

U.S. Companies Free to Buy “Conflict Minerals” from Central African Warlords. Leaked Trump Presidential Memo

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The leaked draft of a [presidential memorandum](#) Donald Trump is expected to sign within days suspends a 2010 rule that discouraged American companies from funding conflict and human rights abuses in the Democratic Republic of Congo through their purchase of “conflict minerals.”

The memo, distributed inside the administration on Friday afternoon and obtained by The Intercept, directs the Securities and Exchange Commission to temporarily waive the requirements of the Conflict Mineral Rule, a provision of the Dodd Frank Act, for two years — which the rule explicitly allows the president to do for national security purposes. The memorandum also directs the State Department and Treasury Department to find an alternative plan to “address such problems in the DRC and adjoining countries.”

The idea behind [the rule](#), which had bipartisan support, was to drain militias of revenue by forcing firms to conduct reviews of their supply chain to determine if contractors used minerals sourced from the militias.



Mining workers stand on a muddy cliff as they work at a gold mine in north eastern Congo in 2009.

Photo: Lionel Healing/AFP/Getty Images

The impending decision comes as Trump held a meeting Wednesday with Brian Krzanich, the chief executive of Intel, one of the leading firms impacted by conflict mineral regulations. At the White House today, Krzanich appeared with the president to announce a new manufacturing plant in Arizona.



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Thank you Brian Krzanich, CEO of [@Intel](#). A great investment (\$7 BILLION) in American INNOVATION and JOBS!
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Human rights advocates — who had celebrated the conflicts rule as a major step forward — were appalled. “Any executive action suspending the U.S. conflict minerals rule would be a gift to predatory armed groups seeking to profit from Congo’s minerals as well as a gift to companies wanting to do business with the criminal and the corrupt,” said Carly Oboth, the policy adviser at Global Witness, in a statement responding to a [Reuters article](#) that first reported the move.

“It is an abuse of power that the Trump administration is claiming that the law should be suspended through a national security exemption intended for emergency purposes. Suspending this provision could actually undermine U.S. national security.”

Advanced computer chips, including technology used in cell phones and semiconductors, contain minerals often sourced from war-torn countries in central Africa. Firms such as Intel, Apple, HP, and IBM use advanced chips that contain tantalum, gold, tin, and tungsten — elements that can be mined at low prices in the the DRC, where mines are often controlled

by militias fueling a decadeslong civil war.

American tech companies, such as Intel, [lobbied directly](#) on the rule when it was proposed. But since passage, tech firms have largely used third party business groups to stymie the rule. Trade groups representing major U.S. tech firms and other manufacturers, including the U.S. Chamber of Commerce and the Business Roundtable, attempted to block the rule through a federal lawsuit. In 2014, a federal court struck down a part of the rule that forced firms to reveal DRC conflict minerals on their corporate websites.

Intel is also one of the firms that has touted its effort to comply with the law, publishing a [report](#) that notes the company has conducted 40 on-site reviews of smelters in the eastern DRC.

Reuters also [reported](#) that acting SEC chief Michael Piwowar has taken steps to also weaken enforcement, asking staff to “reconsider how companies should comply.”

Read the draft memo here:

Presidential Memorandum: Suspension of the Conflict Minerals Rule

EXPLANATORY STATEMENT

Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010¹ (the Dodd-Frank Act) amended the Exchange Act to require the Securities and Exchange Commission to promulgate a rule requiring that companies that file reports with the SEC undertake due diligence to determine whether any materials in the products they manufacture include conflict minerals that originated in the Democratic Republic of the Congo (DRC) or an adjoining country. In 2012, the Commission adopted Rule 13p-1 (the Conflict Minerals Rule).² Section 1502 of the Dodd-Frank Act and the Conflict Minerals Rule were intended to discourage public companies from using those materials in their products. Backers of the legislation hoped it would thereby eliminate a source of financing for armed groups in the Congo involved in human rights violations.

While the Conflict Minerals Rule has discouraged some American companies from purchasing materials sourced in the DRC and adjoining countries, there have been both positive and negative unintended consequences, including some job loss and an increase in the profits of certified *conflict-free* minerals as a result of the Conflict Minerals Rule. In addition to lost livelihoods associated with the Conflict Minerals Rule, the SEC also estimated in 2014 that American companies would be forced to incur upfront compliance costs of \$3 to \$4 billion, with \$200 million per year thereafter.

To respond to these unintended consequences, a more effective means of addressing the problems of the DRC and adjoining countries would be a targeted approach that focuses on specific companies known to be engaging in illegal activities that contribute to the financing of armed groups violating human rights abuses in Central Africa. Section 1502(b) of the Dodd-Frank Act permits the President of the United States to order the Commission to temporarily waive the requirements of the Conflict Minerals Rule for a period of up to two years upon a reasoned determination that the waiver is in the national security interest of the United States. During this two-year waiver period, the President will immediately direct the Secretaries of State and Treasury to propose an alternative plan utilizing existing and proposed authorities to address such problems in the DRC and adjoining countries. The proposal should take a targeted approach that focuses on breaking the link between commodities and armed groups in the DRC and adjoining countries.

¹ Pub. L. No. 111-203, 124 Stat. 1376, 2213-18.

² Conflict Minerals, 77 Fed. Reg. 56, 274 (Sept. 12, 2012), codified at 17 C.F.R. § 240.13p-1.

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