



July 2023

CONFLICT MINERALS

2022 Company Reports on Mineral Sources Were Similar to Those Filed in Prior Years

GAO Highlights

Highlights of [GAO-23-106295](#), a report to congressional committees

Why GAO Did This Study

The United States, along with the international community, has sought to improve peace and 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 includes a provision for GAO to assess, among other things, the SEC rule's 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 2022. GAO analyzed a generalizable sample of 100 SEC filings; reviewed SEC documents; and interviewed SEC officials and industry stakeholders, including representatives from filing companies, business organizations, and non-governmental organizations.

View [GAO-23-106295](#). For more information, contact Kimberly M. Gianopoulos at (202) 512-8612 or gianopoulosk@gao.gov.

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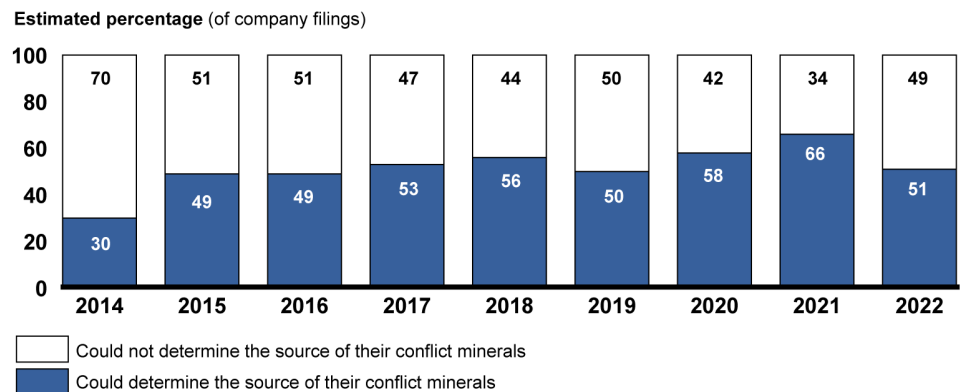
2022 Company Reports on Mineral Sources Were Similar to Those Filed in Prior Years

What GAO Found

The U.S. Securities and Exchange Commission (SEC) disclosure rule on conflict minerals broadly requires that certain companies submit a filing that describes their efforts to conduct a reasonable country-of-origin inquiry for necessary conflict minerals used in their products. These minerals include tin, tungsten, tantalum, and gold. Depending on the determination reached through this inquiry, some companies must then conduct due diligence to further investigate whether these minerals came from covered countries, which include the Democratic Republic of the Congo (DRC) and adjoining countries.

Companies' reasonable country-of-origin inquiry determinations have not changed significantly since 2015, according to GAO's analysis. In 2022, an estimated 51 percent of companies made preliminary determinations about whether the conflict minerals in their products may have come from the DRC or other covered countries. Of those companies that went on to perform due diligence, an estimated 53 percent reported they could not determine whether the minerals used in their products originated in covered countries.

Source of Conflict Minerals in Products as Preliminarily Determined by Companies' Reasonable Country-of-Origin Inquiries, Reporting Years 2014–2022



Source: GAO analysis of Securities and Exchange commission filings. | GAO-23-106295

Note: Estimates have a margin of error of no more than plus or minus 10 percentage points.

Many companies used standardized tools and programs, including supplier surveys, smelter and refiner audit programs, and traceability schemes, to attempt to determine the source of their minerals. However, some companies experienced challenges related to their due diligence efforts, according to GAO's analysis of filings and interviews with industry stakeholders. Such challenges included difficulties getting needed information because of lack of access to suppliers and complex supply chains. Industry stakeholders said that some companies are reporting supply chain information beyond that required by the SEC rule. Conversely, some industry stakeholders noted that other companies may be reporting incomplete information, or not filing at all, because of a perception that they are unlikely to face enforcement action by the SEC if they do not comply with the conflict minerals disclosure requirements.

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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
EU	European Union
FARDC	Armed Forces of the Democratic Republic of the Congo
Form SD	specialized disclosure report
IPSA	independent private-sector audit
MONUSCO	United Nations Organization Stabilization Mission in the Democratic Republic of the Congo
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

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July 19, 2023

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, violence has persisted, and recent United Nations (UN) statements, as well as our 2022 report on Congo conflict minerals, highlight that overall peace and security in the region has not improved.¹ In eastern DRC, armed groups have committed severe human rights abuses, including sexual violence, according to the Department of State. Armed groups continue to raise revenue from various sources, such as illegal taxation on citizens and the exploitation of natural resources, according to State and the UN Group of Experts on the DRC.² These natural resources include “conflict minerals”—in particular, tin, tungsten, tantalum, and gold.

The 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) addresses, among other things, trade in conflict minerals.³ Section 1502 of the act required the U.S. Securities and Exchange Commission (SEC) to promulgate regulations containing disclosure and reporting requirements on the use of conflict minerals from the DRC and adjoining countries (collectively referred to as “covered

¹See for example, United Nations SC/15135, *Despite Peacekeeping Mission’s Efforts, Security Situation Worsening in Democratic Republic of Congo*, Special Representative Tells Security Council, SC/15135. See also, GAO, *Conflict Minerals: Overall Peace and Security in Eastern Democratic Republic of the Congo Has Not Improved Since 2014*, [GAO-22-105411](#) (Washington, D.C.: Sept. 14, 2022).

²A UN resolution in 2004 established the UN Group of Experts on the DRC. The group includes six experts mandated to, among other things, gather and examine information on the impact of conflict minerals traceability efforts; networks supporting armed groups and criminal networks in the DRC; and perpetrators of human rights violations and abuses in the DRC, including those within the security forces.

³Pub. L. No. 111-203, § 1502, 124 Stat. 1376, 2213-18 (2010). 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). When these ores are processed, they yield the following metals used in industrial and other applications: tantalum, tin, gold, and tungsten, respectively. In this report, we use the term “conflict minerals” to refer to either these ores or these metals.

countries” in this report).⁴ In 2012, the SEC adopted a disclosure rule for conflict minerals requiring companies to file specialized disclosure reports beginning in 2014 and annually thereafter.⁵

Section 1502 of the Dodd-Frank Act also includes a provision for us to report annually on the effectiveness of the SEC rule in promoting peace and security in the DRC and adjoining countries.⁶ For 2023, we are examining how companies responded to the SEC conflict minerals disclosure rule when filing in 2022.⁷

To describe how companies responded to the SEC disclosure rule for conflict minerals when filing in 2022, we downloaded and analyzed a random sample of 100 specialized disclosure reports (Form SD) from the SEC’s publicly available Electronic Data Gathering, Analysis, and Retrieval (EDGAR) database. We selected the random sample of 100 from a total of 1,005 filings to create estimates generalizable to the population of all companies that filed in 2022. 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 relevant provisions in the Dodd-Frank Act and the requirements of the SEC disclosure rule to develop a data collection instrument that guided our analysis of the filings.

To verify the completeness and accuracy of the EDGAR database, we reviewed relevant documentation, interviewed knowledgeable SEC

⁴The term “adjoining country” is defined in the Dodd-Frank Act 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, the 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.”

