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DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 515

Cuban Assets Control Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is amending the Cuban Assets Control Regulations to further implement elements of the policy announced by the President on December 17, 2014 to engage and empower the Cuban people. Among other things, these amendments further facilitate travel to Cuba for authorized purposes, expand the range of authorized financial transactions, and authorize additional business and physical presence in Cuba. These amendments also implement certain technical and conforming changes.

DATES: Effective: [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: The Department of the Treasury’s Office of Foreign Assets Control: Assistant Director for Licensing, tel.: 202-622-2480, Assistant Director for Regulatory Affairs, tel.: 202-622-4855, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202-622-2490; or the Department of the Treasury’s Office of the Chief Counsel (Foreign Assets Control), Office of the General Counsel, tel.: 202-622-2410.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC’s website (www.treasury.gov/ofac). Certain general information pertaining to OFAC’s sanctions programs also is available via facsimile through a 24-hour fax-on-demand service, tel.: 202-622-0077.

Background

The Department of the Treasury issued the Cuban Assets Control Regulations, 31 CFR part 515 (the “Regulations”), on July 8, 1963, under the Trading With the Enemy Act (50 U.S.C. 4301-4341). OFAC has amended the Regulations on numerous occasions.

Most recently, on January 16, June 15, and September 21, 2015, and January 27, 2016, OFAC amended the Regulations, in coordinated actions with the Department of Commerce, to

implement certain policy measures announced by the President on December 17, 2014 to further engage and empower the Cuban people. Today, OFAC and the Department of Commerce are taking additional coordinated actions in support of the President's Cuba policy.

OFAC is making additional amendments to the Regulations with respect to travel and related transactions, financial transactions, business and physical presence, and certain other activities, as set forth below.

Travel and Related Transactions

Individual people-to-people educational travel. OFAC is amending section 515.565(b) to remove the requirement that people-to-people educational travel be conducted under the auspices of an organization that sponsors such exchanges. This section now authorizes individuals to travel to Cuba provided that, among other things, the traveler engage while in Cuba in a full-time schedule of educational exchange activities that are intended to enhance contact with the Cuban people, support civil society in Cuba, or promote the Cuban people's independence from Cuban authorities, and that will result in meaningful interaction between the traveler and individuals in Cuba. The predominant portion of the activities engaged in by the traveler must not be with certain Government of Cuba or Cuban Communist Party officials. Persons relying upon this authorization must retain records related to the authorized travel transactions, including records demonstrating a full-time schedule of authorized activities.

Payment of salaries. OFAC is amending section 515.571 to remove the limitation on the receipt of compensation in excess of amounts covering living expenses and the acquisition of goods for personal consumption by a Cuban national present in the United States in a non-immigrant status or pursuant to other non-immigrant travel authorization issued by the U.S. government. New section (a)(5)(i) explicitly authorizes the receipt of any salary or other compensation consistent with the individual's non-immigrant status or other non-immigrant travel authorization, provided that the recipient is not subject to any special tax assessment by the Cuban government in connection with the receipt of the salary or other compensation. New section 515.571(e) authorizes all transactions related to the sponsorship or hiring of a Cuban national to work in the United States and provides that an employer may not make additional payments to the Cuban government in connection with the sponsorship or hiring of a Cuban national. Section 515.571(e) also authorizes transactions in connection with the filing of an application for non-immigrant travel authorization. OFAC is also making conforming edits in section 515.560(d)(3) and the Note to section 515.565(a)(5).

Dealings in merchandise subject to section 515.204, including Cuban-origin goods, for personal use. OFAC is adding section 515.585(c) to authorize individuals who are persons subject to U.S. jurisdiction and who are located in a third country to engage in the purchase or acquisition of merchandise subject to the prohibitions in section 515.204, including Cuban-origin goods, for personal consumption while in a third country, and to receive or obtain services from Cuba or a Cuban national that are ordinarily incident to travel and maintenance within a third country. This provision does not authorize the importation of such merchandise into the United

States, including as accompanied baggage. OFAC is making a conforming change to section 515.410.

