whether the design of the issuing company's due diligence measures conforms in all material respects with the criteria set forth in the nationally or internationally recognized due diligence framework the company used. The IPSA also expresses an opinion or conclusion on whether the description of those measures the company performed as set forth in its conflict minerals report is consistent with the due diligence process the company undertook.

[18]The final judgment set aside the SEC disclosure rule "to the extent that the Statute and Rule require regulated entities to report to the [Securities and Exchange] Commission and state on their websites that any of their products have not been found to be 'DRC conflict free.'" *Nat'l Ass'n of Mfrs. v. SEC*, No. 13-cv-635 (D.D.C. Apr. 3, 2017). The District Court also remanded the case to the SEC.

[19]The updated guidance specifically stated that "in light of the uncertainty regarding how the [Securities and Exchange] Commission will resolve those issues [raised by the Court's decision] and related issues raised by commenters, the SEC's Division of Corporation Finance [SEC staff] has determined that it will not recommend enforcement action to the Commission if companies, including those that are subject to paragraph (c) of Item 1.01 of Form SD, only file disclosure under the provisions of paragraphs (a) and (b) of Item 1.01 of Form SD." The statement noted that it "is subject to any further action that may be taken by the Commission, expresses the Division's position on enforcement action only, and does not express any legal conclusion on the rule." See SEC Division of Corporation Finance, *Updated Statement on the Effect of the Court of Appeals Decision on the Conflict Minerals Rule* (Apr. 7, 2017).

[20]See Jay Clayton, SEC Chairman, *Statement Regarding SEC Staff Views* (Sept. 13, 2018).

views and was not specific to staff statements regarding the conflict minerals rule. According to SEC staff, the 2017 guidance is temporary but still in effect, pending the commission's review of the rule. As of May 2021, review of the rule was on the SEC's long-term regulatory agenda, which means, according to SEC staff, that any action would likely not take place within the next 12 months.

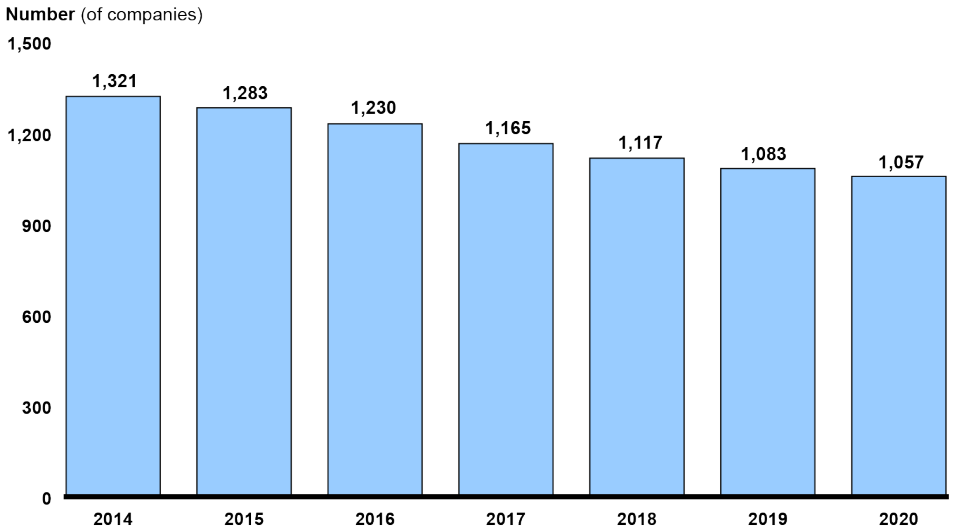
2020 Conflict Minerals Reports

In 2020, 1,057 companies filed conflict minerals disclosure reports with the SEC. The number of disclosure reports that companies filed in 2020 was fewer than the 1,083 filed in 2019 and the 1,117 filed in 2018.[21] This trend reflects a continued decrease in the number of companies that have filed disclosure reports since 2014 (see fig. 3).[22]

[21]See GAO, *Conflict Minerals: Actions Needed to Assess Progress Addressing Armed Groups' Exploitation of Minerals,* GAO-20-595 (Washington, D.C.: Sept. 14, 2020); and *Conflict Minerals: 2018 Company Reports on Mineral Sources Were Similar in Number and Content to Those Filed in the Prior 2 Years*, GAO-19-607 (Washington, D.C.: Sept. 9, 2019).

[22]According to SEC officials, this decrease may be attributable to a variety of factors, such as mergers and acquisitions among companies and changes in business practices by companies that previously filed disclosures. For example, companies that manufacture different products that do not require the use of conflict minerals, or companies using different materials as a substitute for conflict minerals, are no longer required to file a conflict minerals disclosure.

Figure 3: Total Number of Companies Filing Conflict Minerals Disclosures, 2014–2020



Source: GAO analysis of Securities and Exchange Commission filings. | GAO-21-531

Data table for Figure 3: Total Number of Companies Filing Conflict Minerals Disclosures, 2014–2020

	2014	2015	2016	2017	2018	2019	2020
Number of companies that filed a conflict minerals disclosure report	1,321	1,283	1,230	1,165	1,117	1,083	1,057

Source: GAO analysis of SEC filings. | GAO-21-531

We analyzed a generalizable sample of companies' 2020 filings and found that most companies reported the specific conflict minerals used in their products. An estimated 71 percent of companies reported using tin; 57 percent, tungsten; 57 percent, tantalum; and 64 percent, gold—percentages similar to those reported in 2019 and 2018.[23] An estimated 93 percent of companies filed as domestic companies, while 7 percent filed as foreign companies.[24]

[23]Our generalizable sample of 100 filings for 2014–2020 resulted in confidence intervals of no more than plus or minus 10 percent, at the 95 percent confidence level. When we compare estimates across these years and call them "similar in number," we mean that the difference between the numbers is not statistically significant at the 95 percent confidence level. For our analyses of 2019 and 2018 filings, respectively, see GAO-20-595 and GAO-19-607.

