



## **DEPARTMENT OF THE TREASURY**

### **Office of Foreign Assets Control**

#### **31 CFR Part 592**

#### **Rough Diamonds Control Regulations**

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

**ACTION:** Final rule.

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**SUMMARY:** The Department of the Treasury's Office of Foreign Assets Control (OFAC) is amending the Rough Diamonds Control Regulations to clarify several reporting requirements and remove another, clarify which entity may issue Kimberley Process Certificates for the export of rough diamonds from the United States, clarify the steps necessary to validate a Kimberley Process Certificate, add two definitions that define rough diamond packaging requirements and Kimberley Process voided certificates, and make certain technical and conforming changes to the penalties section of the regulations.

**DATES:** *Effective Date:* This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** The Department of the Treasury's Office of Foreign Assets Control: Assistant Director for Licensing, tel.: 202-622-2480, Assistant Director for Regulatory Affairs, tel.: 202-622-4855, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202-622-2490; or the Department of the Treasury's Office of the Chief Counsel (Foreign Assets Control), Office of the General Counsel, tel.: 202-622-2410.

#### **SUPPLEMENTARY INFORMATION:**

##### **Electronic and Facsimile Availability**

This document and additional information concerning OFAC are available from OFAC's website ([www.treas.gov/ofac](http://www.treas.gov/ofac)).

## **Background**

On August 4, 2003, OFAC promulgated the Rough Diamonds Control Regulations, 31 CFR part 592 (the "Regulations"), to implement Executive Order 13312 (E.O. 13312) of July 29, 2003. E.O. 13312 was issued to implement the Clean Diamond Trade Act (Pub. L. 108-19) (CDTA) and the multilateral Kimberley Process Certification Scheme for rough diamonds (KPCS). OFAC amended the Regulations on September 23, 2004 to revise certain reporting requirements (69 FR 56936). OFAC further amended the Regulations on May 21, 2008 (73 FR 29433) to enhance the compilation of statistical data relating to the importation and exportation of rough diamonds.

Today, in consultation with the U.S. Department of Commerce, Bureau of the Census (Census Bureau), Department of State, and Department of Homeland Security, Customs and Border Protection (CBP), OFAC is again amending the Regulations. First, in coordination with a regulatory amendment by the Census Bureau (83 FR 17749), OFAC is incorporating into the Regulations existing Census Bureau requirements for submission of Kimberley Process Certificates in connection with the importation and exportation of rough diamonds. In addition, OFAC is clarifying which entity may issue Kimberley Process Certificates for the export of rough diamonds from the United States and adding two definitions that define rough diamond packaging requirements and Kimberley Process voided certificates. Additionally, OFAC is making certain technical and conforming changes to the penalties section of the Regulations.

*Reporting requirements.* First, in coordination with a regulatory amendment by the Census Bureau, OFAC is amending § 592.301 to incorporate existing Census Bureau

requirements for submission of Kimberley Process Certificates in connection with the importation and exportation of rough diamonds. The Census Bureau is amending the Foreign Trade Regulations (FTR), 15 CFR part 30, to clarify that the data it collects from Kimberley Process Certificates is collected in compliance with the CDTA and not Title 13, United States Code (U.S.C.), and to clarify submission requirements for and permissible uses of the Kimberley Process Certificates. In paragraph (a)(1)(iii) of § 592.301, OFAC is incorporating the existing requirement pursuant to the FTR that importers or customs brokers provide a copy of the Kimberley Process Certificate accompanying a shipment of rough diamonds to the Census Bureau immediately after entry of the rough diamonds in the United States. In paragraph (a)(1)(iv) of this section, OFAC is incorporating the FTR requirement that, with respect to rough diamond exports, the U.S. Principal Party in Interest or U.S. authorized agent, see 15 CFR § 30.1, must provide a copy of the Kimberley Process Certificate to the Census Bureau immediately after export from the United States. In paragraph (a)(1)(v) of this section, OFAC is incorporating the FTR requirement that any voided certificate be provided to the Census Bureau immediately upon voiding.