Financial Transactions

U-turn payments through the U.S. financial system. OFAC is amending section 515.584(d) to authorize U-turn transactions in which Cuba or a Cuban national has an interest to be conducted through the U.S. financial system. This provision authorizes funds transfers from a bank outside the United States that pass through one or more U.S. financial institutions before being transferred to a bank outside the United States where neither the originator nor the beneficiary is a person subject to U.S. jurisdiction. Transactions through the U.S. financial system that do not meet these criteria, including all transactions where the originator or beneficiary is a person subject to U.S. jurisdiction, remain prohibited unless otherwise authorized or exempt under the Regulations. OFAC is also making conforming edits to section 515.584(e), regarding unblocking of certain previously blocked funds transfers.

Processing of U.S. dollar monetary instruments. OFAC is adding new section 515.584(g) to authorize U.S. banking institutions to process U.S. dollar monetary instruments presented indirectly by Cuban financial institutions. Correspondent accounts used for transactions authorized pursuant to this section may be denominated in U.S. dollars. This section does not authorize banking institutions subject to U.S. jurisdiction to open correspondent accounts for banking institutions that are nationals of Cuba.

Certain bank accounts on behalf of a Cuban national. OFAC is adding new section 515.584(h) to authorize banking institutions to open and maintain accounts solely in the name of a Cuban national located in Cuba for the purposes only of receiving payments in the United States in connection with transactions authorized pursuant to or exempt from the prohibitions of this part and remitting such payments to Cuba. This provision would allow, for example, a Cuban national author located in Cuba to open an account with a bank or online payment platform in the United States to receive payments for sales of her book. This provision is in addition to the two existing authorizations for banking institutions to operate certain accounts on behalf of certain Cuban nationals. See Note to paragraph (a) of section 515.571(a)(5) and section 515.585(b). To avoid confusion, OFAC also is making conforming edits to the Note to section 515.571(a)(5) to clarify that all three account authorizations extend to banking institutions.

Business and Physical Presence

OFAC is amending section 515.573 to authorize additional persons subject to U.S. jurisdiction to establish a business and physical presence in Cuba.

Business presence. In September 2015, OFAC amended sections 515.542 and 515.578 to authorize persons subject to U.S. jurisdiction to establish and maintain a business presence in Cuba, including through subsidiaries, branches, offices, joint ventures, franchises, and agency or other business relationships with any Cuban individual or entity, to facilitate the provision of authorized telecommunications and internet-based services. OFAC is now expanding this

authorization to establish a business presence to include the following additional categories of persons subject to U.S. jurisdiction (all of whom were previously authorized to establish a physical presence): exporters of goods authorized for export or reexport to Cuba by section 515.533 or section 515.559 or that are otherwise exempt; entities providing mail or parcel transmission services authorized by section 515.542(a) or providing cargo transportation services in connection with trade involving Cuba authorized by or exempt from the prohibitions of this part; and providers of travel and carrier services authorized by section 515.572. OFAC is clarifying that the business and physical presence authorization for providers of internet-based services extends to persons engaged in transactions authorized by section 515.578(e). OFAC is removing the prior provisions authorizing business presence that were located in sections 515.542 and 515.578 and consolidating these authorizations in section 515.573.

Physical presence. In September 2015, OFAC amended section 515.573 to authorize certain persons subject to U.S. jurisdiction to establish a physical presence, such as an office or other facility, in Cuba, to facilitate authorized transactions. OFAC is now expanding this authorization to include the following additional categories of persons subject to U.S. jurisdiction: entities engaging in non-commercial activities authorized by section 515.574 (Support for the Cuban People); entities engaging in humanitarian projects set forth in section 515.575(b) (Humanitarian projects); and private foundations or research or educational institutes engaging in transactions authorized by section 515.576. OFAC is also adding a note to clarify that the activities that may be carried out by exporters of items exported or reexported pursuant to authorization by the Department of Commerce or OFAC, or that are otherwise exempt, at a physical presence authorized by this section include the assembly of such items.

Other Transactions

Grants and awards. OFAC is adding a new provision in section 515.565 to authorize the provision of educational grants, scholarships, or awards to a Cuban national or in which Cuba or a Cuban national otherwise has an interest. This could include, for example, the provision of educational scholarships for Cuban students to pursue academic studies for a degree. OFAC is also adding a note to section 515.575(b) to clarify that the existing authorization includes provision of grants or awards for humanitarian projects in or related to Cuba that are designed to directly benefit the Cuban people as set forth in that section.

Telecommunications and internet-related services. OFAC is amending section 515.578 to allow the importation of Cuban-origin software.

