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Monetary Policy and Trade, Committee
on Financial Services, House of
Representatives

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SEC CONFLICT MINERALS RULE

Insights from Companies' Initial Disclosures and State and USAID Actions in the Democratic Republic of the Congo Region

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International Affairs and Trade



November 17, 2015

Chairman Huizenga, Ranking Member Moore, and Members of the Subcommittee:

Thank you for the opportunity to discuss our work on conflict minerals. Over the past decade, the United States and the international community have sought to improve security in the Democratic Republic of the Congo (DRC), the site of one of the world's worst humanitarian crises. The International Rescue Committee estimates that between 1998 and 2010, more than 5.4 million people died there as a result of this crisis, which has also destabilized and created insecurity in the minerals-rich eastern part of the country. As we previously reported, illegal armed groups and some units of the Congolese national military have committed severe human rights abuses and mass killings and profited from the illegal exploitation of minerals originating in eastern DRC.¹

Expressing a sense that the exploitation and trade of conflict minerals originating in the DRC is contributing to an emergency humanitarian situation therein, Congress included a provision in the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act (the act) pertaining to the trade in "conflict minerals"—tantalum, tin, tungsten, and gold.² Section 1502 of the act directed several U.S. agencies to take certain actions to implement the act's conflict minerals provisions. For example, Section 1502(b) required the Securities Exchange Commission (SEC), in consultation with the Department of State (State), to promulgate disclosure and reporting regulations regarding the use of conflict minerals from the DRC and adjoining countries. Accordingly, SEC adopted its conflict minerals disclosure rule in August 2012, and companies filed disclosures for the first time in response to the rule in 2014, on conflict

¹GAO, *The Democratic Republic of the Congo: U.S. Agencies Should Take Further Action to Contribute to the Effective Regulation and Control of the Minerals Trade in Eastern Democratic Republic of the Congo*, [GAO-10-1030](#) (Washington, D.C.: Sept. 30, 2010).

²The Dodd-Frank Act defines conflict minerals as columbite-tantalite (coltan), cassiterite, gold, wolframite, or their derivatives, or any other mineral or its derivatives that are determined by the Secretary of State to be financing conflict in the DRC or an adjoining country. See Pub. L. No. 111-203, § 1502, 124 Stat. 1376, 2213-18. Columbite-tantalite, cassiterite, and wolframite are the ores from which tantalum, tin, and tungsten, respectively, are processed.

minerals used in calendar year 2013.³ The act also required State, in consultation with the U.S. Agency for International Development (USAID), to submit to appropriate congressional committees a conflict minerals strategy to address the linkages between human rights abuses, armed groups, mining of conflict minerals, and commercial products.⁴ The act contained a provision for GAO to, among other things, report annually, beginning in July 2012, on the effectiveness of the SEC rule in promoting peace and security in the DRC and adjoining countries.⁵

This statement summarizes key findings from our August 2015 report, in which we examined, among other things, (1) company disclosures filed with SEC for the first time in 2014 in response to the SEC conflict minerals rule, and (2) State and USAID actions related to the U.S. conflict minerals strategy in the DRC region.⁶ In brief, we found that company disclosures filed in 2014 indicate that companies performed country-of-origin inquiry and due diligence but provide limited insights regarding country of origin of conflict minerals used, citing difficulty obtaining information from suppliers. We also found that State and USAID actions to implement the U.S. conflict minerals strategy have yielded some results, but conditions remain difficult.

To conduct our review, we analyzed documents and data and interviewed officials from State, USAID, SEC, the Department of Commerce, nongovernmental organizations (NGO), industry, and international organizations, including offices within the United Nations (UN). We analyzed a random sample of 147 reports from a population of 1,324 to

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

⁴See Pub. L. No. 111-203, § 1502(c). Section 1502 of the act defines “appropriate congressional committees” to mean the Committee on Appropriations, the Committee on Foreign Affairs, the Committee on Ways and Means, and the Committee on Financial Services of the House of Representatives, and the Committee on Appropriations; the Committee on Foreign Relations; the Committee on Finance; and the Committee on Banking, Housing, and Urban Affairs of the Senate.

