

Conflict Minerals Reporting Alert:

U.S. Appeals Court Denies Rehearing in Conflict Minerals Rule Case

November 9, 2015



On November 9th the U.S. Court of Appeals for the D.C. Circuit denied the SEC and Amnesty International petitions for rehearing of the Court's August 18, 2015 decision. This ruling confirms the Court's earlier decision that portions of the SEC's original rules are unconstitutional, and concludes the matter in the Court of Appeal. This result effectively leaves in place the SEC's April 29, 2014 guidance that companies will not be required to identify products as "DRC conflict free," having "not been found to be 'DRC conflict free'" or "DRC conflict undeterminable" for the current compliance reporting period, and furthermore, that "pending further action, an independent private sector audit (or "IPSA") would not be required unless a company voluntarily elects to describe its product(s) as "DRC conflict free".

While this action has come quickly following the filing of both petitions on October 2, litigation is widely expected to continue. The SEC and Amnesty International now have 90 days to file petition to the U.S. Supreme Court to review the lower court's decision. Further commentary and/or guidance from the SEC regarding this latest decision and its impact on filing obligations may also be forthcoming.

Key Takeaways

- Based on the ruling, for CY 2015, it has been reaffirmed that supply chain determination is not required - filing obligations are essentially unchanged from calendar year 2014.
- The IPSA requirement remains suspended, and it's unlikely that an IPSA will be required for the CY 2015 compliance period. However, registrants may still voluntarily elect to describe product(s) as "DRC conflict free" in the Conflict Minerals Report, in which case an IPSA will be required. Although the Court struck down the compelled conflict-minerals disclosures that triggered aspects of the IPSA requirement, organizations are advised to continue long-term preparations to be audit-ready in the event that Congress or the SEC take steps to address the defects identified by the Court. ¹
- The balance of the Conflict Minerals Rule remains in effect, and registrants having products that fall within the scope of Items 1.01(c)(2) or 1.01(c)(2)(i) of Form SD, should disclose, for those products, the facilities used to produce the conflict minerals, the country of origin of the minerals and the efforts to determine the mine or location of origin, in addition to their other CY 2015 compliance obligations as specified under the Law.
- Further Conflict Minerals Rule litigation can be expected to extend beyond the CY 2015 compliance period.

¹ *Independent of the Conflict Minerals Rule, trends driving increased public awareness to global supply chain transparency and corporate responsibility continue to gain momentum. Conflict*



Minerals compliance programs and the auditability standard they establish could serve as benchmarks for related initiatives. Robust, “IPSA-ready” Conflict Minerals programs could enable impacted organizations to more effectively scale and prepare for emerging supply chain transparency initiatives and regulations.

To learn more about how this most recent update to the Conflict Minerals Rule litigation could affect your organization’s 2015 filing, please contact your RGP Client Service Director at (800) 900-1131 or visit [RGP’s Conflict Minerals Compliance Site](#).

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