

## DEPARTMENT OF THE TREASURY

## Office of Foreign Assets Control

31 CFR Parts 500, 501, 505, 515, 535, 536, 537, 538, 539, 540, 545, 550, 560, 575, 585, 586, 587, 588, 590, 591, 594, 595, 596, 597, and 598

**Foreign Assets Control Regulations; Reporting and Procedures Regulations; Cuban Assets Control Regulations; Publication of Revised Civil Penalties Hearing Regulations**

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** The Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury ("Treasury") is issuing this interim final rule to provide revisions to its civil penalties regulations promulgated pursuant to the Trading with the Enemy Act. These revisions consolidate substantive changes to the Foreign Assets Control Regulations, and the Cuban Assets Control Regulations, in a new subpart of the Reporting and Procedures Regulations, renamed Reporting, Procedures, and Penalties Regulations. Conforming changes are made to the other parts of the regulations.

**DATES:** This interim final rule is effective September 11, 2003. Written comments on this interim final rule may be submitted on or before October 14, 2003.

**ADDRESSES:** Comments may be submitted by mail, by facsimile, or through OFAC's Web site. Because paper mail in the Washington, DC area may be subject to delay, electronic mail submission is recommended.

*Mailing address:* Chief of Records, ATTN Request for Comments, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

*Facsimile number:* (202) 622-1657.  
*OFAC's Web site:* <<http://www.treas.gov/ofac.html>>. Comments must be in writing. OFAC will not accept comments accompanied by a request that all or part of the submission be treated confidentially because of its business proprietary nature or for any other reason. All comments received by the deadline will be a matter of public record and will be made available on OFAC's Web site.

**FOR FURTHER INFORMATION CONTACT:** Chief of Penalties, tel.: (202) 622-6140, or Chief Counsel, tel.: (202) 622-2410.

## SUPPLEMENTARY INFORMATION:

## Electronic Availability

This document and additional information concerning OFAC are available from OFAC's Web site <<http://www.treas.gov/ofac.html>> or via facsimile through a 24-hour fax-on-demand service, tel: (202) 622-0077. Comments on this interim final rule may be submitted electronically through OFAC's Web site <http://www.treas.gov/ofac.html>.

## Analysis of the Interim Final Rule

## Background

OFAC hereby publishes as revisions to 31 CFR parts 500, 501, and 515 its civil penalties regulations promulgated pursuant to the Trading with the Enemy Act. These revisions expand on and clarify existing civil penalties procedures. They are intended to promote the transparency of OFAC's procedures and to streamline the existing regulatory scheme. In order to effect a procedurally fair and expeditious resolution of civil penalties cases, OFAC intends that the revised rules for the conduct and review of agency hearings, contained at 31 CFR §§ 501.710-501.761, shall be effective for all hearings regardless of whether the request for hearing was made before the effective date of these revisions.

Currently, the only sanctions programs implemented pursuant to the Trading with the Enemy Act, and significantly affected by these changes, are the Foreign Assets Control Regulations (applicable to North Korea and Vietnam), the Cuban Assets Control Regulations (applicable to Cuba), and the Transaction Control Regulations, at 31 CFR part 505 (applicable to certain offshore trade in strategic goods with the former Soviet Bloc). For ease of the reader, the relevant subparts of parts 500, 501, and 515 are being republished in their entirety. OFAC is also making non-substantive conforming amendments to each of the other parts of 31 CFR chapter V.

## Narrative Overview

The administrative process for enforcing TWEA sanctions programs proceeds as follows:

(a) The Director of the Office of Foreign Assets Control will notify a suspected violator (hereinafter "respondent") of an alleged violation by issuing a "Prepenalty Notice." The Prepenalty Notice shall describe the alleged violation(s) and include a proposed civil penalty amount.

(b) The respondent will have 60 days from the date the Prepenalty Notice is served to make a written presentation either defending against the alleged violation or admitting the violation. A respondent who admits a violation may offer information 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. Information presented during this period may also be used in informal settlement negotiations.

(c) Absent a settlement agreement or a finding that no violation occurred, the Director of the Office of Foreign Assets Control will issue a "Penalty Notice." The respondent will have 30 days from the date of service to either pay the penalty or request a hearing.

(d) If the respondent requests a hearing, the Director of the Office of Foreign Assets Control will have two options:

(1) The Director may issue an "Order Instituting Proceedings" and refer the matter to an Administrative Law Judge for a hearing and decision; or

(2) The Director may determine to discontinue the penalty action based on information presented by the respondent.

(e) Absent review by a Secretary's designee, the decision of the Administrative Law Judge will become the final decision of the Department without further proceedings.

(f) If review is taken by a Secretary's designee, the Secretary's designee reaches a final Department decision.

## Procedural Requirements

Because this interim final rule pertains to a foreign affairs function of the United States, it is not subject to Executive Order 12866.

Pursuant to 5 U.S.C. 553(a)(1), general notice of proposed rule making is not applicable to this interim final rule because it involves a foreign affairs function of the United States. Moreover, Treasury finds, in accordance with 5 U.S.C. 553(b)(A), that notice and public procedure is not required because this interim final rule involves agency procedure and practice. Moreover, this rule merely re-orders and clarifies the existing administrative process for civil penalty cases and will facilitate the provision of hearings for persons who have already requested them.

Notwithstanding the above findings, however, in the interest of receiving full public comment, Treasury is also issuing a companion proposed rule with request for comment on all aspects of the interim final rule. Published elsewhere in a separate part of this issue of the **Federal Register** is a notice of