

Attachment

Foreign Assets Control Act**06/16/2004****The following changes to the Cuban Assets Control Regulations were published in the Federal Register today and will be effective June 30, 2004:**

On October 10, 2003, the President announced the establishment of a Commission for Assistance to a Free Cuba (the "Commission"), an interagency commission tasked with identifying ways to hasten Cuba's transition to a free and open society and identifying U.S. Government programs that could assist the Cuban people during such a transition. On May 1, 2004, the Commission delivered its Report to the President, recommending, among other things, a number of proposed changes to the U.S. sanctions with respect to Cuba. On May 6, 2004, the President directed the implementation of certain of the Report's recommendations. In an interim final rule, the Office of Foreign Assets Control ("OFAC") is amending the Cuban Assets Control Regulations, 31 C.F.R. part 515 (the "CACR"), to implement these recommendations, to make additional changes consistent with the President's policy with respect to Cuba, and to make certain technical and clarifying changes.

Fully-hosted travel. Section 515.420, the note to paragraph (c) and paragraph (f) of Section 515.560, and paragraph (c)(4)(i) of Section 515.572 are amended to remove discussion of and references to fully-hosted travel and the presumption that travelers to Cuba pay expenses for Cuba travel-related transactions. The term "fully-hosted travel" refers to travel to, from, or within Cuba for which all costs and fees either are paid for by a third-country national who is not subject to U.S. jurisdiction or are covered or waived by Cuba or a national of Cuba. The term was first introduced into the CACR on July 22, 1982, in Section 515.560 of the "Licenses, Authorizations, and Statements of Licensing Policy" subpart. See 47 Fed. Reg. 32060. Paragraph (j) of Section 515.560 provided that all transactions incident to fully-hosted travel were "authorized." On May 13, 1999, OFAC removed this provision from Section 515.560, amended it, and placed it in a new Section 515.420, which is in the "Interpretations" subpart of the CACR. See 64 Fed. Reg. 24808. Under Section 515.420 fully-hosted travelers are not considered to be engaging in any transactions that violate the prohibitions of the CACR.

In the years since the May 13, 1999 amendments, OFAC has found that persons who claimed their travel was fully-hosted routinely engaged in prohibited money transactions (e.g., payment of entry and exit and docking fees). OFAC also has come to the position that even a person who accepts goods or services in Cuba without paying for them is in fact engaging in a prohibited dealing in property in which Cuba or a Cuban national has an interest. Therefore, OFAC is removing the language regarding fully-hosted travel from the CACR and is thereby eliminating any authorization of fully-hosted travel. Amended Section 515.420 now explains that OFAC interprets the prohibition in Section 515.201(b)(1) on dealing in property to include a prohibition on the receipt of goods or services in Cuba when those goods or services are provided free-of-charge, whether received as a gift from the Government of Cuba, a national of Cuba, or a third-country national, unless otherwise authorized by an OFAC general or specific license. See, e.g., Section 515.560(a) of the CACR. Amended Section 515.420 also explains that payment for air travel to Cuba on a third-country carrier, which involves property in which Cuba has an interest (for example, because the carrier will pass a portion of the payment on to Cuba), is now prohibited unless the travel is pursuant to an OFAC general or specific license.

In the process of removing references to fully-hosted travel, OFAC is also removing the companion language in Section 515.420 stating that any person who travels to Cuba without OFAC authorization is presumed to have engaged in prohibited travel-related transactions there. Notwithstanding the removal of this language, OFAC may still argue, either within the Treasury Department civil penalties process or before a United States court, that the receipt of services or other dealings in property in which Cuba has an interest, such as a stay at a Cuban hotel or the purchase of food in Cuba, can be inferred from evidence of multi-day travel in Cuba.

Importation of Cuban merchandise. Paragraph (c)(3) of Section 515.560 is amended to eliminate the general license authorizing licensed travelers to Cuba to purchase in Cuba and return to the United

States with up to \$100 worth of Cuban merchandise for personal consumption. The amended paragraph (c) now explains that, with the exception noted below, no merchandise may be purchased or otherwise acquired in Cuba and then brought back to the United States. OFAC has added a note to paragraph (c) explaining that this rule does not apply to the purchase in Cuba and importation into the United States of informational materials, which continue to be exempt from the prohibitions of the CACR, as described in Section 515.206.

Exportation of accompanied baggage. Former paragraph (f) of Section 515.560, which discussed the carrying of currency by fully-hosted travelers, is replaced with a new paragraph (f) limiting the amount of accompanied baggage carried by authorized travelers to Cuba to 44 pounds per traveler, unless a higher amount is authorized pursuant to a specific license from OFAC or by the Bureau of Industry and Security of the Department of Commerce.

