Net weight of fireworks [1] (pounds)	Distance between magazine and inhabited building, passenger railway, or highway [2 3 4] (feet)	Distance between magazines [2 3 4] (feet)
0–1000	150	100
1001–5000	230	150
5001–10000	300	200
10001–15000	360	200
15001–20000	420	200
20001–30000	480	225
30001–40000	625	250
40001–50000	675	275
50001–60000	910	300
60001–75000	1500	325
75001–100000	1750	375
100001–200000	2000	500
Above 200000	Use table § 55.218	.....

* * * * *

Signed: August 12, 2002.

Bradley A. Buckles,

Director.

Approved: January 7, 2003.

Timothy E. Skud,

Deputy Assistant Secretary, (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 03–1946 Filed 1–28–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Parts 501 and 515

Reporting and Procedures Regulations; Cuban Assets Control Regulations: Publication of Economic Sanctions Enforcement Guidelines

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Foreign Assets Control (''OFAC'') of the U.S. Department of the Treasury is publishing for public comment an updated version of its internal Economic Sanctions Enforcement Guidelines. These Guidelines are being published as separate appendices to two parts of the Code of Federal Regulations: general provisions are being published as an appendix to the Reporting and Procedures Regulations, 31 CFR part 501, and specific provisions focusing on Cuba are being published as an appendix to the Cuban Assets Control Regulations, 31 CFR part 515.

DATES: Written comments must be received on or before March 31, 2003.

ADDRESSES: Comments may be submitted by mail, by facsimile, or through OFAC's Web site.

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/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:

Electronic Availability

This document and additional information concerning OFAC are available from OFAC's Web site *http://www.treas.gov/offices/enforcement/ofac/index.html* or via facsimile through a 24-hour fax-on-demand service, tel: 202/622–0077. Comments on these Guidelines may be submitted electronically through OFAC's Web site *http://www.treas.gov/offices/enforcement/ofac/comment.html.*

Procedural Requirements; Request for Comment

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it is hereby certified that this rule would not have a significant economic impact on a substantial number of small entities. OFAC's Guidelines impose no regulatory burdens on the public. The Guidelines simply explain OFAC's enforcement practices based on existing substantive and procedural rules. Accordingly, no regulatory flexibility analysis is required. A regulatory assessment is not required because this rule is not a ''significant regulatory action'' as defined in Executive Order 12866.

Comments must be submitted in writing. The addresses and deadline for submitting comments appear near the beginning of this notice. 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 *http://www.treas.gov/offices/enforcement/ofac/index.html.*

Paperwork Reduction Act

The collections of information related to the Reporting and Procedures Regulations and the Cuban Assets Control Regulations have been previously approved by the Office of Management and Budget (''OMB'') under control number 1505–0164. A small adjustment to that collection has been submitted to OMB in order to take into account the voluntary disclosure rule proposed in this notice. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The new collection of information is contained in subpart B of part III of the new Appendix to part 501—Economic Sanctions Enforcement Guidelines. This subpart explains that when apparent violations are voluntarily disclosed by the actor to OFAC, the proposed penalty will generally be mitigated by at least 50%. This voluntary disclosure rule provides an incentive for persons who have violated economic sanctions laws to come forward and provide OFAC information that it can use to better enforce its economic sanctions programs.

The likely submitters who will avail themselves of the voluntary disclosure rule are financial institutions, business organizations, other entities, and individuals who find that they have violated a sanctions prohibition and wish to disclose their violation.

The estimated total annual reporting and/or recordkeeping burden: 50 hours. *The estimated annual burden per respondent/record keeper:* 1 hour.

Estimated number of respondents and/or record keepers: 50. *Estimated annual frequency of responses:* once or less, given that OFAC expects that persons who voluntarily disclose their violations will take better care to avoid future violations.

Comments are invited on: (a) Whether this new collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments concerning the above information, the accuracy of estimated average annual burden, and suggestions for reducing this burden should be directed to OMB, Paperwork Reduction Project, control number 1505–0164, Washington, DC, 20503, with a copy to the Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Ave., NW.,—Annex, Washington, DC 20220. Any such comments should be submitted not later than March 31, 2003. Comments on aspects of this proposed rule other than those involving collections of information subject to the PRA should not be sent to OMB.

Background

OFAC hereby publishes as appendices to 31 CFR parts 501 and 515 its Guidelines for the enforcement of the various economic sanctions programs it administers. These Guidelines review OFAC's procedures for determining whether an economic sanctions violation has occurred and outline the range of enforcement options available, including the imposition of a civil monetary penalty. A schedule of proposed penalties for certain violations of the Cuban Assets Control Regulations, 31 CFR part 515, is published as a separate appendix to those particular regulations. These Guidelines serve as a general framework for OFAC's enforcement activities, but OFAC may depart from them in particular cases.

The primary mission of OFAC is to administer and enforce economic sanctions against targeted foreign countries, terrorists and terrorist organizations, and narcotic traffickers in furtherance of U.S. foreign policy and national security objectives. OFAC acts under general Presidential wartime and national emergency powers, as well as specific legislation, to prohibit transactions and freeze (or ''block'') assets subject to U.S. jurisdiction. Economic sanctions are designed to deprive the target of the use of its assets and deny the target access to the U.S. financial system and the benefits of trade, transactions, and services involving U.S. markets, businesses, and individuals. These same authorities have also been used to protect assets subject to U.S. jurisdiction of countries subject to foreign occupation and to further important U.S. nonproliferation goals.