At the same time, in consultation with the Department of State, the Census Bureau, and CBP, OFAC is removing the requirement that all rough diamond importers and exporters file annual reports with the Department of State detailing their import, export, and stockpile information as previously set forth in § 592.502. OFAC has removed this requirement as unnecessary in light of alternate sources from which to obtain relevant information.

*Additional clarifications.* In § 592.301, OFAC is also adding new paragraph (a)(4) and amending and redesignating current paragraph (a)(4) as (a)(5). New paragraph (a)(4) of this section clarifies the criteria that a Kimberley Process Certificate issuer must meet, while an

accompanying note clarifies that, as reflected in a Memorandum of Understanding (MOU) among the Department of State, the Census Bureau, and U.S. Kimberley Process Authority (USKPA), a non-profit association, Kimberley Process Certificates for the exportation of rough diamonds from the United States may only be issued at this time by the USKPA or by entities licensed to do so by the USKPA. The new paragraph also states that Kimberley Process Certificates may be issued “on behalf of” this entity. In addition, amended and redesignated paragraph (a)(5) of this section clarifies the steps necessary to validate a Kimberley Process Certificate prior to exporting rough diamonds from the United States.

*Definitions.* OFAC is adding two definitions to the Regulations. The term *Voided certificate*, used in § 592.301(a)(1)(v), is defined in new § 592.313. Consistent with CBP’s practice, OFAC defines the term *Voided certificate* to mean “a Kimberley Process Certificate intended to be used for the exportation of rough diamonds from the United States that has been cancelled, for reasons such as loss or error.”

OFAC is also defining the term *Tamper-resistant container*, used in § 592.301(a)(2), by adding new § 592.314. Consistent with CBP practice, OFAC defines the term *Tamper-resistant container* to mean “packaging having an indicator or barrier to entry that could reasonably be expected to provide visible evidence that tampering had occurred.” A note to the definition further clarifies that standard mailing and express consignment packaging, or such packaging that simply contains a resealable plastic bag, is not considered to be a tamper-resistant container. This definition is intended to foster uniformity in CBP’s enforcement of rough diamond shipping requirements. OFAC is also making a conforming change in paragraph (a)(2) of § 592.301 by changing “*Tamper-resistant container*” to “*Tamper-resistance requirement*.”

*Penalties.* OFAC is also amending Subpart F, which describes the penalties applicable to violations of the Regulations, as well as the procedures governing the potential imposition of a civil monetary penalty or issuance of a Finding of Violation. OFAC is updating the language of this subpart and incorporating references to OFAC's Economic Sanctions Enforcement Guidelines contained in appendix A to part 501 of this chapter.

### **Public Participation**

Because the amendments to the Regulations involve a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, as well as the provisions of Executive Order 13771, are inapplicable. 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**

With respect to section 2 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507 (PRA), the collections of information in §§ 592.301(a)(1)(i) and (ii), 592.501, and 592.603 of the Regulations are made pursuant to OFAC's Reporting, Procedures, and Penalties Regulations (31 CFR part 501) and have been approved by the Office of Management and Budget (OMB) under control number 1505-0164. Pursuant to the Census Bureau, the collections of information in § 592.301(a)(1)(iii)–(v) and in § 592.301(a)(5) related to exporter and importer reporting requirements and the FTR previously were approved by OMB under control number 0607-0152.

*OMB Approval 1505-0198: Report to foreign exporting authority.* The collection of information in § 592.301(a)(3) has been submitted to OMB for review and approval under control number 1505-0198. This collection of information assists in carrying out the

requirements of the CDTA and KPCS and monitoring the integrity of international shipments of rough diamonds, including that the United States produce statistics on imports and exports of rough diamonds and that these statistics be made available for analysis by interested parties, including other governments participating in the KPCS. The information collected will be used to assist the Census Bureau in carrying out its statistics-related functions and the State Department in its KPCS oversight functions, and to further the compliance, enforcement, and civil penalty programs of OFAC, CBP and U.S. Immigration and Customs Enforcement, each of which has enforcement authority under the CDTA and various implementing regulations. See §§ 5(a) and 8 of the CDTA.