OFAC is also making several technical and conforming edits. In particular, OFAC is correcting a typographical error in section 515.533(d)(2). OFAC is also conforming the language of the general authorization in section 515.559(d) to the corresponding authorization in section 515.533(d).

Public Participation

Because the amendments of the Regulations involve a foreign affairs function, Executive Order 12866 and the 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.

Paperwork Reduction Act

The collections of information related to the Regulations are contained in 31 CFR part 501 (the “Reporting, Procedures and Penalties Regulations”) and section 515.572 of this part. Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information are covered by the Office of Management and Budget under control numbers 1505-0164, 1505-0167, and 1505-0168. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects in 31 CFR Part 515

Administrative practice and procedure, Banking, Blocking of assets, Cuba, Financial transactions, Reporting and recordkeeping requirements, Travel restrictions.

For the reasons set forth in the preamble, the Department of the Treasury’s Office of Foreign Assets Control amends 31 CFR part 515 as set forth below:

PART 515—CUBAN ASSETS CONTROL REGULATIONS

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

Authority: 22 U.S.C. 2370(a), 6001-6010, 7201-7211; 31 U.S.C. 321(b); 50 U.S.C. 4301- 4341; Pub. L. 101-410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 104-114, 110 Stat. 785 (22 U.S.C. 6021-6091); Pub. L. 105-277, 112 Stat. 2681; Pub. L. 111-8, 123 Stat. 524; Pub. L. 111-117, 123 Stat. 3034; E.O. 9193, 7 FR 5205, 3 CFR, 1938-1943 Comp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943-1948 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 C — Definitions

§ 515.329 [Amended]

2. In § 515.329, remove “]” at the end of the sentence.

Subpart D — Interpretations

3. Revise § 515.410 to read as follows:

§ 515.410 Dealing abroad in Cuban-origin commodities.

Section 515.204 prohibits, unless licensed, the importation of commodities of Cuban origin. It also prohibits, unless licensed, persons subject to the jurisdiction of the United States from purchasing, transporting or otherwise dealing in commodities of Cuban origin which are

outside the United States. Attention is directed to § 515.585, which authorizes certain dealings in commodities of Cuban origin outside the United States.

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

4. In § 515.505, revise paragraph (a)(4) to read as follows:

§ 515.505 Certain Cuban nationals unblocked.

(a) * * *

(4) Any entity, office, or other sub-unit authorized pursuant to § 515.573; and

* * * * *

5. In § 515.533, revise paragraph (d)(2) introductory text to read as follows:

§ 515.533 Exportations from the United States to Cuba; reexportations of 100% U.S.-origin items to Cuba; negotiation of executory contracts.

* * * * *

(d) * * *

(2) The travel-related transactions set forth in § 515.560(c) and such additional transactions as are directly incident to the facilitation of the temporary sojourn of aircraft and vessels as authorized by 15 CFR 740.15 (License Exception Aircraft, Vessels and Spacecraft) or pursuant to other authorization by the Department of Commerce for travel between the United States and Cuba authorized pursuant to this part, including travel-related transactions by personnel who are persons subject to U.S. jurisdiction and who are required for normal operation and service aboard a vessel or aircraft, as well as personnel who are persons subject to U.S. jurisdiction and who are required to provide services to a vessel in port or aircraft on the ground, are authorized, provided that:

* * * * *

6. In § 515.542, remove and reserve paragraph (f) and revise Notes 1 and 2 to § 515.542 to read as follows:

§ 515.542 Mail and telecommunications-related transactions.

* * * * *

Note 1 to § 515.542: For an authorization of travel-related transactions that are directly incident to the conduct of market research, commercial marketing, sales or contract negotiation, accompanied delivery, installation, leasing, or servicing in Cuba of items consistent with the

export or reexport policy of the Department of Commerce, see § 515.533(d). For an authorization of travel-related transactions that are directly incident to participation in professional meetings, including where such meetings relate to telecommunications services or other activities authorized by paragraphs (b) through (e) of this section, see § 515.564(a).

Note 2 to § 515.542: For general licenses authorizing physical and business presence in Cuba for certain persons, see § 515.573. An authorization related to business presence was previously included in this section. For an authorization of certain internet-related services, see § 515.578.

7. In § 515.559, revising paragraph (d) to read as follows:

§ 515.559 Certain export and import transactions by U.S.-owned or -controlled foreign firms.