OFAC currently administers and enforces 24 economic sanctions programs pursuant to Presidential and Congressional mandates. Active enforcement of these programs is a crucial element in preserving and advancing the foreign policy and national security objectives that underlie these initiatives, usually taken in conjunction with diplomatic and occasionally military action. Penalties, both civil and criminal, serve as a deterrent to conduct that undermines or prevents these sanctions from achieving their foreign policy and national security goals. When violations occur, penalties serve a punitive purpose.

The Economic Sanctions Enforcement Guidelines (the ''Guidelines'') published today are intended to provide OFAC with a procedural framework of general applicability to promote consistency while allowing for the appropriate exercise of agency discretion. They are also intended to promote the transparency of OFAC's procedures and better inform the regulated community. OFAC has always sought to maximize voluntary compliance by the public with U.S. sanction laws and regulations. To further its commitment to maximize voluntary compliance, OFAC is publishing these Guidelines in the **Federal Register** for comment. These Guidelines supersede and replace internal Guidelines previously used by OFAC.

Historical Overview of Statutory Authorities and Regulatory Framework

The United States Department of the Treasury has a long history of dealing with economic sanctions. Prior to the War of 1812, Secretary of the Treasury Gallatin administered sanctions against Great Britain, in the form of the Embargo Act and the Non-Intercourse Act, for British harassment of American sailors. In 1861, during the Civil War, Congress passed the ''Trading With the Enemy Act,'' which prohibited transactions with the Confederacy, called for the forfeiture of goods involved in such transactions, and provided a licensing system under rules and regulations administered by the Treasury Department. This Civil War legislation was updated as the Trading With the Enemy Act of 1917, 50 U.S.C. App. 1–44, for purposes of responding to World War I.

OFAC and The Trading with the Enemy Act of 1917. OFAC is the successor to the Office of Foreign Funds Control (the ''FFC''), which was established at the advent of World War II following the German invasion of Norway in 1940. The FFC's initial purpose, in exercising authorities under Section 5(b) of the Trading With the Enemy Act of 1917 (''TWEA''), was to prevent Nazi use of the occupied countries' holdings of foreign exchange and securities and to prevent forced repatriation of funds belonging to nationals of those countries. These controls were later extended to protect assets of other invaded countries.

After the United States formally entered World War II, the FFC played a leading role in economic warfare against the Axis powers by blocking enemy assets and prohibiting foreign trade and financial transactions. These assets also would serve as a future source of war reparations. The FFC program was administered by the Secretary of the Treasury throughout the war. After the cessation of hostilities, most foreign property subject to protective blocking was gradually released by licenses under the Foreign Funds Control Regulations (the ''FFCR''). Most enemy property was vested by the U.S. Government during and immediately after the war. Responsibility for administering the FFCR was transferred to the Attorney General (Office of Alien Property), effective October 1, 1948.

OFAC was formally created in December 1950, following the entry of China into the Korean War, when President Truman declared a national emergency under TWEA in response to the threat of international communism and blocked all Chinese and North Korean assets subject to U.S. jurisdiction. Economic sanctions against these countries, later expanded to include Vietnam and Cambodia, were promulgated at 31 CFR part 500. Part 505 was added in 1953 to restrict offshore trade with the Soviet Bloc in items of the kind controlled for export from the United States for national security reasons.

In 1963, pursuant to TWEA, President Kennedy imposed a trade embargo and ordered the blocking of assets of Cuba

and Cuban nationals in response to hostile acts against the United States by the Castro regime. Regulations implementing these sanctions are set forth at 31 CFR part 515. In 1966, the Justice Department returned responsibility for administering the FFCR to the Treasury Department, and these regulations were set forth at 31 CFR part 520.

Section 16 of TWEA provides for corporate criminal penalties of up to $1,000,000, and individual criminal penalties not to exceed $100,000 or ten years' imprisonment, or both, per count. Fines for criminal violations may be increased pursuant to 18 U.S.C. 3571. TWEA also provides for forfeiture of property that is the subject of a violation. TWEA authorizes civil penalties of up to $50,000 per count, adjusted for inflation to $55,000. It also allows the respondent to request an agency hearing, with the right to prehearing discovery, and, if the respondent elects this option, the civil penalty may be imposed only after such a hearing.

The International Emergency Economic Powers Act. In 1977, the Congress passed the International Emergency Economic Powers Act (''IEEPA''), 50 U.S.C. 1701–06, replacing TWEA as the statutory authority for a Presidential declaration of a national emergency in peacetime for the purpose of imposing economic sanctions. Pre-existing programs continue to be administered under TWEA, but new programs under TWEA may be established only during wartime. At this time, sanctions remain in place under TWEA solely with respect to (1) comprehensive sanctions against Cuba, (2) a residual blocking of North Korean assets previously blocked and an ongoing prohibition against the importation of certain goods from North Korea without an OFAC license, and (3) certain offshore trade in strategic goods with the former Soviet Bloc.

A significant distinction between the two statutes is that, until recently, IEEPA contained no Presidential vesting authority. With the passage of the USA PATRIOT Act of 2001, Pub. L. No. 107–56, IEEPA was amended to permit the vesting of assets under defined circumstances. While IEEPA does not authorize forfeiture absent an exercise of vesting authority, it does provide civil and criminal penalty authority, but in amounts less than those provided in TWEA. OFAC relies upon the U.S. Customs Service, operating under separate statutory authority, for the forfeiture of seized property.

