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List of Subjects in 31 CFR Part 515

Administrative practice and procedure, Air carriers, Banks, banking, Blocking of assets, Cuba, Currency, Estates, Exports, Foreign investment in the United States, Foreign trade, Imports, Informational materials, Penalties, Publications, Reporting and recordkeeping requirements, Securities, Shipping, Specially designated nationals, Terrorism, Travel restrictions, Trusts and trustees, Vessels.

For the reasons set forth in the preamble, 31 CFR part 515 is amended as set forth below:

PART 515—CUBAN ASSETS CONTROL REGULATIONS

1. The authority citation for part 515 is revised to read as follows:

Authority: 18 U.S.C. 2332d; 22 U.S.C. 2370(a), 6001-6010; 31 U.S.C. 321(b); 50 U.S.C. App. 1-44; Pub. L. 101-410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 9193, 7 FR 5205, 3 CFR, 1938-1943 Comp., p. 1147; E.O. 9989, 13 FR 4891, 3 CFR, 1943-48 Comp., p. 748; Proc. 3447, 27 FR 1085, 3 CFR 1959-1963 Comp., p. 157; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

2. Section 515.563 is revised to read as follows:

§ 515.563 Family remittances to nationals of Cuba.

(a) A person subject to the jurisdiction of the United States may make remittances to a national of Cuba resident in Cuba or in the authorized trade territory who is a close relative of the remitter or of the remitter's spouse, provided the U.S. remitter is 18 years of age or older and payments are made from unblocked sources for the support of the close relative (including any member of his or her household). In any consecutive 3-month period, the maximum amount a remitter may send to a close relative of the remitter or the remitter's spouse pursuant to this section is the lesser of:

(1) \$300 to the close relative in Cuba or the authorized trade territory; or

(2) \$300 to the household of the close relative in Cuba or the authorized trade territory, regardless of the number of close relatives comprising the household.

Note to paragraph (a). The maximum amounts set forth in paragraph (a) of this section do not apply to family remittances to a Cuban national who has been specifically licensed as an unblocked national pursuant to § 515.505(b), as family remittances to unblocked persons do not require separate authorization.

(b) A remitter or remitter's spouse who is 18 years of age or older and who is engaged in authorized travel to Cuba may carry on his or her person no more than \$300 in total family remittances, regardless of the number of eligible payees in Cuba, provided the remitter's family remittances will not exceed the maximum amount set forth in paragraph (a) of this section for any payee within the past 3 months.

(c) In addition to travel-related remittances authorized pursuant to § 515.564(c), remittances to any close relative of the remitter or of the remitter's spouse who is a national of Cuba or who is resident in Cuba are authorized for the purpose of enabling the payee to emigrate from Cuba to the United States, in an amount not exceeding \$500, to be made only once to any payee, provided that the payee is a resident of and within Cuba at the time the payment is made.

(d) The term *close relative* used with respect to any person means such person's spouse, child, grandchild, parent, grandparent, great grandparent, uncle, aunt, brother, sister, nephew, niece, first cousin, mother-in-law, father-in-law, son-in-law, daughter-in-law, sister-in-law, brother-in-law, or spouse, widow or widower of any of the foregoing.

3. Section 515.564 is amended by revising the first sentence of paragraph (c) to read as follows:

§ 515.564 Certain transactions incident to travel to, from and within the United States by certain Cuban nationals.

* * * * *

(c) Travel-related remittances by persons subject to U.S. jurisdiction to Cuba or a Cuban national, directly or indirectly, for transactions on behalf of a Cuban national, are authorized pursuant to paragraph (a) of this section only when made for the purpose of enabling the payee to emigrate from Cuba to the United States, including for the purchase of airline tickets and payment of visa fees or other travel-related fees. * * *

* * * * *

4. Section 515.566 is amended by revising the last sentence of paragraph (a)(2) to read as follows:

§ 515.566 Authorization for transactions incident to the provision of travel service, carrier service, and family remittance forwarding service.

