
DEPARTMENT OF THE TREASURY**Office of Foreign Assets Control****31 CFR Part 501****Rules Governing Availability of Information**

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury is issuing a final rule concerning the disclosure of certain civil penalties information. OFAC intends to publish information about civil penalties imposed and informal settlements on a weekly basis. If the publication falls on a holiday, or if required by an emergency, publication may be postponed to the following week.

DATES: This rule is effective February 11, 2003.

FOR FURTHER INFORMATION CONTACT: Chief of Civil Penalties, tel.: 202/622-6140, or Chief Counsel, tel. 202/622-2410.

SUPPLEMENTARY INFORMATION:**Background**

OFAC published a proposed rule on June 19, 2002 (67 FR 41658–59), announcing a new practice of releasing certain civil penalty enforcement information on a routine basis. OFAC received public comments on the proposed rule from thirty-two persons, including financial institutions, law firms, trade associations, individuals, and a public interest group. Six commenters generally supported the proposed rule, and many of these also urged the release of other types of information. Nine commenters generally opposed the proposed rule, particularly the proposal to release the names of entities involved in civil penalty actions. Seventeen additional commenters fell in the middle; most of these commenters opposed releasing the names of entities, but otherwise they supported the proposed rule. OFAC appreciates the very useful comments it received in response to the proposed rule, and it has carefully considered all relevant comments and how best to resolve the issues they raise.

Entity Names. Among the commenters expressing reservations with the proposed rule, most opposed the naming of the entities involved in civil penalty actions. Some commenters argued that this information is likely to hurt the reputations of the entities involved, in part because the public may misunderstand the burdens of compliance with the economic sanctions programs OFAC administers. One commenter stated that public identification of foreign companies could trigger legal problems in their home countries, where compliance with U.S. economic sanctions may be prohibited. Some commenters also argued that identifying these entities would deter voluntary disclosures and informal settlements.

After considering these comments, OFAC has concluded that, in most instances, the identities of these entities are already available to the public under the Freedom of Information Act ("FOIA"), 5 U.S.C. 552. Additionally, other governmental agencies, including some within the Department, periodically publish enforcement actions such as civil penalties assessed. Accordingly, OFAC has determined to publicize the identities of entities involved in civil penalty actions by periodic release under this rule. We believe most of the concerns identified in the public comments can be adequately addressed in the descriptions OFAC will provide, including whether the entity voluntarily

disclosed the violation and whether the penalty enforcement action was settled without a finding that a violation occurred.

Descriptions of the Violations or Alleged Violations. Some commenters urged OFAC to draw a clear distinction between penalties (which represent a final agency determination that a violation has occurred) and settlements (which do not reflect such a determination) when releasing civil penalties information under this rule. Some also urged OFAC to recognize the entities that have made voluntary disclosures of the violations. OFAC agrees with these points and has revised the final rule accordingly.

One commenter urged OFAC also to distinguish between what it characterized as "minor administrative infractions" and "more serious violations." OFAC expects that the gravity of each incident should be reflected in the brief description to be provided. On a related point, a different commenter asked that companies be permitted to negotiate how the incident is described in the releases of information under this rule. OFAC envisions providing a very brief, factual description of the violation or alleged violation (e.g., "unauthorized funds transfer to SDN bank") and will not negotiate this limited description as part of the civil penalty settlement process. However, if an entity wishes to submit a proposed description, OFAC would certainly consider it, placing a premium on accuracy and brevity.

Advance Notice; Timing. Some commenters requested that OFAC give companies and other entities advance notice of up to 90 days before releasing information under this rule. One commenter urged that the information be released pursuant to a regular, predictable schedule; another commenter urged release within a day of reaching settlement or imposing a penalty. OFAC intends to release information regarding civil penalty actions on a weekly basis, beginning April 4, 2003. However, the final rule provides for disclosure on a "routine basis, not less frequently than monthly," to afford OFAC some regulatory flexibility in preparing and releasing this information in the prescribed format. In the early implementation stages, OFAC intends to notify affected companies before information pertaining to them is made public under this rule.

Some commenters suggested that an entity should be able to avoid disclosure altogether by "correcting" the violation during a short period after a penalty is imposed or settlement reached. OFAC

believes these commenters may misunderstand the administrative civil penalties process. An export, import, funds transfer, or other transaction that violates the economic sanctions programs OFAC administers cannot be "corrected" after it occurs. Any prudent person would take steps to prevent future violations, perhaps by investing in an improved compliance program, but these steps do not relieve an entity or individual of responsibility for completed violations.

Scope of Application/Adequacy of FOIA. Several commenters urged that the final rule apply only to penalties imposed or settlements reached after today's publication date. Some commenters argued that this rulemaking is altogether unnecessary because FOIA provides adequate procedures for releasing information to the public. OFAC disagrees with both these points and will implement this rule to include settlements and penalties that have occurred since March 2002. All of the information that OFAC would release under this rule is already subject to public release under FOIA. OFAC records on settlements with entities from May 1998 through March 2002 were publicly released under FOIA and have been placed in the Department of the Treasury's electronic reading room http://www.treas.gov/foia/err_dof.htm. OFAC has found, however, that processing FOIA requests for this type of information on an ad hoc basis is not the most efficient use of its limited resources. In the implementation of this rule, OFAC intends to release information on all penalties imposed and settlements reached since the end of March 2002.