[24]In 2019, an estimated 84 percent of companies filed as domestic and an estimated 16 percent filed as foreign. In 2018, an estimated 85 percent of companies filed as domestic and an estimated 15 percent filed as foreign.

Companies' Filings Were Similar to Those in Previous Years, with Many Companies Reporting They Could Not Determine the Source of Their Conflict Minerals

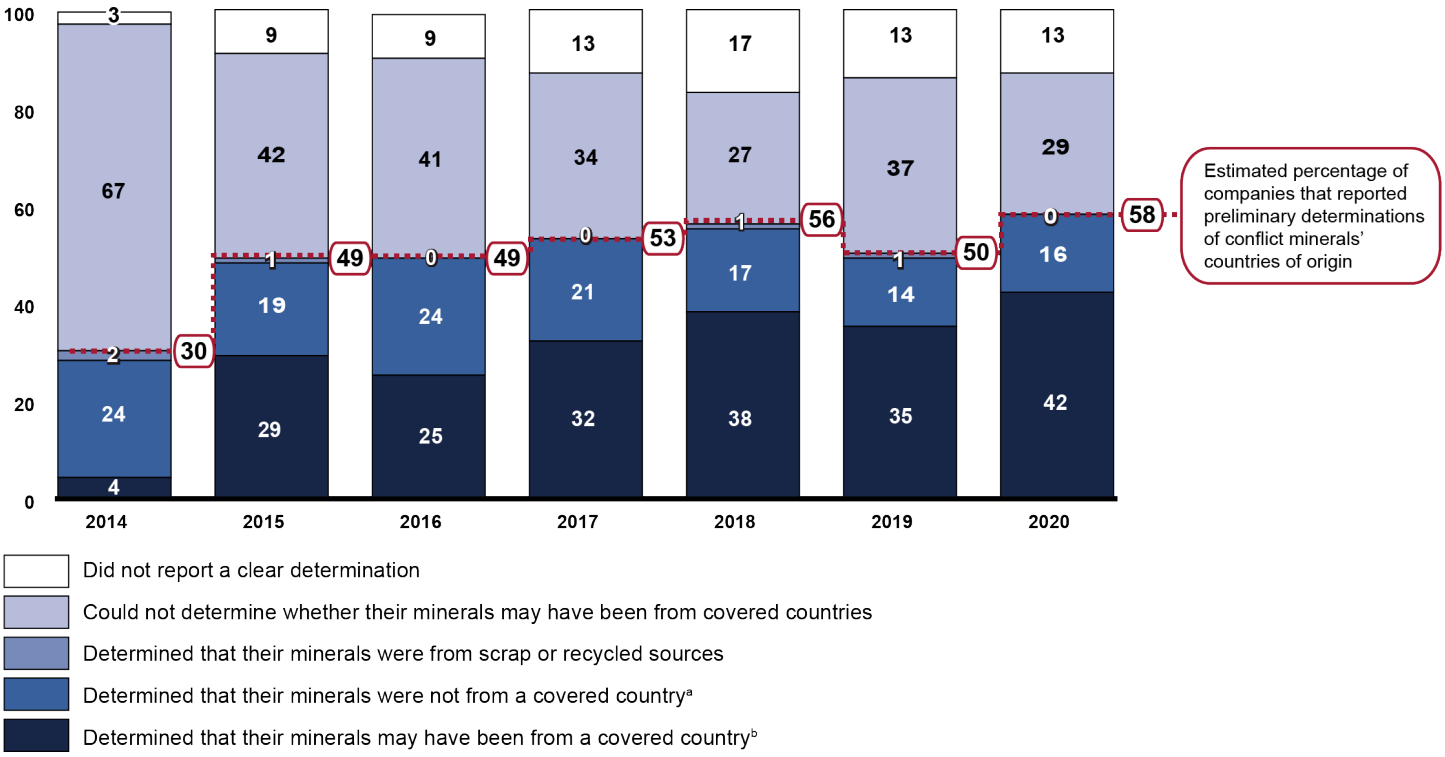
Companies' Reported Reasonable Country-of-Origin Inquiry Determinations Have Not Changed Significantly since 2015

As previously mentioned, to comply with the disclosure rule, companies must conduct a reasonable country-of-origin inquiry (RCOI) to preliminarily determine whether any of the conflict minerals used in their products may have originated in any of the covered countries or may not be from recycled or scrap sources. We found that an estimated 99 percent of companies that submitted conflict minerals filings in 2020 reported that they had conducted an RCOI. This percentage is similar to what we found for filings submitted in 2019 and 2018.[25]

We found that the percentage of companies that reported determinations regarding the origins of their minerals following their RCOI increased significantly from 2014 to 2015 and has not changed significantly since 2015 (see fig. 4). Specifically, in 2020, an estimated 58 percent of companies reported preliminary determinations regarding the source of their conflict minerals. This percentage is similar to what our analysis found for filings submitted from 2015 through 2019, and higher than the 30 percent of companies that we found reported these determinations in 2014.

[25]See GAO-20-595 and GAO-19-607.

Figure 4: Source of Conflict Minerals in Products as Determined by Companies' Reasonable Country-of-Origin Inquiries (RCOI), Reporting Years 2014–2020



Source: GAO analysis of SEC filings. | GAO-21-531

Data table for Figure 4: Source of Conflict Minerals in Products as Determined by Companies' Reasonable Country-of-Origin Inquiries (RCOI), Reporting Years 2014–2020

	2014	2015	2016	2017	2018	2019	2020
From Covered Country	4	29	25	32	38	35	42
Not from Covered Country	24	19	24	21	17	14	16
From scrap or recycled sources	2	1	0	0	1	1	0
Unable to determine country of origin	67	42	41	34	27	36	29
No determination reported	2.5	9	9	13	17	14	13

Source: GAO analysis of SEC filings. | GAO-21-531

Note: Companies reported determinations from 2014 through 2020 in response to the Securities and Exchange Commission (SEC) conflict minerals disclosure rule. Data shown are estimates that have a margin of error of no more than plus or minus 10 percentage points at the 95 percent confidence level. Percentages may not sum to 100 percent because of rounding.