⁵Pub. L. No. 111-203, § 1502(d).

⁶GAO, *SEC Conflict Minerals Rule: Initial Disclosures Indicate Most Companies Were Unable to Determine the Source of Their Conflict Minerals*, [GAO-15-561](#) (Washington, D.C.: Aug. 18, 2015). This report is one of six that we have issued since 2010 examining issues related to the minerals sector and violence in the DRC and adjoining countries. For a list of related GAO products, see appendix I.

create estimates generalizable to the population of all companies that filed Specialized Disclosure reports and Conflict Minerals Reports with the SEC. We spoke with company representatives to obtain additional perspectives. We traveled to the DRC, Burundi, and Rwanda for field work and visited and observed artisanal mining activities at three different mines. We met with a range of stakeholders, including NGOs, contractors, international organizations, and private sector representatives.⁷ We conducted the work on which this testimony is based 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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

The DRC is a vast, mineral-rich nation with an estimated population of about 75 million people and an area that is roughly one-quarter the size of the United States. Since its independence in 1960, the DRC has undergone political upheavals, including a civil war. Eastern DRC, in particular, has continued to be plagued by violence, including sexual violence against women and children, perpetrated by armed groups and some members of the Congolese national military. Some of the adjoining countries in the region have also experienced recent turmoil, which has led to flows of large numbers of refugees and internally displaced persons into the DRC.⁸ For example, the United Nations High Commissioner for Refugees (UNHCR) estimated that as of mid-2013 there were around 2.6 million internally displaced persons living in camps or with host families in the DRC.

Various industries, particularly manufacturing industries, use the four conflict minerals in a wide variety of products. For example, tin is used to solder metal pieces and is also found in food packaging, in steel coatings on automobile parts, and in some plastics. Most tantalum is used to manufacture tantalum capacitors, which enable energy storage in electronic products such as cell phones and computers, and to produce

⁷Artisanal mining is a form of mining that is characterized by a lack of mechanization or capital investment.

⁸According to the UN, internally displaced persons are people who have not crossed an international border but have moved to a different region than the one they call home within their own country to escape war, persecution, or terror.

alloy additives, which can be found in turbines in jet engines. Tungsten is used in automobile manufacturing, drill bits and cutting tools, and other industrial manufacturing tools and is the primary component of filaments in light bulbs. Gold is used as a reserve and in jewelry and is used by the electronics industry. As we have previously reported, conflict minerals are mined in various locations around the world.

Over the past decade, Congress has focused on issues related to the DRC. In 2006, Congress passed the Democratic Republic of the Congo Relief, Security, and Democracy Promotion Act of 2006, stating that U.S. policy is to engage with governments working for peace and security throughout the DRC and holding accountable any individuals, entities, and countries working to destabilize the country.⁹ In 2011, State and USAID developed the U.S. Strategy to Address the Linkages between Human Rights Abuses, Armed Groups, Mining of Conflict Minerals and Commercial Products (the strategy).

⁹Pub. L. No. 109-456, § 102(14), 120 Stat. 3384.

Company Filings in 2014 Indicate That Company Inquiries and Due Diligence Provided Limited Insights Regarding Country of Origin of Conflict Minerals Used, Citing Difficulty Obtaining Information from Suppliers

The SEC conflict minerals disclosure rule outlines a three-step process for companies to follow, as applicable, to comply with the rule. Broadly, the process falls into three steps requiring a company to (1) determine whether the rule applies to it; (2) conduct a reasonable country of origin inquiry (RCOI) concerning the origin of conflict minerals used; and (3) exercise due diligence, if appropriate, to determine the source and chain of custody of conflict minerals used. (App. II depicts SEC's flowchart summary of the rule). Of the 1,321 companies that filed conflict minerals disclosures in 2014, the sample of filings that we reviewed indicates that almost all of the companies conducted an RCOI and a majority of them exercised due diligence, but most reported that they were unable to determine the country of origin of conflict minerals they had used in 2013.¹⁰ Company representatives we interviewed cited difficulties in obtaining information from suppliers. According to our analysis, an estimated

- 67 percent reported that they were unable to determine the country of origin,
- 4 percent reported that conflict minerals came from Covered Countries,¹¹
- 24 percent reported that conflict minerals did not originate in Covered Countries,
- 2 percent reported that conflict minerals came from scrap or recycled sources, and
- 3 percent did not provide a clear determination.