Individual Names. In the preamble to the proposed rule, OFAC invited public comments on the potential disclosure of individual names. One commenter urged OFAC to release the identities of individuals whom OFAC penalizes or with whom OFAC reaches settlements. Other commenters opposed releasing the names of company employees who might be implicated in their employer's civil penalty or settlement; one of these commenters argued that any transparency benefits from releasing such employees' identities would be outweighed by the damage to their personal and professional reputations. OFAC is currently studying the issue of releasing individual names, including the names of individuals who were personally the subject of a civil penalties matter. For the present, the final rule provides for the release of information on proceedings against individuals on an aggregate basis, in

language substantially similar to the proposed rule.

Security Risks. Some commenters argued that release of this civil penalties information would provide clues to terrorists or others about which financial institutions have the weakest OFAC compliance programs. OFAC disagrees. The frequency of civil penalty actions does not necessarily correspond to the effectiveness of a financial institution's compliance program; a small community bank should be expected to have fewer incidents than a large financial institution that processes thousands of transactions daily. As noted above, this information about OFAC's civil penalties proceedings is already available to the public under FOIA, and OFAC does not see any substantial security risk in the implementation of this rule.

Additional Information. One commenter sought clarification of proposed section 501.805(d)(1)(iii), which provided that OFAC may, "[o]n a case-by-case basis, * * * release additional information concerning a particular civil penalties proceeding." This subsection has been relocated to section 501.805(d)(4) in the final rule. Section 501.805(d)(4) is intended to clarify that this rule does not restrict OFAC's ability to disclose additional information about a penalty or settlement to the extent authorized by law. For example, the Department of the Treasury occasionally issues press releases to announce the conclusion of noteworthy OFAC civil penalty actions, and these press releases may include more detail than what is contemplated in the routine releases of information under this rule. OFAC does not intend to release any trade secrets or confidential business information it may acquire during the course of a civil penalty action.

A few commenters urged OFAC to publish, in the implementation of this rule, additional information unique to each civil penalty action. Some urged publication of an analysis of aggravating and mitigating factors in each case; others urged that we describe what the affected entity could have done to avoid the incident. With respect to settlements, one commenter urged that OFAC explain why it decided to settle a case rather than pursue a penalty. At this time, OFAC does not intend to release these types of information on a regular basis as part of the implementation of this rule. Some of this information would be privileged, and in each case preparing detailed additional information would encumber the prompt and efficient implementation of this rule.

Other Comments. OFAC received a wide variety of other comments, including suggestions that OFAC develop free compliance software for banks, add a "frequently asked questions" section to its website, and publish its internal civil penalties guidelines. These matters are not addressed in the final rule because they are outside the scope of this rulemaking. We note, however, that OFAC's website does include a "frequently asked questions" section <http://www.treas.gov/ofac> and that OFAC's enforcement guidelines are due to be published in the **Federal Register** in the near future.

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, Telnet, or FTP protocol is fedbbs.access.gpo.gov.

This document and additional information concerning OFAC are available from OFAC's website <http://www.treas.gov/ofac> or via facsimile through OFAC's 24-hour fax-on-demand service, tel: 202/622-0077. Comments on this proposed rule may be viewed electronically via OFAC's website.

Regulatory Flexibility Act, Paperwork Reduction Act, and Executive Order 12866

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities. The rule imposes no regulatory burdens on the public and simply announces that OFAC will publicly release certain information about civil penalties imposed and informal settlements. Accordingly, no regulatory flexibility analysis is required.

The Paperwork Reduction Act does not apply because the rule does not impose information collection requirements that would require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* A regulatory assessment is not required because this rule is not a "significant regulatory action" as defined in Executive Order 12866.

List of Subjects in 31 CFR Part 501

Administrative practice and procedure, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 31 CFR Part 501 is amended as follows:

PART 501—REPORTING AND PROCEDURES REGULATIONS

1. The authority citation continues to read as follows:

Authority: 21 U.S.C. 1901-1908; 22 U.S.C. 287c; 31 U.S.C. 321(b); 50 U.S.C. 1701-1706; 50 U.S.C. App. 1-44.

2. Section 501.805 is amended by adding paragraph (d) to read as follows:

§ 501.805 Rules governing availability of information.

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(d) **Certain Civil Penalties Information.** (1) After the conclusion of a civil penalties proceeding that results in either the imposition of a civil monetary penalty or an informal settlement, OFAC shall make available to the public certain information on a routine basis, not less frequently than monthly, as follows:

(i) In each such proceeding against an entity, OFAC shall make available to the public

(A) The name and address of the entity involved,

(B) The sanctions program involved,

(C) A brief description of the violation or alleged violation,

(D) A clear indication whether the proceeding resulted in an informal settlement or in the imposition of a penalty,

(E) An indication whether the entity voluntarily disclosed the violation or alleged violation to OFAC, and

(F) The amount of the penalty imposed or the amount of the agreed settlement.

(ii) In such proceedings against individuals, OFAC shall release on an aggregate basis

(A) The number of penalties imposed and informal settlements reached,

(B) The sanctions programs involved,

(C) A brief description of the violations or alleged violations,

(D) A clear indication whether the proceedings resulted in informal settlements, in the imposition of penalties, or in administrative hearing requests pursuant to the Trading With the Enemy Act (TWEA), 50 U.S.C. 5(b), and

(E) The amounts of the penalties imposed and the amounts of the agreed settlements.

(2) The medium through which information will be released is OFAC's website at <http://www.treas.gov/ofac>.

(3) The information made available pursuant to paragraph (d)(1) of this section shall not include the following:

(i) The name of any violator or alleged violator who is an individual.

(ii) Records or information obtained or created in the implementation of part 598 of this chapter.

(4) On a case-by-case basis, OFAC may release additional information concerning a particular civil penalties proceeding.

Dated: January 10, 2003.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: January 14, 2003.

Kenneth E. Lawson,

*Assistant Secretary (Enforcement),
Department of the Treasury.*

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