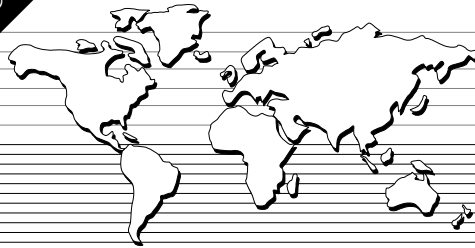




U.S. Department of the Treasury
Office of Foreign Assets Control



DIAMOND TRADING

What You Need To Know About U.S. Sanctions

An Overview of the Rough Diamonds Control Regulations Title 31 Part 592 of the U.S. Code of Federal Regulations

■ **INTRODUCTION** - In the Interlaken Declaration of November 5, 2002, representatives of the United States and 47 other countries announced the launch of the Kimberley Process Certification Scheme for rough diamonds ("KPCS"). Countries participating in the KPCS ("Participants") are expected to prohibit the importation of rough diamonds from, and the exportation of rough diamonds to, non-Participants and to require that shipments of rough diamonds from or to a Participant be controlled through the KPCS.

On April 25, 2003, the President signed the Clean Diamond Trade Act (Pub. L. 108-19) (the "Act"). The Act requires the President to take steps to implement the KPCS in the United States. On July 29, 2003, the President issued Executive Order 13312, "Implementing the Clean Diamond Trade Act."

■ **PROHIBITED TRANSACTIONS** - Executive Order 13312 prohibits, subject to certain waiver authorities set forth in section 4(b) of the Act, the importation into, and exportation from, the United States of any rough diamonds, from whatever source, not controlled through the KPCS. (Pursuant to section 4(b) of the Act, the Secretary of State, in certain limited circumstances, may waive these prohibitions with respect to a particular country for periods of not more than one year each.) This means that shipments of rough diamonds between the United States and countries that do not participate in the KPCS generally are prohibited, and shipments between the United States and Participants are permitted only if they are "controlled through the KPCS," i.e., handled in accordance with the standards, practices, and procedures of the KPCS, as summarized below. Executive Order 13312 also prohibits 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 of the order, as well as any conspiracy formed to violate any of the prohibitions of the order.

The Department of State is responsible for identifying all the Participants eligible for trade in rough diamonds (and their importing and exporting authorities) and periodically publishes an up-to-date list of Participants in the Federal Register. The list of Participants may be amended at any time as determined appropriate by the Secretary of State.

■ **KPCS REQUIREMENTS** - OFAC's Rough Diamonds Control Regulations, 31 CFR Part 592, implement Executive Order 13312 and the KPCS. The regulations, as amended, were published in 69 FR 56936 (September 23, 2004). As explained in detail in those regulations, except to the extent modified by the Secretary of State, all shipments of rough diamonds imported into the United States from a Participant, or exported from the United States to a Participant must be accompanied by a Kimberley Process Certificate and sealed in a tamper-resistant container. The Kimberley Process Certificate must bear the following information: the title "Kimberley Process Certificate"; the statement, "The rough diamonds in this shipment have been handled in accordance with the provisions of the Kimberley Process Certification Scheme for rough diamonds"; country of origin for shipment of parcels of unmixed origin; unique numbering with the Alpha 2 country code, according to ISO 3166-1; date of issuance; date of expiry; name of issuing authority; identification of exporter and importer; carat weight/mass; value; number of parcels in shipment; Harmonized Commodity Description and Coding System; and validation by the exporting authority. A shipment of rough diamonds imported into the United States that includes a parcel of mixed-origin rough diamonds must be accompanied by the Kimberley Process Certificate, and the certificate need not indicate the countries of origin of the diamonds; however, the country-of-origin field on the certificate must be filled in with asterisks. In addition, the shipment still must comply with all other country-of-origin reporting requirements.

For an inbound shipment of rough diamonds, the ultimate consignee must report receipt of the shipment to the relevant foreign exporting authority within 15 calendar days of the date that the shipment arrived at a U.S. port of entry. The report must refer to the relevant Kimberley Process Certificate by its unique identifying number; specify the number of parcels in the shipment and the total carat weight; and identify the importer and exporter. To obtain the required validation of the Kimberley Process Certificate for an exportation of rough diamonds from the United States to any Participant (including Canada), U.S. exporters must file transaction-specific information through the Automated Export System ("AES") maintained by the Bureau of the Census, which is the exporting authority for the United

States. Validation of the Kimberley Process Certificate occurs when the AES confirms the submission of export information by the return of an Internal Transaction Number, which the exporter is required to report on the Kimberley Process Certificate.

■ **PENALTIES** - The Clean Diamond Trade Act provides for criminal penalties of \$50,000 per count for corporations and individuals and/or ten years imprisonment for individuals. Civil penalties of up to \$10,000 per violation may be imposed on any person who violates, or attempts to violate, any order or regulation issued under the Act. In addition, 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 apply with respect to rough diamonds imported in violation of the Act.

Moreover, 18 U.S.C. 3571 provides that organizations or individuals convicted of violating a criminal statute may be fined the greater of the amount specified in the statute, or twice the pecuniary gain or loss from the violation, or \$500,000 for felonies and that individuals may be fined \$250,000 for felonies. Finally, 18 U.S.C. 1001 provides for five years' imprisonment and a \$10,000 criminal fine for knowingly making false statements or falsifying or concealing material facts with respect to any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States.

This document is explanatory only and does not have the force of law. The Executive Order and implementing regulations pertaining to Diamond Trading contain the legally binding provisions governing the sanctions. This document does not supplement or modify the Executive Order or regulations from a legal perspective.

