

PERIODIC REPORT ON THE NATIONAL EMERGENCY
WITH RESPECT TO SIERRA LEONE AND LIBERIA

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

A SIX MONTH PERIODIC REPORT ON THE NATIONAL EMERGENCY
WITH RESPECT TO SIERRA LEONE AND LIBERIA THAT WAS DE-
CLARED IN EXECUTIVE ORDER 13194, OF JANUARY 18, 2001 AND
EXPANDED IN SCOPE IN EXECUTIVE ORDER 13213, OF MAY 22,
2001, PURSUANT TO 50 U.S.C. 1641(c) AND 50 U.S.C. 1703(c)



JULY 23, 2002.—Message and accompanying papers referred to the
Committee on International Relations and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

To the Congress of the United States:

As required by section 401(c) of the National Emergencies Act, 50 U.S.C. 1641(c), and section 204(c) of the International Emergency Economic Powers Act, 50 U.S.C. 1703(c), I am providing herewith a 6-month periodic report prepared by my Administration on the national emergency with respect to Sierra Leone and Liberia that was declared in Executive Order 13194 of January 18, 2001, and expanded in scope in Executive Order 13213 of May 22, 2001.

GEORGE W. BUSH.

THE WHITE HOUSE, *July 22, 2002.*

PERIODIC REPORT ON THE NATIONAL EMERGENCY WITH RESPECT TO
SIERRA LEONE AND LIBERIA

This report to the Congress covers developments over the course of the past 6 months concerning the national emergency declared in Executive Order 13194 of January 18, 2001, in response to the actions and policies of the insurgent Revolutionary United Front ("RUF") in Sierra Leone and pursuant to which the United States imposed a general ban on the direct and indirect importation of all rough diamonds from Sierra Leone to the United States, except those imports controlled through the Certificate of Origin regime of the Government of Sierra Leone. On May 22, 2001, I issued Executive Order 13213, which expanded the scope of that national emergency to include actions of the Government of Liberia in support of the RUF and prohibited the importation of all rough diamonds from Liberia. This report is submitted pursuant to section 204(c) of the International Emergency Economic Powers Act, 50 U.S.C. 1703(c), and section 401(c) of the National Emergencies Act, 50 U.S.C. 1641(c).

1. On February 6, 2002, the Department of the Treasury's Office of Foreign Assets Control ("OFAC") issued the Rough Diamonds (Sierra Leone and Liberia) Sanctions Regulations, 31 C.F.R. Part 591 (67 Fed. Reg. 5472), as an interim rule with request for public comment to implement Executive Orders 13194 and 13213. A copy of the Regulations is attached.

2. OFAC has disseminated details of this program to the financial and international trade communities by both electronic and conventional media. In the 6-month period since January 18, 2002, OFAC has not issued any specific licenses authorizing transactions otherwise prohibited by the Executive Orders and has neither assessed nor collected any civil monetary penalty for a violation of the Executive Orders. OFAC, in cooperation with the U.S. Customs Service, is closely monitoring potential violations of the general bans on the importation of rough diamonds from Sierra Leone which are not controlled through the Certificate of Origin regime and of all rough diamonds from Liberia.

3. The expenses incurred by the Federal Government in the 6-month period from January 18, through July 17, 2002, that are directly attributable to the exercise of powers and authorities conferred by the declaration of a national emergency with respect to Sierra Leone and Liberia, are reported to be approximately \$65,000, most of which represent wage and salary costs for Federal personnel. Personnel costs were largely centered in the Department of the Treasury (particularly in the Office of Foreign Assets Control, the U.S. Customs Service, the Office of the Under Secretary for Enforcement, and the Office of the General Counsel), the Department of State, and the Department of Commerce.

4. For the first time in more than a decade, Sierra Leone is at peace. More than 46,000 RUF rebels and members of a pro-government militia organization have disarmed. Multi-party elections were conducted peacefully on May 14, 2002. The United Nations Mission in Sierra Leone, the world's largest U.N. peacekeeping force, continues to assist the Sierra Leone army to provide internal security. The Sierra Leone military are deployed to all vital locations and are securing the country's borders, with heavy British guidance and support. The police have a presence in all provincial capitals. Government authority and services are being extended, albeit slowly, throughout the country.

