

manner as for output contracts taken into account under the private business tests, including the principles of § 1.141-7(d), treating nonqualified sales of gas or electricity under this paragraph (e)(2)(iii) as satisfying the benefits and burdens test under § 1.141-7(c)(1).

(iv) *Additional prepayments as permitted by the Commissioner.* The Commissioner may, by published guidance, set forth additional circumstances in which a prepayment does not give rise to investment-type property.

\* \* \* \* \*

**Par. 7.** Section 1.148-11 is amended by adding paragraph (j) to read as follows:

**§ 1.148-11 Effective dates.**

\* \* \* \* \*

(j) *Certain prepayments.* Section 1.148-1(e)(1) and (2) apply to bonds sold on or after October 3, 2003. Issuers may apply § 1.148-1(e)(1) and (2), in whole but not in part, to bonds sold before October 3, 2003 that are subject to § 1.148-1.

**Dale F. Hart,**

*Acting Deputy Commissioner for Services and Enforcement.*

Approved: July 25, 2003.

**Pamela F. Olson,**

*Assistant Secretary of the Treasury.*

[FR Doc. 03-19644 Filed 8-1-03; 8:45 am]

BILLING CODE 4830-01-P

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

#### 31 CFR Parts 591 and 592

#### Rough Diamonds (Sierra Leone & Liberia) Sanctions Regulations; Rough Diamonds Control Regulations

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Interim final rule.

**SUMMARY:** The Office of Foreign Assets Control of the U.S. Department of the Treasury is amending and issuing regulations to carry out the purposes of Executive Order 13312 of July 29, 2003, which implemented the Clean Diamond Trade Act and the Kimberley Process Certification Scheme for rough diamonds and amended prior Executive orders that served as the bases for restricting or prohibiting the importation into the United States of rough diamonds from Sierra Leone or Liberia.

**DATES:** *Effective Date:* July 30, 2003.

*Comments:* Written comments must be received no later than October 3, 2003.

**ADDRESSES:** Comments may be submitted to the Chief of Records, ATTN: Request for Comments, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Alternatively, comments may be submitted via facsimile to the Chief of Records at 202/622-1657 or via OFAC's Web site (<http://www.treas.gov/offices/enforcement/ofac/comment.html>).

**FOR FURTHER INFORMATION CONTACT:** OFAC's Chief of Policy Planning and Program Management, tel.: 202/622-2500, or Chief Counsel, tel.: 202/622-2410.

**SUPPLEMENTARY INFORMATION:**

**Electronic and Facsimile Availability**

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**Background**

On July 29, 2003, the President issued Executive Order 13312, taking into account enactment of the Clean Diamond Trade Act (Pub. L. 108-19), which implements the multilateral Kimberley Process Certification Scheme for rough diamonds (KPCS), and recent developments in Sierra Leone and Liberia. The Clean Diamond Trade Act requires the President, subject to certain waiver authorities, to prohibit the importation into, and exportation from, the United States of any rough diamond not controlled through the KPCS. This means shipments of rough diamonds between the United States and non-Participants in the KPCS generally are prohibited, and shipments between the United States and Participants are permitted only if they are handled in accordance with the standards, practices, and procedures of the KPCS

set out in these regulations. Executive Order 13312 implemented the Clean Diamond Trade Act and the KPCS and amended Executive Orders 13194 and 13213, which are described below.

On January 18, 2001, the President issued Executive Order 13194 (66 FR 7389, Jan. 23, 2001), taking into account United Nations Security Council Resolution (UNSCR) 1306 of July 5, 2000. This order declared a national emergency in response to the role played by the illicit trade in diamonds in fueling conflict and human rights violations in Sierra Leone (RUF) and prohibited the importation into the United States of rough diamonds from Sierra Leone that were not controlled by the Government of Sierra Leone through its Certificate of Origin regime.

On May 22, 2001, the President issued Executive Order 13213 (66 FR 28829, May 24, 2001), taking into account UNSCR 1343 of March 7, 2001. This order expanded the scope of the national emergency declared in Executive Order 13194 to respond to, among other things, the Government of Liberia's complicity in the illicit trade in rough diamonds through Liberia. Executive Order 13213 prohibited the direct or indirect importation into the United States of all rough diamonds from Liberia, whether or not such diamonds originated in Liberia.

