

SUPPORTING STATEMENT
1505-0198, Requirement to Report Information Regarding the Shipment of Rough Diamonds

This filing contains the information required by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520, and 5 C.F.R. Part 1320.

A. Justification.

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

The accompanying OMB 83-I application is submitted to renew the information collection authority pertaining to a revision to the Office of Foreign Assets Control's (OFAC) Rough Diamonds Control Regulations (31 CFR part 592) (the Regulations).

The Regulations were originally promulgated on August 4, 2003, pursuant to the Clean Diamond Trade Act (Pub. L. 108-19) (included as Attachment A to this submission) and Executive Order 13312 (included as Attachment B to this submission). At the time of their promulgation, the information collections in the regulations were authorized under OMB control number 1505-0164, which pertains to OFAC's Reporting, Procedures and Penalties Regulations (31 CFR part 501), and control number 0607-0152, which pertains to the Census Bureau's Foreign Trade Statistics Regulations (15 CFR part 30). Since that time, OFAC, the State Department, and U.S. Customs officials continued to meet regarding the Regulations. As a result of those meetings and consultation with members of the rough diamond importing community, OFAC decided that revisions to the Regulations were necessary to more effectively implement the Clean Diamond Trade Act.

One of the revisions to the Regulations was determined to require approval of a new information collection. Prior to the publication of the revised Regulations, OFAC requested an emergency processing and waiver of the generally applicable requirements of 5 CFR 1320.8(d) from OMB so that the information collection contained in the revised Regulations would be immediately enforceable upon publication. OMB granted OFAC's emergency application and, on September 23, 2004, OFAC published a final rule containing revisions to the Regulations and a request for comments on the just-approved information collection contained in the Regulations and identified by OMB Control Number 1505-0198 (included as Attachment C to this submission).

The information collection is contained in § 592.301 of the Regulations, which sets forth requirements that apply to the importation into or exportation from the United States of any shipment including any rough diamond. In addition to the other requirements outlined in § 592.301, § 592.301(a)(3), as revised on September 23, 2004, requires the person identified as the ultimate consignee on the Customs Form 7501 Entry summary filed with U.S. Customs and Border Protection in connection with an importation of rough diamonds to report that person's receipt of a shipment of rough diamonds to the relevant foreign exporting authority within 15 calendar days of the date that the shipment arrived at the U.S. port of entry. This collection of

information furthers the effective implementation in the United States of the multilateral Kimberley Process Certification Scheme (KPCS) for rough diamonds, as implemented through the Clean Diamond Trade Act and Executive Order 13312. The KPCS is a control regime that seeks to prevent the illicit trade in rough diamonds that in the past has fueled bloodshed, instability, and human rights abuses in West Africa.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

As revised, § 592.301(a)(3) of the Regulations requires the person identified as the ultimate consignee on the Customs Form 7501 Entry Summary filed with U.S. Customs and Border Protection in connection with an importation of rough diamonds to report that person's receipt of a shipment of rough diamonds to the relevant foreign exporting authority within 15 calendar days of the date that the shipment arrived at the U.S. port of entry. The report must refer to the relevant Kimberley Process Certificate by serial number; specify the number of parcels in the shipment; specify the total carat weight of the shipment; and identify the importer and exporter of the shipment.

The purpose of this information collection requirement is to facilitate the foreign exporting authority's prompt and efficient determination as to whether a parcel of rough diamonds arrived in the United States in the same condition as when exported. Such facilitation will strengthen the proper functioning of the KPCS and, thus, implementation of the Clean Diamond Trade Act.

The information collected by foreign exporting authorities will assist in monitoring the integrity of international shipments of rough diamonds and, therefore, can be used to further the compliance, enforcement, and civil penalty programs of OFAC, U.S. Customs and Border Protection, and the Bureau of Immigration and Customs Enforcement, each of which has enforcement authority under the Clean Diamond Trade Act and various implementing regulations. See §§ 5(a) and 8 of the Clean Diamond Trade Act.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

As revised, § 592.301(a)(3) states that the report filed by the ultimate consignee need not be in any particular form and may be submitted electronically or by mail or courier. Persons engaged in the rough diamond trade have indicated to the U.S. Government their intention to submit such reports usually by way of e-mail.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in item 2. above.

The information that OFAC requires pertains to individual transactions and is not available other than through a specific report. Each individual report of information provided is of a limited

nature, separate, and unique. Thus, there is no duplication of records.

5. If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.

The information collection requirement of revised § 592.301(a)(3) may affect a limited number of small businesses or other small entities that are engaged in the rough diamond trade. The reporting procedures are simple and straightforward and the estimated time to prepare and submit a report is expected to be ten minutes. Additionally, as noted above, reports need not be in any particular form and may be submitted electronically or by mail or courier.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

One of the principal objectives of the KPCS, and thus the Clean Diamond Trade Act, is to safeguard the integrity of rough diamond shipments while in transit. If this information collection is not conducted, it will be more difficult for the United States and other countries participating in the KPCS to determine whether an international rough diamond shipment has been tampered with.

Conducting the information collection on a less frequent basis would also run counter to the aim of the KPCS and the Clean Diamond Trade Act to prevent conflict diamonds from entering the legitimate channels of trade. The prompt detection of tampering has a strong deterrent effect and also will assist in the interdiction and recovery of conflict diamonds.