According to our estimate, just about all of the companies that filed conflict minerals disclosures reported that they conducted an RCOI, with

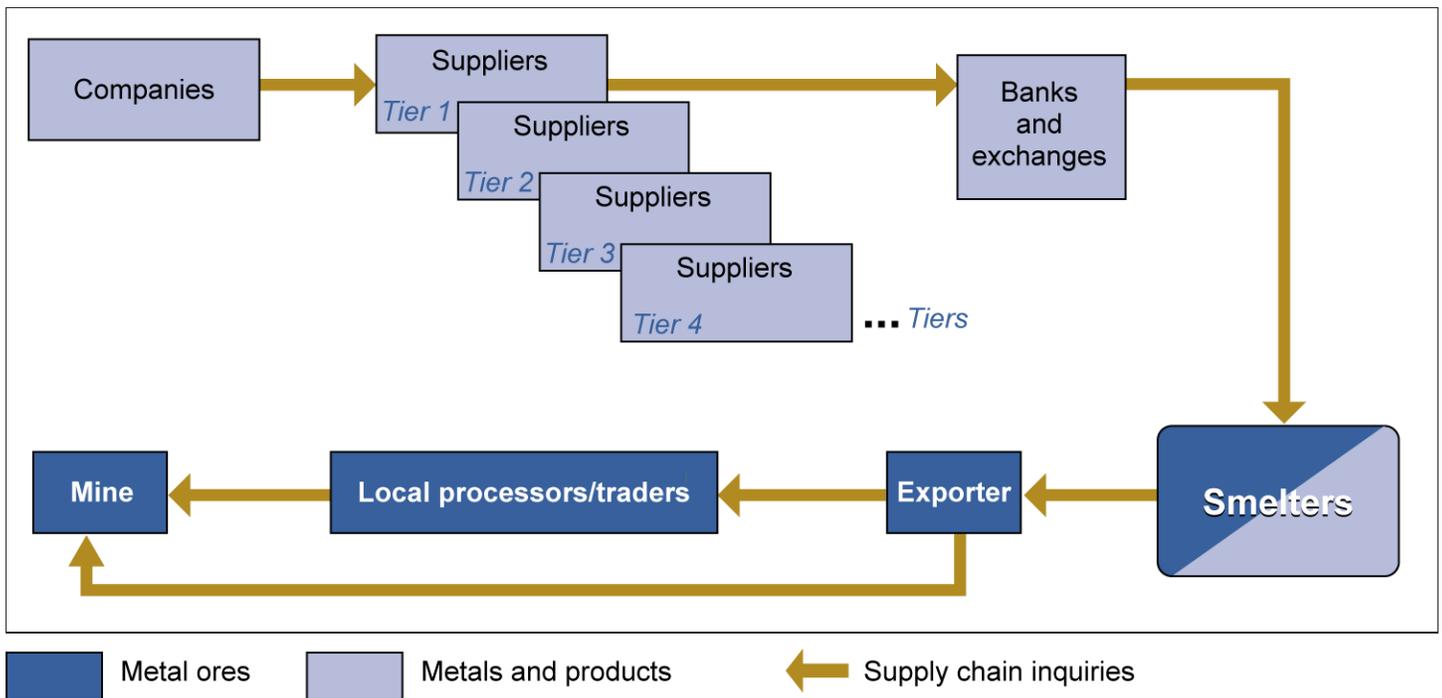
¹⁰The number of companies that filed conflict minerals disclosures in 2014—1,321—was substantially lower than SEC's estimate of 6,000 companies that could possibly be affected by the rule. In its rule proposal, SEC had estimated that approximately 6,000 companies could possibly be affected by the rule by estimating the number and types of businesses that SEC staff believed may manufacture or contract to manufacture products with conflict minerals necessary to the functionality or production of those products. According to an SEC official, this estimate was intentionally overly inclusive, was not an expectation, and was provided to satisfy the requirements of the Paperwork Reduction Act. Pub. L. No. 104-13, 109 Stat. 163 (codified at 44 U.S.C. §§ 3501-3520).