The United Nations Security Council decided to allow the ban against the importation of rough diamonds from Sierra Leone without a certificate of origin to expire on June 4, 2003, taking into account the Government of Sierra Leone's increased efforts to control and manage its diamond industry and ensure proper control over diamond mining areas, as well as the Government's full participation in the KPCS. In addition, however, on May 6, 2003, the Security Council renewed for one year the absolute import ban on rough diamonds from Liberia based on evidence that the Government of Liberia continues to breach the measures imposed by UNSCR 1343 (2001).

Executive Order 13312 authorized the Secretary of the Treasury to promulgate rules and regulations as may be necessary to carry out the purposes of the order. To implement the order, the Office of Foreign Assets Control, acting pursuant to delegated authority, is issuing the Rough Diamonds Control Regulations and revising the Rough Diamonds (Sierra Leone & Liberia) Sanctions Regulations.

### **Amendments to Part 591—Rough Diamonds (Sierra Leone & Liberia) Sanctions Regulations**

Section 591.201 of subpart B of the regulations, prohibiting the importation of rough diamonds from Sierra Leone and Liberia, is revised to implement section 3 of Executive Order 13312, which amended Executive Order 13194 to control rough diamonds from Sierra Leone through the KPCS and also amended Executive Order 13213 to remove licensing and other authorities with respect to rough diamonds from Liberia. As revised, the prohibition in § 591.201 is limited in scope to rough diamonds from Liberia and is not subject to possible licensing or other administrative action. A note is added to § 591.201 to refer the reader to new part 592, which now controls the importation into, and the exportation from, the United States of rough diamonds from Sierra Leone and other countries.

Section 591.301 of subpart C is removed to reflect the removal of Sierra Leonean rough diamonds from the scope of part 591 and the replacement of the certificate of origin regime of the Government of Sierra Leone with the KPCS in new part 592. Section 591.302, defining the term effective date, is revised to delete the reference to Sierra Leone. Section 591.306 is revised to reflect the KPCS definition of the term rough diamond. Section 591.308 is revised to delete the references to Sierra Leone in the term rough diamonds from Sierra Leone and Liberia. Section 591.309 is revised to conform the definition of the term "United States" to section 3(10) of the Clean Diamond Trade Act.

Section 591.404 of subpart D, relating to the transshipment or transit of rough diamonds through the United States, is revised to delete the reference to rough diamonds from Sierra Leone. Sections 591.405 and 591.406, relating to the direct or indirect importation of rough diamonds and the importation into and release from a bonded warehouse or foreign trade zone of rough diamonds are revised to delete the references to Sierra Leone.

### **New Part 592—Rough Diamonds Control Regulations**

Section 592.201(a) of subpart B of the regulations implements section 1(a) of Executive Order 13312, which implements section 4(a) of the Clean Diamond Trade Act and the KPCS. Section 592.201(a) prohibits, subject to possible exceptions described below, the importation into, or exportation from, the United States of any rough

diamond, from whatever source, on or after July 30, 2003, unless the rough diamond is controlled through the KPCS. Section 592.201(b) implements section 4(b) of the Clean Diamond Trade Act by excepting from the prohibitions of § 592.201(a) importations from, or exportations to, any country with respect to which the Secretary of State has waived the prohibitions pursuant to section 4(b) of the Clean Diamond Trade Act and section 2(a)(i) of Executive Order 13312.

Section 592.202 implements section 1(b) of Executive Order 13312 by prohibiting any transaction by a United States person or within the United States that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in section 1 of the order. Section 592.202 also implements section 1(c) of the order by prohibiting any conspiracy formed to violate any of the prohibitions of the order.

Subpart C of part 592 provides definitions of terms used in the regulations, including exporting authority, importing authority, Kimberley Process Certificate, Kimberley Process Certification Scheme, and rough diamond. Subpart D sets forth interpretive guidance with respect to the regulations. For example, §§ 592.403 and 592.404 provide guidance with respect to the transshipment or transit through the United States of rough diamonds and the importation into and release of rough diamonds from a bonded warehouse or foreign trade zone, respectively.