Travel to visit relatives in Cuba. Sections 515.560 and 515.561 are amended to make a number of changes to the rules regarding travel-related transactions incident to visiting relatives in Cuba.

Prior to these amendments, a person with a Cuban national close relative (defined to include second cousins) in Cuba could engage in travel-related transactions incident to visiting that relative once every 12 months under a general license and more often pursuant to specific licenses if requested. There was no stated limit to the duration of the first visit, and the traveler could spend up to the State Department per diem (currently \$167) for living expenses in Cuba plus any additional funds needed for transactions that were directly incident to visiting that relative.

These amendments narrow the category of relatives who can be visited in Cuba. The definition of "close relative" set forth in former paragraph (d) of Section 515.561, is replaced by the term "member of a person's immediate family," which is defined in new paragraph (c). Under the new rule, a member of a person's immediate family is defined as a spouse, child, grandchild, parent, grandparent, or sibling of that person or that person's spouse, as well as any spouse, widow, or widower of any of the foregoing. Relevant portions of Section 515.561 also are amended to eliminate the policy of authorizing those who share a common dwelling as a family with the traveler to accompany the traveler, unless they are themselves members of the immediate family of the person to be visited.

The once-per-twelve-months general license contained in former paragraph (a) of Section 515.561 is eliminated. In its place, new paragraph (a) states that OFAC will issue specific licenses authorizing travel-related transactions incident to visits to members of a person's immediate family who are nationals of Cuba once per three-year period and for no more than 14 days. A person subject to U.S. jurisdiction who wishes to engage in travel-related transactions to visit a member of his or her immediate family who is a national of Cuba will need to request and receive specific permission from OFAC before engaging in those transactions. For those who emigrated to the United States from Cuba and have not since that time visited a family member in Cuba, the three-year period will be counted from the date they left Cuba. For all others, the three year period will be counted from the date they last left Cuba pursuant to the pre-existing family visit general license or, if they traveled under a family visit specific license, the date that license was issued. Former paragraph (b), under which OFAC issued specific licenses for additional visits, is eliminated. No additional visits will be authorized.

Former paragraph (c) of Section 515.561 stated a different rule for travelers wishing to visit relatives who are not nationals of Cuba but who instead are in Cuba pursuant to an OFAC authorization (such as a student who is in Cuba under her university's educational activities license). This rule has been moved to paragraph (b) and modified to provide for the issuance of a specific license to visit a member of a person's immediate family in exigent circumstances provided the person to be visited is in Cuba pursuant to an OFAC authorization, the particular exigency has been reported to the U.S. Interests Section in Havana, and issuance of the license would support the mission of the U.S. Interests Section in Havana. Licenses would be issued under this paragraph, after consultation with the Department of State, in true emergent situations, such as serious illness accompanied by an inability to travel, and in order to support services normally provided in such circumstances by the U.S. Interests Section in Havana.

A number of individuals have outstanding specific licenses that were issued pursuant to former Section 515.561(b) and (c). Those licenses will remain valid only until June 30, 2004, after which they are

revoked. Accordingly, individuals who have such specific licenses may not use them to engage in any Cuba travel-related transaction occurring on or after June 30, 2004.

These amendments also reduce the amount of money travelers visiting members of their immediate family may spend for their living expenses in Cuba. The new limit, set forth in amended paragraph (c)(2) of Section 515.560, is \$50 per day plus up to an additional \$50 per trip, if needed, to pay for transportation-related expenses in Cuba that exceed the \$50 per day limit. For example, a traveler whose five-day trip to visit her father in Camaguey includes roundtrip ground transportation between Havana and Camaguey may expend \$50 per day for her living expenses in Cuba plus up to an additional \$50, if needed, to pay for the costs of transportation between Havana and Camaguey, for a total of \$250 of in-Cuba costs (airfare to and from Cuba is not included in this limit). The per diem amount for all other categories of OFAC-authorized travel-related transactions in Cuba remains unchanged.

Attendance at certain professional meetings in Cuba. A note is added to paragraph (a)(1) of Section 515.564 to clarify that the general license in paragraph (a) authorizing travel-related transactions incident to certain professional research in Cuba does not extend to transactions incident to attendance at professional meetings or conferences in Cuba. Attendance at certain professional meetings and conferences in Cuba already is addressed by a separate general license set forth in paragraph (a)(2). To the extent a professional researcher believes that attendance at a particular meeting or conference in Cuba is important to his or her research and the meeting or conference does not qualify under the general license set forth in paragraph (a)(2), the researcher may request a specific license from OFAC under paragraph (b).