(a)(1) * * *

(2) * * * Carriage to or from Cuba of any merchandise, cargo or gifts, other than those permitted to individual travelers as accompanied baggage, must also be authorized by licenses issued by the U.S. Department of Commerce.

* * * * *

5. Section 515.569 is amended by revising paragraph (d) to read as follows:

§ 515.569 Currency carried by travelers to Cuba.

* * * * *

(d) A Cuban national returning directly from the United States to Cuba may carry non-Cuban currency only in the amount of U.S. currency or third-country currency brought into the United States by the traveler and registered with the U.S. Customs Service upon entry, plus up to \$300 in funds received as family remittances by the Cuban national during his or her stay in the United States.

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Dated: May 4, 1998.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: May 11, 1998.

James E. Johnson,

*Assistant Secretary (Enforcement),
Department of the Treasury.*

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DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 515

Cuban Assets Control Regulations: Fully-Hosted or Fully-Sponsored Travel and Restrictions on Travel Transactions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule; amendments.

SUMMARY: In order to ensure effective enforcement of the prohibitions on travel-related transactions in Cuba, any person subject to U.S. jurisdiction determined to have traveled to Cuba without the authority of a general or specific license is subject to a rebuttable presumption that the traveler has

engaged in prohibited travel-related transactions. In order to overcome this presumption, any traveler to Cuba who claims to have been fully hosted or fully sponsored, or not to have engaged in any travel-related transactions, may be asked by Federal enforcement agencies to provide a signed explanatory statement, accompanied by any relevant supporting documentation.

EFFECTIVE DATE: May 13, 1998.

FOR FURTHER INFORMATION: Steven I. Pinter, Chief of Licensing (tel.: 202/622-2480); David H. Harmon, Chief of Enforcement (tel.: 202/622-2430); or William B. Hoffman, Chief Counsel (tel.: 202/622-2410); Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220.

SUPPLEMENTARY INFORMATION:

Electronic Availability:

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Background

The Office of Foreign Assets Control ("OFAC") is amending § 515.560 of the Cuban Assets Control Regulations, 31 CFR part 515 (the "Regulations"), to establish a presumption that persons subject to U.S. jurisdiction who have traveled to Cuba without the authority

of a general or specific license have engaged in prohibited travel-related transactions. This presumption is subject to rebuttal upon presentation of a statement, signed by the traveler and accompanied by appropriate supporting documentation, that (1) no transactions were entered into, or (2) the travel was fully hosted or fully sponsored by a person or persons not subject to the jurisdiction of the United States and was not in exchange for services provided in Cuba or elsewhere. The statement shall give a full accounting of either (1) how it was possible to engage in travel without engaging in travel-related transactions, or (2) who hosted or sponsored the visit, why it was hosted or sponsored, and what travel-related transactions were paid for by a third party. In the case of fully hosted or fully sponsored travel, appropriate supporting documentation includes, but is not limited to, an original letter of invitation signed by the person or persons hosting or sponsoring the travel, specific to that traveler, and an explanation of the purpose of the travel, or other appropriate evidence documenting that the travel was not in exchange for services provided in Cuba or elsewhere.

Persons planning to travel to Cuba under this provision are encouraged to obtain two brochures from OFAC prior to their departure to ensure that their travel plans conform with the requirements for fully hosted or fully sponsored travel: *Cuba: Travel Restrictions* (available in Spanish as *Cuba: Restricciones de Viajes a Cuba*), and *Cuba: What You Need to Know About the U.S. Embargo*. Travel to Cuba is not fully hosted or fully sponsored if a person subject to U.S. jurisdiction, as defined in § 515.329 of the Regulations prepaids or reimburses expenses for travel in Cuba or on a Cuban carrier through a foreign travel service provider not subject to the jurisdiction of the United States. Nor is travel to Cuba fully hosted or fully sponsored if a person subject to U.S. jurisdiction pays — before, during, or after the travel — any expenses for travel in Cuba, or on a Cuban carrier, even if the payment is made to a third-country person or entity.