Though there has been improvement, a significant portion of the mining and trading of diamonds remains outside Sierra Leonean government control. Liberian President Charles Taylor, who supported and sustained the RUF during its long campaign of terror in Sierra Leone, remains defiant of UN Security Council sanctions. He continues to trade in illicit diamonds smuggled from Sierra Leone, smuggle illegal arms, support RUF elements within Liberia, and pose a threat to the security and fragile stability of Sierra Leone. In June 2002, Liberian troops crossed into Sierra Leone to attack border villages. Until the threat to Sierra Leone from Charles Taylor is eliminated, and the mining of Sierra Leonean diamonds is brought under control, the threat to U.S. foreign policy remains and Executive Orders 13194 and 13213 will remain in effect.

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 591

Rough Diamonds (Sierra Leone & Liberia) Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Interim rule.

SUMMARY: The Treasury Department's Office of Foreign Assets Control is issuing regulations to implement Executive Order 13194 of January 18, 2001, as expanded in scope in Executive Order 13213 of May 22, 2001, prohibiting, with limited exceptions, the importation into the United States of rough diamonds from Sierra Leone or Liberia.

DATES: *Effective date:* February 6, 2002.

Comments: Written comments must be received no later than April 8, 2002.

ADDRESSES: Comments may be submitted either via regular mail to the attention of Chief, Policy Planning and Program Management Division, rm. 2176 Main Treasury Annex, 1500 Pennsylvania Ave. NW., Washington, DC 20220 or via OFAC's Web site (<http://www.treas.gov/ofac>).

FOR FURTHER INFORMATION CONTACT: Chief of Licensing, tel.: 202/622-2480, or Chief Counsel, tel.: 202/622-2410, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:**Electronic Availability**

This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the *Federal Register*. By modem, dial 202/512-1387 and type "/GO FAC," or call 202/512-1530 for disk or paper copies. This file is available for downloading without charge in ASCII and Adobe Acrobat⁷ readable (*.PDF) formats. For Internet access, the address for use with the World Wide Web (Home Page), Telnet, or FTP protocol is: fedbbs.access.gpo.gov. This document and additional information concerning the programs of the Office of Foreign Assets Control are available for downloading from the Office's Internet Home Page: <http://www.treas.gov/ofac>, or in fax form through the Office's 24-hour fax-on-demand service: call 202/622-0077 using a fax machine, fax modem, or (within the United States) a touch-tone telephone.

Background

On January 18, 2001, the President issued Executive Order 13194 (66 FR 7389, Jan. 23, 2001), taking into account United Nations Security Council Resolution 1306 of July 5, 2000. This order declared a national emergency in response to the actions of the insurgent Revolutionary United Front in Sierra Leone ("RUF") and prohibits the importation into the United States of rough diamonds from Sierra Leone that have not been controlled by the Government of Sierra Leone through its Certificate of Origin regime. The stated purpose of the order is to ensure that the direct or indirect importation into the United States of rough diamonds from Sierra Leone will not contribute financial support to the RUF, whose illicit trade in rough diamonds fuels the civil war in Sierra Leone by funding the rebels' aggressive actions and procurement of weapons, while at the same time seeking to avoid undermining the legitimate diamond trade or diminishing confidence in the integrity of the legitimate diamond industry.

On May 22, 2001, the President issued Executive Order 13213 (66 FR 28829, May 24, 2001), taking into account United Nations Security Council Resolution 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 RUF's illicit trade in rough diamonds through Liberia. Executive Order 13213 prohibits the direct or indirect importation into the United States of all rough diamonds from Liberia, whether or not such diamonds originated in Liberia.

Both Executive orders authorize the Secretary of the Treasury, in consultation with the Secretary of State, to promulgate rules and regulations as may be necessary to carry out the purposes of the orders. To implement the orders, the Treasury Department's Office of Foreign Assets Control, acting under authority delegated by the Secretary of the Treasury, is promulgating the Rough Diamonds (Sierra Leone & Liberia) Sanctions Regulations (the "Regulations").