Subpart E of part 592 sets forth provisions relating to required records and reports. Penalties for violations of the regulations are described in subpart F of the regulations.

### **Request for Comments; Procedural Requirements**

Because the regulations involve a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) (the "APA") requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. However, because of the importance of the issues addressed in these regulations, this rule is being issued in interim form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views. Comments may address the impact of

the regulations on the submitter's activities, whether of a commercial, non-commercial or humanitarian nature, as well as changes that would improve the clarity and organization of the regulations.

The period for submission of comments will close October 3, 2003. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the submission be treated confidentially because of its business proprietary nature or for any other reason. The Department will return any such submission to the originator without considering it in the development of final regulations. In the interest of accuracy and completeness, the Department requires comments in written form.

All public comments on these regulations will be a matter of public record. Copies of the public record concerning these regulations will be made available not sooner than November 3, 2003 and will be obtainable from OFAC's Web site (<http://www.treas.gov/ofac>). If that service is unavailable, written requests for copies may be sent to: Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Ave., NW, Washington, DC 20220, Attn: Chief of Records Division.

Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

### **Paperwork Reduction Act**

The collections of information related to the regulations are contained in 31 CFR part 501 (the "Reporting and Procedures Regulations"). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been previously approved by the Office of Management and Budget under control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

### **List of Subjects**

#### *31 CFR Part 591*

Administrative practice and procedure, Blocking, Certificate of origin, Conflict diamonds, Diamonds, Exports, Exporting authority, Foreign

trade, Importing authority, Imports, Kimberley Process, Liberia, Penalties, Reporting and recordkeeping requirements, Rough diamonds, Sierra Leone.

### 31 CFR Part 592

Administrative practice and procedure, Foreign trade, Exports, Imports, Kimberley Process, Penalties, Reporting and recordkeeping requirements, Rough diamond.

■ For the reasons set forth in the preamble, 31 CFR chapter V, part 591 is amended and part 592 is added as follows:

■ 1. The title for part 591 is revised to read as follows:

## **PART 591—ROUGH DIAMONDS (LIBERIA) SANCTIONS REGULATIONS**

■ 2. The authority citation for part 591 is revised to read as follows:

**Authority:** 3 U.S.C. 301; 31 U.S.C. 321(b); 22 U.S.C. 287c; 50 U.S.C. 1601–1641, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 13194, 66 FR 7389 (January 23, 2001); E.O. 13213, 66 FR 28829 (May 24, 2001); E.O. 13312 (FR vol. 68, no. 147, July 31, 2003).

### **Subpart B—Prohibitions**

■ 3. Section 591.201 is revised to read as follows:

#### **§ 591.201 Prohibited importation of any rough diamond.**

Notwithstanding the existence of any rights or obligations conferred or imposed by any contract entered into or any license or permit granted prior to the effective date, the direct or indirect importation into the United States, on or after the effective date, of any rough diamond from Liberia is prohibited.

**Note to § 591.201.** See part 592 of this chapter for additional regulations controlling the importation into the United States of any rough diamond from any country other than Liberia, as well as the exportation from the United States of any rough diamond from any source.

#### **§ 591.202 [Removed and reserved]**

■ 4. Section 591.202 is removed and reserved.

### **Subpart C—General Definitions**

#### **§ 591.301 [Removed and reserved]**

■ 5. Section 591.301 is removed and reserved.

■ 6. Section 591.302 is revised to read as follows:

#### **§ 591.302 Effective date.**

The term *effective date* refers to the effective date of the applicable

prohibitions and directives contained in this part, which is 12:01 a.m., eastern daylight time, May 23, 2001.

■ 7. Section 591.307 is revised to read as follows:

#### **§ 591.307 Rough diamond.**

The term *rough diamond* means any diamond that is unworked or simply sawn, cleaved, or bruted, and classifiable under subheading 7102.10, 7102.21, or 7102.31 of the Harmonized Tariff Schedule of the United States.