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

⁶Pub. L. No. 111-203, § 1502(d), as amended by the GAO Mandates Revision Act, Pub. L. No. 114-301, § 3, 130 Stat. 1514 (2016). We are to report on the effectiveness of the SEC disclosure rule annually from 2012 through 2020, with additional reports in 2022 and 2024. We are also required to report on the rate of sexual violence from 2011 through 2020, with additional reports in 2022 and 2024. This intermediate report contributes to our body of work in response to the annual reporting requirements in Section 1502 of the Dodd-Frank Act. To date, we have issued 17 related products, including this report. For a complete list of our previous work in this area, see the Related GAO Products page at the end of this report.

⁷Conflict 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 2022 about conflict minerals used in 2021. All years cited in this report are calendar years, unless otherwise noted.

officials, and reviewed data reliability assessments from prior GAO reports that used data from EDGAR for similar purposes. We determined that EDGAR was sufficiently reliable for identifying the universe of Form SD filings.

In addition, we interviewed SEC officials and a non-generalizable sample of 13 industry stakeholders—including representatives from filing companies, business organizations, and non-governmental organizations—to obtain additional perspectives on meeting disclosure requirements. We identified stakeholders to interview through (1) their participation in an annual industry conference, (2) background research on companies and organizations involved in responsible sourcing efforts in DRC, (3) our prior work on Congo conflict minerals, and (4) asking identified stakeholders to recommend others.

We conducted this performance audit from October 2022 to July 2023 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 111 million people. 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 War,” which resulted in the deaths of an estimated 5 million people in the DRC.

The UN deployed a peacekeeping mission to the DRC in 1999—now known as the UN Stabilization Mission in the DRC or by its French

acronym, MONUSCO.⁸ Since then, the United States and the international community have sought to improve security in the country. However, eastern DRC's rich mineral resources and history as a venue for global strategic competition continue to engender economic instability, corruption, and violence. The UN has reported numerous cases of violence, including sexual violence perpetrated against civilians by non-state armed groups and some members of the Congolese security forces. The DRC also has one of the world's highest numbers of internally displaced people—some 5.6 million Congolese were internally displaced as of late 2021. Nearly a million more are refugees in neighboring countries.⁹

As we reported in September 2022, overall peace and security in the eastern DRC has not improved since 2014 because of persistent, interdependent factors that fuel violence by non-state armed groups.¹⁰ In 2020, there were an estimated 122 of these armed groups in the region, according to the Kivu Security Tracker. Armed groups use revenue from the trade in conflict minerals as one source of funding for their operations. As we reported in 2022, experts we interviewed said corruption is one of several factors contributing to conflict and supporting the rise of armed groups.¹¹ Some members of the Armed Forces of the DRC (known by the French acronym FARDC) have been found to engage in corrupt practices related to the trade of conflict minerals, sometimes in conjunction with armed groups, according to the UN Group of Experts. For example, in a

⁸The United Nations Organization Stabilization Mission in the Democratic Republic of the Congo's (MONUSCO) mandate includes protecting civilians and supporting the stabilization and strengthening of the DRC's institutions and key governance and security reforms. In December 2020, the UN adopted a resolution requesting that the Secretary-General develop a transition plan for MONUSCO's drawdown. S.C. Res. 2556, U.N. Doc. S/RES/2556 (Dec. 18, 2020). In September 2021, MONUSCO presented this transition plan with details about the criteria and indicators necessary for its drawdown and reported that it had withdrawn from two provinces and had plans to withdraw from a third. MONUSCO remains active in Ituri, North Kivu, and South Kivu Provinces. For more information on the transition plan and conditions for MONUSCO's drawdown, see United Nations, *Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo, delivered to the Security Council and the General Assembly*, U.N. Doc. S/2023/208 (Mar. 20, 2023).

⁹United Nations Office for the Coordination of Humanitarian Affairs, *République Démocratique du Congo: Personnes déplacées internes et retournées*, November 2021; and United Nations High Commissioner for Refugees, *Refugees and Asylum Seekers from DRC*, October 31, 2021.

¹⁰[GAO-22-105411](#).

¹¹[GAO-22-105411](#).

SEC Disclosure Rule for Conflict Minerals

June 2022 report, the UN Group of Experts noted the armed presence, armed attacks, illegal taxation, and digging by some FARDC members at coltan and tourmaline mines in the DRC during 2021 and early 2022.¹²

Various industries, particularly in manufacturing, use 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.
- Tantalum is mostly 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.

In August 2012, the SEC adopted its disclosure rule for conflict minerals in response to Section 1502(b) of the Dodd-Frank Act.¹³ In its adopting release for the rule, the SEC noted that Congress sought to help end the human rights abuses that the DRC conflict had caused, by using the Dodd-Frank 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.¹⁴ 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.

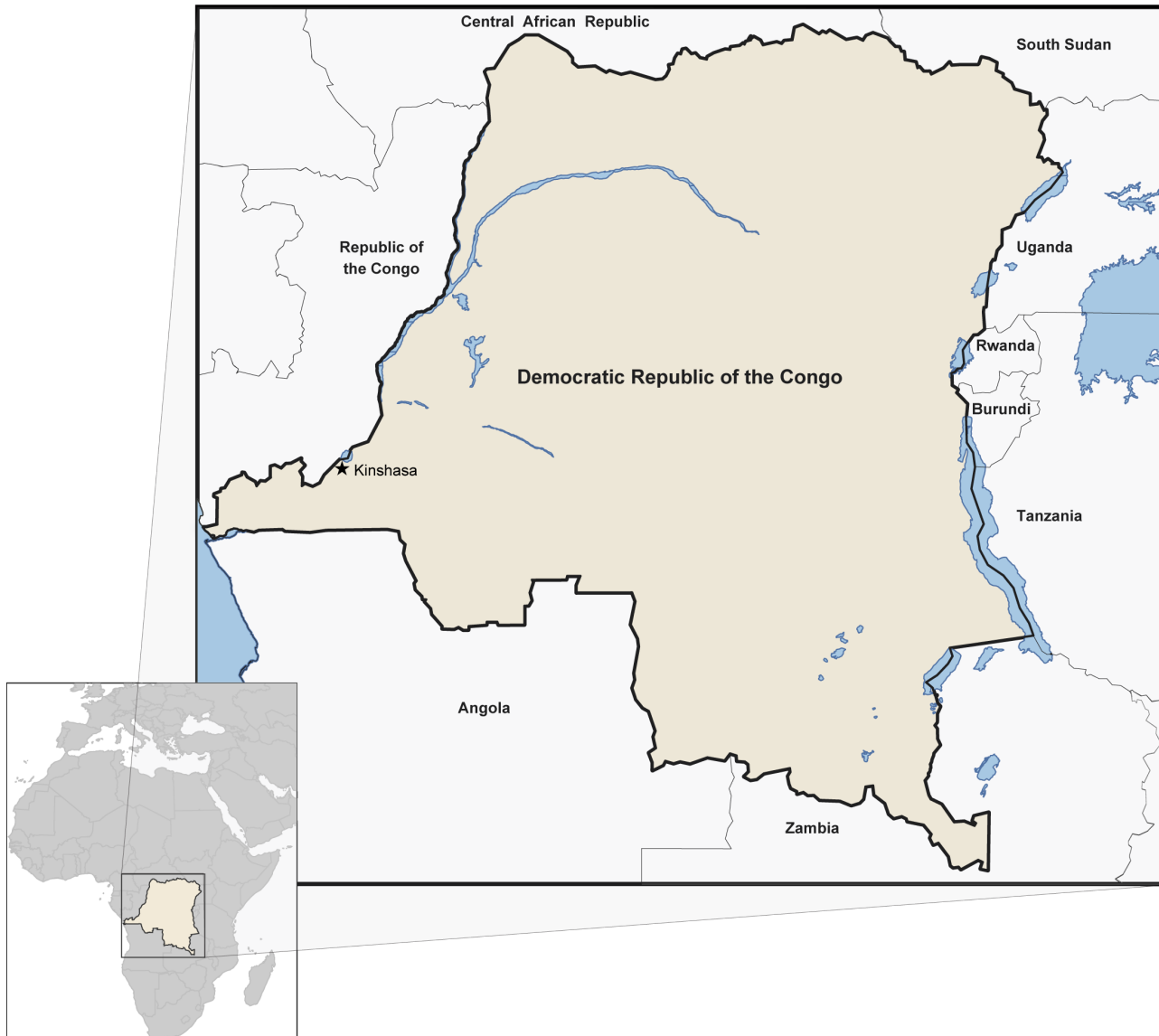
The map in figure 1 shows the countries covered by the SEC disclosure rule.