Section 591.201 of subpart B of the Regulations implements section 1 of Executive Order 13194 and section 1 of Executive Order 13213 by prohibiting (1) subject to limited exceptions, the direct or indirect importation into the United States of all rough diamonds from Sierra Leone on or after January 19, 2001, and (2) the direct or indirect importation into the United States of all

rough diamonds from Liberia on or after May 23, 2001. Section 591.202 implements section 2 of Executive Order 13194 by excepting from the import prohibition those importations of rough diamonds from Sierra Leone that are controlled through the Certificate of Origin regime of the Government of Sierra Leone, provided that the diamonds have not physically entered the territory of Liberia.

Section 591.203 implements section 3 of Executive Order 13194 and section 2 of Executive Order 13213 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 the order. The regulation also prohibits any conspiracy formed to violate any of the prohibitions of the Executive orders.

Subpart C of part 591 provides definitions of terms used in the Regulations. Subpart B sets forth interpretive guidance for the Regulations. For example, § 591.403 makes clear that any transaction that is ordinarily incident to a licensed transaction and necessary to give effect to the licensed transaction is also authorized.

Subpart E relates to licenses, authorizations, and statements of licensing policy. Section 591.501 refers the reader to subpart D of part 501 of 31 CFR chapter V for procedures relating to general licenses and the issuance of specific licenses to authorize transactions otherwise prohibited under part 591 but found to be consistent with U.S. policy. Subpart F refers the reader to subpart C of part 501 of 31 CFR chapter V for provisions relating to required records and reports. Penalties for violations of the Regulations are described in subpart G of the Regulations.

Request for Comments

Because the promulgation of the Regulations pursuant to Executive Orders 13194 and 13213 involves 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, are inapplicable. However, because of the importance of the issues raised by the Regulations, this rule is 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 April 8, 2002. 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 material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials when submitted by regular mail to the person submitting the comments and will not consider them 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 public record concerning these regulations will be made available not sooner than May 7, 2002, and will be obtainable from OFAC's website (<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, 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 in CFR Part 591

Administrative practice and procedure, Certificate of origin,

Diamonds, Foreign trade, Imports, Liberia, Penalties, Reporting and recordkeeping requirements, and Sierra Leone.

For the reasons set forth in the preamble, 31 CFR chapter V is amended by adding part 591 to read as follows:

PART 591—ROUGH DIAMONDS (SIERRA LEONE & LIBERIA) SANCTIONS REGULATIONS

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

Sec.
591.101 Relation of this part to other laws and regulations.

Subpart B—Prohibitions

591.201 Prohibited importation of rough diamonds.
591.202 Permitted importation of rough diamonds.
591.203 Evasions; attempts; conspiracies.

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591.501 General and specific licensing procedures.
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591.601 Records and reports.

Subpart G—Penalties

591.701 Penalties.
591.702 Prepenalty notice.
591.703 Response to prepenalty notice; informal settlement.
591.704 Penalty imposition or withdrawal.
591.705 Administrative collection; referral to United States Department of justice.

Subpart H—Procedures

591.801 Procedures.
591.802 Delegation by the Secretary of the Treasury.

Subpart I—Paperwork Reduction Act

591.901 Paperwork Reduction Act notice.

Authority: 3 U.S.C. 301; 22 U.S.C. 287c; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–419, 104 Stat. 690 (28 U.S.C. 2461 note); E.O. 13194, 66 FR 7389 (Jan. 23, 2001); E.O. 13213, 66 FR 28829 (May 24, 2001).

Subpart A—Relation of This Part to Other Laws and Regulations**§ 591.101 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 license application and other 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. No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

Subpart B—Prohibitions**§ 591.201 Prohibited importation of rough diamonds.**

Except to the extent provided in § 591.202 or authorized by other regulations, orders, directives, rulings, instructions, licenses or otherwise, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted prior to the effective date, the direct or indirect importation into the United States of all rough diamonds from Sierra Leone or Liberia is prohibited.

§ 591.202 Permitted importation of rough diamonds.