¹¹Covered Countries are the DRC and countries that share an internationally recognized border with the DRC, which included Angola, Burundi, Central African Republic, the Republic of the Congo, Rwanda, South Sudan, Tanzania, Uganda, and Zambia at the time that SEC issued its conflict minerals rule.

96 percent of them reporting that they conducted a survey of their suppliers to try to obtain information about whether they used conflict minerals, the country of origin of those conflict minerals, and the processor of the conflict minerals. Based on some of the filings that we reviewed and interviews with company representatives, in general, companies used a supplier survey and industry template to conduct their RCOIs. A challenge noted by representatives of some companies we spoke with was that they received incomplete information from suppliers, limiting their ability to determine the source and chain of custody of the conflict minerals they used in 2013. We should note that in a July 2013 report, we found that a company's supply chain can involve multiple tiers of suppliers.¹² As a result, a request for information from a company could go through many suppliers, as figure 1 illustrates, delaying the communication of information to the company.

¹²GAO, *SEC Conflict Minerals Rule: Information on Responsible Sourcing and Companies Affected*, [GAO-13-689](#) (Washington, D.C.: July 18, 2013).

Figure 1: Simplified Conflict Minerals Supply Chain Showing Tiers of Suppliers



Source: GAO analysis. | GAO-16-200T

For example, as we noted in our 2013 report, companies required to report under the rule could submit the inquiries to their first-tier suppliers.¹³ Those suppliers could either provide the reporting company with sufficient information or initiate the inquiry process up the supply chain, such as by distributing the inquiries to suppliers at the next tier—tier 2 suppliers. The tier 2 suppliers could inquire up the supply chain to additional suppliers, until the inquiries arrived at the smelter. Smelters could then provide the suppliers with information about the origin of the conflict minerals. Representatives of some companies that we spoke with told us that they were making efforts to address concerns about the lack of information on the country of origin of conflict minerals they had used.

Our analysis shows that the exercise of due diligence on the source and chain of custody of conflict minerals yielded little or no additional

¹³Ibid.

information, beyond the RCOI, regarding the country of origin of conflict minerals or whether the conflict minerals that companies used in 2013 in their products benefited or financed armed groups in the Covered Countries. The estimated 4 percent of the companies who determined that the necessary conflict minerals used in their products originated from Covered Countries could not determine whether such conflict minerals financed or benefitted armed groups during the reporting period, even though they disclosed that they conducted due diligence on the source and chain of custody of conflict minerals they used.

State and USAID Actions to Implement the U.S. Conflict Minerals Strategy Have Yielded Some Results, but Conditions Remain Difficult

State and USAID Are Taking Action to Implement Strategy Objectives

State and USAID officials reported that they are implementing the U.S. conflict minerals strategy they submitted to Congress in 2011 through specific actions that address the strategy's five key objectives. Both State and USAID officials in Washington and the region reiterated that the strategy and its five key objectives remain relevant. The following summarizes our findings about each objective:

- *Promote an Appropriate Role for Security Forces (Objective 1).* Some of the reported actions being undertaken by the International Organization for Migration (IOM), a USAID implementing partner, are helping to lessen the involvement of the military and increasing the role of legitimate DRC government stakeholders in mining areas. For example, USAID reported that IOM has assisted with the planning and demilitarization of mine sites in eastern DRC through leading a multi-sector stakeholder process of mine validation to ensure that armed groups and criminal elements of the Congolese military are not active in eastern DRC mines. As we previously reported, according to UN,

U.S., and foreign officials and NGO representatives, some members of the Congolese national military units are consistently and directly involved in human rights abuses against the civilian population in eastern DRC and are involved in the exploitation of conflict minerals and other trades.