¹²United Nations Security Council, S/2022/479, June 14, 2022.

¹³77 Fed. Reg. 56,274.

¹⁴77 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. | GAO-23-106295

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). Pub. L. No. 111-203, § 1502(e)(1), 124 Stat. 1376, 2217 (2010). Adjoining countries included Angola, Burundi, Central African Republic, the Republic of the Congo, Rwanda, South Sudan, Tanzania, Uganda, and Zambia, at the time that the U.S. Securities and Exchange Commission (SEC) issued its conflict minerals disclosure rule. 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 that are named in the Dodd-Frank Act and originate from the covered countries. The rule requires companies to (a) file a specialized disclosure report 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.¹⁵ The Form SD provides general instructions to companies submitting a filing and specifies the information that the form 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 details on the SEC disclosure rule process, see appendix II.

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

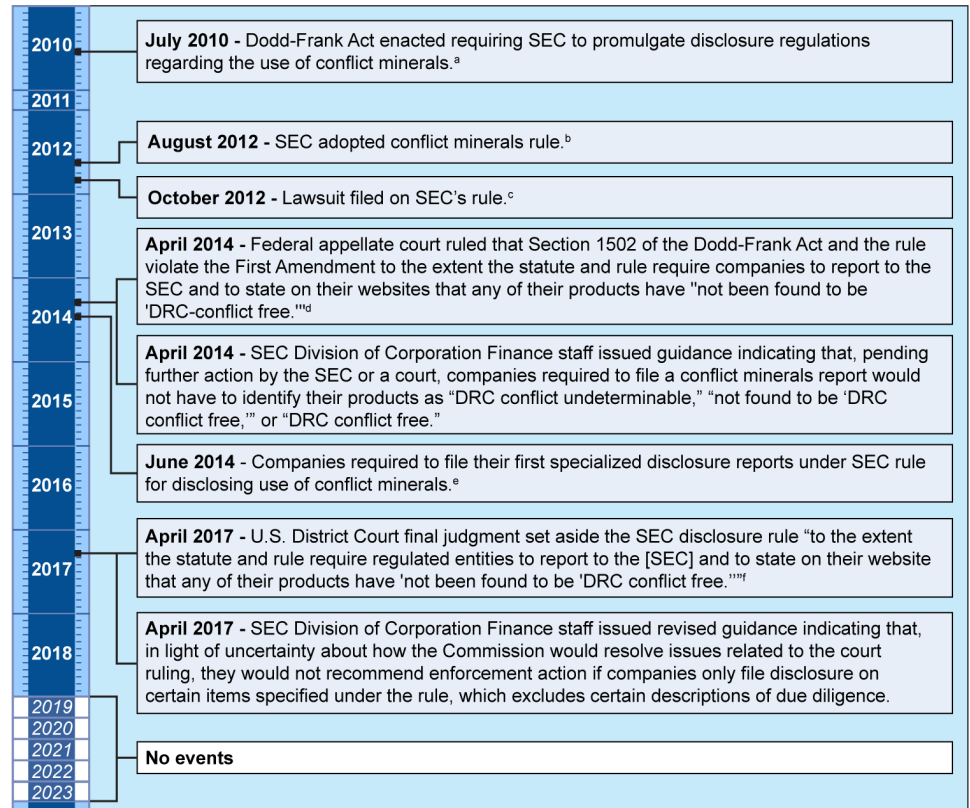
1. determine whether it manufactures, or contracts to be manufactured, products with “necessary” conflict minerals;
2. conduct a reasonable country-of-origin inquiry (RCOI) concerning the origin of those conflict minerals; and
3. exercise due diligence, if appropriate, to determine the source and chain 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.¹⁶

The timeline in figure 2 shows events related to the implementation of the SEC disclosure rule.

¹⁵As 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.”

¹⁶A 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 be from scrap or recycled sources.

Figure 2: Timeline of Events Related to the Implementation of the U.S. Securities and Exchange Commission (SEC) Conflict Minerals Disclosure Rule, 2010–2023



Source: GAO analysis of laws, regulations, court documents, and SEC documents. | GAO-23-106295

^aDodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Pub. L. No. 111-203, § 1502, 124 Stat. 1376, 2213-18 (2010).

^b77 Fed. Reg. 56,274 (Sept. 12, 2012) (codified at 17 C.F.R. § 240.13p-1).

^cIn October 2012, stakeholders filed a lawsuit against the SEC challenging various aspects of the rule as arbitrary and capricious under the Administrative Procedure Act (5 U.S.C. §§ 701, et seq.) and challenging the constitutionality of both the rule and section 1502 of Dodd-Frank claiming that the disclosures required by the Commission and Congress violate the First Amendment. Nat'l Ass'n of Mfrs. v. SEC, 956 F. Supp. 2d 43 (D.D.C. July 23, 2013).

^dNat'l Ass'n of Mfrs. v. SEC, 748 F.3d 359 (D.C. Cir. Apr. 14, 2014).

^eThe SEC required companies to file specialized disclosure reports for the first time by June 2, 2014, and annually thereafter by May 31. The filing date for the first year was set for June 2, 2014, because May 31, 2014, occurred on a weekend.

^fNat'l Ass'n of Mfrs. v. SEC, No. 13-cv-635 (D.D.C. Apr. 3, 2017).

