

Extractives: Dirty Industries, Clean Standards

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The TakeAway: New SEC proposals require ethical health, safety, and human rights due diligence by companies engaged in the extractive industries.



Extractive industries are by definition a dirty business, but recent legislation and regulatory moves aim to clean them up as much as possible. Last week, an SEC [hearing](#) on “Specialized Disclosure” approved proposals on “[conflict minerals](#)”, [mine safety](#), and resource extraction company [payments](#) to US and foreign governments. Over the opposition of industry groups, the SEC’s action means investors and consumers will have a better picture of whether products and payments are tainted by human rights abuses, unsafe worker conditions, and corruption. The disclosure proposals flow from provisions of the historic [Dodd-Frank](#) Wall Street Reform and Consumer Protection Act, signed by President Obama on July 21st. They also build on other standards, such as the Extractives Industry Transparency Initiative ([EITI](#)).

A coalition of retail and industry groups – [including](#) WalMart, Costco, Lowes, and Target – [opposed](#) the conflict minerals measures, claiming they’ve little control over manufacturing and sourcing decisions. Proponents – including social justice advocacy groups, the [Social Investment Forum](#), and investment managers [Domini](#), [Trillium](#), [Boston Common](#), and [As You Sow](#) – argue the proposed rules protect investors while advancing the public interest. Supporters also cite last June’s Institute for Human Rights and Business ([IHRB](#)) report on the “[State of Play](#)” of human rights due diligence, which reviewed the practices of 24 multinational companies in connection with UN Special Representative to the Secretary General (SRSG) [John Ruggie](#)’s [Protect, Respect, Remedy](#) framework. Recently, the Organisation for European Economic Cooperation (OECD) produced a draft [due diligence](#) guidance on conflict minerals, and [hosts](#) a working group on the topic.

Section 1502: The Conflict Minerals Provision | Section 1502 of the Dodd-Frank Act calls for disclosure and regulation on the corporate connection to [conflict minerals](#), which include substances such as tin, tantalum, tungsten or gold sourced from areas characterized by violent conflict and human rights abuses, particularly against women and girls in the Democratic Republic of the Congo ([DRC](#)). Conflict minerals are found in a wide range of products, including laptops, cellphones, jewelry, medical devices, airplanes, and cars. The SEC requirement will affect around 6,000 US and foreign companies that file reports, an agency official [told](#) the *Wall Street Journal*.

The SEC’s proposed [rules](#) involve three sequential steps:

1. If “conflict minerals are necessary to the functionality or production of a product,” then the issuer falls under the Conflict Minerals Provision;
2. The issuer must disclose annually whether any conflict minerals originated in the DRC countries, and make that information available on its website; and
3. If conflict minerals did come from DRC countries, then the company must submit a “[Conflict Minerals Report](#)” to the SEC that includes a description of the due diligence measures taken on the source and supply chain.

The SEC’s stance builds on earlier Congressional concern that the exploitation and trade of conflict minerals originating

in the DRC and neighboring countries helps finance extreme levels of violence, particularly sexual- and gender-based violence.

Section 1503: The Mine Safety Disclosure Provision | Section 1503 of the Dodd-Frank Act – based on the safety and health requirements that apply to mines under the Federal Mine Safety and Health Act of 1977 ([Mine Act](#)) – requires mining companies to include mine safety and health information in their annual and quarterly SEC filings. In a nod to the [bureaucratic problems](#) revealed after the Massey Energy [mine disaster](#), mining companies must also report on shutdown or violation notices received from the Department of Labor’s Mine Safety and Health Administration ([MSHA](#)). Although mine safety disclosure requirements currently are in effect, the SEC [proposes](#) to amend its rules and forms to incorporate these requirements, “for the protection of investors and to carry out the purposes of Section 1503”. In addition to larger firms, the proposed rules also would cover [smaller reporting companies](#) and “[foreign private issuers](#)”.

Section 1504: Disclosure of Payments by Resource Extraction Issuers | To combat bribery and corruption, Section 1504 of Dodd-Frank requires resource extraction issuers to disclose payments made by them or by their subsidiaries to the US or foreign governments. Payments covered include those furthering the commercial development of oil, natural gas, or minerals, including exploration, extraction, processing, and export, or for acquiring a license for any such activity. The [proposed](#) rules apply to taxes, royalties, fees, production entitlements, and bonuses—consistent with items recommended by the [Extractive Industries Transparency Initiative](#), an NGO founded in 2001. Reports would be required in both regular text and [XBRL](#) formats—to make it easier for stakeholder groups to retrieve and compare payment information.

The [comment period](#) for all three rules changes closes on January 31, 2010; following a second vote, final rules take effect in 2012.