

Conflict Minerals & Customer Requests:

5 Requests You Shouldn't Fulfill

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The Year One submittals to the Securities and Exchange Commission (SEC) for Dodd-Frank Conflict Minerals (DFCM) were done on or before June 2, 2014. The 2014 calendar year is the second year of transition, and it is more than half over. Time is running out for companies to make improvements in the many aspects of their conflict minerals management program.

Companies – your customers – are beginning new campaigns for supplier outreach. Their requests may be simple, logical and achievable. Or, requests could indicate unfamiliarity with the DFCM rule's requirements or general industry capabilities or practice. Here are five customer requests the author suggests you should not agree to, and some suggested actions you should consider instead.

Imagine you've just opened an email that begins "Dear Supplier....."

1. Request: "Please re-issue your Conflict Minerals Reporting Template (CMRT) form, but list only Conflict Free Smelters."

Background: The Electronic Industry Citizenship Coalition (EICC) and the Conflict Free Sourcing Initiative (CFSI) have created the CMRT as a mechanism to provide information regarding the country of origin, and the conflict-free status in the Covered Countries (the Democratic Republic of Congo (DRC) and surrounding countries). The CMRT has become the standard for providing information between companies. Smelters or refiners (SORs) of tin, tantalum, tungsten and gold ("3TG") are listed, along with their status as determined by the CFSI (see www.conflictreesourcing.org). A smelter that meets the CFSI's criteria – including passing an independent audit using CFSI protocol – is designated a **Conflict Free Smelter (CFS)**. Many companies regard the CFS designation as the only way to demonstrate DRC Conflict Free. Not surprisingly, companies wish to have all the SORs in their supply chain on the CFS list. However, smelter engagement has been a slow process. The EICC, CFSI and member companies are working diligently to expand the number of SORs on the CFS list.

Action: The most important features of your companies CMRT is that it must be, to the best of your knowledge, complete, accurate, and supportable. If your suppliers have provided information in their CMRTs that includes smelters not on the CFS List, you cannot omit them in your own CMRT just because a customer requested it. You can increase outreach to SORs and improve participation in the CFSI, and encourage your customer and suppliers to do the same.



2. Request: “Please put your information on the latest revision of the CMRT.”

Background: The CMRT has evolved over time – and will probably evolve again. Many companies used CMRT version 2.03a for their latest information for the 2013 reporting year. CMRT version 3.01 is now available. The questions in version 3.01 differ slightly from prior versions. The CFSI has changed the identification numbering scheme for smelters and refiners. Version 3.01 (or subsequent versions) should be used for information compiled for the 2014 reporting year.

Action: Migrating old information into a new form – just because the form is available – would result in misinformation, and will only cause confusion. Wait until you have the right information for 2014 production (either the full year or an interim CMRT) and fill out the updated information using version 3.01.

3. Request: “Please certify your submittal.”

Background: Customers may request that you “certify” your CMRT, that smelters in your supply chain are conflict free, the truthfulness and/or accuracy of your submittal, your SEC filings, or something else. Certifications inspire confidence. They can also pose risk, if there is no basis to provide a certification. Indeed, “certification” implies a certificate. Think of all the certificates you have received: for attending a webinar or completing a course, for passing an exam, or completing an academic program. These examples indicate the wide variability of the rigor underlying a “certificate.” Customers may request a sweeping “certification” of their suppliers’ use of conflict free smelters, or for their overall DFCM compliance program. The CFSI does not “certify” smelters as being [DRC] conflict free; it merely maintains a list of smelters, criteria for assigning categories (known, active, conflict free), and the categories of those smelters. An “authorized” person will provide a CMRT, but they do not “certify” its content.

Action: If a customer requests a “certification” of any kind, attempt to engage with that customer and explain why there is no basis for one, and provide some information that will give the customer confidence in your conflict minerals program. Weigh risks and benefits carefully before providing any “certification.”



4. Request: “Provide us with only DRC Conflict Free parts, beginning January 1, 2015.”

Background: The SEC rule provides for a two-year transition period – calendar years 2013 and 2014. As the SEC rule is currently written, companies will need to determine if their products are DRC Conflict Free or Not Found to be DRC Conflict Free in 2015. Court challenges have yet to be resolved as to whether issuers must use these exact terms in SEC filings, but customers will want these determinations in some form. The SEC filing requirement is an annual one. Many companies have adopted an annual cycle for collecting information and making their determinations and report. The rule is silent as to when in 2015 companies make their determination, and the SEC has not published an FAQ to address this. Should companies make their determinations for products at the beginning or end of 2015? Or for all products manufactured (or contracted for manufacture) during the entire year? It would be ideal to have a supply chain completely DRC Conflict Free for the entire 2015 calendar year. As noted, the adoption of the CFSI by 3TG smelters worldwide makes this a stretch goal. Furthermore, some suppliers may change their suppliers – and receive CMRTs that include smelters your company did not previously have in the supply chain – and are not yet involved in the CFSI.

Suggested Action: Absent SEC requirements to the contrary, strive to achieve DRC Conflict Free status by year-end 2015, and convince your customers that this is a sound strategy.

5. Request: “Remove all minerals from the Democratic Republic of Congo (DRC) and surrounding countries from your products.”

Background: This is expressly not the goal of the statute or of the SEC rule. Stakeholders that are proponents of the rule and other supply chain transparency favor support of above-board, ethical, fair businesses in conflict areas as a mechanism to provide stability and economic opportunity.

Suggested Action: There may be instances where this action makes sense, such as for a company that has a short supply chain, uses only tin (of 3TG), and almost all of the tin comes from a smelter that is only a few miles from a tin mine in South America. If removing, say, <1% of tin from Covered Countries from the supply chain is easy and reduces overall costs, then this approach may be a logical one. However, companies with more complex supply chains should not simply abandon Covered Countries. Companies should engage with customers making this request to explain the underlying purpose of the rule, their own policy and commitments, and their efforts and status with regard to becoming DRC Conflict Free. Encourage these companies to join and actively participate in industry professional associations such as the EICC and CFSI.