Among other things, companies were required to describe in their conflict minerals report, if appropriate, the products that had "not been found to be 'DRC conflict free.'" However, an appellate court decision found that

Section 1502 of the Dodd-Frank Act and the rule violated the First Amendment to the extent that the statute and the rule required companies to report to the SEC and to state on their websites whether any of their products had “not been found to be “DRC conflict free.””¹⁷

Following the appellate court decision, 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.”¹⁸ According to the 2014 SEC staff guidance, companies are not required to obtain an independent private-sector audit (IPSA) unless they choose to disclose that their products are “DRC conflict free” in a conflict minerals report.¹⁹ In our sample of 100 conflict mineral filings, we found that only one company filed an IPSA of its due diligence process and activities.

In April 2017, after the final judgment in the case, the staff of the SEC’s Division of Corporation Finance issued revised guidance.²⁰ This guidance indicates that, because of uncertainty about how the SEC commissioners would resolve issues related to the court ruling, the Division of Corporation Finance would not recommend enforcement action to the

¹⁷According 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 had “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).

¹⁸See 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.

¹⁹Under the SEC disclosure rule, an IPSA expresses an opinion or conclusion as to whether the design of the issuing company’s due diligence measures as set forth in its conflict minerals report 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.

²⁰The final judgment set aside the SEC disclosure rule “to the extent that the statute and rule require regulated entities to report to the [U.S. Securities and Exchange] Commission and to 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 issued a remand to the SEC.

commission if companies only file disclosure on certain items specified under the rule and do not include a description of due diligence.²¹

However, as we previously reported, SEC staff told us that the 2017 staff 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 Chair released a statement in 2018 confirming that SEC staff statements are nonbinding and do not create enforceable legal rights or obligations of the commission.²² The statement clarifies that there is a distinction between the SEC staff's views and the commission's rules and regulations. According to SEC staff, the Chair's statement was a general statement regarding staff views and was not specific to staff statements regarding the conflict minerals rule. The 2017 staff guidance is temporary but still in place, pending the commission's review of the rule, according to SEC staff. As of May 2023, review of the rule was on the SEC's long-term regulatory agenda, which means that any action would likely not take place within the next 12 months, according to SEC staff.

²¹The updated guidance specifically stated that "in light of the uncertainty regarding how the [SEC] 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).

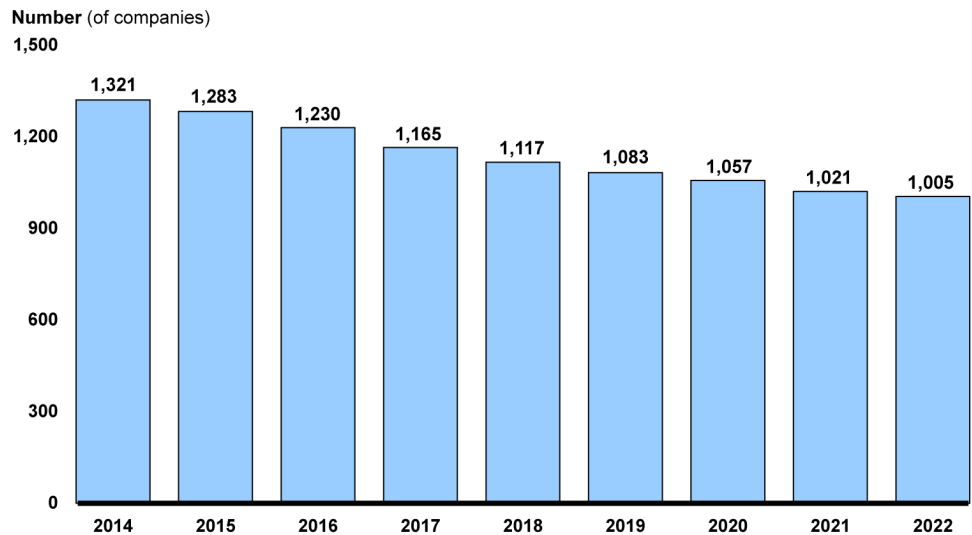
²²See Jay Clayton, SEC Chair, *Statement Regarding SEC Staff Views* (Sept. 13, 2018).

As in Previous Years, Many Companies Reported They Could Not Determine the Origins of the Conflict Minerals Used in Their Products

The Number of
Companies Filing Conflict
Minerals Disclosures Has
Continued to Decrease
since 2014

In 2022, 1,005 companies filed conflict minerals disclosures with the SEC, reflecting a continued decrease since 2014, when 1,321 companies filed SEC disclosures (see fig. 3). According to SEC officials, this 24 percent decrease may be due to factors such as mergers and acquisitions among companies and changes in business practices by companies that previously filed disclosures.

Figure 3: Total Number of Companies Filing Conflict Minerals Disclosures, 2014–2022



Source: GAO analysis of Securities and Exchange Commission filings. | GAO-23-106295

However, some industry stakeholders we spoke with told us that a factor contributing to the decrease in conflict minerals disclosure filings may be that some companies perceive that they are unlikely to face enforcement action by the SEC if they do not comply with the conflict minerals disclosure requirements. According to SEC staff, companies are responsible for determining whether the conflict minerals rule applies to

them and for the accuracy and adequacy of their disclosure. A company determining that the rule applies to it, but choosing not to file a Form SD, may be subject to a potential enforcement action, according to SEC staff. The 2017 staff guidance does not discuss companies that are required, but fail, to file a Form SD. The SEC indicated that the public (whistleblowers and non-whistleblowers) can report companies failing to file their required SEC disclosure on the SEC's website by submitting a tip, complaint, or referral.²³

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

Companies comply with the disclosure rule by conducting an 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 2022 reported that they had conducted an RCOI. This percentage is similar to what we found for filings submitted in 2021 and 2020.²⁴

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 but has not changed significantly, over time, since 2015 (see fig. 4). For 2022, we found that an estimated 51 percent of companies reported preliminary determinations regarding the source of their conflict minerals. This percentage is down from the peak in 2021, when 66 percent of companies made such determinations, but is similar to what our analysis found for filings submitted in 2015 through 2020. The difference between 2021 and 2022 could be attributed to sampling variability or to other factors that affected the RCOI determinations that companies reported.²⁵