The prohibition in § 591.201 of the importation into the United States of rough diamonds from Sierra Leone does not apply if the importation is controlled through the Certificate of Origin regime of the Government of Sierra Leone and the rough diamonds

have not physically entered the territory of Liberia.

§ 591.203 Evasions; attempts; conspiracies.

(a) Except as otherwise authorized, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted prior to the effective date, any transaction by any United States person or within the United States on or after the effective date that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in this part is prohibited.

(b) Except as otherwise authorized, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted prior to the effective date, any conspiracy formed for the purpose of engaging in a transaction prohibited by this part is prohibited.

Subpart C—General Definitions**§ 591.301 Controlled through the Certificate of Origin regime of the Government of Sierra Leone.**

The term *controlled through the Certificate of Origin regime of the Government of Sierra Leone* means accompanied by a Certificate of Origin or other documentation that demonstrates to the satisfaction of the United States Customs Service (or analogous officials of a United States territory or possession with its own customs administration) that the rough diamonds were legally exported from Sierra Leone with the approval of the Government of Sierra Leone.

§ 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 standard time, January 19, 2001, with respect to importations of rough diamonds from Sierra Leone and which is 12:01 a.m., eastern daylight time, May 23, 2001, with respect to importations of rough diamonds from Liberia.

§ 591.303 Entity.

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

§ 591.304 Importation into the United States.

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

§ 591.305 Licenses; general and specific.

(a) Except as otherwise specified, the term *license* means any license or authorization contained in or issued pursuant to this part.

(b) The term *general license* means any license or authorization the terms of which are set forth in subpart E of this part.

(c) The term *specific license* means any license or authorization not set forth in subpart E of this part but issued pursuant to this part.

Note to § 591.305. See § 501.801 of this chapter on licensing procedures.

§ 591.306 Person.

The term *person* means an individual or entity.

§ 591.307 Rough diamond.

The term *rough diamond* means all unworked diamonds classifiable in heading 7102 of the Harmonized Tariff Schedule of the United States.

§ 591.308 Rough diamonds from Sierra Leone or Liberia.

The term *rough diamonds from Sierra Leone or Liberia* means rough diamonds extracted in Sierra Leone or Liberia and rough diamonds that have physically entered the territories of Sierra Leone or Liberia, regardless of where they have been extracted.

§ 591.309 United States.

The term *United States* means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

§ 591.310 United States person; U.S. person.

The term *United States person* or *U.S. person* means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

Subpart D—Interpretations**§ 591.401 Reference to amended sections.**

Except as otherwise specified, reference to any section of this part or to any regulation, ruling, order, instruction, direction, or license issued pursuant to this part refers to the same as currently amended.

§ 591.402 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, instruction, or license 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, instruction, or license continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 591.403 Transactions incidental to a licensed transaction.

Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized.

§ 591.404 Transshipment or transit through the United States prohibited.

The prohibitions in § 591.201 apply to the importation into the United States, for transshipment or transit, of rough diamonds from Sierra Leone or Liberia that are intended or destined for any country other than the United States.

§ 591.405 Direct or indirect importation of rough diamonds from Sierra Leone or Liberia.

The prohibitions in § 591.201 apply to the importation of rough diamonds from Sierra Leone or Liberia whether those rough diamonds are being imported directly into the United States from Sierra Leone or Liberia, or indirectly through any other country.

§ 591.406 Importation into and release from a bonded warehouse or foreign trade zone.

The prohibitions in § 591.201 apply to the importation into and release 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 rough diamonds from Sierra Leone or Liberia that were imported into that bonded warehouse or foreign trade zone prior to the effective date.

Subpart E—Licenses, Authorizations and Statements of Licensing Policy**§ 591.501 General and specific licensing procedures.**

For provisions relating to licensing procedures, see part 501, subpart D, of this chapter. Licensing 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.

§ 591.502 Effect of license or authorization.

(a) No license or other authorization contained in this part, or otherwise issued by or under the direction of the Director of the Office of Foreign Assets Control, authorizes or validates any transaction effected prior to the issuance of the license, unless specifically provided in such license or authorization.