OFAC has determined that persons traveling to and within Cuba normally incur expenses that are routinely and customarily associated with travel to and within any country. Therefore, absent evidence to the contrary, it will be presumed that a person who traveled to Cuba did engage in transactions related to his or her travel.

OFAC bases its presumption that travelers to and within Cuba engage in

travel-related transactions on information developed during the course of OFAC investigations demonstrating that it is normally necessary for such travelers to incur expenditures. Information on travel fees and costs has also been documented in publications concerning travel to Cuba. Following are descriptions of some of the costs commonly incurred by travelers to and in Cuba.

The Cuban Government routinely charges a fee for a tourist visa or tourist card. This fee may be paid directly by the traveler or it may be included in the amount paid by the traveler to a third country travel agent who arranges travel to Cuba. A departure tax is required of air travelers departing Cuba. This fee may be paid directly by the traveler or indirectly through a third-country travel agent.

Travelers in Cuba often encounter significant room and board charges at major hotels and restaurants frequented by foreign tourists. Accommodations and meals may also be found in private Cuban residences for a fee.

Pleasure boaters encounter several fees that are required by Cuban authorities for sailing in Cuban waters and visiting Cuban ports. These include separate fees for a tourist visa, inward clearance, cruising permits, and exit fees. The Marina Hemingway and other marinas in Cuba charge docking fees that vary according to vessel length and duration of stay. Since Marina Hemingway is not within walking distance of the center of Havana, paid ground transportation by taxi or private vehicle is essential for boaters wishing to explore the city. The International Yacht Club (Club Nautico) charges fees for permanent and temporary membership. Members receive discounts on mooring fees and at bars and restaurants within the Marina Hemingway complex. Persons flying aircraft to Cuba are normally required to pay charges for landing, refueling, storage, and maintenance.

In general, Cuba actively promotes foreign tourism as a means of acquiring foreign currency to stimulate its economy. Foreign tourism has become a major industry within Cuba, and is identified in press reports as the country's leading source of hard currency. While OFAC recognizes that unique situations may arise wherein the Cuban Government or a third party not subject to U.S. jurisdiction may find it in its interest to pay or waive all travel fees and costs required of a traveler who is subject to the jurisdiction of the United States, it is highly unlikely that such is the case with most travelers to Cuba.

In the absence of the presumption established by this regulation, it is often a practical impossibility for OFAC to prove that persons traveling to Cuba without a general or specific license have engaged in travel-related transactions in Cuba. Unlicensed travelers do not routinely return to the United States with receipts documenting their expenditures in Cuba. Moreover, OFAC often cannot compel documentary evidence of expenditures from the recipients of payments for travel in Cuba, because many of those recipients are nationals of Cuba or third countries who are not subject to U.S. jurisdiction. Because the Cuban government is generally unwilling to permit travel to Cuba by federal enforcement personnel, they cannot travel to Cuba in order to investigate traveler's claims that they had no expenses.

The presumption established by this regulation only shifts the burden of producing evidence. It does not shift the ultimate burden of proof from OFAC to the traveler.

Because the Regulations involve a foreign affairs function, Executive Order 12866 and provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601-612, does not apply.

List of Subjects in 31 CFR Part 515

Administrative practice and procedure, Air carriers, Banks, banking, Blocking of assets, Cuba, Currency, Estates, Exports, Foreign investment in the United States, Foreign trade, Imports, Informational materials, Penalties, Publications, Reporting and recordkeeping requirements, Securities, Shipping, Specially designated nationals, Terrorism, Travel restrictions, Trusts and trustees, Vessels.