IEEPA provides for civil penalties not to exceed $10,000, adjusted for inflation to $11,000. Criminal penalties range up to $50,000, or, if a natural person, up to ten years imprisonment, or both. Fines for criminal violations may be increased pursuant to 18 U.S.C. 3571.

National Emergencies under IEEPA. The first use of IEEPA occurred in 1979, in response to the Iranian hostage crisis. President Carter blocked over twelve billion dollars in Iranian assets subject to U.S. jurisdiction, enabling those assets to be used as leverage in negotiating the release of the U.S. hostages. Although most of the prohibitions contained in these sanctions were lifted prospectively by general license in 1981 in accordance with the Algiers Accords, transactions involving Iranian property within the United States or in the possession or control of U.S. persons remain regulated pursuant to 31 CFR part 535, that is, permitted only by general license. Import sanctions were imposed against Iran by President Reagan in 1987, under the authority of the International Security and Development Cooperation Act of 1985 (''ISDCA''), 22 U.S.C. 2349aa–9. Since this statute does not provide for criminal or civil penalty authority, OFAC relied upon the U.S. Customs Service, operating under separate statutory authority, for the imposition of criminal and civil penalties (including forfeiture of merchandise). President Clinton invoked IEEPA in 1995 to prohibit all trade with and investment in Iran, imposing the most comprehensive economic sanctions currently in place short of an assets freeze. Regulations implementing these sanctions are set forth at 31 CFR part 560.

President Reagan invoked IEEPA in 1985 to impose a trade embargo against the Sandinista regime in Nicaragua, and then again in 1986 to impose comprehensive economic sanctions, including an assets freeze, against the Government of Libya. The Libyan Sanctions Regulations remain in place at this time and are set forth at 31 CFR part 550. In 1986, Congress passed the Comprehensive Anti-Apartheid Act, prohibiting trade in certain goods and new investment in South Africa by codifying and expanding Executive Branch sanctions against that country imposed under IEEPA in 1985.

President Bush invoked IEEPA in 1988 to impose comprehensive economic sanctions against the Noriega regime in Panama, which sanctions were lifted after the U.S. invasion of that country in 1989. Assets of the Government of Panama remained blocked until the new government settled claims against it by U.S. persons. President Bush invoked IEEPA again in 1990 in response to the Iraqi invasion of Kuwait. Kuwaiti assets subject to U.S. jurisdiction were protected under an assets freeze until the Government of Kuwait was restored. Although OFAC did not conduct a formal census of these assets, the total Kuwaiti assets blocked under this program were estimated to exceed sixty billion dollars. Punitive sanctions against Iraq, including a comprehensive assets freeze, also were imposed in 1990 and remain in effect as set forth at 31 CFR part 575.

Since 1990, other countries have been subject to economic sanctions imposed under IEEPA, calibrated to respond to the given situation and U.S. foreign policy and national security objectives. Many ''country-based'' sanctions programs have a nexus to the U.S. government's response over time to the threat to U.S. national security and foreign policy posed by international terrorism. The Secretary of State has designated seven countries—Cuba, North Korea, Libya, Iran, Iraq, Sudan and Syria—as supporting international terrorism. Most of these countries are subject to comprehensive economic sanctions.

In 1995, President Clinton used IEEPA to deal with the threat to U.S. foreign policy and national security posed by terrorists who threaten to disrupt the Middle East Peace Process. This marked an expansion in the use of economic sanctions as a tool of U.S. foreign policy to target groups and individuals, as well as foreign governments. The Terrorism Sanctions Regulations are set forth at 31 CFR part 595. The trend of targeting groups and individuals continued later in 1995 when President Clinton invoked IEEPA to block assets and prohibit transactions with significant narcotics traffickers centered in Colombia. Regulations implementing these sanctions are set forth at 31 CFR part 536.

IEEPA has also been invoked to promote the national security and foreign policy objectives of the United States with respect to nonproliferation. In 1998, certain foreign entities were designated by the Secretary of State as promoting the proliferation of weapons of mass destruction. As set forth in 31 CFR part 539, OFAC regulations prohibit the importation of goods, technology, or services produced or provided by these entities. In 2000, President Clinton also invoked IEEPA to protect assets of the Russian Federation relating to the implementation of the agreement between the United States and Russia on the disposition of highly enriched uranium. Transfers of these assets in support of the agreements are licensed by OFAC. These protective

blocking regulations are set forth at 31 CFR part 540.

Most recently, in Executive Order 13224 of September 23, 2001, President George W. Bush declared a national emergency under IEEPA in response to the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States posed by the grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the terrorist attacks committed in New York and Pennsylvania and at the Pentagon on September 11, 2001. The President also relied on the United Nations Participation Act (discussed below) as authority for the imposition of economic sanctions, citing United Nations Security Council Resolution (''UNSCR'') 1214 of December 8, 1998, UNSCR 1267 of October 15, 1999, UNSCR 1333 of December 19, 2000, and the multilateral sanctions contained therein.

The Iraq Sanctions Act. An additional statute containing penalty authority with respect to Iraq is the Iraq Sanctions Act of 1990 (''ISA''), Pub. L. 101–513, 104 Stat. 1079, 2047–55. The ISA dramatically increased the amount of civil and criminal penalties that may be assessed against U.S. persons violating these sanctions. ISA provides for civil penalties of up to $250,000, adjusted for inflation to $275,000, and criminal penalties of up to $1,000,000 and 12 years imprisonment.