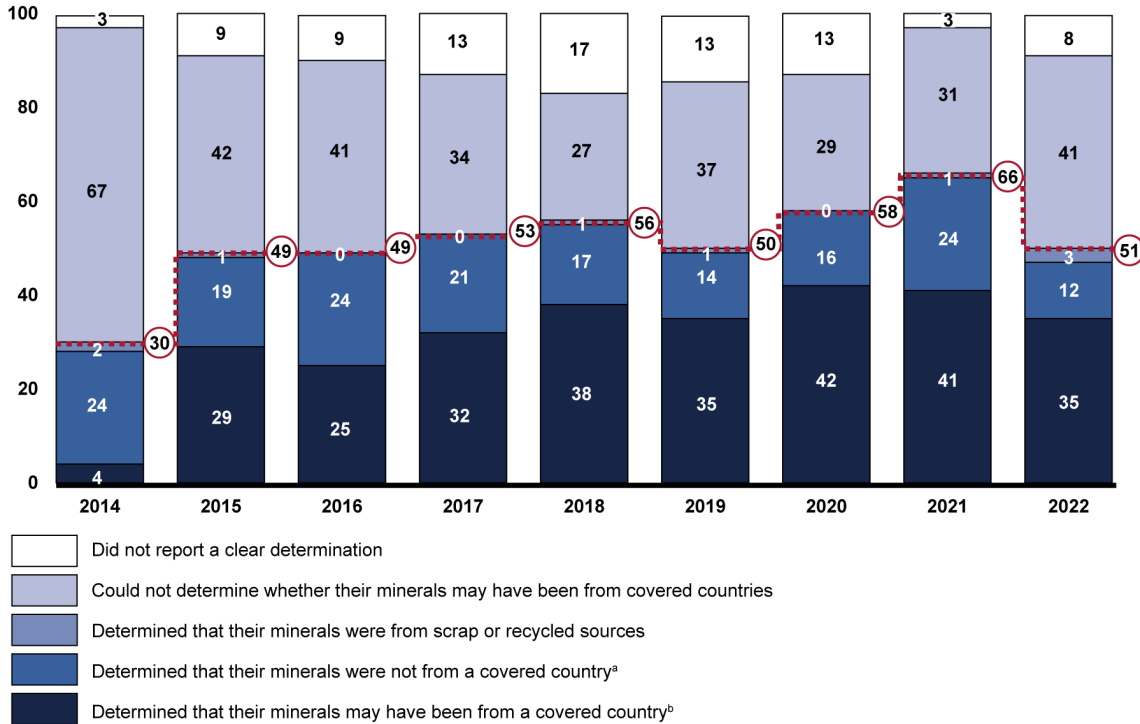
²³The SEC's website for reporting suspected securities fraud or wrongdoing is at <https://www.sec.gov/tcr>.

²⁴See [GAO-22-105411](#) and GAO, *Conflict Minerals: 2020 Company SEC Filings on Mineral Sources Were Similar to Those from Prior Years*, [GAO-21-531](#) (Washington D.C.: July 12, 2021).

²⁵Because 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 interval 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 4: Source of Conflict Minerals in Products as Determined by Companies' Reasonable Country-of-Origin Inquiries (RCOI), Reporting Years 2014–2022

Estimated percentage (of company filings)



- Did not report a clear determination
- Could not determine whether their minerals may have been from covered countries
- Determined that their minerals were from scrap or recycled sources
- Determined that their minerals were not from a covered country^a
- Determined that their minerals may have been from a covered country^b
- Estimated percentage of companies that reported preliminary determinations of conflict minerals' countries of origin

Source: GAO analysis of SEC filings. | GAO-23-106295

Notes: From 2014 through 2022, companies reported determinations in response to the U.S. 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.

^aDeterminations 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 Dodd-Frank Wall Street Reform and Consumer Protection Act. Pub. L. No. 111-203, § 1502(e)(1), 124 Stat. 1376, 2217 (2010).

^bPreliminary 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 2022 were generally similar to the percentages of companies that reported these determinations in filings submitted in 2021 and 2020. Specifically:

-
- An estimated 35 percent of companies that reported conducting an RCOI in 2022 disclosed 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 41 percent of companies reporting this in 2021 and the 42 percent reporting this in 2020. Because of this RCOI determination, these companies were required to conduct due diligence to further investigate the source of their minerals.
 - An estimated 41 percent of companies reported in 2022 that they were unable to determine after their RCOI whether any of their conflict minerals may have originated in covered countries. This finding does not represent a statistically significant change from 2021 or 2020. These determinations required these companies to conduct due diligence.
 - An estimated 8 percent of companies did not report a clear RCOI determination in 2022. This finding does not represent a statistically significant change from 2021 or 2020. Most of the companies in our sample that did not report a clear RCOI determination reported conducting due diligence (five of eight). According to SEC staff, companies that reported conducting due diligence are not required to report an RCOI determination.²⁶
 - An estimated 12 percent of companies reported in 2022 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 statistically different from our finding from the 2021 filings, but similar to our finding from the 2020 filings. Because of this determination, these companies were not required to conduct due diligence.
 - Finally, an estimated 3 percent of companies reported after conducting an RCOI that they had determined that their conflict minerals were from scrap or recycled sources. This finding is similar to our findings from the prior 2 years. Because of this determination, these companies were not required to conduct due diligence.

²⁶If a company conducts 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, according to SEC staff.

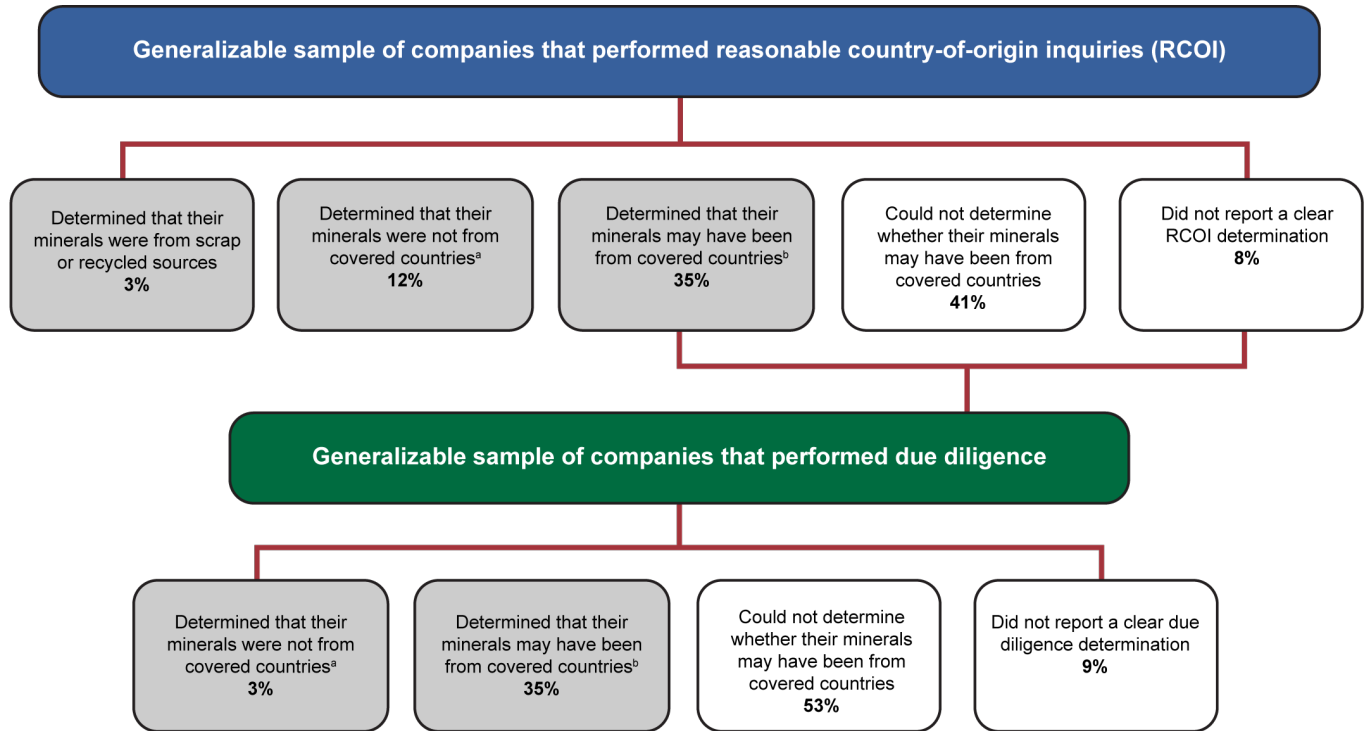
After Conducting Due Diligence, 53 Percent of Companies Reported Not Being Able to Determine Whether Their Conflict Minerals May Have Originated in Covered Countries