7. Explain any special circumstances that require the collection to be conducted in a manner:

□ *requiring respondents to report information to the agency more often than quarterly;*

Prompt and complete reporting on a transaction-by-transaction basis is consistent with the objectives of the KPCS and the Clean Diamond Trade Act and is necessary for OFAC and other implementing agencies to maintain effective compliance and enforcement.

□ *requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;*

Revised § 592.301(a)(3) requires the ultimate consignee to report on its receipt of the rough diamond shipment within 15 calendar days of the date that the shipment arrived at the U.S. port of entry. This 15-day period represents the maximum period of time for the filing of required entry documents under U.S. Customs and Border Protection regulations. A 30-day requirement would potentially frustrate the objectives of the KPCS and the Clean Diamond Trade Act. As explained above, a prompt determination that a shipment may have been tampered with is important to effective compliance and enforcement.

□ *requiring respondents to submit more than an original and two copies of any document;*

No such requirement exists.

- *requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;*

Pursuant to § 501.601 of OFAC's Reporting, Penalties and Procedures Regulations (31 CFR part 501), § 592.501 of the Regulations requires respondents to retain full and accurate records relating to rough diamond shipments for five years from the date of importation. The requirement for five years of record retention, which is covered by OMB control number 1505-0164, corresponds to the statute of limitations set forth in 28 U.S.C. 2462.

- *in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;*

The information collection is not part of a statistical survey.

- *requiring the use of a statistical data classification that has not been reviewed and approved by OMB;*

Not Applicable.

- *that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use;*

Though the Regulations do not themselves provide assurances of confidentiality to persons who furnish information to foreign exporting authorities, it is our understanding that those authorities have committed to safeguard commercially sensitive information. It is the policy of OFAC to protect the confidentiality of information in appropriate cases pursuant to the exemptions from disclosure provided under the Freedom of Information Act and the Privacy Act and in conformity with the requirements of the Trade Secrets Act.

- *requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.*

Though the Regulations do not themselves provide assurances of confidentiality to persons who furnish information to foreign exporting authorities, it is our understanding that those authorities have committed to safeguard commercially sensitive information. It is the policy of OFAC to protect the confidentiality of information in appropriate cases pursuant to the exemptions from disclosure provided under the Freedom of Information Act and the Privacy Act and in conformity with the requirements of the Trade Secrets Act.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

A notice for public comment was published on December 19th, 2007 (Vol 72, pg 72001). OFAC did not receive any public comments.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and record keeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

The State Department, U.S. Customs, and Treasury officials directly responsible for the implementation of the KPCS and the Clean Diamond Trade Act have, throughout the past year, participated in a series of meetings with numerous individuals and firms engaged in the rough diamond trade in the United States. The effectiveness of the process for confirming receipt of rough diamonds shipments has been discussed and the industry's input is reflected in the revision to § 592.301(a)(3).

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years - even if the collection of information activity is the same as in prior periods. There may be circumstances that mitigate against consultation in a specific situation. These circumstances should be explained.

State Department, U.S. Customs, and Treasury officials will continue to meet several times a year, on an ongoing basis, with the rough diamonds industry. These meetings are expected to include discussions of all aspects of the KPCS, including the information collection for which OFAC is seeking renewal.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

Respondents receive no payment or gifts for providing information to OFAC.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

Though the Regulations do not themselves provide assurances of confidentiality to persons who furnish information to foreign exporting authorities, it is our understanding that those authorities have committed to safeguard commercially sensitive information. It is the policy of OFAC to protect the confidentiality of information in appropriate cases pursuant to the exemptions from disclosure provided under the Freedom of Information Act and the Privacy Act and in conformity with the Trade Secrets Act.

11. *Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.*

OFAC makes no requests for sensitive information of the type described above.

12. *Provide estimates of the hour burden of the collection of information. The statement should:*

∏ *Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.*

The anticipated number of respondents is approximately 250. OFAC expects that the majority of these respondents will report to foreign exporting authorities 10 to 15 times per year. Based on discussions with the rough diamond traders and U.S. Customs' experience, roughly 3,000 reports are expected annually. The total number of burden hours is anticipated to be 500. This is based on an estimated completion and submission time of ten minutes per report. Based on discussions with 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.

If the request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.

The information collection does not involve the use of a form. As revised, § 592.301(a)(3) states that a report need not be in any particular form and may be submitted electronically or by mail or courier.

∏ *Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 13.*

Of the 3,000 estimated responses, a great majority are expected to be processed quickly by individuals acting on their own behalf or by clerk-level administrators. OFAC estimates the cost per burden hour of the anticipated 500 burden hours to be \$10 per hour, for a total cost of \$5,000.

13. Provide an estimate of the total annual cost burden to respondents or record-keeper resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14.)

∅ *The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.*

OFAC expects that any capital, start-up, operating, or maintenance costs associated with this burden will be minimal. Respondents will be able to use office equipment routinely purchased and maintained in the ordinary course of business to prepare and submit the required report.

∅ *If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.*

Not applicable.

∅ *Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.*

Not applicable.

14. Provide estimates of annualized cost to the Federal Government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies may also aggregate cost estimates from paragraphs 12, 13, and 14 in a single table.

There is no cost to the U.S. Government attributable to this information collection effort that would not have been incurred without the paperwork burden.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I.

Not applicable.

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

Results will not be published.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

Not applicable.

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I.

Not applicable.

B. Collections of Information Employing Statistical Methods.

Not applicable.