The United Nations Participation Act. The Iraqi sanctions are also multilateral and administered under the authority not only of IEEPA but also the United Nations Participation Act (the ''UNPA''). The UNPA permits the President to incorporate United Nations-mandated economic sanctions into domestic law. The UNPA provides for criminal penalties of up to $10,000 in fines and up to ten years' imprisonment. Fines for criminal violations may be increased pursuant to 18 U.S.C. 3571. The UNPA also provides for forfeiture authority. United Nations-sponsored multilateral economic sanctions against the Federal Republic of Yugoslavia (Serbia & Montenegro) were imposed in 1992 in response to the disintegration of the former Yugoslavia and the civil strife fomented and genocide committed by the Milosevic regime in Bosnia and Herzegovina.

The Antiterrorism and Effective Death Penalty Act. Title III of the Antiterrorism and Effective Death Penalty Act of 1996 (''AEDPA''), Pub. L. 104–132, 110 Stat. 1214, makes it a criminal offense to (1) engage in a financial transaction with the government of a country designated as supporting international terrorism, or (2) provide material support or resources to a designated foreign terrorist organization. Violators may be fined or imprisoned for not more than ten years, or both. AEDPA also provides that any financial institution that knowingly fails to retain possession of or control over blocked funds or to report the existence of such funds shall be subject to a civil penalty in an amount that is the greater of $50,000 per violation, or twice the amount of the funds at issue. Regulations implementing these sanctions are set forth at 31 CFR parts 596 and 597.

The Foreign Narcotics Kingpin Designation Act. In 1999, new legislation expanded the scope of the 1995 sanctions against narcotics traffickers centered in Colombia. The Foreign Narcotics Kingpin Designation Act (the ''FNKDA''), 21 U.S.C. 1901–08, provides for criminal penalties of up to ten years imprisonment, fines in the amounts provided in title 18 of the U.S. Code, or both, or, in the case of an entity, fines of not more than $10,000,000 per violation. Criminal penalties for any officer, director, or agent range up to $5,000,000 or 30 years imprisonment, or both. Civil penalties not to exceed $1,000,000 per violation also may be imposed. Regulations implementing these sanctions are set forth at 31 CFR part 598.

List of Subjects

31 CFR Part 501

Administrative practice and procedure, Reporting and recordkeeping requirements.

31 CFR Part 515

Administrative practice and procedure, Banks, Banking, Cuba, Currency, Foreign investments in United States, Foreign trade, Penalties, Reporting and recordkeeping requirements, Securities, Travel restrictions.

For the reasons set forth in the preamble, 31 CFR parts 501 and 515 are amended as follows:

PART 501—REPORTING AND PROCEDURES REGULATIONS

1. Part 501 is amended by adding the following appendix to read as follows:

Appendix to Part 501—Economic Sanctions Enforcement Guidelines

Note: These guidelines provide a procedural framework for the enforcement of all economic sanctions programs administered by the Office of Foreign Assets Control (''OFAC''). Attention is directed to the appendix to the Cuban Assets Control Regulations, 31 CFR part 515, for additional guidelines specifically dealing with particular violations of those regulations.

I. Enforcement of Economic Sanctions; Determination of Violation

A. OFAC Civil Investigation and Enforcement Action. Civil investigation and enforcement with respect to economic sanctions violations rest primarily with OFAC, with certain investigations conducted by the U.S. Customs Service. OFAC investigations may lead to one or more of the following: a cautionary letter, a warning letter, a requirement to furnish information, an order to cease and desist, or a civil penalty proceeding. In addition to or instead of such actions, if the party involved is currently acting pursuant to an OFAC license, that license may be suspended or revoked.

B. OFAC's Evaluation of Violative Conduct. The type of enforcement action undertaken by OFAC depends on the nature of the apparent violation and the foreign policy goals of the particular sanctions program involved. In evaluating whether to initiate a civil penalty action, OFAC determines whether there is reasonable cause to believe that a violation of the regulations, pertinent statute, or Executive Order has occurred. Parts II and III of these Guidelines set forth the criteria used by OFAC to determine the appropriate response to an apparent violation.

C. Criminal Investigations and Prosecutions. If the evidence suggests willful violations of substantive prohibitions or requirements, OFAC may refer those cases to other federal law enforcement agencies for criminal investigation. Cases that are referred to the Department of Justice for criminal prosecution also may be processed by OFAC as civil penalty matters. This is generally done after the Justice Department's declination of criminal prosecution or the termination of criminal proceedings or as part of a global settlement of criminal and civil violations by the Justice Department.

II. License Suspension and Revocation; Cautionary and Warning Letters

A. License Suspension and Revocation. In addition to or instead of other administrative actions, OFAC authorization to engage in transactions pursuant to a general or specific license may be suspended or revoked for reasons including, but not limited to, the following:

1. The party has willfully made or caused to be made in any license application, or in any report required pursuant to a license, any statement that was, at the time and in light of the

circumstances under which it was made, false or misleading with respect to any material fact or has omitted to state in any application or report any material fact that was required;

2. The party has failed to file timely reports or comply with the recordkeeping requirements of a general or specific license;

3. The party has violated any provision of law enforced by the Office of Foreign Assets Control or the rules or regulations issued under any such provision;

4. The party has counseled, commanded, induced, procured, or knowingly aided or abetted the violation by any other person of any provision of any law or regulations referred to above; or

5. The party has committed any other act or omission that demonstrates unfitness to conduct the transactions authorized by the general or specific license.