■ 8. Section 591.308 is revised to read as follows:

#### **§ 591.308 Rough diamond from Liberia.**

The term *rough diamond from Liberia* means any rough diamond extracted in Liberia and any rough diamond that has physically entered the territory of Liberia, regardless of where it had been extracted.

### **Subpart D—Interpretations**

■ 9. Section 591.404 is revised to read as follows:

#### **§ 591.404 Transshipment or transit through the United States prohibited.**

The prohibition in § 591.201 applies to the importation into the United States, for transshipment or transit, of any rough diamond from Liberia that is intended or destined for any country other than the United States.

■ 10. Section 591.405 is revised to read as follows:

#### **§ 591.405 Direct or indirect importation of any rough diamond from Liberia.**

The prohibition in § 591.201 applies to the importation of any rough diamond from Liberia whether the rough diamond is being imported directly into the United States from Liberia, or indirectly through any other country.

■ 11. Section 591.406 is revised to read as follows:

#### **§ 591.406 Importation into or release of any rough diamond from a bonded warehouse or foreign trade zone.**

The prohibition in § 591.201 applies to the importation into or release of any rough diamond from a bonded warehouse or foreign trade zone of the United States. However, § 591.201 does not prohibit the release from a bonded warehouse or a foreign trade zone of any rough diamond from Liberia that was imported into the bonded warehouse or foreign trade zone prior to the effective date.

■ 12. Part 592 is added to 31 CFR Chapter V to read as follows:

## **PART 592—ROUGH DIAMONDS CONTROL REGULATIONS**

### **Subpart A—Relation of This Part to Other Laws and Regulations**

Sec.

592.101 Relation of this part to other laws and regulations.

### **Subpart B—Prohibitions**

592.201 Prohibited importation and exportation of any rough diamond; permitted importation and exportation of any rough diamond.

592.202 Evasions; attempts; conspiracies.

### **Subpart C—General Definitions**

592.301 Controlled through the Kimberley Process Certification Scheme.

592.302 Effective date.

592.303 Entity.

592.304 Exporting authority.

592.305 Importation into the United States.

592.306 Importing authority.

592.307 Kimberley Process Certificate.

592.308 Participant.

592.309 Person.

592.310 Rough diamond.

592.311 United States.

592.312 United States person; U.S. person.

### **Subpart D—Interpretations**

592.401 Reference to amended sections.

592.402 Effect of amendment.

592.403 Transshipment or transit through the United States.

592.404 Importation into or release from a bonded warehouse or foreign trade zone.

### **Subpart E—Records and Reports**

592.501 Records and reports.

### **Subpart F—Penalties**

592.601 Penalties.

592.602 Prepenalty notice.

592.603 Response to prepenalty notice; informal settlement.

592.604 Penalty imposition or withdrawal.

592.605 Administrative collection; referral to United States Department of Justice.

### **Subpart G—Procedures**

592.701 Procedures.

592.702 Delegation by the Secretary of the Treasury.

### **Subpart H—Paperwork Reduction Act**

592.801 Paperwork Reduction Act notice.

**Authority:** 3 U.S.C. 301; 31 U.S.C. 321(b); 22 U.S.C. 287c; 50 U.S.C. 1601–1641, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 108–19; E.O. 12865, 58 FR 51005, 3 CFR, 1993 Comp., p. 636; E.O. 13098, 63 FR 44771, 3 CFR, 1998 Comp., p. 206; E.O. 13194, 66 FR 7389 (January 23, 2001); E.O. 13213, 66 FR 28829 (May 24, 2001); E.O. 13312 (FR vol. 68, no. 147, July 31, 2003).

### **Subpart A—Relation of This Part to Other Laws and Regulations**

#### **§ 592.101 Relation of this part to other laws and regulations.**

This part is separate from, and independent of, the other parts of this

chapter, with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and procedures of which apply to this part. Actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. Differing foreign policy and national security circumstances may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part.

### Subpart B—Prohibitions

#### § 592.201 Prohibited importation and exportation of any rough diamond; permitted importation or exportation of any rough diamond.