*OMB Approval 1505-0198: Annual State report.* The collection of information previously in § 592.502 and approved by OMB under control number 1505-0198 has been removed as unnecessary in light of alternate sources from which to obtain relevant information.

With respect to all of the foregoing collections of information, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information subject to the requirements of the PRA, unless the collection of information displays a current, valid OMB control number.

The likely respondents and recordkeepers affected by the collection of information in § 592.301(a)(3) (report to foreign exporting authority) and the removal of the collection of information in § 592.502 (Annual State report) are rough diamond importers and exporters. The anticipated number of respondents is approximately 80. OFAC expects that the majority of these respondents will report to foreign exporting authorities approximately 15 times per year. Based on information from rough diamond traders and CBP's experience, roughly 1,200 individual transaction reports are expected annually. The total number of burden hours associated with the

individual transaction reports is anticipated to be 200. This is based on an estimated completion and submission time of 10 minutes per report. This is a decrease of 300 burden hours from the prior hour burden based on current estimates that indicate there are fewer respondents and fewer imports than previously assumed. Based on information from rough diamonds traders, OFAC does not expect the hour burden on respondents to vary widely. Additionally, OFAC understands that it is the customary and usual business practice for most traders to send a detailed acknowledgment of receipt of a shipment to their overseas counterparts to the transaction.

As this regulatory amendment removes the annual State reporting requirement, the total number of burden hours is reduced by an estimated 1,250 hours. This is based on an estimated completion and submission time of five hours per report. The overall reduction in burden hours is therefore this reduction of 1,250 burden hours plus the reduction of 300 burden hours with respect to the report to foreign exporting authorities for a total reduction of 1,550 burden hours. The aggregate burden hours now associated with this information collection is 200 burden hours.

Comments are invited on: (a) whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques and other forms of information technology; and (e) the estimated capital or start-up costs of the operation, maintenance, and/or purchase of services to provide information. Comments concerning the above information and the accuracy of these burden estimates, and suggestions for reducing this burden, should be

directed to OMB, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs (OIRA), Washington, DC 20503 or by email to: OIRA\_Submission@omb.eop.gov, with a copy to Chief of Records, Attention: Request for Comments, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue N.W., Freedman's Bank Building, Washington, DC 20220. Any such comments should be submitted not later than [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. All comments on the collections of information in § 592.301(a)(3) and the removal of the collection of information in § 592.502 will be a matter of public record.

### **List of Subjects in 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, the Office of Foreign Assets Control amends 31 CFR part 592 as follows:

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

1. The authority citation for part 592 is revised to read as follows:

**Authority:** 3 U.S.C. 301; 19 U.S.C. 3901–3913; 28 U.S.C. 2461 note; 31 U.S.C. 321(b); E.O. 13312, 68 FR 45151, 3 CFR, 2003 Comp., p. 246.

### **Subpart C—General Definitions**

2. Amend § 592.301 by revising paragraphs (a)(1), (a)(2), and (a)(4), and adding paragraph (a)(5) to read as follows:

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

(a) \* \* \*



(1) *Kimberley Process Certificate*. A shipment of rough diamonds imported into, or exported from, the United States must be accompanied by an original Kimberley Process Certificate. The certificate must be provided as follows:

(i) The original certificate must be presented immediately upon demand to U.S. Customs and Border Protection in connection with an importation or exportation of rough diamonds;

(ii) The person identified as the ultimate consignee (*see* Customs Directive 3550-079A) on the Customs Form 7501 Entry Summary or its electronic equivalent filed with U.S. Customs and Border Protection in connection with an importation of rough diamonds must retain the original Kimberley Process Certificate for a period of at least five years from the date of importation (*see* also 19 CFR 12.152);