Traceability Mechanisms

Traceability mechanisms may minimize the risk that minerals that have been exploited by illegal armed groups will enter the supply chain and may also support companies' efforts to identify the source of the conflict minerals across the supply chain around the world. Such mechanisms in the Democratic Republic of the Congo and adjoining countries focus on tracing minerals from the mine to the mineral smelter or refiner by supporting a bagging and tagging program or some type of traceability scheme.

Source: GAO. | GAO-16-200T

- *Enhance Civilian Regulation of the DRC Minerals Trade (Objective 2)*. USAID reported that it is undertaking a number of actions, through implementing partners, to enhance civilian regulation and traceability of the DRC minerals trade. For example, USAID reported funding TetraTech, a technical services company, to (1) build the capacity for responsible minerals trade in the DRC, (2) strengthen the capacity of key actors in the conflict minerals supply chain, and (3) advance artisanal and mining rights. In addition, USAID indicated that it is funding IOM to support DRC infrastructure and regulatory reform. According to an IOM official we spoke with in the region, IOM also provides the DRC government with information on which mines should be suspended from the conflict-free supply chain based on safety and human rights violations. During our visit to the region, we met with a USAID official and representatives of local human rights organizations who told us that the implementation of traceability schemes is contributing to positive outcomes. For example, in some cases, according to USAID, local miners earn double the price for certified conflict-free minerals compared to non-certified illegal minerals, which is more than they would earn from smuggling (see app. III, figs. 1 and 2).
- *Protect Artisanal Miners and Local Communities (Objective 3)*. State and USAID reported several programs through their implementing partners, aimed at protecting artisanal miners and local communities and providing alternative livelihoods. For example, State reported that it funded an implementing partner for anti-human-trafficking initiatives as well as to promote alternative livelihoods and improve workers' rights in the artisanal mining sector. According to State, these efforts aimed to reduce the vulnerability of men and women in local communities. In addition, USAID has funded an implementing partner to promote community conflict mitigation and conflict minerals monitoring structures at local levels. According to USAID, artisanal mining provides survival incomes to Congolese throughout the country but it is particularly significant in eastern DRC, where roughly 500,000 people directly depend on artisanal mining for their income. These miners work under very difficult safety, health, and

security conditions and almost always within an illicit environment. Moreover, as we observed during our visits to the mines in the region, artisanal mining is a physically demanding activity requiring the use of rudimentary techniques and little or no industrial capacity (see app. III, figs. 3 and 4).

- *Strengthening Regional and International Efforts (Objective 4).* U.S. diplomatic and capacity building initiatives have reportedly helped strengthen international efforts. For example, USAID said it is working with TetraTech to build the capacity of the International Conference on the Great Lakes Region (ICGLR), an intergovernmental organization. According to USAID, this effort supports the implementation and coordination of regional countries' efforts to promote monitoring, certification, and traceability of mine sites. A TetraTech representative we met with in the region told us that TetraTech is also organizing workshops for educating and raising awareness about regional certification in ICGLR countries.¹⁴ According to officials we interviewed from the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) and the ICGLR, as well as local officials, U.S. diplomacy has increased awareness about conflict minerals and improved coordination in the region. Some of these officials described State and USAID actions to strengthen regional and international efforts as the most effective in the region.
- *Promote Due Diligence and Responsible Trade through Public Outreach (Objective 5).* State and USAID reported engaging in various efforts to reach out to industry associations, NGOs, international organizations, and regional entities to help promote due diligence and responsible trade in conflict minerals. For example, State and USAID reported that they leveraged private sector interest to establish the Public-Private Alliance for Responsible Minerals Trade to support supply chain solutions to conflict minerals challenges in the region. The alliance includes State, USAID, and representatives from U.S. end-user companies, industry associations, NGOs, and ICGLR, among others. In