We found that an estimated 89 percent of companies that submitted filings in 2022 reported that they had conducted due diligence after conducting an RCOI. This percentage increased from 81 percent in 2021 and 78 percent in 2020, but the increase is not a statistically significant change. We also found that 96 percent of companies that conducted due diligence reported using the Organisation for Economic Co-operation and Development's (OECD) due diligence framework.²⁷

According to our analysis, an estimated 53 percent of the companies that conducted due diligence in 2022 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 35 percent of companies reported that their minerals may have originated in covered countries. An estimated 9 percent of companies did not clearly report that they had determined whether their conflict minerals may have originated in covered countries. An estimated 3 percent of companies reported after conducting due diligence that they had determined that their conflict minerals did not originate in covered countries. Finally, no companies reported after conducting due diligence that their minerals were from scrap or recycled sources.

²⁷Organisation 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.

Figure 5: Companies' Determinations Regarding the Source of Their Conflict Minerals, as Reported in 2022



Companies that reported they were able to determine the source of their minerals

Source: GAO analysis of SEC filings submitted in 2022. | GAO-23-106295

Note: Companies reported determinations in 2022 in response to the U.S. 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 due diligence, that all of their conflict minerals were from scrap or recycled sources. Percentages may not sum to 100 percent because of rounding.

^aDeterminations in which companies reported that their minerals “are 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 (2010).

^bDeterminations in which companies reported that 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.

As in prior years, very few companies—an estimated 3 percent of the companies that reported conducting due diligence in 2022—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. Industry stakeholders we spoke with said that companies are hesitant to claim that their minerals are not financing armed groups without full certainty.

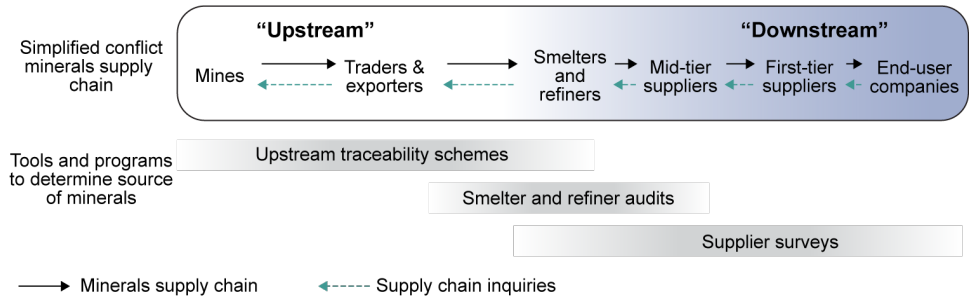
We learned through our interviews with industry stakeholders that while some companies are increasing their responsible sourcing practices in response to end user and industry pressure, many companies lack the resources to conduct due diligence. We also learned that some companies are cautious about sharing information related to due diligence for fear of potential intellectual property concerns or retaliation from consumers if they disclose risks in their supply chain.

Many Companies Use Programs and Tools to Attempt to Trace Minerals' Origins, but Company Filings and Industry Stakeholders Noted Challenges and Limitations

Our analysis of companies' 2022 filings and our interviews with industry stakeholders indicated that most companies reported using stakeholder-developed programs and tools to trace the origins of the conflict minerals in their products. We have previously reported on these tools and programs, developed by entities such as industry associations, international organizations, and non-governmental organizations. As shown in figure 6, these standardized tools and programs that companies reported using generally fell 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 audits.** These audit programs help companies collect country-of-origin information from smelters and refiners in their supply chain, according to industry stakeholders. These stakeholders said that 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 stakeholders.

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-23-106295

Supplier Surveys

We found that an estimated 89 percent of 2022 filings stated that companies conducted a preliminary survey of suppliers to determine whether conflict minerals may have originated in covered countries. We found that an estimated 78 percent of companies reported using the Conflict Minerals Reporting Template as their survey tool.²⁸ However, some filings we reviewed and industry stakeholders we interviewed reported challenges related to supplier surveys. Companies may have hundreds of suppliers or more throughout many tiers in their supply chains. Some of these companies may struggle with access to suppliers and may have difficulty obtaining data on the specific mine from which their minerals originated. For example, an estimated 43 percent of 2022 filings mentioned lack of access to suppliers and complex supply chains as a challenge. This percentage is the same as what we found for filings submitted in 2021.²⁹

As in prior years, our analysis also identified challenges related to survey responses containing incomplete or inaccurate information. For example, 56 percent of the 2022 filings indicated that some of the companies' suppliers provided incomplete or inaccurate information in their surveys. Additionally, we identified challenges related to suppliers not responding to survey requests. For instance, an estimated 48 percent of filings submitted in 2022 stated that not all of the suppliers had responded to the company's survey requests. Industry representatives said that companies

²⁸The 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."

²⁹[GAO-22-105411](#).

Smelter and Refiner Audit Programs

mitigate these challenges by conducting outreach to suppliers to gather details not provided in survey responses and by educating suppliers about conflict-free sourcing options, including creating and publicizing conflict minerals policies.

Interviews with industry stakeholders showed a continuing trend of companies using smelter and refiner audit programs for their due diligence initiatives. Companies use audit programs to gain 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 stakeholders, is that they provide companies with information regarding the countries from which the conflict minerals were sourced.

However, some industry stakeholders reported challenges and limitations relating to these audit programs. For example, some industry stakeholders 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. These stakeholders noted that obtaining disaggregated data from audit programs would help companies better determine the source of their minerals. However, these stakeholders also noted that if smelter and refiner audit programs publish more disaggregated data for individual smelters and refiners, this information may become accessible to smelters' and refiners' competitors. Smelters and refiners may prefer not to have disaggregated data on their suppliers become publicly accessible as they view these data as sensitive business information.

Industry stakeholders said that companies could take certain actions to overcome some of these challenges. For example, industry stakeholders 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. According to these stakeholders, some companies currently conduct such direct outreach efforts with upstream entities in their supply chains, but most do not. Industry stakeholders emphasized that this type of direct outreach is part of the due diligence process outlined in the OECD guidance.

Upstream Traceability Schemes

Industry stakeholders we interviewed stated that companies' due diligence processes involve the use of upstream traceability schemes.³⁰

³⁰Traceability 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.

