



RESCINDED

OCC 2002-30

Subject: Office of Foreign Assets Control
Date: July 3, 2002

**To: Chief Executive Officers and Compliance
Officers of All National Banks, Federal Branches
and Agencies, Department and Division Heads,
and All Examining Personnel**

Description: Notice of Proposed Rulemaking—Rules Governing Availability of Information

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information about civil penalties and informal settlements. For example, OFAC will publish the name of the entity involved (except names of individuals), the sanctions program involved, a brief description of the violation or alleged violation, and the amount of the penalty.

Comments on the proposed regulation may be submitted to OFAC on or before July 19.

Questions about the proposed regulation may be directed to your OCC supervisory office or the Compliance Division at (202) 874-4428.

David G. Hammaker
Deputy Comptroller for Compliance

Related Links

- [Notice of Proposed Rulemaking](#)

concerning the disclosure of certain civil penalties information. On a periodic basis, not less frequently than quarterly, OFAC intends to make public certain information about civil penalties imposed and informal settlements.

DATES: Public comments must be received by OFAC on or before July 19, 2002.

ADDRESSES: Comments may be submitted to the Chief of Records, ATTN: Request for Comments, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Alternatively, comments may be submitted via facsimile to the Chief of Records at 202/622-1657 or via OFAC's Web site <<http://www.treas.gov/offices/enforcement/ofac/comment.html>>.

FOR FURTHER INFORMATION CONTACT: Chief of Records, tel.: 202/622-2500, or Chief Counsel, tel. 202/622-2410.

SUPPLEMENTARY INFORMATION:

Background

OFAC is committed to making its enforcement activities more transparent to the public. In an effort to achieve this goal, while balancing foreign policy considerations and the requirements of the statutes, Executive Orders, and regulations it administers and enforces, OFAC offers this notice of a proposed rule governing the public availability of certain civil penalties information. OFAC expects that making certain additional information public will promote greater awareness of its enforcement activities and encourage compliance with the economic sanctions programs OFAC administers and enforces under 31 CFR chapter V.

OFAC has already made public certain information pertaining to informal settlements of civil penalties matters in response to a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. 552. Within a given range of dates, the FOIA requester sought, inter alia, the identity of each entity with which a civil penalties matter was settled, the nature of the alleged violation, and the amount of the settlement. OFAC is still in the process of completing its response to this particular FOIA request, but an interim release of documents generated substantial public interest.

Prospectively, OFAC intends to make public the following civil penalties information on a periodic basis, not less frequently than quarterly. In proceedings against an entity that result in either the imposition of a civil monetary penalty or an informal settlement, OFAC plans to release (1) the name of the entity involved, (2) the

sanctions program involved, (3) a brief description of the violation or alleged violation, and (4) the amount of the penalty imposed or the amount of the agreed settlement. At this time, OFAC does not plan to release the names of individuals involved in civil penalties matters, but OFAC may decide to do so in the future; we would welcome public comments on the potential disclosure of individual names in response to this notice. For the time being, penalties and informal settlements involving individuals will be included in the periodic release on an aggregate basis. The information concerning civil penalties and informal settlements will be made available to the public through OFAC's Web site <<http://www.treas.gov/offices/enforcement/ofac/index.html>>.

In addition to the names of individuals, there are certain types of information that OFAC does not propose to make public under this rule. These include information relating to the Foreign Narcotics Kingpin Sanctions Regulations, trade secrets and other sensitive commercial or financial information, and information on proceedings that have not yet been completed.

Civil Penalties Proceedings Under the Kingpin Act. Section 805(e)(3) of the Foreign Narcotics Kingpin Designation Act ("FNKDA"), 21 U.S.C. 1904(e)(3), provides that a key disclosure provision of FOIA, 5 U.S.C. 552(a)(3), shall not apply to any record or information obtained or generated in the implementation of FNKDA. OFAC has implemented FNKDA through the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598, which explain that information obtained or created in the implementation of those regulations shall not be disclosed under section 552(a)(3) of FOIA. *See* 31 CFR § 598.802. In recognition of the important policies underlying this provision of FNKDA, OFAC does not plan to make public, under this proposed rule, information from civil penalties proceedings conducted under the Foreign Narcotics Kingpin Sanctions Regulations.

Trade Secrets and Commercial or Financial Information. OFAC does not intend to make public any "trade secrets and commercial or financial information obtained from a person and privileged or confidential," within the meaning of section 552(b)(4) of FOIA.

Pending Proceedings. As a matter of policy, OFAC does not publicly comment on pending enforcement and civil penalties proceedings. OFAC plans to make public the information described in this proposed rule only

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: Proposed rule; request for comments.

SUMMARY: The Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury invites public comments on a proposed rule

after the conclusion of any such proceedings.

Electronic Availability

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This document and additional information concerning the Office of Foreign Assets Control are available from OFAC's Web site <<http://www.treas.gov/offices/enforcement/ofac/index.html>> or via facsimile through OFAC's 24-hour fax-on-demand service, tel: 202/622-0077. Comments on this proposed rule may be submitted electronically via OFAC's Web site <<http://www.treas.gov/offices/enforcement/ofac/comment.html>>.

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 proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed 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 proposed 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 proposed rule is not a "significant regulatory action" as defined in Executive Order 12866.

Request for Comment

OFAC invites public comments concerning this proposed rule. Comments must be received within thirty (30) days of the publication date of this notice. The address for submitting comments appears near the beginning of this notice. All relevant comments received will be made available to the public on OFAC's Web site <<http://www.treas.gov/offices/enforcement/ofac/index.html>>.

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, OFAC proposes to amend 31 CFR Part 501 to read as follows:

PART 501—REPORTING AND PROCEDURES REGULATIONS

Subpart D—Procedures

Amend § 501.805 by adding paragraph (d) to read as follows:

§ 501.805 Rules governing availability of information.

* * * * *

(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 periodic basis, not less frequently than quarterly, as follows:

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

- (A) The name of the entity involved,
- (B) The sanctions program involved,
- (C) A brief description of the violation

or alleged violation, and

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

(ii) In such proceedings involving 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, and
- (D) The amounts of the penalties imposed and the amounts of the agreed settlements.

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

(2) 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.

Dated: June 12, 2002.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: June 12, 2002.

Kenneth Lawson,

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

[FR Doc. 02-15377 Filed 6-14-02; 10:19 am]

BILLING CODE 4810-25-P