(a) Except to the extent provided in paragraph (b) of this section, and notwithstanding the existence of any rights or obligations conferred or imposed by any contract entered into or any license or permit granted prior to the effective date, the importation into, or exportation from, the United States on or after July 30, 2003, of any rough diamond, from whatever source, is prohibited, unless the rough diamond has been controlled through the Kimberley Process Certification Scheme.

(b) The prohibitions in paragraph (a) of this section regarding the importation into, or exportation from, the United States of any rough diamond not controlled through the Kimberley Process Certification Scheme do not apply to an importation from, or exportation to, any country with respect to which the Secretary of State has granted a waiver pursuant to section 4(b) of the Clean Diamond Trade Act (Pub. L. 108–19) and section 2(a)(1) of Executive Order 13312.

**Note to § 592.201.** An importation of any rough diamond from, or an exportation of any rough diamond to, a non-Participant is not controlled through the Kimberley Process Certification Scheme and thus is not permitted except in the following circumstance. The Secretary of State may, pursuant to section 4(b) of the Clean Diamond Trade Act, waive the prohibitions contained in section 4(a) of that Act with respect to a particular country for periods of not more than one year each. The Secretary of State will publish a notice in the **Federal Register** identifying any country with respect to which a waiver applies and specifying the relevant time period during which the waiver will apply.

#### § 592.202 Evasions; attempts; conspiracies.

(a) Notwithstanding the existence of any rights or obligations conferred or imposed by any contract entered into or any license or permit granted prior to July 30, 2003, any transaction by a United States person anywhere, or any transaction that occurs in whole or in part within the United States, on or after the effective date that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in this part is prohibited.

(b) Notwithstanding the existence of any rights or obligations conferred or imposed by any contract entered into or any license or permit granted prior to July 30, 2003, any conspiracy formed to violate any of the prohibitions of this part is prohibited.

### Subpart C—General Definitions

#### § 592.301 Controlled through the Kimberley Process Certification Scheme.

(a) Except as otherwise provided in paragraph (b) of this section, the term *controlled through the Kimberley Process Certification Scheme* refers to the following requirements that apply, as appropriate, to the importation into the United States from a Participant, or the exportation from the United States to a Participant, of any shipment including any rough diamond:

(1) *Kimberley Process Certificate.* A shipment of rough diamonds imported into, or exported from, the United States must be accompanied by a Kimberley Process Certificate. The certificate must be presented in connection with an importation or exportation of rough diamonds if demanded by Customs officials.

(2) *Tamper-Resistant Container.* A shipment of rough diamonds imported into, or exported, from the United States must be sealed in a tamper-resistant container;

(3) *Notification Requirements for Importations into the United States.* The importer of record in the United States must confirm receipt of a shipment of rough diamonds to the relevant foreign exporting authority. The confirmation must refer to the relevant Kimberley Process Certificate by serial number, the number of parcels, the carat weight, and the details of the importer and exporter; and

(4) *Validation of Kimberley Process Certificate for Exportations from the United States.* With respect to the exportation of rough diamonds from the United States and regardless of the destination, the Census Bureau requires the filing of export information through

the Automated Export System. Submission of export information through the Automated Export System must be done in advance and must be confirmed by the return of an Internal Transaction Number. The return to the filer of the Internal Transaction Number shall constitute the validation of the Kimberley Process Certificate for an exportation of rough diamonds from the United States to a Participant. The exporter is required to report the Internal Transaction Number on the Kimberley Process Certificate accompanying any exportation from the United States. The Internal Transaction Number is a unique confirmation number generated by the Automated Export System to the filer who provides in a timely manner the complete commodity shipment data when such data have been accepted by the system.

(b) The Secretary of State, consistent with section 3(2)(b) of the Clean Diamond Trade Act (Pub. L. 108–19), may modify the requirements set forth in paragraph (a) of this section upon making a determination that a Participant has established an alternative system of control for rough diamonds that meets substantially the standards, practices, and procedures of the Kimberley Process Certification Scheme.