The Office of Foreign Assets Control also administers sanctions programs involving Cuba, Iran, North Korea, Syria, Sudan, Burma (Myanmar), Liberia, targets in the Western Balkans, targets in Zimbabwe, designated Terrorists and international Narcotics Traffickers, Foreign Terrorist Organizations, and designated foreign persons who have engaged in activities related to the proliferation of weapons of mass destruction. For additional information about these programs or about the Diamond Trading program, please contact the:

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202/622-2520

(November 5, 2004)

EXECUTIVE ORDER 13312 - IMPLEMENTING THE CLEAN DIAMOND TRADE ACT

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Clean Diamond Trade Act (Public Law 108-19) (the "Act"), the International Emergency Economic Powers Act, as amended (50 U.S.C. 1701 et seq.), the National Emergencies Act (50 U.S.C. 1601 et seq.), section 5 of the United Nations Participation Act, as amended (22 U.S.C. 287c), and section 301 of title 3, United States Code, and in view of the national emergency described and declared in Executive Order 13194 of January 18, 2001, and expanded in scope in Executive Order 13213 of May 22, 2001, I, GEORGE W. BUSH, President of the United States of America, note that, in response to the role played by the illicit trade in diamonds in fueling conflict and human rights violations in Sierra Leone, the President declared a national emergency in Executive Order 13194 and imposed restrictions on the importation of rough diamonds into the United States from Sierra Leone. I expanded the scope of that emergency in Executive Order 13213 and prohibited absolutely the importation of rough diamonds from Liberia. I further note that representatives of the United States and numerous other countries announced in the Interlaken Declaration of November 5, 2002, the launch of the Kimberley Process Certification Scheme (KPCS) for rough diamonds, under which Participants prohibit the importation of rough diamonds from, or the exportation of rough diamonds to, a non-Participant and require that shipments of rough diamonds from or to a Participant be controlled through the KPCS. The Clean Diamond Trade Act authorizes the President to take steps to implement the KPCS. Therefore, in order to implement the Act, to harmonize Executive Orders 13194 and 13213 with the Act, to address further threats to international peace and security posed by the trade in conflict diamonds, and to avoid undermining the legitimate diamond trade, it is hereby ordered as follows:

Section 1. Prohibitions. Notwithstanding the existence of any rights or obligations conferred or imposed by any contract entered into or any license or permit granted prior to July 30, 2003, the following are, except to the extent a waiver issued under section 4(b) of the Act applies, prohibited:

- (a) the importation into, or exportation from, the United States on or after July 30, 2003, of any rough diamond, from whatever source, unless the rough diamond has been controlled through the KPCS;
- (b) any transaction by a United States person anywhere, or any transaction that occurs in whole or in part 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 this section; and
- (c) any conspiracy formed to violate any of the prohibitions of this section.

Sec. 2. Assignment of Functions.

- (a) The functions of the President under the Act are assigned as follows:
 - (i) sections 4(b), 5(c), 6(b), 11, and 12 to the Secretary of State; and
 - (ii) sections 5(a) and 5(b) to the Secretary of the Treasury.
- (b) The Secretary of State and the Secretary of the Treasury may reassign any of these functions to other officers, officials, departments, and agencies within the executive branch, consistent with applicable law.
- (c) In performing the function of the President under section 11 of the Act, the Secretary of State shall establish the coordinating committee as part of the Department of State for administrative purposes only, and shall, consistent with applicable law, provide administrative support to the coordinating committee. In the performance of functions assigned by subsection 2(a) of this order or by the Act, the Secretary of State, the Secretary of the Treasury, and the Secretary of Homeland Security shall consult the coordinating committee, as appropriate.

Sec. 3. Amendments to Related Executive Orders.

- (a) Section 1 of Executive Order 13194 of January 18, 2001, is revised to read as follows: "Section 1. Except to the extent provided by section 2 of this order, and notwithstanding the existence of any rights or obligations conferred or imposed by any contract entered into or any license or permit granted prior to the effective date of this order, the importation into, or exportation from, the United States of any rough diamond from Sierra Leone, on or after July 30, 2003, is prohibited."
- (b) Section 2 of Executive Order 13194 is revised to read as follows: "Sec. 2. The prohibitions in section 1 of this order shall not apply to the importation or exportation of any rough diamond that has been controlled through the Kimberley Process Certification Scheme."

- (c) Sections 4(c), (d), and (e) of Executive Order 13194 are deleted, and the word "and" is added after the semicolon at the end of section 4(a).
- (d) Section 1 of Executive Order 13213 of May 22, 2001, is revised to read as follows: "Section 1. Notwithstanding the existence of any rights or obligations conferred or imposed by any contract entered into or any license or permit granted prior to the effective date of this order, the direct or indirect importation into the United States of all rough diamonds from Liberia, whether or not such diamonds originated in Liberia, on or after July 30, 2003, is prohibited."

Sec. 4. Definitions. For the purposes of this order and Executive Order 13194, the definitions set forth in section 3 of the Act shall apply, and the term "Kimberley Process Certification Scheme" shall not be construed to include any changes to the KPCS after April 25, 2003.

Sec. 5. General Provisions. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities or entities, its officers or employees, or any other person.

Sec. 6. Effective Date and Transmittal.

- (a) Sections 1 and 3 of this order are effective at 12:01 a.m. eastern daylight time on July 30, 2003. The remaining provisions of this order are effective immediately.
- (b) This order shall be transmitted to the Congress and published in the Federal Register.

GEORGE W. BUSH
THE WHITE HOUSE,
July 29, 2003.