(iii) The person identified as the ultimate consignee (*see* Customs Directive 3550-079A) on the Customs Form 7501 Entry Summary or its electronic equivalent filed with U.S. Customs and Border Protection in connection with an importation of rough diamonds must provide the certificate to the U.S. Bureau of the Census immediately after entry of the shipment in the United States. The certificate must be provided by faxing it to (800) 457-7328 or by other methods as permitted by the U.S. Bureau of the Census;

(iv) The U.S. Principal Party in Interest or U.S. authorized agent (*see* 15 CFR 30.1) must also provide the certificate to the U.S. Bureau of the Census immediately after export of the shipment of rough diamonds from the United States by faxing it to (800) 457-7328 or by other methods as permitted by the U.S. Bureau of the Census; and

(v) Any voided certificate(s) must be provided to the U.S. Bureau of the Census immediately upon voiding by faxing it to (800) 457-7328 or by other methods as permitted by the U.S. Bureau of the Census (*see* § 592.313);

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

\* \* \* \* \*

(4) *Issuance of Kimberley Process Certificate for exportations from the United States.* Consistent with section 5(c) of the Clean Diamond Trade Act (CDTA), the Kimberley Process Certificate accompanying a shipment of rough diamonds exported from the United States must be issued by, or on behalf of, an entity whose standards, practices, and procedures are annually reviewed by the appropriate U.S. Government agency, and that has reached an arrangement with such agency concerning the issuance of Kimberley Process Certificates consistent with the Kimberley Process Certification Scheme and the CDTA.

**Note to paragraph (a)(4):** As reflected in a Memorandum of Understanding (MOU) among the U.S. Department of State, the U.S. Bureau of the Census, and the U.S. Kimberley Process Authority (USKPA), a non-profit association, Kimberley Process Certificates for the exportation of rough diamonds from the United States may only be issued at this time by the USKPA or by entities licensed to do so by the USKPA. Pursuant to this MOU, the U.S. Department of State annually reviews the USKPA's standards, practices, and procedures. The Secretary of State may reassign this review function to any other officers, officials, departments, and agencies within the executive branch, consistent with applicable law.

(5) *Validation of Kimberley Process Certificate for exportations from the United States.* With respect to the validation of a Kimberley Process Certificate for the exportation of rough diamonds from the United States, exporters must:

(i) Report shipments to the U.S. Bureau of the Census through the Automated Export System (AES) or a successor system and obtain an Internal Transaction Number (ITN) prior to

exportation. The ITN is the number generated by the AES and assigned to a shipment confirming that an Electronic Export Information (EEI) was accepted and is on file in the AES.

(ii) Report the ITN on the Kimberley Process Certificate accompanying any exportation from the United States, which completes the validation process for the exportation of rough diamonds from the United States to a Participant.

\* \* \* \* \*

3. Add § 592.313 to subpart C to read as follows:

**§ 592.313 Voided certificate.**

The term *voided certificate* means a Kimberley Process Certificate intended to be used for the exportation of rough diamonds from the United States that has been cancelled for reasons such as loss or error.

4. Add § 592.314 to subpart C to read as follows:

**§ 592.314 Tamper-resistant container**

The term *tamper-resistant container* means packaging having an indicator or barrier to entry that could reasonably be expected to provide visible evidence that tampering had occurred. Standard mailing and express consignment packaging, or such packaging that simply contains a resealable plastic bag, is not considered to be a *tamper-resistant container*.

**Subpart E-Records and Reports**

**§ 592.502 [Amended]**

5. Remove § 592.502.

**Subpart F-Penalties**

6. Amend § 592.601 by:

a. Revising paragraph (a)(3);

- b. Revising the note to paragraph (a); and
- c. Revising paragraphs (c) and (d).