[a]Determinations in which companies reported their minerals "were not from a covered country" means the companies determined that the conflict minerals in their products (1) did not come from covered

countries or (2) they had no reason to believe the conflict minerals came from covered countries, which comprise the Democratic Republic of the Congo and adjoining countries. The term "adjoining countries" is defined in section 1502 of the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act. Pub. L. No. 111-203, § 1502(e)(1), 124 Stat. 1376, 2217.

[b]Preliminary determinations in which companies reported their minerals "may have been from a covered country" means the companies determined that they know or have reason to believe the conflict minerals in their products came from covered countries.

We found that the percentages of companies that reported the various RCOI determinations in 2020 are similar to the percentages of companies that reported these determinations in filings submitted in 2019 and 2018.

- An estimated 42 percent of companies that reported conducting an RCOI in 2020 disclosed that they had determined preliminarily that some or all of their conflict minerals may have originated in covered countries. This percentage did not change significantly from the 35 percent of companies reporting this in 2019 filings and the 38 percent reporting this in 2018 filings. Based on this determination, these companies were required to conduct due diligence to further investigate the source of their minerals.
- An estimated 29 percent of companies reported in 2020 that they were unable to determine after their RCOI whether any of their conflict minerals may have originated in covered countries. This finding is also similar to our findings from the prior two years, and these companies' determinations also require them to conduct due diligence.
- An estimated 13 percent of companies did not report a clear RCOI determination in 2020, similar to the prior two years. Most of the companies in our sample that did not report a clear RCOI determination reported conducting due diligence (11 of 13). According to SEC staff, companies that reported conducting due diligence are not required to report an RCOI determination.[26]
- The remaining 16 percent of companies reported in 2020 that they had determined after their RCOI that none of their conflict minerals originated in covered countries or they had no reason to believe that their minerals originated in covered countries. This finding is similar to our findings from 2019 and 2018 filings. Based on this determination, these companies were not required to conduct due diligence.

[26]SEC staff said that if a company has conducted due diligence, this indicates to the SEC that the company's RCOI determination was that its conflict minerals may have originated in covered countries and may not have come from scrap or recycled sources.

- An estimated 0 percent of companies reported after conducting an RCOI that they had determined that their conflict minerals were from scrap or recycled sources.

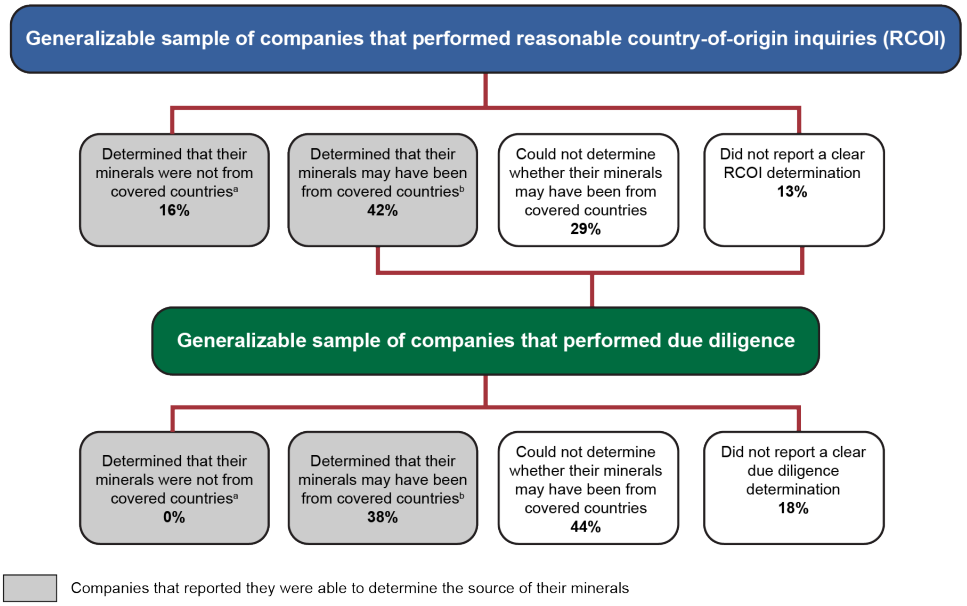
After Conducting Due Diligence, Many Companies Reported that They Could Not Determine Whether Their Conflict Minerals May Have Originated in Covered Countries

We found that an estimated 78 percent of companies that submitted filings in 2020 reported that they had conducted due diligence after conducting an RCOI. This percentage is similar to what we found for filings submitted in 2019 and 2018.

According to our analysis, an estimated 44 percent of the companies that reported conducting due diligence in 2020 reported that they ultimately could not determine whether any of the conflict minerals used in their products may have originated in covered countries (see fig. 5). We also found that an estimated 38 percent of companies reported that their minerals may have originated in covered countries, and an estimated 18 percent did not clearly report if they determined whether their conflict minerals may have originated in covered countries.[27] An estimated 0 percent of companies reported after conducting due diligence that they determined their conflict minerals did not originate in covered countries or that their minerals were from scrap or recycled sources.

[27]The 38 percent of companies that we found reported in 2020 that their minerals may have originated in covered countries after conducting due diligence is statistically different from the 17 percent of companies that we found reported this determination in filings submitted in 2019. It is similar to the 35 percent of companies that we found reported this determination in filings submitted in 2018 and the 37 percent of companies that we found reported this determination in filings submitted in 2017. Because we followed a probability procedure based on random selections, our annual sample is one of a large number of samples that we might have drawn. Since each sample could have provided different estimates, we express our confidence in the precision of our particular sample's results as a 95 percent confidence interval (e.g., plus or minus 10 percentage points). This is the interval that would contain the actual population value for 95 percent of the samples we could have drawn. We would expect 5 percent of the confidence intervals from the samples in any particular year not to contain the true percentage of companies making such a determination.