¹⁴ICGLR is composed of twelve member states: Angola, Burundi, Central African Republic, the Republic of the Congo, the DRC, Kenya, Uganda, Rwanda, South Sudan, Sudan, Tanzania, and Zambia.

addition, State is engaged with the Conflict-Free Sourcing Initiative (CFSI) and State and USAID both participate in the biannual Organization for Economic Co-operation and Development, UN Group of Experts (UNGOE), and ICGLR forums. According to State and USAID officials, these efforts promote continued engagement with industry officials and civil society groups and encourage due diligence and strengthening of conflict-free supply chains. A USAID official in the region told us that teams of private sector executives, hosted by State and USAID officials, have visited eastern DRC and Rwanda mining sites on several occasions, reinforcing the executives' commitment to source minerals responsibly. In addition, a State official noted that some private companies have been active in providing feedback on certification and traceability mechanisms.

State and USAID Face Difficult Conditions in Implementing the U.S. Conflict Minerals Strategy

Although State and USAID officials provided some examples of results associated with their actions, the agencies face difficult operating conditions that complicate efforts to address the connection between human rights abuses, armed groups, and the mining of conflict minerals. We have described some of these challenges in our previous reports but, as we observed during our fall 2014 visit to the region, numerous challenges continue to exist. First, the mining areas in eastern DRC continue to be plagued by insecurity because of the presence and activities of illegal armed groups and some corrupt members of the national military. In 2010, we reported extensively on the presence of illegal armed groups, such as the Democratic Forces for the Liberation of Rwanda or Forces Democratiques de Liberation du Ruwanda, and some members of the Congolese military and the various ways in which they were involved in the exploitation of the conflict minerals sector in eastern DRC.¹⁵ In 2013, the Peace and Security Cooperation Framework signed by 11 regional countries noted that eastern DRC has continued to suffer from recurring cycles of conflict and persistent violence.¹⁶ Although U.S. agency and Congolese officials informed us during our recent fieldwork in the region that a large number of mines had become free of armed

¹⁵See [GAO-10-1030](#).

¹⁶*Peace, Security and Cooperation Framework for the Democratic Republic of the Congo and the Region*, signed in Addis Ababa (Feb. 24, 2013).

groups (referred to as green mines),¹⁷ MONUSCO officials we met with in the DRC also told us that armed groups and some members of the Congolese military were still active in other mining areas. Specifically, MONUSCO officials described two fundamental ways in which armed groups continued to be involved in conflict minerals activities: directly, by threatening and perpetrating violence against miners to confiscate minerals from them; and indirectly, by setting up checkpoints on trade routes to illegally tax miners and traders. As we noted in our 2010 report, U.S. agency and UN officials and others believe that the minerals trade in the DRC cannot be effectively monitored, regulated, or controlled as long as armed groups and some members of the Congolese national military continue to commit human rights violations and exploit the local population at will.¹⁸

As we reported in 2010, U.S. government officials and others indicated that weak governance and lack of state authority in eastern DRC constitute a significant challenge. As we noted then, according to UN officials, if Congolese military units are withdrawn from mine sites, civilian DRC officials will need to monitor, regulate, and control the minerals trade. We also noted that effective oversight of the minerals sector would not occur if civilian officials in eastern DRC continued to be underpaid or not paid at all, as such conditions easily lead to corruption and lack of necessary skills to perform their duties. Evidence shows that this situation has not changed much. U.S. agencies and an implementing partner, as well as some Congolese officials, told us that there are not enough trained civilians to effectively monitor and take control of the mining sector. ICGLR officials we met with highlighted the importance of a regional approach to addressing conflict minerals and indicated that governments' capacity for and interest in participating in regional certification schemes varies substantially, making it difficult to implement credible, common standards. Corruption continues to be a challenge in the mining sector. For example, a member of the UN Group of Experts told us that smuggling remains prolific and that instances of fraud call into question the integrity of traceability mechanisms. This official stated that tags used to certify minerals as conflict-free are easily obtained and sometimes sold illegally in the black market. According to USAID officials,

¹⁷For our August 2015 report, we traveled to a tantalum mine in eastern DRC, which would have been impossible in 2010 during our last visit to the region, because of security concerns at that time.

