

Dodd-Frank Conflict Minerals: What Did You Manufacture in 2013?

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Dodd-Frank Conflict Minerals (DFCM) (section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act) applies to publicly-traded companies, beginning with calendar year 2013. The first SEC filing (Form SD) is due May 31, 2014. In preparing for “Year One,” companies have been performing activities for the first time – and may not have been thinking of how these activities will be done consistently in the years ahead. As companies prepare for Year One reporting, several questions will arise.

What did you “manufacture” or “contracted to manufacture” in 2013? DFCM applies to filers who manufacture or contract to manufacture products that contain tin, tantalum, tungsten or gold (3TG). The rule and preamble provide guidance to exclude products already in the supply chain at January 1, 2013. Sales or revenue are standard parameters for financial reporting. Companies have robust systems and controls for gathering data, and there are accounting standards for audits of these parameters. However, production (or contracted for production) is not the same as sales.

How should companies determine what was manufactured or contracted for manufacture in 2013?

- Is a product manufactured only when the product is complete?
- Is a product manufactured when key components are complete?
- Is a product “contracted for manufacture” when it is delivered? Or when the contract is signed?

Companies may have several business units, each of which manages supply chain contracting differently. Production information and data may not be reported exactly in line with calendar months, and may differ with different suppliers.

Absent a prescriptive statutory requirement, it is up to companies to determine how this term applies between years. Companies should establish clear cut-off dates for manufacture and contract to manufacture of products. These dates need not be identical for each business unit or product.

The company’s management system and business process should ensure that all products are covered, and covered exactly once.

- There should be safeguards to avoid missing any products. Nothing should fall between the cracks.
- The systems should also avoid double-counting products. DFCM requires narrative disclosures - not reporting of numerical values. Companies may elect to include numerical values (number of questionnaires received, response rates, or percentage of the product portfolio that is “conflict undeterminable”) in Conflict Minerals Reports or other channels.

As companies compile information for 2013, begin using the process for compiling 2014 information – it begins now.