* * * * *

(d) General license. Travel-related transactions set forth in § 515.560(c) and such other transactions as are directly incident to market research, commercial marketing, sales or contract negotiation, accompanied delivery, installation, leasing, or servicing in Cuba of exports that are consistent with the licensing policy under paragraph (a) of this section are authorized, provided that the traveler's schedule of activities does not include free time or recreation in excess of that consistent with a full-time schedule.

* * * * *

8. In § 515.560, revise paragraph (d)(3) to read as follows:

§ 515.560 Travel-related transactions to, from, and within Cuba by persons subject to U.S. jurisdiction.

* * * * *

(d) * * *

(3) Salaries or other compensation earned by the Cuban national up to any amount that can be substantiated through payment receipts as authorized in § 515.571(a)(5).

* * * * *

9. In § 515.565:

- a. Revise paragraph (a)(5);
- b. Redesignate paragraphs (a)(11) and (12) as (a)(12) and (13), respectively;
- c. Add new paragraph (a)(11);
- d. Revise newly redesignated paragraph (a)(12);
- e. Revise paragraph (b);

- f. Revise the Note to § 515.565(a) and (b); and
- g. Revise paragraph (c).

The revisions and addition read as follows:

§ 515.565 Educational activities.

(a) * * *

(5) Sponsorship of a Cuban scholar to teach or engage in other scholarly activity at the sponsoring U.S. academic institution (in addition to those transactions authorized by the general license contained in § 515.571).

Note to paragraph (a)(5): See § 515.571(a) for authorizations related to certain banking transactions and receipt of salary or other compensation by Cuban nationals present in the United States in a non-immigrant status or pursuant to other non-immigrant travel authorization issued by the U.S. government.

* * * * *

(11) Provision of educational grants, scholarships, or awards to a Cuban national or in which Cuba or a Cuban national otherwise has an interest; and

(12) The organization of, and preparation for, activities described in paragraphs (a)(1) through (a)(11) of this section by employees or contractors of the sponsoring organization that is a person subject to U.S. jurisdiction;

* * * * *

(b) General license for people-to-people travel. The travel-related transactions set forth in § 515.560(c) and such additional transactions as are directly incident to educational exchanges not involving academic study pursuant to a degree program are authorized, provided that:

(1) Travel-related transactions pursuant to this authorization must be for the purpose of engaging, while in Cuba, in a full-time schedule of activities intended to enhance contact with the Cuban people, support civil society in Cuba, or promote the Cuban people's independence from Cuban authorities;

(2) Each traveler has a full-time schedule of educational exchange activities that will result in meaningful interaction between the traveler and individuals in Cuba;

(3) The predominant portion of the activities engaged in by individual travelers is not with a prohibited official of the Government of Cuba, as defined in § 515.337 of this part, or a prohibited member of the Cuban Communist Party, as defined in § 515.338 of this part;

(4) For travel conducted under the auspices of an organization that is a person subject to U.S. jurisdiction that sponsors such exchanges to promote people-to-people contact, an employee, paid consultant, or agent of the sponsoring organization must accompany each group traveling to Cuba to ensure that each traveler has a full-time schedule of educational exchange activities; and

Note to § 515.565(b)(4): An organization that sponsors and organizes trips to Cuba in which travelers engage in individually selected and/or self-directed activities would not qualify for the general license. Authorized trips are expected to be led by the organization and to have a full-time schedule of activities in which the travelers will participate.

(5) In addition to all other information required by § 501.601 of this chapter, persons relying on the authorization in paragraph (b) of this section must retain records sufficient to demonstrate that each individual traveler has engaged in a full-time schedule of activities that satisfy the requirements of paragraphs (b)(1) through (3) of this section. In the case of an individual traveling under the auspices of an organization that is a person subject to U.S. jurisdiction and that sponsors such exchanges to promote people-to-people contact, the individual may rely on the entity sponsoring the travel to satisfy his or her recordkeeping requirements with respect to the requirements of paragraphs (b)(1) through (b)(3) of this section. These records must be furnished to the Office of Foreign Assets Control on demand pursuant to § 501.602 of this chapter.

Example 1 to § 515.565(b): An organization wishes to sponsor and organize educational exchanges not involving academic study pursuant to a degree program for individuals to learn side-by-side with Cuban individuals in areas such as environmental protection or the arts. The travelers will have a full-time schedule of educational exchange activities that will result in meaningful interaction between the travelers and individuals in Cuba. The organization's activities qualify for the general license, and the individual may rely on the entity sponsoring the travel to satisfy his or her recordkeeping requirement.