Figure 5: Flowchart of Companies' Determinations Regarding the Source of Their Conflict Minerals, as Reported in 2020



Source: GAO analysis of SEC filings submitted in 2020. | GAO-21-531

Notes: Companies reported determinations in 2020 in response to the Securities and Exchange Commission (SEC) conflict minerals disclosure rule. Data shown are estimates that have a margin of error of no more than plus or minus 10 percentage points at the 95 percent confidence level. An estimated 0 percent of companies determined, after conducting an RCOI or due diligence, that all of their conflict minerals were from scrap or recycled sources.

[a]Determinations in which companies reported their minerals "were not from covered countries" means the companies determined that the conflict minerals in their products (1) did not come from covered countries or (2) they had no reason to believe the conflict minerals came from covered countries, which comprise the Democratic Republic of the Congo and adjoining countries. The term "adjoining countries" is defined in section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Pub. L. No. 111-203, § 1502(e)(1), 124 Stat. 1376, 2217.

[b]Determinations in which companies reported their minerals may have been "from covered countries" means the companies determined that they know or have reason to believe the conflict minerals in their products came from covered countries.

Under the disclosure rule, some companies are required to describe the smelters and refiners in their supply chains. We found that an estimated 63 percent of the companies that conducted due diligence disclosed the smelters and refiners in their supply chains. An industry expert told us it is important for companies to know which smelters and refiners are in their supply chains because these processing facilities are in the best position to know the countries where conflict minerals originated. As we have

previously reported, it can be difficult to verify the source of conflict minerals once a smelter or refiner has processed them.[28]

In conducting due diligence, companies are required to adhere to a nationally or internationally recognized due diligence framework, if such a framework is available. We found that in 2020, an estimated 92 percent of companies that were required to conduct due diligence reported using the due diligence framework developed by the Organisation for Economic Co-operation and Development (OECD).[29] This percentage is similar to what we found for filings submitted in 2019 and 2018.

As in prior years, very few companies—an estimated 4 percent of the companies that reported conducting due diligence in 2020—reported that they could determine whether the conflict minerals in their products financed or benefitted armed groups in the covered countries. All of the companies that were able to make such a determination reported that their conflict minerals did not finance or benefit armed groups.

Most Filings Stated that Companies Used Standardized Tools and Programs to Attempt to Determine the Source of Conflict Minerals, but Filings and Industry Experts Noted Challenges

Our analysis of companies' 2020 filings and our interviews with company representatives and industry experts indicate that most companies used standardized tools and programs when attempting to determine the source of the conflict minerals in their products. We have previously reported on these tools and programs, which were developed by entities

[28]See GAO, *SEC Conflict Minerals Rule: Companies Face Continuing Challenges in Determining Whether Their Conflict Minerals Benefit Armed Groups,* GAO-16-805 (Washington, D.C.: Aug. 25, 2016).

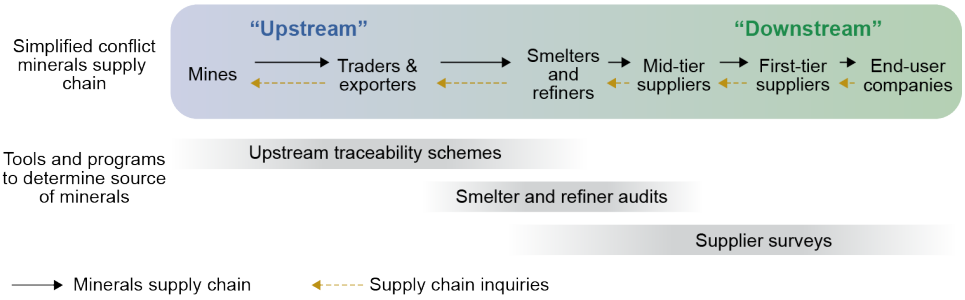
[29]Organisation for Economic Co-operation and Development, *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*, Third Edition (Paris, France: OECD Publishing, 2016). The OECD framework includes five steps: (1) establish strong company management systems, (2) identify and assess risks in the supply chain, (3) design and implement a strategy to respond to identified risks, (4) carry out an independent third-party audit of smelters' and refiners' due diligence practices, and (5) report annually on supply chain due diligence. The OECD guidance is for use by any company potentially sourcing minerals or metals from conflict-affected and high-risk areas and, according to the OECD, is one of the international frameworks available to help companies meet their due diligence reporting requirements.

such as industry associations, international organizations, and nongovernmental organizations.[30] As shown in figure 6, these tools and programs generally fall into three broad categories:

- **Supplier surveys.** Companies generally survey their suppliers located in the "downstream" portion of their supply chains—from first-tier suppliers to smelters and refiners—to collect data about the source of their conflict minerals.
- **Smelter and refiner audit programs.** These audit programs help companies collect country-of-origin information from smelters and refiners in their supply chain, according to industry experts. These experts said that these audits also provide information to companies regarding whether conflict minerals sourced from a particular smelter or refiner may have benefitted or financed armed groups.
- **Upstream traceability schemes.** These programs trace conflict minerals through the "upstream" portion of companies' supply chains—from mines to smelters and refiners—and can help verify that the sale of these minerals did not benefit or finance armed groups, according to industry experts.

[30]GAO, *Conflict Minerals: Stakeholder Options for Responsible Sourcing Are Expanding, but More Information on Smelters is Needed,* GAO-14-575 (Washington, D.C.: June 26, 2014), and GAO-16-805.

