

JOINT INDUSTRY GROUP

1620 I Street, NW
Suite 615
Washington, DC 20006
☎ (202) 466-5490 📠 (202) 463-8498 ✉ jig@moinc.com

Chairman
Ronald Schoof
Caterpillar Inc.

Treasurer
William Outman, II
Baker & McKenzie

Secretariat
James B. Clawson
JBC International

July 17, 2002

Ms. Wanda Davis
Chief of Records
ATTN: Request for Comments
Office of Foreign Assets Control
Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220
Fax: 202-622-1657

Re: Rules Governing Availability of Information

Dear Ms. Davis:

The Joint Industry Group (JIG) welcomes the opportunity to comment on the proposed rule governing the availability of information published by the Office of Foreign Assets Control (OFAC) in the *Federal Register* on June 19, 2002 (67 *Fed. Reg.* 41658).

JIG is a member-driven coalition of over 160 companies, trade associations and businesses actively involved in international trade. JIG examines the concerns of the business community relative to current and proposed international trade-related policies, legislation and regulations. The coalition helps develop solutions to these concerns by working directly with the Departments of Commerce, State, and Treasury, the U.S. Customs Service, the Office of the U.S. Trade Representative, and the U.S. Congress. JIG membership represents more than \$350 billion in trade.

JIG appreciates and supports OFAC's efforts to make its enforcement activities more transparent to the public, and encourages OFAC to extend such transparency to its regulations and compliance requirements. Greater transparency with regard to the scope of the regulations, which are notoriously ambiguous, would reduce the need for enforcement actions. JIG urges OFAC to proactively engage the trade in compliance initiatives and to provide clear and timely advice to companies regarding which activities are prohibited and which are permissible.

JIG also believes, however, that the subject proposal will discourage informal settlements and voluntary disclosures unless OFAC modifies the proposal to indicate whether (1) the amount was collected as part of a settlement, and (2) the violation was voluntarily disclosed.

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COMMENTS:

In addition to transparency in enforcement, OFAC should also promote greater transparency in voluntary compliance, which is the front end of the process that can lead to enforcement. Although a few companies undoubtedly engage in transactions they know violate the sanctions regulations, almost all companies desire to comply and yet experience difficulty in obtaining timely information and well-reasoned opinions from OFAC regarding which activities are permissible. OFAC regulations and guidance frequently discourage all activity with sanctioned countries through obfuscation and ambiguity. OFAC should publish its rulings, redacted if necessary, to provide guidance to companies on how OFAC interprets its own regulations. OFAC should also be straightforward in advising companies what activities are permissible.

Enforcement proceedings often involve allegations that are never fully provable, and companies routinely settle such claims in order to put these matters behind them, notwithstanding the ambiguity of the rules. Moreover, companies with effective compliance programs often discover and voluntarily disclose the facts that lead to these proceedings. JIG urges OFAC to modify 31 C.F.R. § 501.805(d)(1) to include information on whether the amount was collected pursuant to a settlement, and whether the company voluntarily disclosed the violation to OFAC. The Bureau of Industry and Security (BIS) routinely includes this information, which presents a fairer view of companies' compliance efforts, in its list of enforcement proceedings.¹ Unless companies are given some credit for voluntary disclosures, there will be less incentive to inform OFAC of violations.

JIG respectfully urges OFAC to modify the proposed regulation to include this additional information and to increase the transparency of other OFAC activities besides enforcement.

Sincerely,



Ronald Schoof, Chairman

¹ See BIS publication "Don't Let This Happen To You," available on the BIS website at http://www.bis.doc.gov/Enforcement/DontLetThisHappen2U_6_02.pdf