**Note 1 to § 592.301.** The Secretary of State will periodically publish in the **Federal Register** an up-to-date listing of all Participants. Where appropriate, such listing also will describe any modification of the requirements set forth in paragraph (a) of this section.

**Note 2 to § 592.301.** The recordkeeping and reporting requirements imposed by § 592.501 apply to all U.S. persons engaged in the importation into, or exportation from, the United States of any shipment of rough diamonds.

#### § 592.302 Effective date.

The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part, which is 12:01 a.m., eastern daylight time, July 30, 2003.

#### § 592.303 Entity.

The term *entity* means a partnership, association, trust, joint venture, corporation, or other organization.

#### § 592.304 Exporting authority.

(a) The term *exporting authority* means one or more entities designated by a Participant from whose territory a shipment of rough diamonds is being exported as having the authority to validate the Kimberley Process Certificate.

(b) The exporting authority for the United States is the Bureau of the Census.

**Note to § 592.304.** The Secretary of State will periodically publish in the **Federal Register** an up-to-date listing of the exporting authorities of all Participants.

**§ 592.305 Importation into the United States.**

The term *importation into the United States* means the bringing of goods into the United States.

**§ 592.306 Importing authority.**

(a) The term *importing authority* means one or more entities designated by a Participant into whose territory a shipment of rough diamonds is being imported as having the authority to enforce the laws and regulations of the Participant regulating imports, including the verification of the Kimberley Process Certificate accompanying the shipment.

(b) The importing authorities for the United States are the United States Bureau of Customs and Border Protection or, in the case of a territory or possession of the United States with its own customs administration, analogous officials.

**Note to § 592.306.** The Secretary of State will periodically publish in the **Federal Register** an up-to-date listing of the importing authorities of all Participants.

**§ 592.307 Kimberley Process Certificate.**

The term *Kimberley Process Certificate* means a tamper- and forgery-resistant document that bears the following information in any language, provided that an English translation is incorporated:

(a) The title “Kimberley Process Certificate” and the statement: “The rough diamonds in this shipment have been handled in accordance with the provisions of the Kimberley Process Certification Scheme for rough diamonds”;

(b) Country of origin for shipment of parcels of unmixed (*i.e.*, from the same) origin;

(c) Unique numbering with the Alpha 2 country code, according to ISO 3166-1;

(d) Date of issuance;

(e) Date of expiry;

(f) Name of issuing authority;

(g) Identification of exporter and importer;

(h) Carat weight/mass;

(i) Value in U.S. dollars;

(j) Number of parcels in the shipment;

(k) Relevant Harmonized Commodity Description and Coding System; and

(l) Validation by the exporting authority.

**Note to § 592.307.** See § 592.301(a)(4) for procedures governing the validation of the Kimberley Process Certificate when exporting from the United States.

**§ 592.308 Participant.**

The term *Participant* means a state, customs territory, or regional economic integration organization identified by the Secretary of State as one for which rough diamonds are controlled through the Kimberley Process Certification Scheme.

**Note to § 592.308.** The Secretary of State will periodically publish in the **Federal Register** an up-to-date listing of all Participants.

**§ 592.309 Person.**

The term *person* means an individual or entity.

**§ 592.310 Rough diamond.**

The term *rough diamond* means any diamond that is unworked or simply sawn, cleaved, or bruted and classifiable under subheading 7102.10, 7102.21, or 7102.31 of the Harmonized Tariff Schedule of the United States.

**§ 592.311 United States.**

The term *United States*, when used in the geographic sense, means the several States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

**§ 592.312 United States person; U.S. person.**

The term *United States person* or *U.S. person* means any United States citizen; any alien admitted for permanent residence into the United States; any entity organized under the laws of the United States or any jurisdiction within the United States (including its foreign branches); or any person in the United States.

**Subpart D—Interpretations**

**§ 592.401 Reference to amended sections.**

Except as otherwise specified, reference to any provision in this part or chapter or to any other regulation refers to the same as currently amended.