Figure 6: Simplified Conflict Minerals Supply Chain and Programs and Tools That Companies Use to Determine the Source of Their Conflict Minerals



Source: GAO analysis. | GAO-21-531

Text of Figure 6: Simplified Conflict Minerals Supply Chain and Programs and Tools That Companies Use to Determine the Source of Their Conflict Minerals

Simplified conflict minerals supply chain:

1. Upstream. Mines
2. Traders and exporters
3. Smelters and refiners
4. mid tier suppliers
5. Downstream. First tier suppliers
6. end user companies

Tools and programs to determin source of materials:

- upstream traceability schemes
- smelter and refiner audits
- supplier surveys

Source: GAO analysis | GAO-21-531

Supplier Surveys

We found that an estimated 96 percent of filings submitted in 2020 stated that the company had conducted a supplier survey to attempt to preliminarily determine the source of their conflict minerals. We found that

an estimated 86 percent of these companies reported using the Conflict Minerals Reporting Template as their survey tool.[31]

The filings we reviewed and the industry experts we interviewed reported several challenges relating to these supplier surveys, similar to our findings from past years:

- **Lack of access to suppliers.** An estimated 72 percent of the filings that companies submitted in 2020 stated that the company lacked access to its suppliers and had complex supply chains involving many suppliers. This percentage is similar to what we found for filings submitted in 2019. We have previously reported that companies' supply chains can be complex and often contain several tiers of suppliers. Some companies' filings indicate hundreds of suppliers in their supply chains, and an industry expert whom we interviewed said that one company might work with over 1,000 suppliers throughout many tiers.
- **Survey responses contained incomplete or incorrect information.** An estimated 32 percent of the filings submitted in 2020 stated that some of the companies' suppliers provided incomplete or inaccurate information in their surveys. For example, an estimated 15 percent of the filings stated that some of the suppliers' survey responses did not identify the specific smelters and refiners that are in the company's supply chains. Most of these filings stated that this was because these suppliers reported all the smelters and refiners that they source from instead of limiting their responses to the products or components that they supply to the company. Conversely, an estimated 9 percent of the filings stated that the company's suppliers did not identify all of the smelters and refiners from which they source conflict minerals.
- **Suppliers did not respond to survey requests.** An estimated 28 percent of filings submitted in 2020 stated that not all of the company's suppliers responded to the company's survey requests. To mitigate this challenge, some industry experts we interviewed suggested that companies require suppliers to respond to surveys as part of their contracts. However, one of these industry experts said that companies usually have contractual relationships only with their

[31]The Conflict Minerals Reporting Template was developed by the Responsible Minerals Initiative, which is an organization that provides companies with tools and resources to make sourcing decisions and support responsible sourcing from conflict-affected and high-risk areas. The template states that it "facilitates the transfer of information through the supply chain regarding mineral country of origin and smelters and refiners being utilized and supports compliance to legislation."

direct suppliers and therefore have limited leverage over suppliers that are farther upstream in their supply chains.

Smelter and Refiner Audit Programs

We found that an estimated 66 percent of filings submitted in 2020 stated that the company used data from a smelter and refiner audit program as part of its efforts to determine the source of its conflict minerals.[32] In addition, we found that an estimated 43 percent of filings reported the number of smelters and refiners in their supply chains that were conformant with the audit standards of the Responsible Minerals Assurance Process, which was the most commonly cited smelter and refiner audit program in companies' filings. According to industry experts, when a smelter or refiner has met this program's audit criteria, this provides downstream companies with reasonable assurance that the conflict minerals supplied by that smelter or refiner did not finance or benefit armed groups. Another important function of these audit programs, according to industry experts, is that they provide companies with information regarding the countries from which the conflict minerals were sourced. Industry experts told us that because more smelters and refiners have become conformant with these audit programs over the last few years, an increasing number of companies have started sourcing exclusively from audit-conformant smelters and refiners.

However, some industry experts and a company representative reported challenges and limitations relating to these audit programs. For example, some experts and a company representative said that the country-of-origin data that these audit programs provide to companies usually include all of the countries that a particular smelter or refiner sources from, regardless of whether all of those countries are in a particular company's supply chain. In addition, some industry experts and a company representative said these audit programs occasionally indicate that a smelter or refiner has met the audit criteria when it has not. For example, two industry experts said that auditors sometimes do not have sufficient time to properly audit a smelter or refiner, which hinders the reliability of the audit results.

[32]All of these filings reported that the company used results from the Responsible Minerals Assurance Process: a smelter and refiner audit program developed by the Responsible Minerals Initiative. Some of these companies also mentioned using results from additional smelter and refiner audit programs, such as those developed by the London Bullion Market Association and the Responsible Jewelry Council.

Industry experts said that companies could take certain actions to overcome some of these challenges. For example, industry experts said that companies could obtain better country-of-origin data by directly contacting smelters and refiners in their supply chains rather than relying solely on audit programs to gather these data. Industry experts emphasized that this type of direct outreach is part of the due diligence process outlined in the OECD's guidance, which states that companies are solely responsible for conducting due diligence. According to these experts, some companies currently conduct such direct outreach efforts with upstream entities in their supply chains, but most do not. Furthermore, some industry experts said that companies should make changes in their supply chains when an audit program has identified a particular smelter or refiner as high-risk, but many companies currently do not do so.

Upstream Traceability Schemes

Many companies' due diligence processes involved the use of upstream traceability schemes, according to industry experts we interviewed.[33] As we have previously reported, these traceability schemes can help companies determine the source of their conflict minerals and may minimize the risk that the sale of those minerals financed or benefitted armed groups. Industry experts explained that traceability schemes report activity by armed groups at mine sites and trace minerals from conflict-free mines to smelters and refiners, among other activities. However, one industry expert expressed doubts about the efficacy of traceability schemes, stating, for example, that issues like fraud, corruption, and smuggling persist despite the presence of these schemes.