B. Cautionary Letters. OFAC issues ''cautionary letters'' where an OFAC audit or civil investigation results in insufficient evidence to conclude that a violation appears to have occurred, but which may indicate activity that could lead to a violation in other circumstances or cause problems for future transactions. From time to time, when financial institutions appear not to be exercising due diligence in assuring compliance with OFAC's regulations, but no violation has occurred, a cautionary letter may be sent outlining the requirements of the regulations and urging greater diligence.

C. Warning Letters. Warning letters represent OFAC's conclusion that an apparent violation of the regulations occurred. In the exercise of its discretion, OFAC may determine in certain instances that a warning letter, citing the specific facts and relevant law, may achieve the same result as a monetary penalty insofar as future compliance with OFAC regulations is concerned. A warning letter will fully explain the apparent violation and urge future compliance. A warning letter does not constitute a final agency determination that a violation has occurred.

1. *Financial Transfers.* OFAC recognizes the high volume and level of automation of international funds transfers processed within the United States banking system on a daily basis. With respect to financial transfers, OFAC often issues warning letters in lieu of civil penalties in cases that appear to involve violations based on technicalities, where good faith efforts to comply with the law and no aggravating factors are evident. Some examples of cases where a warning letter might be issued in lieu of a proposed civil penalty include the following:

(a) Transactions in which there are significant variations in name and/or location specified in a funds transfer from those on OFAC's list of blocked persons and vessels, specially designated nationals, terrorists, narcotics traffickers and foreign terrorist organizations (the ''SDN list'') or list of sanctioned countries;

(b) Transactions where the name of the blocked party is spelled differently from the entry on OFAC's SDN list, thus bypassing an electronic filter (in these instances, the bank is expected to add the spelling variation to its filter);

(c) Transactions where funds are not intended to be sent to or through a blocked or specially designated bank (an ''SDN bank'') but a bank employee accidentally enters a code for an SDN bank;

(d) Transactions where a clerk accidentally hits a ''release'' key instead of a ''block'' or ''reject'' key and immediately takes action to try to recall the funds;

(e) Transactions that take place shortly after a new designation where the bank has not had time to update its systems and procedures or to review its account base;

(f) Transactions that are of a low value where the cost of pursuing a penalty action would likely exceed the enforcement benefit;

(g) Transactions involving an activity for which a policy determination has been made to authorize the activity by specific license; and

(h) Other transactions where the fact pattern and underlying transaction would appear to warrant a warning letter as opposed to a civil penalty action.

2. *Exports and Imports.* Warning letters may be issued in response to apparent violations solely involving the importation and exportation of goods and/or services valued at $500 or less, unless aggravating factors are present. Unauthorized importations in conjunction with travel involving Cuba are addressed in the appendix to the Cuban Assets Control Regulations, 31 CFR Part 515.

III. Civil Penalties

Prohibitions against engaging in various types of transactions in the context of economic sanctions programs are set forth in applicable statutes, Executive Orders, and regulations administered by OFAC. The criteria for initiating civil penalty enforcement action may differ depending upon the substantive nature of the apparent violation at issue and existing foreign policy and national security objectives. For purposes of the discussion below, ''proposed penalty'' is the amount set forth in the prepenalty notice, as distinct from the final amount imposed in the penalty notice.

A. Most Frequent Categories of Violations Resulting in Civil Penalty Action, and the Penalties Proposed by OFAC

1. *Prohibited Dealing in Blocked Property or Fund Transfers (including Rejected Transfers).* If the apparent violative transaction at issue is a prohibited dealing in blocked property by a person subject to the jurisdiction of the United States, the proposed penalty generally will be the lesser of either the statutory maximum or the dollar value of the transaction involved. For example, the dollar value may be the value of the property dealt in or the amount of the funds transfer that a financial institution failed to block or reject.

2. *Imports and Exports.* In import cases, the dollar value used in proposing a penalty generally will be the transaction value for imports of goods, technology, or services into the United States, as demonstrated by commercial invoices, bills of lading, signed Customs declarations, or similar documents. In U.S. Customs Service seizures where no transaction value can be demonstrated by credible evidence, the dollar value generally will be the foreign value as determined by U.S. Customs Service. Where neither the transactional nor U.S. Customs Service-determined foreign value is established in the administrative record, a default value of $10 per item imported generally will be assigned. For importations of Cuban-origin goods in conjunction with travel-related transactions involving Cuba, please refer to the appendix to the Cuban Assets Control Regulations, 31 CFR part 515. For exports, the dollar value used in proposing a civil penalty generally will be the U.S. domestic value of the goods, technology, or services.

3. *Performance of a Contract; New Investment.* The proposed penalty for the performance of a contract or new investment generally will be the lesser of the statutory maximum or the value of the contract or investment.

4. *Travel-Related Violations.* Proposed penalties for travel-related transactions involving Cuba are set forth in the appendix to the Cuban Assets Control Regulations, 31 CFR part 515. Please note that other sanctions programs, including the Iraqi Sanctions

Regulations (31 CFR part 575) and the Libyan Sanctions Regulations (31 CFR part 550), may include restrictions on travel-related transactions, violations of which will be dealt with on a case-by-case basis.