For the reasons set forth in the preamble, 31 CFR part 515 is amended as set forth below:

PART 515—CUBAN ASSETS CONTROL REGULATIONS

1. The authority citation for part 515 continues to read as follows:

Authority: 18 U.S.C. 2332d; 22 U.S.C. 2370(a), 6001-6010; 31 U.S.C. 321(b); 50 U.S.C. App. 1-44; Pub. L. 101-410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 9193, 7 FR 5205, 3 CFR, 1938-1943 Comp., p. 1147; E.O. 9989, 13 FR 4891, 3 CFR, 1943-48 Comp., p. 748; Proc. 3447, 27 FR 1085, 3 CFR 1959-

1963 Comp., p. 157; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

2. Section 515.560 is revised to read as follows:

§ 515.560 Certain transactions incident to travel to and within Cuba.

* * * * *

(g)(1) Unless otherwise authorized to engage in travel-related transactions pursuant to this part, any person subject to the jurisdiction of the United States, as defined in § 515.329, who has traveled to Cuba shall be presumed to have engaged in travel-related transactions prohibited by this part. This presumption may be rebutted by a statement signed by the traveler providing specific supporting documentation that no transactions were engaged in by the traveler or on the traveler's behalf by any other person subject to U.S. jurisdiction, or that the traveler was fully sponsored or fully hosted by a third party not subject to the jurisdiction of the United States and that any sponsorship or waiver of fees was not in exchange for services provided to Cuba or a Cuban national. The statement may be requested by any Federal law enforcement agency authorized to enforce the prohibitions of this Part, including the Office of Foreign Assets Control. The statement shall describe the circumstances of the travel and explain how it was possible to avoid entering into travel-related transactions such as payments for meals, lodging, transportation, bunkering of vessels or aircraft, visas, entry or exit fees, and gratuities. If the travel was fully sponsored or fully hosted, the statement shall state what party hosted or sponsored the travel and why. The statement shall also provide a day-to-day account of financial transactions entered into on behalf of the traveler by the host or sponsor, including but not limited to visa fees, room and board, local or international transportation costs and Cuban airport departure taxes. In the case of pleasure craft calling at Cuban marinas, the statement shall also address related refueling costs, mooring fees, club membership fees, provisions, cruising permits, local land transportation, and departure fees. In preparing the statement, travelers should be aware that the authorization contained in paragraph (c)(3) of this section concerning the purchase and importation of up to \$100 of Cuban merchandise for personal use does not apply to fully sponsored or fully hosted

travelers. Travelers fully hosted or fully sponsored by a person or persons not subject to the jurisdiction of the United States shall also provide appropriate supporting documentation demonstrating that they were fully hosted or fully sponsored, such as an original signed statement from their sponsor or host, specific to that traveler, confirming that the travel was fully hosted or fully sponsored and the reasons for the travel. All documentation described in this section is subject to the recordkeeping requirements, including the period during which records shall be available for examination, in § 501.601 of this chapter.

(2) If the traveler can establish that all necessary transactions involved fully sponsored or fully hosted travel within Cuba, such transactions do not violate the prohibitions of this part, provided that, except as provided in paragraph (g)(3) of this section:

(i) No person subject to the jurisdiction of the United States has made any payments or transferred any property or provided any service in connection with such travel, including prepayment of or reimbursement for travel expenses, to any person or entity not subject to U.S. jurisdiction; and

(ii) The travel is not aboard a direct flight between the United States and Cuba authorized pursuant to § 515.566.

(3) Travel shall be considered fully sponsored or fully hosted for purposes of this section notwithstanding a payment by a person subject to the jurisdiction of the United States for transportation to and from Cuba, provided that the carrier furnishing the transportation is not a Cuban national.

(4) Persons planning to travel to Cuba consistent with this paragraph (g) may contact the Compliance Programs Division, Office of Foreign Assets Control, prior to their departure to ensure that their travel plans conform with the requirements for fully hosted or sponsored travel. Other inquiries concerning travel-related transactions should be addressed to the Licensing Division, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW—Annex, Washington, DC 20220.

Dated: May 4, 1998.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: May 11, 1998.

James E. Johnson,

*Assistant Secretary (Enforcement),
Department of the Treasury.*

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