Some Filings and Industry Experts Stated that SEC Staff Guidance May Have Affected Companies' Filings

Some filings and industry experts stated that the SEC staff guidance issued in 2014 and 2017 may have also affected companies' filings, as we have reported in prior years. For example, industry experts said that some companies may have chosen not to disclose the source of their minerals in 2020 because they interpreted the 2017 SEC staff guidance statement as saying there would be no consequences if they did not do

[33]Traceability schemes primarily monitor minerals as they travel from mines to smelters or refiners. Because downstream companies do not directly participate in this process, we did not track whether companies' filings mentioned traceability schemes.

so. As previously mentioned, this 2017 guidance statement indicated that, because of uncertainty about how the SEC commissioners would resolve issues related to the appellate court ruling, SEC staff determined that it would not recommend enforcement action to the commission if companies did not report on certain disclosure requirements relating to due diligence.

In addition, we found that several filings stated that the SEC staff guidance had an effect on the company's filings. For example, an estimated 13 percent of the filings submitted in 2020 stated that, pursuant to the SEC staff guidance, the company did not file an independent private-sector audit (IPSA) of their due diligence activities. In addition, an estimated 5 percent of the filings stated that the company did not describe its products as "DRC conflict free," pursuant to the SEC staff guidance. As previously mentioned, SEC staff issued guidance in April 2014 on the effect of the 2014 appellate court decision stating that companies did not have to identify their products as "DRC conflict undeterminable," "not found to be DRC conflict free," or "DRC conflict free." The 2014 guidance also stated that companies were not required to obtain an IPSA unless they chose to describe their products as "DRC conflict free." We found that two companies in our sample identified their products as "DRC conflict free"; one of these companies filed an IPSA, and the other did not. We also found that 12 of the 1,057 companies that submitted conflict minerals filings in 2020 (about 1 percent) submitted an IPSA of their due diligence process and activities.[34]

Agency Comments

We provided a draft of this report to the SEC for review and comment. SEC provided technical comments, which we incorporated as appropriate.

We are sending copies of this report to the appropriate congressional committees and to the Chairman of the Securities and Exchange Commission. In addition, the report is available at no charge on the GAO website at https://www.gao.gov.

[34]We analyzed all 1,057 filings submitted in 2020 to determine the number of companies that filed an IPSA. To conduct this analysis, we searched the content of all of these filings to find any mention of "IPSA" and "independent private-sector audit." We then reviewed those filings to identify which of them actually contained IPSAs.

If you or your staff have any questions about this report, please contact me at (202) 512-8612 or gianopoulosk@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix III.

Kimberly M. Gianopoulos
Director, International Affairs and Trade

List of Committees

The Honorable Patrick Leahy
Chairman
The Honorable Richard Shelby
Vice Chairman
Committee on Appropriations
United States Senate

The Honorable Sherrod Brown
Chairman
The Honorable Patrick J. Toomey
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Ron Wyden
Chairman
The Honorable Mike Crapo
Ranking Member
Committee on Finance
United States Senate

The Honorable Robert Menendez
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The Honorable James Risch
Ranking Member
Committee on Foreign Relations

United States Senate

The Honorable Rosa L. DeLauro
Chairwoman
The Honorable Kay Granger
Ranking Member
Committee on Appropriations
House of Representatives

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Ranking Member
Committee on Financial Services
House of Representatives

The Honorable Gregory Meeks
Chairman
The Honorable Michael McCaul
Ranking Member
Committee on Foreign Affairs
House of Representatives

The Honorable Richard Neal
Chairman
The Honorable Kevin Brady
Ranking Member
Committee on Ways and Means
House of Representatives

Appendix I: Objectives, Scope, and Methodology

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) included a provision for us to report on, among other things, the effectiveness of the SEC rule in promoting peace and security in the DRC and adjoining countries.[1] In this report, we examine how companies responded to the Securities and Exchange Commission (SEC) disclosure rule for conflict minerals when submitting filings in 2020.[2]

To address this objective, we downloaded specialized disclosure reports (Form SD) from the SEC's publicly available Electronic Data Gathering, Analysis, and Retrieval (EDGAR) database. To verify the completeness and accuracy of the EDGAR database, we reviewed relevant documentation, interviewed knowledgeable SEC officials, and reviewed prior GAO reports on internal controls related to the SEC's data systems. We determined that the EDGAR database was sufficiently reliable for identifying the universe of Form SD filings.

We downloaded 1,059 Form SD filings and any associated conflict minerals reports included in EDGAR. Companies filed the Forms SD, along with related conflict minerals reports in some instances, to provide information in response to the SEC disclosure rule.[3] We randomly sampled 100 Forms SD out of a total of 1,057 to create estimates generalizable to the population of all companies that filed in response to

[1]Pub. L. No. 111-203, § 1502(d), as amended by the GAO Mandates Revision Act, Pub. L. No. 114-301, § 3, 130 Stat. 1514 (2016). This provision, as amended, requires us to report annually from 2012 through 2020, with additional reports in 2022 and 2024. This report contributes to our body of work in response to the reporting requirements in Section 1502 of the Dodd-Frank Act.

[2]Conflict minerals disclosures filed with the SEC in a given year contain information about conflict minerals used in the previous year. For example, for this report we reviewed disclosures that companies filed with the SEC in 2020 about conflict minerals used in 2019. All years cited in this report are calendar years, unless otherwise noted.

[3]77 Fed. Reg. 56,274 (Sept. 12, 2012) (codified at 17 C.F.R. § 240.13p-1).

the SEC disclosure rule in 2020.[4] We selected this sample size to achieve a margin of error of no more than plus or minus 10 percentage points at the 95 percent confidence level, which applies to all of our estimates. Because we followed a probability procedure based on random selections, our sample is one of a large number of samples that we might have drawn. Since each sample could have generated different estimates, we express our confidence in the precision of our particular sample's results as a 95 percent confidence interval. This interval would contain the actual population value for 95 percent of the samples we could have drawn.