The revisions read as follows:

**§ 592.601 Penalties.**

(a) \* \* \*

(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) of this section, section 8(a) of the Act establishes penalties with respect to any violation of any regulation issued under the Act. OFAC pre-penalty, penalty, and administrative collection procedures relating to such violations are set forth below in §§ 592.602 through 592.604. Section 8(c) of the Act also authorizes the U.S. Bureau of Customs and Border Protection and U.S. Immigration and Customs Enforcement, as appropriate, to enforce the penalty provisions set forth in paragraph (a) of this section 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 U.S. Bureau of the Census. The Office of Foreign Assets Control (OFAC) civil penalty procedures set forth below are separate from, and independent of, any penalty procedures that may be followed by the U.S. Bureau of Customs and Border Protection and U.S. Immigration and Customs Enforcement in their exercise of the authorities set forth in section 8(c) of the Act.

\* \* \* \* \*

(c) Pursuant to 18 U.S.C. 1001, 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, imprisoned, or both.

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

7. Revise § 592.602 to read as follows:

**§ 592.602 Pre-Penalty Notice; settlement.**

(a) *When required.* If OFAC has reason to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, directive, or instruction 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 determines that a civil monetary penalty is warranted, OFAC will issue a Pre-Penalty Notice informing the alleged violator of the agency's intent to impose a monetary penalty. A Pre-Penalty Notice shall be in writing. The Pre-Penalty Notice may be issued whether or not another agency has taken any action with respect to the matter. For a description of the contents of a Pre-Penalty Notice, see appendix A to part 501 of this chapter.

(b) *Response—(1) Right to respond.* An alleged violator has the right to respond to a Pre-Penalty Notice by making a written presentation to OFAC. For a description of the information that should be included in such a response, see appendix A to part 501 of this chapter.

(2) *Deadline for response.* A response to a Pre-Penalty Notice must be made within 30 days as set forth in paragraphs (b)(2)(i) and (ii) of this section. The failure to submit a response within 30 days shall be deemed to be a waiver of the right to respond.

(i) *Computation of time for response.* A response to a Pre-Penalty 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 Pre-Penalty Notice was mailed. If the Pre-Penalty Notice was personally delivered by a non-U.S. Postal Service agent authorized by OFAC, a response must be postmarked or date-stamped on or before the 30th day after the date of delivery.

(ii) *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 discretion of OFAC, only upon specific request to OFAC.

(3) *Form and method of response.* A response to a Pre-Penalty Notice need not be in any particular form, but it must be typewritten and signed by the alleged violator or a representative thereof, contain information sufficient to indicate that it is in response to the Pre-Penalty Notice, and include the OFAC identification number listed on the Pre-Penalty Notice. A copy of the written response may be sent by facsimile, but the original also must be sent to OFAC's Office of Compliance and Enforcement by mail or courier and must be postmarked or date-stamped in accordance with paragraph (b)(2) of this section.

(c) *Settlement.* Settlement discussion may be initiated by OFAC, the alleged violator, or the alleged violator's authorized representative. For a description of practices with respect to settlement, see appendix A to part 501 of this chapter.

(d) *Guidelines.* Guidelines for the imposition or settlement of civil penalties by OFAC are contained in appendix A to part 501 of this chapter.

(e) *Representation.* A representative of the alleged violator may act on behalf of the alleged violator, but any oral communication with OFAC prior to a written submission regarding the specific allegations contained in the Pre-Penalty Notice must be preceded by a written letter of representation, unless the Pre-Penalty Notice was served upon the alleged violator in care of the representative.

8. Revise § 592.603 to read as follows:

**§ 592.603 Penalty imposition.**

If, after considering any written response to the Pre-Penalty Notice and any relevant facts, OFAC determines that there was a violation by the alleged violator named in the Pre-Penalty Notice and that a civil monetary penalty is appropriate, OFAC may issue a Penalty Notice to the violator containing a determination of the violation and the imposition of the monetary penalty. For additional details concerning issuance of a Penalty Notice, see appendix A to part 501 of this chapter. The issuance of the Penalty Notice shall constitute final agency action. The violator has the right to seek judicial review of that final agency action in federal district court.

