Office of Foreign Assets Control, Treasury § 592.603

this part or a violation of the provi-
sions of any regulation or order issued
by or pursuant to the direction or au-
thorization of the Secretary of the
Treasury pursuant to this part or oth-
ervise under the Clean Diamond Trade
Act, and the Director determines that
further civil proceedings are war-
ranted, the Director shall notify the
al-
leged violator of the agency’s intent to
impose a monetary penalty by issuing
a prepenalty notice. The prepenalty no-
tice shall be in writing. The prepenalty
notice may be issued whether or not
another agency has taken any action
with respect to the matter.

(b) Contents of notice—(1) Facts of vio-
lation. The prepenalty notice shall de-
scribe the violation, specify the laws
and regulations allegedly violated, and
state the amount of the proposed mon-
etary penalty.

(2) Right to respond. The prepenalty
notice also shall inform the respondent
of the respondent’s right to make a
written presentation within the appli-
cable 30-day period set forth in § 592.603
as to why a monetary penalty should
not be imposed or why, if imposed, the
monetary penalty should be in a lesser
amount than proposed.

(c) Informal settlement prior to issuance
of prepenalty notice. At any time prior
to the issuance of a prepenalty notice,
an alleged violator may request in
writing that, for a period not to exceed
sixty (60) days, the agency withhold
issuance of the prepenalty notice for
the exclusive purpose of effecting set-
tlement of the agency’s potential civil
monetary penalty claims. In the event
the Director grants the request, under
terms and conditions within his discre-
tion, the Office of Foreign Assets Con-
trol will agree to withhold issuance of
the prepenalty notice for a period not
to exceed 60 days and will enter into
settlement negotiations of the poten-
tial civil monetary penalty claim.

§ 592.603 Response to prepenalty no-
tice; informal settlement.

(a) Deadline for response. The respond-
ent may submit a response to the
prepenalty notice within the applicable
30-day period set forth in this para-
graph. The Director of the Office of
Foreign Assets Control may grant, at
his discretion, an extension of time in
which to submit a response to the
prepenalty notice. The failure to sub-
mit a response within the applicable
time period set forth in this paragraph
shall be deemed to be a waiver of the
right to respond.

(1) Computation of time for response. A
response to the prepenalty notice must
be postmarked or date-stamped by the
U.S. Postal Service (or foreign postal
service, if mailed abroad) or courier
service provider (if transmitted to the
Office of Foreign Assets Control by
courier) on or before the 30th day after
the postmark date on the envelope in
which the prepenalty notice was
mailed. If the respondent refused deliv-
er or otherwise avoided receipt of the
prepenalty notice, a response must be
postmarked or date-stamped on or be-
fore the 30th day after the date on the
stamped postal receipt maintained at
the Office of Foreign Assets Control. If
the prepenalty notice was personally
delivered to the respondent by a non-
U.S. Postal Service agent authorized
by the Director, a response must be
postmarked or date-stamped on or be-
fore the 30th day after the date of de-
ivery.

(2) Extensions of time for response. If a
due date falls on a federal holiday or
weekend, that due date is extended to
include the following business day. Any
other extensions of time will be grant-
ed, at the Director’s discretion, only
upon the respondent’s specific request
to the Office of Foreign Assets Control.

(b) Form and method of response. The
response must be submitted in writing
and may be handwritten or typed. The
response need not be in any particular
form. A copy of the written response
may be sent by facsimile, but the origi-
nal also must be sent to the Office of
Foreign Assets Control Civil Penalties
Division by mail or courier and must
be postmarked or date-stamped, in ac-
cordance with paragraph (a) of this sec-
tion.

(c) Contents of response. A written re-
response must contain information suf-
ficient to indicate that it is in response
to the prepenalty notice and must in-
clude the Office of Foreign Assets Con-
trol identification number listed on the
prepenalty notice.

(1) A written response must include the
respondent’s full name, address,
telephone number, and facsimile number, if available, or those of the representative of the respondent.

(2) A written response should either admit or deny each specific violation alleged in the prepenalty notice and also state if the respondent has no knowledge of a particular violation. If the written response fails to address any specific violation alleged in the prepenalty notice, that alleged violation shall be deemed to be admitted.

(3) A written response should include any information in defense, evidence in support of an asserted defense, or other factors that the respondent requests the Office of Foreign Assets Control to consider. Any defense or explanation previously made to the Office of Foreign Assets Control or any other agency must be repeated in the written response. Any defense not raised in the written response will be considered waived. The written response also should set forth the reasons why the respondent believes the penalty should not be imposed or why, if imposed, it should be in a lesser amount than proposed.

(d) Failure to respond. Where the Office of Foreign Assets Control receives no response to a prepenalty notice within the applicable time period set forth in paragraph (a) of this section, a penalty notice generally will be issued, taking into account the mitigating and/or aggravating factors present in the record. If there are no mitigating factors present in the record, or the record contains a preponderance of aggravating factors, the proposed prepenalty amount generally will be assessed as the final penalty.

(e) Informal settlement. In addition to or as an alternative to a written response to a prepenalty notice, the respondent or respondent’s representative may contact the Office of Foreign Assets Control as advised in the prepenalty notice to propose the settlement of allegations contained in the prepenalty notice and related matters. However, the requirements set forth in paragraph (f) of this section as to oral communication by the representative must first be fulfilled. In the event of settlement at the prepenalty stage, the claim proposed in the prepenalty notice will be withdrawn, the respondent will not be required to take a written position on allegations contained in the prepenalty notice, and the Office of Foreign Assets Control will make no final determination as to whether a violation occurred. The amount accepted in settlement of allegations in a prepenalty notice may vary from the civil penalty that might finally be imposed in the event of a formal determination of violation. In the event no settlement is reached, the time limit specified in paragraph (a) of this section for written response to the prepenalty notice will remain in effect unless additional time is granted by the Office of Foreign Assets Control.

(f) Representation. A representative of the respondent may act on behalf of the respondent, but any oral communication with the Office of Foreign Assets Control prior to a written submission regarding the specific allegations contained in the prepenalty notice must be preceded by a written letter of representation, unless the prepenalty notice was served upon the respondent in care of the representative.