**§ 592.402 Effect of amendment.**

Unless otherwise specifically provided, any amendment, modification, or revocation of any provision in or appendix to this part or chapter or of any order, regulation, ruling, or instruction issued by or under the direction of the Director of the Office of Foreign Assets Control does not affect any act done or omitted, or any civil or criminal suit or proceeding commenced or pending prior to such amendment, modification, or

revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, or instruction continue and may be enforced as if such amendment, modification, or revocation had not been made.

**§ 592.403 Transshipment or transit through the United States.**

The prohibitions in § 592.201 apply to the importation into, or exportation from, the United States, for transshipment or transit, of any rough diamond intended or destined for any country other than the United States unless the shipment is sealed in a tamper-resistant container, accompanied by a Kimberley Process Certificate, and leaves the United States in an identical state as it entered. The validation, recordkeeping, and confirmation procedures applicable to importations and exportations do not apply in this case.

**§ 592.404 Importation into or release from a bonded warehouse or foreign trade zone.**

The requirements of the Kimberley Process Certification Scheme apply to all imported shipments of a rough diamond, regardless of whether they are destined for entry into, or withdrawal from, a bonded warehouse or a foreign trade zone of the United States.

**Subpart E—Records and Reports**

**§ 592.501 Records and reports.**

(a) Any United States person seeking to export from or import into the United States any rough diamond shall keep a full record of, in the form of reports or otherwise, complete information relating to any act or transaction to which any prohibition imposed under § 592.201(a) applies. Such record shall be available for examination for at least 5 years after the date of such act or transaction.

(b) Every United States person is required to furnish under oath, in the form of reports or otherwise, from time to time and at any time as may be required by the Director, Office of Foreign Assets Control, complete information relative to any act or transaction subject to the provisions of this part. The Director may require that such reports include the production of books of account, records, contracts, letters, memoranda, or other papers in the custody or control of persons required to make such reports. Reports with respect to any acts or transactions may be required either before or after such acts or transactions are completed.

**Subpart F—Penalties****§ 592.601 Penalties.**

(a) Attention is directed to section 8 of the Clean Diamond Trade Act (the "Act") (Pub. L. 108–19), which provides that:

(1) A civil penalty not to exceed \$10,000 per violation may be imposed on any person who violates, or attempts to violate, any order or regulation issued under the Act;

(2) Whoever willfully violates, or willfully attempts to violate, any order or regulation issued under this Act shall, upon conviction, be fined not more than \$50,000, or, if a natural person, may be imprisoned for not more than 10 years, or both; and any officer, director, or agent of any corporation who willfully participates in such violation may be punished by a like fine, imprisonment, or both; and

(3) Those customs laws of the United States, both civil and criminal, including those laws relating to seizure and forfeiture, that apply to articles imported in violation of such laws shall apply with respect to any rough diamond imported in violation of the Act.

**Note to paragraph (a).** As reflected in paragraphs (a)(1) and (2) above, section 8(a) of the Clean Diamond Trade Act (Pub. L. 108–19) establishes penalties with respect to any violation of any regulation issued under the Act. OFAC prepenalty, penalty, and administrative collection procedures relating to such violations are set forth below in §§ 592.602 through 592.605. Section 8(c) of the Act also authorizes the United States Bureau of Customs and Border Protection and the United States Bureau of Immigration and Customs Enforcement, as appropriate, to enforce the penalty provisions set forth in paragraph (a) and to enforce the laws and regulations governing exports of rough diamonds, including with respect to the validation of the Kimberley Process Certificate by the Bureau of the Census. The OFAC civil penalty procedures set forth below are separate from, and independent of, any penalty procedures that may be followed by the United States Bureau of Customs and Border Protection and the United States Bureau of Immigration and Customs Enforcement in their exercise of the authorities set forth in section 8(c) of the Clean Diamond Trade Act.

(b) The criminal penalties provided in the Act are subject to increase pursuant to 18 U.S.C. 3571.

(c) Attention is also directed to 18 U.S.C. 1001, which provides that whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device, a material fact, or makes any materially

false, fictitious, or fraudulent statement or representation or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry shall be fined under title 18, United States Code, or imprisoned not more than five years, or both.

(d) Violations of this part may also be subject to relevant provisions of other applicable laws.