5. *Travel, Carrier, and Remittance-forwarding Service Provider Violations (Cuba).* The criteria for imposition of civil penalties for violations relating to the provision of travel, carrier, and remittance-forwarding service providers are contained in (1) the appendix to 31 CFR part 515 with respect to service providers not authorized by OFAC to provide such services and (2) the annual Service Provider Program Circular issued by OFAC with respect to service providers holding OFAC authorization.

6. *Requirement to Furnish Information; Reporting and Recordkeeping.* The following criteria shall apply for purposes of proposing a penalty, except in the instance of authorized service providers under the Cuban Assets Control Regulations, which criteria appear in the annual Service Provider Program Circular issued by OFAC:

(a) Each failure to respond to a requirement to furnish information, issued pursuant to 31 CFR 501.602, generally will result in a proposed penalty in the amount of $10,000, irrespective of whether any other violation is alleged;

(b) Late filing of a required report generally will result in a proposed penalty in the amount of $2,000, if filed within the first month after it is due. Each failure to comply with a reporting requirement, whether set forth in regulations or in a specific license, generally will result in a proposed penalty in the amount of $5,000 if the report is beyond one month late. If the report concerns blocked assets, however, the proposed penalty generally will include an additional $1,000 for every month beyond the second month that the report is not submitted, up to five years or the statutory maximum, whichever is lower.

(c) The first failure to maintain records in conformance with the requirements of OFAC's regulations or of a specific license generally will result in a proposed penalty in the amount of $2,000. Each additional offense in this regard generally will result in a proposed penalty in the amount of $10,000.

B. Evaluation of Mitigating and Aggravating Factors

In determining a settlement amount or penalty assessment at the penalty notice stage, OFAC generally will balance the mitigating and aggravating factors present in the administrative record, as well as weigh any administrative considerations that the agency may deem appropriate.

1. *Mitigation and mitigating factors.* The degree to which a proposed penalty is mitigated is determined by the blend of mitigating factors and aggravating factors present. The history of mitigation with respect to cases having substantially identical fact patterns generally will govern the degree of mitigation to be applied in subsequent cases. However, departures from these Guidelines or from prior history will be considered where appropriate. OFAC may attach more importance to a particular factor, and administrative considerations may also be taken into account. The individual circumstances of a violation, including the balance of factors present, will also influence the outcome. OFAC encourages evidentiary submissions indicating the presence or absence of a mitigating or aggravating factor. In the case of funds transfer violations by banks or other financial institutions, depending on the balance of mitigating and aggravating factors present, penalties generally will be mitigated 25–50% from the amount proposed in the prepenalty notice. In all other instances, penalties for violations generally will be mitigated 10% to 75% from the amount proposed in the prepenalty notice depending upon the balance of mitigating and aggravating factors present. Typical mitigating factors include, but are not limited to, the following:

(a) Voluntary disclosure;

(b) First offense (but see the appendix to 31 CFR part 515 for certain Cuba travel-related violations);

(c) Compliance program in place at time of violation;

(d) If no compliance program, implementation of one upon the respondent's discovery of or OFAC notification of the violation;

(e) Other remedial measures taken;

(f) Provision of a written response to a prepenalty notice;

(g) Useful enforcement information provided during an OFAC audit, investigation, or penalty proceeding;

(h) Part of comprehensive settlement with U.S. Customs Service;

(i) Other U.S. government enforcement action already completed;

(j) Lack of relevant commercial experience;

(k) Clerical error, inadvertence, or mistake of fact;

(l) Evidence in the administrative record that a transaction(s) could have been licensed by OFAC under an existing licensing policy had an application been submitted;

(m) Apparent language barrier or other impediment to understanding of regulations (individuals only);

(n) Humanitarian nature of transaction;

(o) Such other matters as justice may require.

2. *Aggravating Factors.* Typical aggravating factors include, but are not limited to, the following:

(a) Willfulness;

(b) Second or subsequent offense (but see the appendix to 31 CFR part 515 for certain Cuba travel-related violations);

(c) Apparent disregard of prior notice from U.S. government concerning transactions at issue;

(d) No remedial measure taken after notice or discovery;

(e) Deliberate effort to hide or conceal the violation;

(f) Extraordinary adverse economic sanctions impact;

(g) Lack of compliance program at the time of the violation;

(h) Familiarity with economic sanctions programs.

3. *Voluntary Disclosure.* When apparent violations are voluntarily disclosed by the actor to OFAC, the proposed penalty generally will be mitigated at least 50% from the amount that would otherwise be proposed under these Guidelines. A disclosure to OFAC is considered to be a voluntary disclosure where OFAC is notified of possible sanctions violations. Notification to OFAC may not be considered to be a voluntary disclosure if OFAC previously received information concerning the transactions from another source, including but not limited to another regulatory or law enforcement agency or another person's blocking or funds-transfer rejection report. Responding to an administrative subpoena or other inquiry from OFAC does not constitute a voluntary disclosure. Similarly, the submission of a license application does not constitute a voluntary disclosure unless it is also accompanied by a separate disclosure.

