The Copper Mark

Guidance on Criterion 31: Due Diligence in Mineral Supply Chains for Downstream Sites

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The Copper Mark Guidance on Due Diligence in Mineral Supply Chains for Downstream Sites		Public

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Disclaimer:

This guidance does not seek to establish new requirements. It should be understood as an interpretation of the existing Copper Mark Responsible Production Criteria.

However, the Copper is currently revising its Responsible Production Criteria with the details on this process available on its website here.

The Copper Mark welcomes the opportunity provided by the revision process to further engage our stakeholders on this important topic. We invite any interested stakeholder to provide feedback at any time by sending an email to info@coppermark.org.

1 Overview

The Copper Mark Criteria for Responsible Production, the Risk Readiness Assessment, includes Criterion 31: Due Diligence in Mineral Supply Chains. Criterion 31 is unique because it is directly connected to the expectation for Copper Mark participants to implement the Joint Due Diligence Standard for Copper, Lead, Nickel and Zinc (the Joint Due Diligence Standard).

The Joint Due Diligence Standard is 100% OECD-aligned and approved by the London Metals Exchange as a Track A standard for their responsible sourcing requirements. Consequently, it enables sites to demonstrate compliance with the LME rules and meet customer expectations through their participation in the Copper Mark or the standalone use of the Joint Due Diligence Standard.

To date, Criterion 31 and the Joint Due Diligence Standard apply as follows:

	Criterion 31 AND Joint Due Diligence Standard	**ONLY Joint Due Diligence Standard**	**ONLY Criterion 31**
Copper Mark participants upstream: e.g., mining, smelting, refining	X		
Copper Mark participants downstream: e.g., semis-fabricators			X
Other eligible sites: producers of copper, lead, molybdenum, nickel or zinc from mine up to and including the refinery		X	

This guidance clarifies the expectations for Copper Mark participants that are considered to be **downstream supply chain actors** participating in the Copper Mark Assurance Process in relation to criterion 31: Due Diligence in Mineral Supply Chains.

2 Copper Mark Criterion 31: Due Diligence in Mineral Supply Chains

The Copper Mark Criteria for Responsible Production, the Risk Readiness Assessment, include a specific requirement for due diligence in mineral supply chains. Participants must *"implement the OECD Due Diligence Guidance on Conflict-Affected and High-Risk Areas."* Furthermore, the Copper Mark Assurance Process states that "*participants are required to implement the Joint Due Diligence Standard to demonstrate conformance with Criterion 31."*

The measures sites are expected to take to implement due diligence in accordance with the OECD Due Diligence Guidance vary for upstream and downstream supply chain actors.

The Joint Due Diligence Standard provides the detailed requirements for **upstream** supply chain actors. However, the Joint Due Diligence Standard does **not** apply to supply chain actors that are considered **downstream**. Downstream is defined as "*The minerals supply chain from smelters/refiners to retailers".*

The Copper Mark Criteria Guide provides further details on the interpretation of Criterion 31 (full text of the Criteria Guide is provided in Annex I of this document). However it does not specifically address the expectations for downstream supply chain actors.

3 Guidance on Due Diligence in Mineral Supply Chains for Downstream Copper Mark Participants

The Copper Mark seeks to provide additional guidance on *"implementing the OECD Due Diligence Guidance on Conflict-Affected and High-Risk Areas"* for participants that are considered downstream supply chain actors and for whom the Joint Due Diligence Standard is not applicable. Relevant participants include:

- Copper semis-fabricators
- Ferro-molybdenum converters
- Molybdenum metal producers
- Molybdenum chemical producers

Participants and approved assessors of the Copper Mark are required to refer to this guidance when determining conformance with the Copper Mark Responsible Production Criteria.

The Copper Mark fully adopts the guidance provided by the OECD Responsible Business Conduct (RBC) unit published on www.duediligenceguidance.org.

Specifically, the Copper Mark adopts the OECD's guidance as it applies to the supply chain category of "downstream" and its sub-category "manufacturers". Core elements of due diligence for downstream supply chain actors are to:

- Identify ‘choke points’ in supply chain (e.g. metal smelter or refiners).