**§ 592.602 Prepenalty notice.**

(a) *When required.* If the Director of the Office of Foreign Assets Control has reasonable cause to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any regulation or order issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the Clean Diamond Trade Act, and the Director determines that further proceedings are warranted, the Director shall notify the alleged violator of the agency's intent to impose a monetary penalty by issuing a prepenalty notice. The prepenalty notice 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 violation.* The prepenalty notice shall describe the violation, specify the laws and regulations allegedly violated, and state the amount of the proposed monetary 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 applicable 30-day period set forth in § 592.703 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 settlement of the agency's potential civil monetary penalty claims. In the event the Director grants the request, under terms and conditions within his discretion, the Office of Foreign Assets Control 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 potential civil monetary penalty claim.

**§ 592.603 Response to prepenalty notice; informal settlement.**

(a) *Deadline for response.* The respondent may submit a response to the prepenalty notice within the applicable 30-day period set forth in this paragraph. The Director may grant, at his discretion, an extension of time in which to submit a response to the prepenalty notice. The failure to submit 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 OFAC 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 delivery or otherwise avoided receipt of the prepenalty notice, a response must be postmarked or date-stamped on or before 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 before the 30th day after the date of delivery.

(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 granted, 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 typewritten form and signed by the respondent or a representative thereof. The response need not be in any particular form. A copy of the response may be sent by facsimile, but the original 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 accordance with paragraph (a) of this section.

(c) *Contents of response.* A written response must contain information sufficient to indicate that it is in response to the prepenalty notice and must identify the Office of Foreign Assets Control 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 OFAC 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.

#### **§ 592.604 Penalty imposition or withdrawal.**

(a) *No violation.* If, after considering any response to the prepenalty notice and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was no violation by the respondent named in the prepenalty notice, the Director shall notify the respondent in writing of that determination and of the cancellation of the proposed monetary penalty.

(b) *Violation.* (1) If, after considering any written response to the prepenalty notice, or default in the submission of a written response, and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was a violation by the respondent named in the prepenalty notice, the Director is authorized to issue a written penalty notice to the respondent of the determination of the violation and the imposition of the monetary penalty.

(2) The penalty notice shall inform the respondent that payment or arrangement for installment payment of the assessed penalty must be made within 30 days of the date of mailing of the penalty notice by the Office of Foreign Assets Control.

(3) The penalty notice shall inform the respondent of the requirement to furnish the respondent's taxpayer identification number pursuant to 31 U.S.C. 7701 and that such number will be used for purposes of collecting and reporting on any delinquent penalty amount.

(4) The issuance of the penalty notice finding a violation and imposing a monetary penalty shall constitute final agency action. The respondent has the right to seek judicial review of that final agency action in federal district court.

#### **§ 592.605 Administrative collection; referral to United States Department of Justice.**

In the event that the respondent does not pay the penalty imposed pursuant to this part or make payment arrangements acceptable to the Director of the Office

of Foreign Assets Control within 30 days of the date of mailing of the penalty notice, the matter may be referred for administrative collection measures by the Department of the Treasury or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a federal district court.

### **Subpart G—Procedures**

#### **§ 592.701 Procedures.**

For procedures relating to rulemaking and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see part 501, subpart E, of this chapter.

#### **§ 592.702 Delegation by the Secretary of the Treasury.**

Any action that the Secretary of the Treasury is authorized to take pursuant to Executive Order 13312 (FR vol. 68, No. 147, July 31, 2003) and any further Executive orders relating to the Clean Diamond Trade Act (Pub. L. 108-19) may be taken by the Director of the Office of Foreign Assets Control or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

### **Subpart H—Paperwork Reduction Act**

#### **§ 592.801 Paperwork Reduction Act notice.**

For approval by the Office of Management and Budget ("OMB") under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) of information collections relating to recordkeeping and reporting requirements and other procedures, see § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Dated: July 30, 2003.

**R. Richard Newcomb,**

*Director, Office of Foreign Assets Control.*

Approved: July 30, 2003.

**Juan C. Zarate,**

*Deputy Assistant Secretary (Terrorist Financing and Financial Crimes), Department of the Treasury.*

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