(b) No regulation, ruling, instruction, or license authorizes any transaction prohibited under this part unless the regulation, ruling, instruction, or license is issued by the Office of Foreign Assets Control and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part shall be deemed to authorize any transaction prohibited by any provision of this chapter unless the regulation, ruling, instruction, or license specifically refers to such provision.

(c) Any regulation, ruling, instruction, or license authorizing any transaction otherwise prohibited under this part has the effect of removing a prohibition contained in this part from the transaction, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction, or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property which would not otherwise exist under ordinary principles of law.

§ 591.503 Exclusion from licenses.

The Director of the Office of Foreign Assets Control reserves the right to exclude any person, property, or transaction from the operation of any license or from the privileges conferred by any license. The Director of the Office of Foreign Assets Control also reserves the right to restrict the applicability of any license to particular persons, property, transactions, or classes thereof. Such actions are binding upon all persons receiving actual or constructive notice of the exclusions or restrictions.

Subpart F—Reports**§ 591.601 Records and reports.**

For provisions relating to required records and reports, see part 501, subpart C, of this chapter. Recordkeeping and reporting requirements imposed by part 501 of this chapter with respect to the prohibitions contained in this part are considered requirements arising pursuant to this part.

Subpart G—Penalties**§ 591.701 Penalties.**

(a) Attention is directed to section 206 of the International Emergency Economic Powers Act (the "Act") (50 U.S.C. 1705), which is applicable to violations of the provisions of any license, ruling, regulation, order, direction, 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 Act. Section 206 of the Act, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Public Law 101-413, as amended, 28 U.S.C. 2461 note), provides that:

(1) A civil penalty not to exceed \$11,000 per violation may be imposed on any person who violates or attempts to violate any license, order, or regulation issued under the Act;

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

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

(c) Attention is directed to section 5 of the United Nations Participation Act (22 U.S.C. 207(c)(1)), which provides that any person who willfully violates or evades or attempts to violate or evade any order, rule, or regulation issued by the President pursuant to the authority granted in that section, upon conviction, shall be fined not more than \$10,000 and, if a natural person, may also be imprisoned for not more than 10 years; and the officer, director, or agent of any corporation who knowingly participates in such violation or evasion shall be punished by a like fine, imprisonment, or both and any property, funds, securities, papers, or other articles or documents, or any vessel, together with her tackle, apparel, furniture, and equipment, or vehicle, or aircraft, concerned in such violation shall be forfeited to the United States. The criminal penalties provided in the United Nations Participation Act are subject to increase pursuant to 18 U.S.C. 3571.

(d) 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.

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

§ 591.702 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 license, ruling, regulation, order, direction, 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 International Emergency Economic Powers 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 respondent's right to make a written presentation within the applicable 30-day period set forth in § 591.703 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.

§ 591.703 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 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 original must also 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.

(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) *Default.* If the respondent elects not to submit a written response within the time limit set forth in paragraph (a) of this section, the Office of Foreign Assets Control will conclude that the respondent has decided not to respond to the prepenalty notice. The agency generally will then issue a written prepenalty notice imposing the penalty proposed in the prepenalty notice.

(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.

§ 591.704 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 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.

§ 591.705 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 federal district court.

Subpart H—Procedures

§ 591.801 Procedures.

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; 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 D, of this chapter.

§ 591.802 Delegation by the Secretary of the Treasury.

Any action that the Secretary of the Treasury is authorized to take pursuant to Executive Order 13194 of January 18, 2001 (66 FR 7389, January 23, 2001), Executive Order 13213 of May 22, 2001 (66 FR 28829, May 24, 2001), and any further Executive orders relating to the national emergency declared in Executive Order 13194 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 I—Paperwork Reduction Act

§ 591.901 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, licensing procedures (including those pursuant to statements of licensing policy), 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: December 14, 2001.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: January 30, 2002.

Jimmy Gurulé,

Under Secretary (Enforcement), Department of the Treasury.

[FR Doc. 02-2763 Filed 2-1-02; 10:26 am]

BILLING CODE 4810-25-P