¹⁸See [GAO-10-1030](#).

USAID is working to introduce a pilot traceability system to increase transparency, accountability, and competition in the legal artisanal mining sector. According to U.S. government officials and officials from local and civil society in the region that we met with, lack of state authority bolsters armed group activity and precludes public trust in the government.

Poor infrastructure, including poorly maintained or nonexistent roads, makes it difficult for mining police and other authorities to travel in the region and monitor mines for illegal armed group activity. In our 2010 report, we reported that the minerals trade cannot be effectively monitored, regulated, and controlled unless civilian DRC officials, representatives from international organizations, and others can readily access mining sites to check on the enforcement of laws and regulations and to ensure visibility and transparency at the sites.¹⁹ As shown by the photograph in app. III, fig. 5, during our recent visit to the region, poor road conditions made travel to the mines very challenging.

Chairman Huizenga, Ranking Member Moore, and Members of the Subcommittee, this completes my prepared statement. I would be pleased to respond to any questions that you may have at this time.

GAO Contact and Staff Acknowledgments

If you or your staff have any questions about this testimony, please contact Kimberly Gianopoulos, Director, International Affairs and Trade, 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 statement. GAO staff who made key contributions to this testimony are Godwin Agbara (Assistant Director), Marc Castellano (Analyst-in-Charge), Jeffrey Baldwin-Bott, Debbie Chung, Stephanie Heiken, Andrew Kurtzman, Grace Lui, and Jasmine Senior.

¹⁹[GAO-10-1030](#).

Appendix I: Related GAO Products

SEC Conflict Minerals Rule: Initial Disclosures Indicate Most Companies Were Unable to Determine the Source of Their Conflict Minerals. [GAO-15-561](#). Washington, D.C.: August 18, 2015.

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.