Educational activities in Cuba. OFAC is amending Section 515.565 to reflect new policy with respect to specific licensing of certain educational activities in Cuba. These amendments restrict the availability under paragraph (a) of specific licenses to institutions to undergraduate and graduate institutions. Accordingly, former paragraph (a)(2)(vi), which covered certain activities by secondary schools, has been eliminated. The duration of these institutional licenses is shortened from two years to one year.

Paragraph (a) of Section 515.565 is further amended by adding a requirement that any students who use an institution's license must be enrolled in an undergraduate or graduate degree program at that licensed institution. Students may no longer engage in Cuba travel-related transactions under the license of an educational institution other than their own even if their own institution will accept the licensed institution's program for credit toward the student's degree. Paragraph (a) also is amended to clarify that employees who travel under an institution's license must be full-time permanent employees of the licensed institution. Temporary employees and contractors do not qualify as full-time permanent employees of an institution.

Three of the six educational activities listed in paragraph (a) of Section 515.565 that are available to licensed educational institutions and their students and staff are subject to a new requirement that those educational activities in Cuba be no shorter than 10 weeks. The three affected activities are: structured educational programs in Cuba offered as part of a course at the licensed institution; formal courses of study at a Cuban academic institution; and teaching at a Cuban academic institution. The remaining three educational activities may still be engaged in for a period of less than 10 weeks. These activities are: graduate research in Cuba; sponsorship of a Cuban national to teach or engage in other scholarly activities in the United States; and organization of and preparation for licensed educational activities. OFAC is also amending the requirements in paragraph (a) with respect to letters from the licensed institution that must be carried by each authorized traveler.

Some current holders of educational institution licenses may have already planned Cuba travel-related activities that would not be authorized under amended paragraph (a) of Section 515.565. Those licensed institutions that, prior to the effective date of this Notice, have already planned Cuba trips that will not meet the new requirements may still engage in all transactions incident to such trips provided that the trips and all associated transactions are completed by August 15, 2004.

Paragraph (b) of Section 515.565 is amended to clarify that its statement of specific licensing policy applies only to individuals seeking to engage in certain educational activities in Cuba if their educational institution does not have an institutional license under paragraph (a). The licensing policies set forth in

paragraphs (a) and (b) are not available to individuals or entities that purport to arrange, facilitate, or coordinate educational programs in Cuba for U.S. academic institutions.

Participation in international sports federation competitions; clinics and workshops licensing policy. OFAC is eliminating the general license set forth in paragraph (a) of Section 515.567 for travel-related transactions incident to participation in amateur and semi-professional athletic competitions that take place in Cuba under the auspices of an international sports federation. In its place, revised paragraph (a) states a specific licensing policy under which OFAC will authorize those same activities on a case-by-case basis. OFAC also is amending paragraph (b) of the same section to eliminate the policy of specifically licensing travel-related transactions incident to participation in clinics and workshops, whether sports-related or otherwise, in Cuba.

Quarterly remittances to nationals of Cuba. OFAC is amending the general license in paragraph (a) of Section 515.570 to eliminate the authorization of quarterly \$300 remittances sent from any person subject to U.S. jurisdiction who is 18 years of age or older to any household of a national of Cuba. The amended general license authorizes such remittances only when they are sent to members of the remitter's immediate family. The term "member of the remitter's immediate family" is defined to include only a spouse, child, grandchild, parent, grandparent, or sibling of the remitter or that remitter's spouse, as well as any spouse, widow, or widower of any of the foregoing. Paragraph (a) is further amended to provide that the quarterly \$300 remittance cannot be remitted to certain government officials and certain members of the Cuban Communist Party.

Paragraph (c)(4)(i) of Section 515.560 is also amended to reduce the total amount of quarterly \$300 remittances that an authorized traveler may carry to Cuba from \$3,000 to \$300.

NGO remittances to Cuba. Paragraph (d)(1) of Section 515.570 is revised to clarify the specific licensing policy of authorizing remittances from nongovernmental organizations and individuals subject to U.S. jurisdiction to Cuban pro-democracy groups, independent civil society groups, and religious organizations as well as to individual members of such Cuban groups and organizations.

Remittance-related transactions by banks and other depository institutions. Paragraph (a)(3) of Section 515.572 is amended to eliminate the general license authorizing depository institutions to act as forwarders for the quarterly family household remittances or emigration-related remittances authorized in paragraphs (a), (b), and (c) of Section 515.570. Depository institutions, as defined in Section 515.333, are now required to apply to OFAC and receive specific authorization as remittance forwarders before providing such services. Depository institutions continue to be authorized by general license, however, to provide services related to other authorized financial transactions. For example, a banking institution does not need separate authorization from OFAC to transfer to Cuba funds covered by a specific license allowing overflight payments or remittances other than quarterly family or emigration-related remittances.