

**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](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