  For the Copper Mark, these are referred to as “refiner” in the Joint Due Diligence Standard and defined as:

  “a company performing a process of purification to produce refined copper, lead, molybdenum, nickel and zinc metal. In these industries, such metals would be:
    - *Grade A copper cathode;*
    - *99.97% refined lead;*
    - *Roasted molybdenum concentrate (Technical Mo oxide)*
    - *Nickel metal class 1;*
    - *Special High Grade (SHG) zinc.”*

- Collect information on their upstream due diligence (e.g., both through individual efforts and industry auditing).

  For the Copper Mark, downstream supply chain actors may use the results of refiners’ (or other upstream supply chain actors’) assessment against the Joint Due Diligence Standard to inform their due diligence. These results are published in Criterion 31 in the summary report on the Copper Mark’s website[1] or in a stand-alone report for sites that have done an assessment only against the Joint Due Diligence Standard **here**).[2]

- Use collective industry leverage to encourage improvement of upstream due diligence.

  For the Copper Mark, collective action is supported through Copper Mark partners.

- Report publicly on due diligence efforts.

In addition to the four core elements above, Copper Mark participants that are considered downstream supply chain actors shall also review and implement the due diligence measures for each of the 5 steps as they are applicable to “manufacturer” per the OECD’s guidance: https://www.duediligenceguidance.org/.

[1] Examples of step 5 reports of Copper Mark participants can be found as links in Criterion 31 of their Summary Reports, published here.

[2] Other sources of completed refiner-level assessments include: LBMA Good Delivery, LME listed brands (as of 1 January 2024), LME Passport, RJC Chain of Custody certified sites, RMAP conformant smelters and refiners.

For more detailed information about developing a due diligence management system, Copper Mark participants shall refer to section 5.1 of the Joint Due Diligence Standard.

4 Annex I: Criteria Guide for Criterion 31: Due Diligence in Mineral Supply Chains

RRA ISSUE AREA: DUE DILIGENCE IN MINERAL SUPPLY CHAINS
To implement the OECD Due Diligence Guidance on Conflict-Affected and High-Risk Areas.

Explanation:

Mining projects can take place in areas where there are existing or potential conflicts or socio-political instability that can adversely affect the project and local stakeholders. In some cases, conflict may be external to the company's operation, and in other cases conflict may be caused, exacerbated or supported by a company's activities or presence in an area. Developing suitable responses when operating in or sourcing minerals from conflict-affected or high-risk areas is challenging, but guidance exists to assist companies in identifying, assessing and mitigating risks and impacts associated with operating in those areas. The most widely accepted framework is the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (OECD Guidance).[3]

Due diligence in this context refers specifically to the proactive and reactive process undertaken by a business to identify and assess risks related to conflict-affected and high-risk areas (CAHRAs). These risks are outlined in Annex II of the OECD Guidance and include gross human rights violations, torture, forced or compulsory labor, war crimes, support to non-state armed groups or public or private security forces, bribery and fraudulent misrepresentation of the origin of minerals, money laundering and non-payment of taxes. For the purposes of this Guidance, "risks" are defined in relation to the potentially adverse impacts of a company's operations, which result from a company's own activities or its relationships with third parties, including suppliers and other entities in the supply chain. Adverse impacts may include harm to people (i.e. external impacts), or reputational damage or legal liability for the company (i.e. internal impacts), or both. Such internal and external impacts are often interdependent, with external harm coupled with reputational damage or exposure to legal liability.

Due diligence provides companies with the information they need to identify risks in order to prevent or mitigate adverse impacts associated with their sourcing practices. The RMI encourages companies to source and operate responsibly from/in CAHRAs. Companies that source or use minerals from CAHRAs can also play an effective role in supporting livelihoods, economic growth and prosperity, and due diligence enables this.[4]

See also related issue area 25 Artisanal and Small-Scale Mining and 26 Human Rights.