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 stakeholders 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, some industry stakeholders noted concerns about the efficacy of traceability schemes, stating, for example, that issues like fraud, corruption, and smuggling persist despite the presence of these schemes. Several industry stakeholders noted that some companies had lost confidence in their existing traceability program but continued to use it in the absence of alternative traceability program options.

Industry stakeholders noted that some companies had started to test blockchain technology tools as part of their upstream traceability efforts.³¹ While this technology can allow companies to compile information on their supply chains in the form of a secure digital trail, some industry stakeholders have pointed out that the use of blockchain as a due diligence tool has potential limitations. For example, there is still the possibility that the initial information recorded in the blockchain about the origin of a particular shipment of minerals may be inaccurate.

Upstream traceability programs face additional challenges related to the supply chain for gold. According to IMPACT's 2021 report, the complex nature of the supply chain for artisanal small-scale gold makes traceability more challenging than the supply chain for other conflict minerals because of economic, infrastructural, and illicit trading reasons, as follows.³² First, gold from the DRC is more expensive to legally mine and less lucrative for local communities because of a combination of provincial-level fees, charges, and taxes that do not apply to gold mined in other countries. Second, conflict in the DRC has limited the options available for secure transportation of gold, including the number of banks available to purchase gold from local communities. Third, because of the economic and infrastructure challenges for legal gold trading, miners are often forced or pressured to turn to the illicit market to trade their gold

³¹A blockchain is a type of distributed ledger technology made up of digital information (blocks) recorded in a public or private database in the format of a distributed ledger (chain). The ledger permanently records the history of transactions that take place among the participants within the network in a chain of cryptographically secured blocks. Distributed ledger technology allows for users across a computer network to verify the validity of transactions, potentially without a central authority.

³²IMPACT, *The Just Gold Project: Lessons for the Future of Artisanal Gold in Democratic Republic of Congo* (March 2021).

since it can be easily smuggled and traded across borders. According to one industry stakeholder, it is nearly impossible for upstream companies to determine the origins of gold without massive investments in traceability efforts. Another industry stakeholder told us that having working knowledge of on-the-ground mine production trends can help with identifying spikes in production, which may be indicative of trafficked minerals.

Some Companies Are Limiting the Information Provided in Their Filings Because of SEC Staff Guidance; Other Companies Are Doing Additional Reporting on Minerals Sourcing Efforts

Similar to what we have reported in previous years, industry stakeholders we interviewed for this report said the 2014 and 2017 SEC staff guidance may have contributed to some companies choosing to limit the information included in their conflict minerals filings or choosing not to file at all. Several companies stated that the SEC staff guidance had an effect on their company's filings, according to our review of SEC filings. For example, 13 percent of filings submitted in 2022 (132 of 1,005) stated that, pursuant to the SEC staff guidance, the companies did not file an IPSA of their due diligence activities. In our sample of 100 filings, we found that only one company filed an IPSA. We also found that one company in our sample identified its products as "DRC conflict free" but did not file an IPSA. Of the universe of 1,005 companies that submitted conflict mineral filings in 2022, we found that seven submitted an IPSA of their due diligence process and activities.³³

As previously mentioned, the 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 they would not recommend enforcement action to the commission if companies did not report on certain disclosure requirements relating to due diligence. Some industry stakeholders noted that there is a perception among some companies that the SEC is not reviewing filings and that companies will therefore face no consequence for limiting the information in their filing or for not filing at all. Additionally, some industry stakeholders shared that companies may view the conflict minerals disclosures as a bureaucratic exercise, rather than an opportunity to meaningfully investigate the origins of minerals in their supply chains.

According to SEC staff, companies are responsible for determining whether the conflict minerals rule applies to them and for the accuracy and adequacy of their disclosure. A company that determines that the rule applies to it, but chooses to either limit the information in its filing, except

³³We analyzed all 1,005 filings submitted in 2022 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" or "independent private-sector audit." We then reviewed those filings to identify which of them actually contained IPSAs.

as permitted by the 2017 staff guidance, or not file a Form SD, may be subject to a potential enforcement action, according to SEC staff. The 2017 staff guidance does not discuss companies that are required, but fail, to file a Form SD.

Conversely, industry stakeholders told us that some companies are increasingly undertaking and reporting on responsible minerals sourcing efforts beyond those required by the SEC rule. For example, industry stakeholders told us that some companies are expanding their responsible minerals sourcing programs to include countries beyond the DRC and adjoining countries, and minerals and ores beyond the ones currently covered by the SEC rule, such as cobalt. Of the 1,005 companies that filed with the SEC in 2022, 42 mentioned cobalt in their filings. For example, one company indicated in its filing that it had commenced due diligence procedures on those of its products that contain cobalt.

Industry stakeholders stated that these increased reporting efforts by some companies are driven by a combination of new international regulations and increased consumer and industry pressures. For example, companies that import specified volumes of conflict minerals to the EU are subject to the EU Conflict Minerals Regulation, which came into effect in 2021.³⁴ This regulation has a different geographic focus than the Dodd-Frank Act, in that it is not limited to the DRC and adjoining countries. Some industry stakeholders expressed frustration at the extent to which U.S. regulatory requirements have not kept up with industry expectations and international regulations to conduct due diligence on a broader range of minerals and geographic areas.

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 Chair of the U.S. Securities and Exchange Commission. In addition, the report is available at no charge on the GAO website at <https://www.gao.gov>.

³⁴The EU Conflict Minerals Regulation is also known as Regulation (EU) 2017/821 and came into effect in January 2021. The regulation establishes an EU system for supply chain due diligence in order to curtail opportunities for armed groups and security forces to trade in tin, tantalum, and tungsten, their ores, and gold. According to the regulation, these provisions are designed to provide transparency and certainty as regards the supply practices of European Union importers, and of smelters and refiners sourcing from conflict-affected and high-risk areas.

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.

A handwritten signature in black ink that reads "Kimberly M. Gianopoulos". The signature is written in a cursive, flowing style.

Kimberly M. Gianopoulos
Director, International Affairs and Trade

List of Committees

The Honorable Patty Murray
Chair
The Honorable Susan Collins
Vice Chair
Committee on Appropriations
United States Senate

The Honorable Sherrod Brown
Chairman
The Honorable Tim Scott
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
Chairman
The Honorable James E. Risch
Ranking Member
Committee on Foreign Relations
United States Senate

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

The Honorable Patrick McHenry
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The Honorable Maxine Waters
Ranking Member
Committee on Financial Services
House of Representatives

The Honorable Michael McCaul
Chairman

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

The Honorable Jason Smith
Chairman

The Honorable Richard Neal
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) includes a provision for us to report on, among other things, the effectiveness of the U.S. Securities and Exchange Commission (SEC) rule in promoting peace and security in the Democratic Republic of the Congo (DRC) and adjoining countries.¹ In this report, we examine how companies responded to the SEC conflict minerals disclosure rule when submitting filings in 2022.²

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 data reliability assessments from prior GAO reports that used data from EDGAR for similar purposes. We determined that the EDGAR database was sufficiently reliable for identifying the universe of Form SD filings.

We downloaded 1,005 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 of the 1,005 Forms SD to create estimates generalizable to the population of all companies that filed in response to the SEC disclosure rule in 2022. 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.

