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OFAC OPENS UP

OFAC Publishes Civil Penalty Guidelines

On January 29, 2003, the U.S. Department of the Treasury, Office of Foreign Assets Control (OFAC), as part of its effort to increase transparency, published an updated version of its internal "Economic Sanctions Enforcement Guidelines" in the Federal Register for public comment.

The guidelines, which are applicable to all economic sanctions programs administered by OFAC, outline the following:

- OFAC's procedures for determining whether an economic sanctions violation has occurred;
- the range of enforcement options available to OFAC (*i.e.*, license suspension and revocation, warning letters, cautionary letters, and civil penalties);
- mitigating and aggravating factors that will be considered by OFAC when determining a penalty assessment or settlement amount (*e.g.*, voluntary disclosure, remedial measures taken, history of compliance, cooperation with investigation) and the general percentage of aggravation or mitigation;
- OFAC's settlement process; and
- specific monetary penalties that will be applied to violations of the Cuban Assets Control Regulations.

These guidelines are based on Penalties Guidelines currently used by OFAC in civil cases that were released in the Judicial Review Commission Final Report to Congress on Foreign Asset Control, January 2001. The proposed guidelines use similar factors for mitigation but are less detailed in allocating specific dollar amounts that will be taken off a penalty if the mitigation factor is present.

When adopted, the general provisions of the guidelines will be published as an appendix to the Reporting and Procedures Regulations, 31 C.F.R. Part 501, and specific provisions pertaining to Cuba will be published as an appendix to the Cuban Assets Control Regulations, 31 C.F.R. Part 515.

Comments must be submitted by March 31, 2003 in accordance with the procedures stated in the Federal Register. All comments received will be a matter of public record and made available on OFAC's website, www.treas.gov/ofac.

Civil Settlements to be Published Weekly

On February 11, 2003 OFAC published a final rule concerning the disclosure of civil penalty information. The new rule, effective immediately, provides that after the conclusion of a civil penalties proceeding that results in either the imposition of a civil monetary penalty or an

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informal settlement, OFAC will make publicly available the following information on a weekly or at least monthly basis:

- name and address of the entity involved;
- the sanctions program involved;
- a brief description of the violation or alleged violation;
- clear indication whether the proceeding resulted in an informal settlement or an imposition of a penalty;
- whether the entity voluntarily disclosed the violation to OFAC; and
- the penalty amount or the agreed settlement.

With respect to proceedings against individuals, OFAC will release only the following information on an aggregate basis:

- the number of penalties imposed and informal settlements reached;
- sanctions program;
- a brief description of the violation or alleged violations;
- whether the proceeding resulted in informal settlements or the imposition of penalties or administrative hearing requests; and
- penalty amount imposed or the agreed settlement amounts.

This new rule follows OFAC's decision to publish redacted versions of settlement letters as a result of a Freedom of Information Act request filed and appealed to Federal Court. Previously, all OFAC proceedings were treated confidentially. Now companies involved in enforcement matters risk disclosure of their activities involving countries and entities subject to OFAC sanctions regulations. The information will be made available on OFAC's website at www.treas.gov/ofac.

For further information about this issue or other international trade matters, please contact Alina Gorokhovsky at agorokhovsky@pillsburywinthrop.com or 703 905 2029.

This publication is devoted exclusively to developments relating to international trade and is published on a regular basis to reflect major legal updates. If you would like to subscribe to this publication, please email jziros@pillsburywinthrop.com.

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