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[3] Adapted from IRMA Standard for Responsible Mining: https://responsiblemining.net/resources/

[4] Adapted from Responsible Jewellery Council Code of Practices Guidance: https://www.responsiblejewellery.com/rjc-certification/code-of-practices-certification13-2-2/

Companies must take reasonable steps and make good faith efforts to conduct due diligence. Due diligence management systems vary, depending on the size of the company and the complexity of its supply chains.

Due diligence is an active process, which results in a responsible sourcing program that is:

- Ongoing: seamlessly integrated into a company's management systems and daily processes;
- Proactive: designed and implemented to identify and mitigate risks to prevent negative outcomes;
- Reactive: able to respond promptly to risks (both actual and potential).
- Risk based: with a level of detail and effort that matches the potential risk in a company's supply chains;
- Allowing for continuous improvement: companies may be starting with very little understanding of risks in their supply chains and work to improve their systems and understanding over time.[5]

The OECD Guidance offers specific recommendations through a five-step framework which is global in scope and can be applied to all mineral types.

The five steps are:

- Establish strong company management systems;
- Identify and assess risk in the supply chain;
- Design and implement a strategy to respond to identified risks;
- Carry out independent third-party audit of supply chain due diligence at identified points in the supply chain;
- Report on supply chain due diligence.

The OECD Guidance in Annex II further specifies possible risk mitigation strategies for companies to adopt. These include the continuation of business relationships during mitigation, the suspension of business relationships during mitigation or the termination of business relationships.

Performance Determination:

Does Not Meet
We have not implemented a policy or completed due diligence that conforms with the OECD DDG.

Partially Meets

[5] Adapted from Responsible Jewellery Council Code of Practices Guidance: https://www.responsiblejewellery.com/rjc-certification/code-of-practices-certification13-2-2/.

We have begun to develop a policy and to complete a due diligence that conforms with the OECD DDG, but implementation has not started or is incomplete.

<u>Fully Meets</u>
We have a fully implemented a policy and completed due diligence that conforms with the OECD DDG.

For further detail on the performance determination, Producers should refer to specific standards applicable to their metal, for example:
- The Copper Mark Due Diligence Standard
- The RMI-ITA Joint Assessment Criteria
- RMI SNTA Standard
- RMI Tungsten Standard
- RMI Gold Standard
- LBMA Responsible Gold Guidance
- Responsible Jewellery Council Code of Practices

Verification:

Types of evidence:

The following are examples of documents a Producer can upload to demonstrate conformance:
- Completed Due Diligence Tool or questionnaire that is aligned with the OECD DDG five steps
- Screening analysis reports;
- Policy for supply chains of minerals originating from CAHRAs
- Publicly available Step 5 due diligence reports;
- Reports from country risk assessment of management systems and sourcing practices and their alignment with the OECD DDG;
- Supply chain risk assessment reports and risk mitigation plan;
- Reports from on-the-ground risk assessments;
- Records of communication with public, supply chain partners and other relevant stakeholders.
- Public statement (annual report, website, regulatory submissions, filings, corporate sustainability report) of involvement in joint initiatives or institutionalized mechanisms (please contact the RMI for further information on such initiatives);
- Third-party assurance statement related to the implementation of the OECD DDG .

Site assessment:

During interviews with management, managers can demonstrate understanding of the company's policy on sourcing from conflict-affected and high-risk areas (CAHRAs).

They can demonstrate that they exercise due diligence over their supply chains in accordance with the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. They can describe the OECD Guidance five-step framework and OECD Annex II risks. They can demonstrate that they communicate the supply chain policy consistent with Annex II of the OECD Guidance to business partners with respect to sourcing from CAHRAs. They can demonstrate that are aware of resources used to identify a CAHRA and identify red flags associated with mineral supply chains.

Management can describe clear lines of accountability and responsibility within the company for the oversight, implementation and reporting of the due diligence program. They can describe how suppliers and business partners are made aware of company's policy on conflict-affected and high-risk areas.

During interviews with relevant employees and suppliers, they can demonstrate a basic understanding of the company's policy on sourcing from CAHRAs and confirm that they have received training on the policy and associated due diligence procedures.