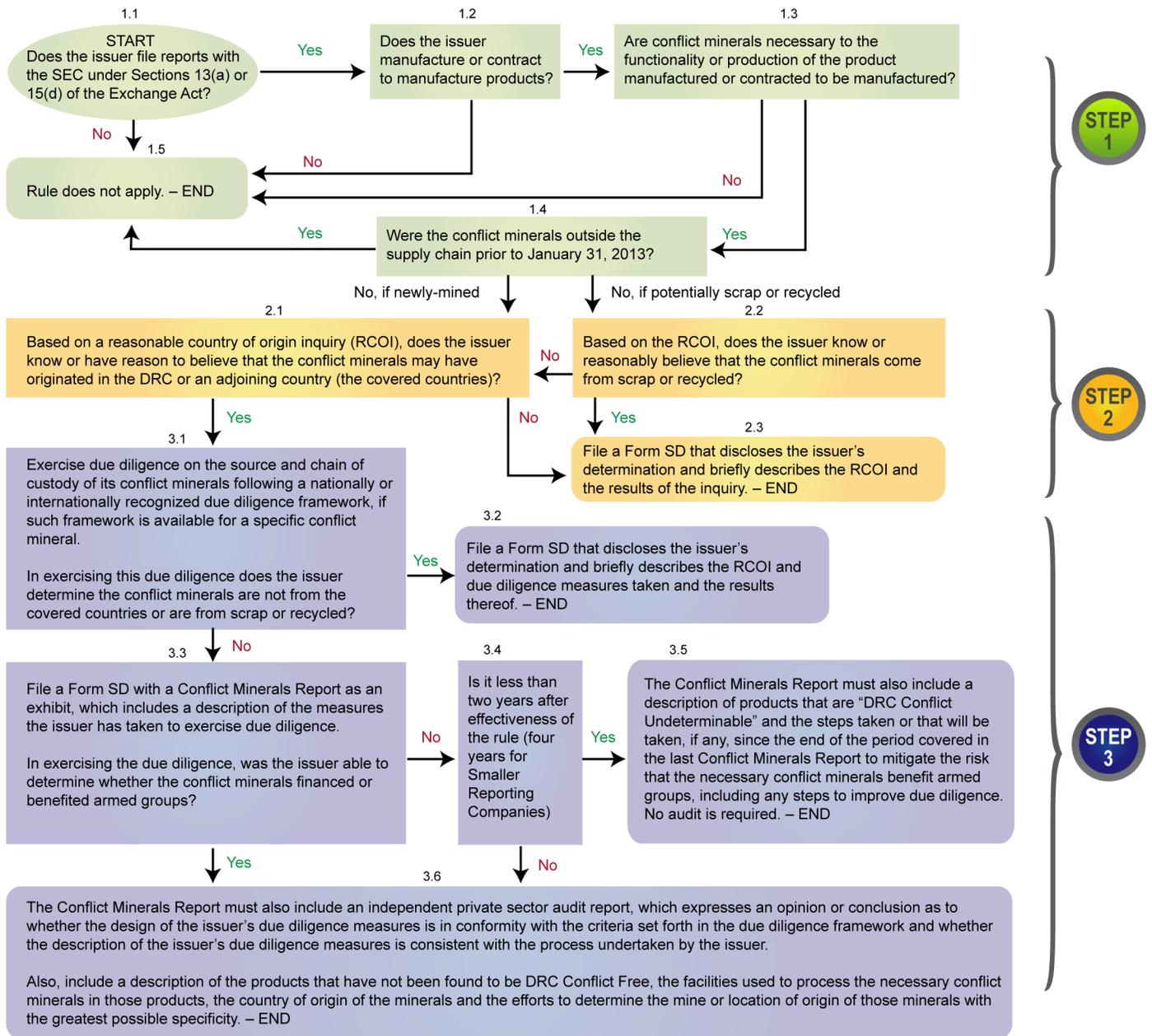
SEC Conflict Minerals Rule: Information on Responsible Sourcing and Companies Affected, [GAO-13-689](#). Washington D.C.: July 18, 2013.

Conflict Minerals Disclosure Rule: SEC's Actions and Stakeholder-Developed Initiatives. [GAO-12-763](#). Washington, D.C.: July 16, 2012.

The Democratic Republic of Congo: Information on the Rate of Sexual Violence in War-Torn Eastern DRC and Adjoining Countries. [GAO-11-702](#). Washington, D.C.: July 13, 2011.

The Democratic Republic of the Congo: U.S. Agencies Should Take Further Action to Contribute to the Effective Regulation and Control of the Minerals Trade in Eastern Democratic Republic of the Congo. [GAO-10-1030](#). Washington, D.C.: September 30, 2010.

Appendix II: SEC Flowchart Summary of the Conflict Minerals Disclosure Rule



Source: Securities and Exchange Commission (SEC). | GAO-16-200T

Appendix III: Photographs from GAO Fieldwork

We took the following photographs in the Democratic Republic of the Congo, Burundi, and Rwanda during fieldwork for our August 2015 report.

Figure 1: A Bag of Tantalum Ore Being Prepared for Tagging (a Method to Trace Origin) and Export at a Mine in the Democratic Republic of the Congo



Source: GAO. | GAO-16-200T

Figure 2: A Bag of Tin Ore Tagged for Export at a Mine in Rwanda



Source: GAO. | GAO-16-200T

Figure 3: Artisanal Miners at a Tantalum Mine in the Democratic Republic of the Congo



Source: GAO. | GAO-16-200T

Figure 4: Artisanal Miners at a Gold Mine in Burundi



Source: GAO. | GAO-16-200T

Figure 5: Stuck Vehicle during a Visit by GAO Team to a Mine Site in the Eastern Part of the Democratic Republic of the Congo, November 2014



Source: GAO. | GAO-16-200T

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