4. *First Offense.* Proposed penalties for apparent violations that constitute a first offense generally will be mitigated at least 25% in the penalty notice, unless aggravating factors are also present. Significant exceptions to this rule include apparent violations involving willful misconduct or gross negligence and those involving certain travel-related transactions described in the appendix to 31 CFR part 515 (where the proposed penalties already distinguish between first and subsequent offenses). In determining whether an apparent violation constitutes a first or subsequent offense, a distinction generally will be made

between prior OFAC penalty cases ending in an assessed civil monetary penalty and those settled prior to a finding of violation. Another factor considered is whether the OFAC regulations previously violated were similar to those of the new case under review. For example, all apparent reporting violations will be considered to be similar, as will those involving a failure to block financial transfers or failure to respond to a request for information. An apparent violation generally will be considered a first offense if no similar violation has been found within the past five years.

C. Settlement Generally

Settlements of penalty cases may be proposed at any stage of a civil penalty proceeding prior to the issuance of a final agency determination of violation. A settlement does not constitute a final agency determination that a violation has occurred.

D. Settlement Prior to Issuance of Prepenalty Notice

1. *Initiating settlement.* OFAC may settle a matter without initiating a formal action through the issuance of a prepenalty notice. A party may request an informal settlement with OFAC prior to OFAC's issuance of a prepenalty notice. To do so, the party may request in writing that OFAC withhold issuance of a prepenalty notice for a period of up to 60 days for the exclusive purpose of reaching settlement. If the applicable statute of limitations is close to expiring, OFAC may condition the entry into or continuation of informal settlement negotiations on an agreement to execute a waiver with respect to the statute of limitations. If such a waiver is not executed, OFAC may decide that there should be no informal settlement period and issue a prepenalty notice.

2. *Settlement process.* In informal settlement negotiations prior to the issuance of a prepenalty notice, OFAC will inform the party of the apparent violations OFAC intends to cite in the prepenalty notice, as well as the penalty amount to be proposed therein. Whenever possible, settlements will be negotiated in accordance with the mitigation provisions set forth above; however, each settlement will be viewed on its own merits, as factors present in one case may not appear in another.

3. *Settlements of multiple violations.* A settlement initiated for one apparent violation may also involve a comprehensive or global settlement of multiple apparent violations covered by other prepenalty notices, apparent violations for which a prepenalty has yet to be issued by OFAC, or previously unknown violations reported to OFAC during the penalty proceeding.

E. Settlement Following Issuance of Prepenalty Notice

1. *Initiating settlement.* After a prepenalty notice is issued and served, OFAC may settle the matter through informal negotiations at OFAC's initiation, at the request of the respondent or its authorized representative, or through the respondent's payment of the proposed penalty in full.

2. *Settlement process.* Settlements generally will be negotiated in accordance with the mitigation provisions set forth above. If a matter is settled at the prepenalty stage, that is, before a final penalty notice is issued, the claim proposed in the prepenalty notice will be withdrawn, the respondent will not be required to take a written position on the allegations contained in the prepenalty notice, and OFAC will not make a final determination as to whether a violation occurred. In the event no settlement is reached, the period specified for written response remains in effect unless additional time is granted by OFAC.

3. *Settlements of multiple violations.* As in the case of settlements prior to the issuance of a prepenalty notice, settlements following the issuance of a prepenalty notice may be comprehensive (global) settlements of multiple apparent violations covered by other prepenalty notices or for which a prepenalty notice has yet to be issued.

F. Cancellation of Proceedings

In the absence of a settlement, OFAC generally will not cancel a penalty proposed in a prepenalty notice absent evidence substantiating that the party named in the prepenalty notice did not commit or is not responsible for the violation charged, or unless such cancellation is otherwise appropriate for policy or legal reasons.

G. Assessment and Imposition of Final Penalty

1. *Consideration of response to prepenalty notice.* Prior to OFAC's issuance of a penalty notice, the cited party may respond to the allegations in OFAC's prepenalty notice. If a response is submitted, OFAC will carefully and fully consider all explanations contained in the response and weigh all information presented in making a final determination whether a violation has occurred, whether a penalty notice should be issued and, if so, in what amount the penalty should be assessed. If the response discloses new apparent economic sanctions violations, a revised prepenalty notice may be issued citing the newly-disclosed apparent violations. When possible criminal conduct is revealed in the response, the case may be referred for further investigation.

2. *Issuance of penalty notice.* Absent a settlement of allegations, OFAC generally will issue a penalty notice in accordance with the procedures set forth in the applicable regulations. OFAC will consider all information in the administrative record before assessing the final penalty amount. The penalty generally will be assessed in an amount that reflects the mitigating and aggravating factors present in the record, determined in accordance with the mitigation provisions set forth above.

3. *Penalty assessment in absence of response to prepenalty notice.* Where OFAC receives no response to a prepenalty notice within the time prescribed in the applicable regulations, a penalty notice generally will be issued, taking into account the mitigating and/or aggravating factors present in the record. If there are no mitigating factors present in the record, or the record contains a preponderance of aggravating factors, the proposed prepenalty amount generally will be assessed as the final penalty.

4. *Referral to Financial Management Division.* The imposition of a penalty pursuant to a penalty notice creates a debt due the U.S. Government. OFAC advises Treasury's Financial Management Division (''FMD'') upon the imposition of a penalty. FMD will take follow-up action to collect the penalty assessed if it is not paid within the prescribed time period set forth in the penalty notice.

5. *Final agency action and judicial review.* The imposition of a penalty pursuant to a penalty notice constitutes final agency action, which is subject to judicial review.