9. Revise § 592.604 to read as follows:

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

In the event that the violator does not pay the penalty imposed pursuant to this part or make payment arrangements acceptable to OFAC, 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.

10. Revise § 592.605 to read as follows:

**§ 592.605 Finding of Violation.**

(a) *When issued.* (1) OFAC may issue an initial Finding of Violation that identifies a violation if OFAC:

(i) Determines that there has occurred a violation of any provision of this part, or a violation of the provisions of any license, ruling, regulation, order, directive, or instruction 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;

(ii) Considers it important to document the occurrence of a violation; and,

(iii) Based on the Guidelines contained in appendix A to part 501 of this chapter, concludes that an administrative response is warranted but that a civil monetary penalty is not the most appropriate response.

(2) An initial Finding of Violation shall be in writing and may be issued whether or not another agency has taken any action with respect to the matter. For additional details concerning issuance of a Finding of Violation, see appendix A to part 501 of this chapter.

(b) *Response—(1) Right to respond.* An alleged violator has the right to contest an initial Finding of Violation by providing a written response to OFAC.

(2) *Deadline for response; default determination.* A response to an initial Finding of Violation must be made within 30 days as set forth in paragraphs (b)(2)(i) and (ii) of this section. The failure to submit a response within 30 days shall be deemed to be a waiver of the right to respond, and the initial Finding of Violation will become final and will constitute final agency action. The violator has the right to seek judicial review of that final agency action in federal district court.



(i) *Computation of time for response.* A response to an initial Finding of Violation 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 initial Finding of Violation was served. If the initial Finding of Violation was personally delivered by a non-U.S. Postal Service agent authorized by OFAC, a response must be postmarked or date-stamped on or before the 30th day after the date of delivery.

(ii) *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 discretion of OFAC, only upon specific request to OFAC.

(3) *Form and method of response.* A response to an initial Finding of Violation need not be in any particular form, but it must be typewritten and signed by the alleged violator or a representative thereof, contain information sufficient to indicate that it is in response to the initial Finding of Violation, and include the OFAC identification number listed on the initial Finding of Violation. A copy of the written response may be sent by facsimile, but the original also must be sent to OFAC by mail or courier and must be postmarked or date-stamped in accordance with paragraph (b)(2) of this section.

(4) *Information that should be included in response.* Any response should set forth in detail why the alleged violator either believes that a violation of the regulations did not occur and/or why a Finding of Violation is otherwise unwarranted under the circumstances, with reference to the General Factors Affecting Administrative Action set forth in the Guidelines contained in appendix A to part 501. The response should include all documentary or other

evidence available to the alleged violator that supports the arguments set forth in the response. OFAC will consider all relevant materials submitted in the response.

(c) *Determination—(1) Determination that a Finding of Violation is warranted.* If, after considering the response, OFAC determines that a final Finding of Violation should be issued, OFAC will issue a final Finding of Violation that will inform the violator of its decision. A final Finding of Violation shall constitute final agency action. The violator has the right to seek judicial review of that final agency action in federal district court.

(2) *Determination that a Finding of Violation is not warranted.* If, after considering the response, OFAC determines a Finding of Violation is not warranted, then OFAC will inform the alleged violator of its decision not to issue a final Finding of Violation.

**Note 1 to paragraph (c)(2):** A determination by OFAC that a final Finding of Violation is not warranted does not preclude OFAC from pursuing other enforcement actions consistent with the Guidelines contained in appendix A to part 501 of this chapter.

(d) *Representation.* A representative of the alleged violator may act on behalf of the alleged violator, but any oral communication with OFAC prior to a written submission regarding the specific alleged violations contained in the initial Finding of Violation must be preceded by a written letter of representation, unless the initial Finding of Violation was served upon the alleged violator in care of the representative.

Dated: June 12, 2018

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Bradley T. Smith  
Acting Deputy Director, Office of Foreign Assets Control.

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