We reviewed the Dodd-Frank Act[5] and the requirements of the SEC disclosure rule[6] to develop a data collection instrument that guided our analysis of the Form SD filings in our sample. Our data collection instrument was not a compliance review of the Forms SD and conflict minerals reports. The data collection instrument contained a number of questions related to the companies' filings. Among other things, we used the instrument to review companies' filings to identify their determinations of their conflict minerals' origin based on their reasonable country-of-origin inquiry and, if reported, due diligence. We categorized companies based on whether they (1) reported that their minerals came from covered countries, (2) reported that their minerals did not come from covered countries, (3) reported that their minerals came from scrap or recycled sources, (4) reported that they could not determine the origin of their minerals, or (5) did not report a clear determination. For example, we concluded that a company did not report a clear determination if the company made statements related to more than one determination or if they did not mention a determination in their filing. An analyst reviewed the Forms SD and conflict minerals reports and recorded responses to the data collection instrument for all of the companies in the sample. A second analyst also reviewed the Forms SD and conflict minerals reports and verified the responses recorded by the first analyst. The analysts discussed and resolved any discrepancies.

[4]Two companies submitted both a Form SD and an amended Form SD. In those cases, we excluded the original Forms SD and kept the amended Forms SD in the population from which we drew our sample. This reduced the population of filings from 1,059 to 1,057.

[5]Pub. L. No. 111-203, § 1502, 124 Stat. 1376, 2213-18.

[6]17 C.F.R. § 240.13p-1.

After using the data collection instrument to analyze the sample of filings submitted in 2020, we compared the resulting estimates with our estimates regarding filings submitted in prior years to determine whether there had been any statistically significant changes. In addition, we interviewed SEC staff about the SEC disclosure rule and their understanding of how companies are responding to the rule. We also interviewed a nongeneralizable selection of representatives from the private sector and nongovernmental organizations to obtain additional perspectives on meeting disclosure requirements. We interviewed stakeholders who participated in an annual industry conference and identified additional interviewees using a snowball selection process that included asking members of the population to recommend other members.

We conducted this performance audit from October 2020 to July 2021 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Summary of the Securities and Exchange Commission's Conflict Minerals Rule Disclosure Process

The Securities and Exchange Commission (SEC) conflict minerals disclosure rule requires certain companies to file a specialized disclosure report (Form SD).[1] Companies must file if they manufacture, or contract to have manufactured, a product or products containing conflict minerals that are necessary to the functionality or the production of those products.[2] The rule also requires each company, as applicable, to conduct a reasonable county-of-origin inquiry (RCOI) to determine whether it knows, or has reason to believe, that its conflict minerals may have originated in the covered countries and may not have been from scrap or recycled sources.

If the company's RCOI shows both conditions to be true of its conflict minerals, the company must exercise due diligence and provide a description of the measures it took to exercise due diligence in determining the source and chain of custody of the conflict minerals.[3] If as

[1]As adopted, the final rule applies to any issuer that files reports with the SEC under Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(a) and 78o(d)) and uses conflict minerals that are necessary to the functionality or production of a product that the issuer manufactures or contracts to manufacture. 77 Fed. Reg. 56,274 (Sept. 12, 2012) (codified at 17 C.F.R. § 240.13p-1). For the purposes of our report, we refer to those issuers affected by the rule as "companies."

[2]The 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act defines conflict minerals as columbite-tantalite (coltan), cassiterite, gold, wolframite, or their derivatives, or any other mineral or its derivatives that the Secretary of State determines to be financing conflict in the DRC or an adjoining country. See Pub. L. No. 111-203, § 1502(e)(4), 124 Stat. 1376, 2218. Columbite-tantalite, cassiterite, and wolframite are the mineral ores from which tantalum, tin, and tungsten, respectively, are processed.

[3]According to SEC staff, consistent with the staff's revised guidance of 2017, the staff will not recommend enforcement action if companies that are required to conduct due diligence do not describe their due diligence efforts. SEC staff issued the revised guidance of 2017 after final judgement in the U.S. Court of Appeals case, *Nat'l Ass'n of Mfrs. v. SEC*, No. 13-cv-635 (D.D.C. Apr. 3, 2017). See SEC, *Updated Statement on the Effect of the Court of Appeals Decision on the Conflict Minerals Rule* (Apr. 7, 2017).

a result of this due diligence the company cannot determine that its conflict minerals are "DRC conflict free,"[4] the company must provide a description of the