¹Pub. L. No. 111-203, § 1502(d), 124 Stat. 1376, 2213-18 (2010), 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.

²Conflict 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 2022 about conflict minerals used in 2021. All years cited in this report are calendar years, unless otherwise noted.

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

We reviewed relevant portions of the Dodd-Frank Act⁴ and the requirements of the SEC disclosure rule⁵ 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 on the basis of their reasonable country-of-origin inquiry and, if reported, due diligence.

We categorized companies according to 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 it 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.

After using the data collection instrument to analyze the sample of filings submitted in 2022, we compared the resulting estimates with our estimates regarding filings submitted in prior years to determine whether there had been any statistically significant changes. We analyzed all 1,005 filings submitted in 2022 to determine the number of companies that filed an independent private-sector audit (IPSA). To conduct this analysis, we searched the content of all of these filings to find any mention of "IPSA" or "independent private-sector audit." We then reviewed those filings to identify which of them actually contained IPSAs.

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 13 industry stakeholders including representatives from filing companies, business organizations, and non-governmental organizations to obtain additional perspectives on meeting disclosure requirements. We identified stakeholders to interview

⁴Pub. L. No. 111-203, § 1502.

⁵17 C.F.R. § 240.13p-1.

through (1) their participation in an annual industry conference, (2) background research on companies and organizations involved in responsible sourcing efforts in the DRC, and (3) our prior work on Congo conflict minerals. We 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 2022 to July 2023 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 U.S. Securities and Exchange Commission’s Conflict Minerals Rule Disclosure Process

The U.S. Securities and Exchange Commission (SEC) conflict minerals disclosure rule requires certain companies to file a specialized disclosure report (Form SD).¹ Companies must file the report 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 country-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 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

¹As 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 this report, we refer to those issuers affected by the rule as “companies.”

²The 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 (2010). Columbite-tantalite, cassiterite, and wolframite are the mineral ores from which tantalum, tin, and tungsten, respectively, are processed.

³According 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 report on specified disclosure requirements for due diligence. SEC staff issued the revised guidance in 2017 after final judgment 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, Division of Corporation Finance, *Updated Statement on the Effect of the Court of Appeals Decision on the Conflict Minerals Rule* (Apr. 7, 2017).

⁴The 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.

**Appendix II: Summary of the U.S. Securities
and Exchange Commission’s Conflict Minerals
Rule Disclosure Process**

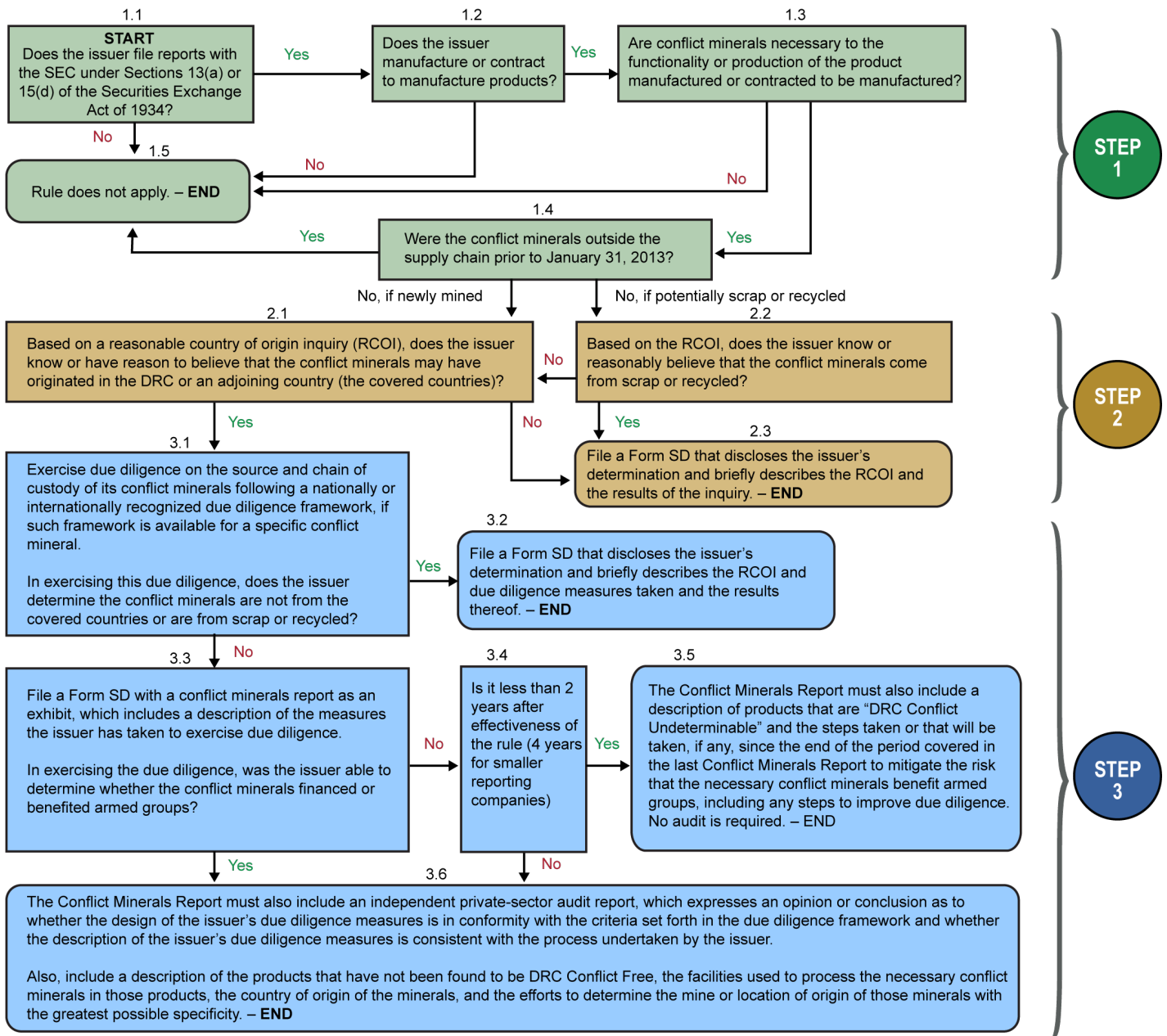
- efforts it made to determine the mine or location of origin with the greatest possible specificity.

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

⁵According 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 [U.S. 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 U.S. Securities and Exchange Commission, Division of Corporation Finance, *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.

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

Figure 7: U.S. 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-23-106295

Note: See original at 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

**Appendix II: Summary of the U.S. Securities
and Exchange Commission’s Conflict Minerals
Rule Disclosure Process**

commission had no plans to update the flowchart as of May 2023. 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 contact named above, Ryan Vaughan (Assistant Director), Mason Thorpe Calhoun (Analyst-in-Charge), Mariela Martinez, James Boohaker, Debbie Chung, Christopher Keblitis, Marc Rockmore, James Ashley, Justin Fisher, Carl Ramirez, and Nicole Willems made key contributions to this report.

Related GAO Products

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