H. Disposition of Funds and Merchandise

1. *Seizure, forfeiture, and release generally.* Where import or export violations of economic sanctions occur, the U.S. Customs Service may have seized the goods involved pursuant to separate statutory authorities. OFAC usually coordinates with the U.S. Customs Service regarding the disposition of seized goods for purposes of resolving the penalty action. Where OFAC lacks civil forfeiture authority, OFAC may provide a recommendation to the U.S. Customs Service regarding disposition of seized goods. The forfeiture of the goods may be considered in addition to or in lieu of monetary penalties in determining the

most equitable and appropriate penalty. OFAC may authorize or recommend to the U.S. Customs Service the release of any funds or merchandise involved in the violative transaction upon the payment of the penalty assessed or settlement negotiated by OFAC. In settlements involving seized goods, the disposition of the goods generally will be an element of OFAC's agreement. When there has been no payment of an assessed monetary penalty, OFAC generally will recommend the forfeiture of the seized goods or funds to the U.S. Customs Service.

2. *Seizure of blocked property.* Where the funds or merchandise seized by the U.S. Customs Service constitute property blocked pursuant to the controlling Executive Order, statute, or regulations, such property generally remains blocked. Those who might claim an interest in the blocked property should refer to provisions in the Reporting and Procedures Regulations, 31 CFR part 501, and in the regulations or other legal authorities governing the relevant economic sanctions program for additional information.

PART 515—CUBAN ASSETS CONTROL REGULATIONS

1. Part 515 is amended by adding the following appendix to read as follows:

Appendix to Part 515—Cuba Travel-Related and Certain Other Violations of 31 CFR Part 515

Note to Appendix to Part 515: This appendix provides a schedule of proposed civil monetary penalties for certain violations of the Cuban Assets Control Regulations, 31 CFR part 515. The civil penalty process is described in detail in subpart G of 31 CFR part 515 and in the appendix to the Reporting and Procedures Regulations, 31 CFR part 501.

A. Traveler Violations/Amounts for Prepenalty Notices

1. Tourist travel-related transactions:
First trip: $7,500
Each additional trip: $10,000

2. Business travel-related transactions:
First trip: $15,000
Each additional trip: $25,000

3. Travel-related transactions involving unlicensed visits to close relatives:
First trip: warning letter
Each additional trip—
Prior to agency notice*: $1,000
Subsequent to agency notice*: $4,000

4. Travel-related transactions where no specific license was issued under 31 CFR 515.560(a)(3)–(12) but where there is evidence that the purpose of the travel fits within one of the categories of licensable activities:
Each trip prior to agency notice*: $3,000
Each trip subsequent to agency notice*: $10,000

5. Exports (or attempted exports) of unauthorized funds in which Cuba or a Cuban national has an interest: Value of unauthorized funds

Note to A.5.: Additional remittance forwarding penalties may be considered.

6. Unauthorized use of a credit card in Cuba:
First trip: $1,000
Each additional trip: $2,000

7. Importations of Cuban-origin goods in conjunction with travel-related violations:
Where aggregate value of goods is $500 or less: $250
Where aggregate value of goods exceeds $500: $250 plus excess value above $500

Note to A.7.: Value generally will be determined by the transactional value, if evidenced by a receipt, signed Customs declaration, or similar document or, if none, the foreign value as determined by the U.S. Customs Service. In the absence of either, a default value of $10 per item generally will be assigned to the goods, except in the case of boxes of cigars, which generally will be valued at $250.

B. Provision of Travel, Carrier and Remittance Forwarding Services by Persons Not Authorized as Service Providers

1. Provision of remittance forwarding services:
Prior to agency notice*: $2,000
Subsequent to agency notice*: $15,000

2. Provision of travel services:
Prior to agency notice*: $2,000, plus $500 per person assisted
Subsequent to agency notice*: $15,000, plus $500 per person assisted

3. Provision of carrier services:
Prior to agency notice*: $5,000, plus $500 per person assisted
Subsequent to agency notice*: $25,000, plus $500 per person assisted

Note to B.: Other violations that arise in the context of the Cuba program are addressed in the main text of these Guidelines as published in the appendix to 31 CFR part 501. Violations by persons authorized as Service Providers are addressed in the annual Service Provider Program Circular issued by OFAC.

* For purposes of determining prepenalty amounts as set forth in this appendix, the term ''agency notice'' means any evidence in the administrative record of written or oral communication between OFAC and the party alleged to have committed a violation concerning the same or a substantially similar violation. This evidence may include, but is not limited to, a warning letter, a cease and desist order, a prepenalty notice, or a notation of a telephonic conversation or letter from OFAC advising the party that the conduct is in violation of applicable regulations. A party may dispute the adequacy of agency notice in its response to the prepenalty notice.

Dated: January 13, 2003.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: January 13, 2003.

Kenneth E. Lawson,

Assistant Secretary (Enforcement), Department of the Treasury.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7443–6]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent for partial deletion of the Cecil Field Naval Air Station (site) from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency, Region 4, announces its intent to delete portions of the Cecil Field Naval Air Station Superfund Site (the ''Site'') (EPA ID# FL 5170022474) from the National Priorities List (NPL) and requests public comment on this action. The NPL is codified as appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. 9605. The EPA has determined, with the concurrence of the State of Florida through its Department of Environmental Protection, that the parcels proposed for deletion under this action do not pose a significant threat to public health or the environment, as defined by CERCLA, and therefore, further remedial measures pursuant to CERCLA are not appropriate for these parcels. EPA proposes deletion of these parcels in accordance with 40 CFR 300.425(e) and the Notice of Policy Change: Partial Deletion of Sites on the