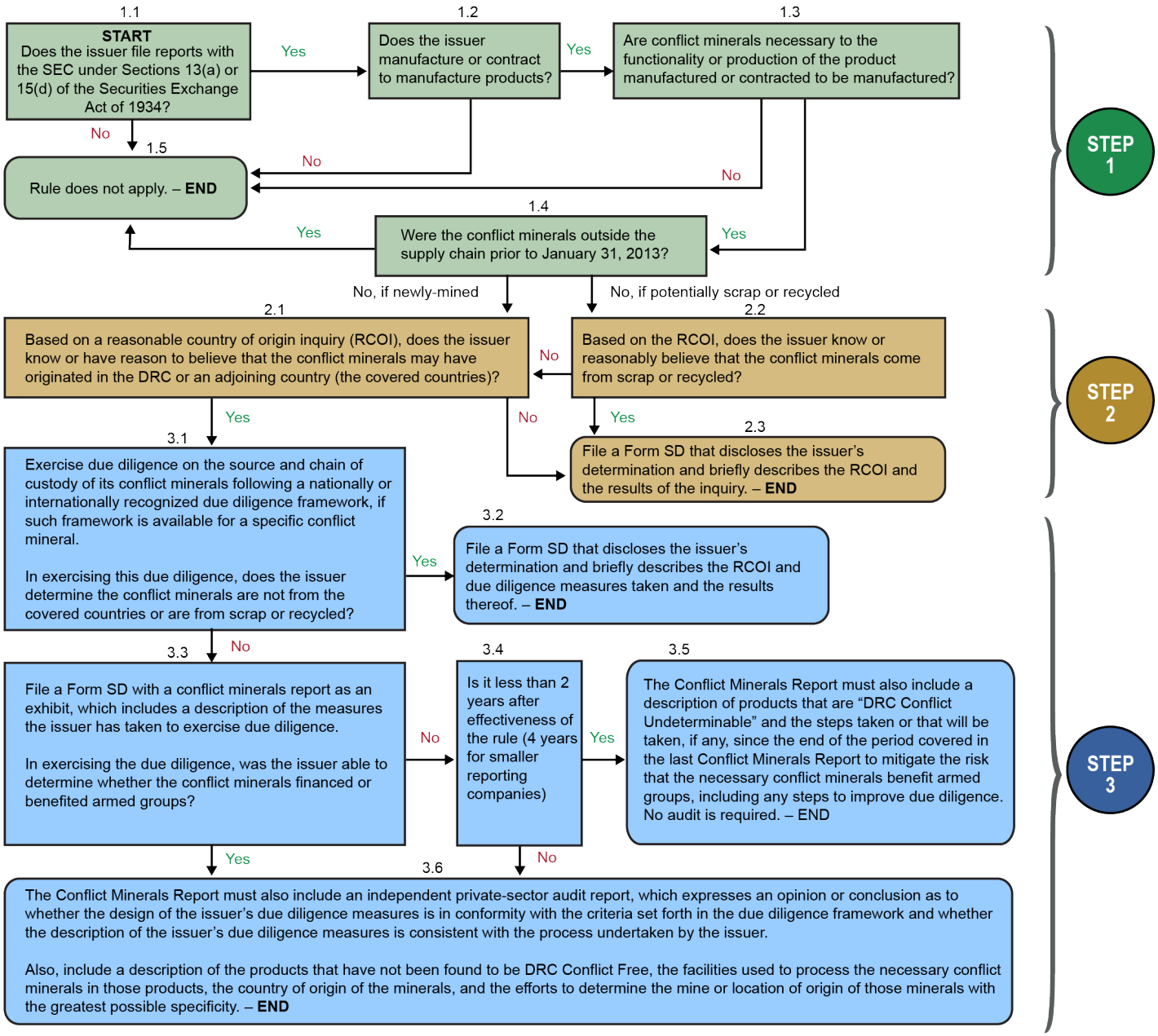
- facilities used to process the conflict minerals,
- country of origin of the conflict minerals, and
- efforts it made to determine the mine or location of origin with the greatest possible specificity.

The Form SD provides general instructions for filing conflict minerals disclosures and specifies the information that companies must provide. Companies were required to file under the rule for the first time by June 2, 2014, and annually thereafter on May 31. Figure 7 shows the flowchart included in the SEC's adopting release for the rule, which summarized the conflict minerals disclosure rule at the time of its adoption. The commission has not updated the flowchart to reflect a 2014 legal decision on the rule or SEC staff's related guidance from 2014 and 2017.[5]

[4]The final rule states that the term "DRC conflict free" means that a product does not contain conflict minerals necessary to the functionality or production of that product that directly or indirectly finance or benefit armed groups in the covered countries.

[5]According to SEC staff, the U.S. Court of Appeals in 2014 rejected challenges to the bulk of the SEC conflict minerals rule. However, the court held that Section 1502 of the Dodd-Frank Act and the rule violate the First Amendment to the extent that they require regulated entities to report to the SEC and to state on their website that any of their products "have not been found to be DRC conflict free." *Nat'l Ass'n of Mfrs. v. SEC*, 748 F.3d 359 (D.C. Cir. Apr. 14, 2014). In addition, SEC staff issued revised guidance, indicating that "in light of the uncertainty regarding how the [Securities and Exchange] Commission will resolve those issues [raised by the Court's decision] and related issues raised by commenters, the Division of Corporation Finance has determined that it will not recommend enforcement action to the Commission if companies, including those that are subject to paragraph (c) of Item 1.01 of Form SD, only file disclosure under the provisions of paragraphs (a) and (b) of Item 1.01 of Form SD. This statement is subject to any further action that may be taken by the Commission, expresses the Division's position on enforcement action only, and does not express any legal conclusion on the rule." See SEC, *Updated Statement on the Effect of the Court of Appeals Decision on the Conflict Minerals Rule* (Apr. 7, 2017). According to the guidance issued by the staff on April 29, 2014, a company required to file a conflict minerals report is not required to conduct the independent private-sector audit unless it describes its products as "DRC Conflict Free" in that report.

Figure 7: Securities and Exchange Commission Flowchart Summary of the Conflict Minerals Disclosure Rule



Legend: DRC = Democratic Republic of the Congo, Form SD = specialized disclosure report.

Source: Securities and Exchange Commission (SEC). | GAO-21-531

Note: The flowchart was included in the SEC's 2012 release adopting the conflict minerals rule (Rel. No. 34-67716). The commission has not revised the flowchart to reflect the decision of the U.S. Court of Appeals for the District of Columbia Circuit on the rule or to reflect statements the SEC staff issued

on the effect of the court's decision. According to SEC staff, the commission had no plans to update the flowchart as of May 2021. SEC staff also noted that the transition period mentioned in steps 3.4 and 3.5 is now complete and thus not applicable. Furthermore, they noted that, should a company decide to submit a conflict minerals report, it would be required to conduct the independent private-sector audit mentioned in step 3.6 if it decided to describe its products as "DRC Conflict Free"—a term that the company is not required to use but may use voluntarily.

Appendix III: GAO Contact and Staff Acknowledgments

GAO Contact

Kimberly M. Gianopoulos, (202) 512-8612 or gianopoulosk@gao.gov

Staff Acknowledgments

In addition to the individual named above, Ryan Vaughan (Assistant Director), Diana Blumenfeld (Analyst-in-Charge), Elizabeth Poulsen, James Boohaker, Debbie Chung, Justin Fisher, Christopher Keblitis, and Grace Lui made key contributions to this report. Katherine Forsyth, Julia Jebo Grant, Katya Rodriguez, and Timothy Young provided additional assistance.

Related GAO Products

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