Example 2 to § 515.565(b): An individual plans to travel to Cuba to participate in discussions with Cuban artists on community projects, exchanges with the founders of a youth arts program, and to have extended dialogue with local city planners and architects to learn about historical restoration projects in Old Havana. The traveler will have a full-time schedule of such educational exchange activities that will result in meaningful interaction between the traveler and individuals in Cuba. The individual's activities qualify for the general license, provided that the individual satisfies the recordkeeping requirement.

Example 3 to § 515.565(b): An individual plans to travel to Cuba to participate in discussions with Cuban farmers and produce sellers about cooperative farming and agricultural practices and have extended dialogue with religious leaders about the influence of African traditions and religion on society and culture. The traveler fails to keep any records of the travel. Although the traveler will have a full-time schedule of educational exchange activities that will result in meaningful interaction between the traveler and individuals in Cuba, the traveler's

failure to keep records means that the individual's activities do not qualify for the general license.

Example 4 to § 515.565(b): An individual plans to travel to Cuba to rent a bicycle to explore the streets of Havana, engage in brief exchanges with shopkeepers while making purchases, and have casual conversations with waiters at restaurants and hotel staff. None of these activities are educational exchange activities that will result in meaningful interaction between the traveler and individuals in Cuba, and the traveler's trip does not qualify for the general license.

Example 5 to § 515.565(b): An individual plans to travel to Cuba to participate in discussions with Cuban farmers and produce sellers about cooperative farming and agricultural practices and have extended dialogue with religious leaders about the influence of African traditions and religion on society and culture. The individual also plans to spend a few days engaging in brief exchanges with Cuban food vendors while spending time at the beach. Only some of these activities are educational exchange activities that will result in meaningful interaction between the traveler and individuals in Cuba, and the traveler therefore does not have a full-time schedule of such activities on each day of the trip. The trip does not qualify for the general license.

Note to § 515.565(a) and (b): Except as provided in § 515.565(b)(5), each person relying on the general authorizations in these paragraphs, including entities sponsoring travel pursuant to the authorization in § 515.565(b), must retain specific records related to the

authorized travel transactions. See §§ 501.601 and 501.602 of this chapter for applicable recordkeeping and reporting requirements.

(c) Transactions related to activities that are primarily tourist-oriented are not authorized pursuant to this section.

* * * * *

10. In § 515.571, revise paragraph (a)(5) and add paragraph (e) to read as follows:

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

(a) * * *

(5) All transactions ordinarily incident to the Cuban national's presence in the United States in a non-immigrant status or pursuant to other non-immigrant travel authorization issued by the U.S. government.

(i) This paragraph (a)(5) authorizes the receipt of salary or other compensation by a national of Cuba consistent with the individual's non-immigrant status or non-immigrant travel authorization, provided that national of Cuba is not subject to any special tax assessments by the Cuban government in connection with the receipt of the salary or other compensation.

(ii) Examples of other transactions authorized by this paragraph (a)(5) include: the payment of tuition to a U.S. educational institution by a national of Cuba issued a student (F-1) visa, and the rental of a stage by a group of Cubans issued performance (P-2) visas.

Note to paragraph (a)(5): This paragraph authorizes banking institutions, as defined in §515.314, to open and maintain accounts solely in the name of a Cuban national who is present in the United States in a non-immigrant status or pursuant to other non-immigrant travel authorization for use while the Cuban national is located in the United States in such status, and to close such accounts prior to departure. See paragraph (b) of this section for an authorization for banking institutions to maintain accounts opened pursuant to this paragraph while the Cuban national is located outside the United States.

* * * * *

(e) The following transactions by or on behalf of a Cuban national are authorized:

(1) All transactions related to the sponsorship or hiring of a Cuban national to work in the United States in a non-immigrant status or pursuant to other non-immigrant travel authorization issued by the U.S. government, except that an employer may not make payments to the Cuban government in connection with the sponsorship or hiring of a Cuban national; and

(2) All transactions in connection with the filing of an application for non-immigrant travel authorization issued by the U.S. government.

* * * * *

11. In § 515.573:

- a. Revise the section heading;
- b. Revise paragraph (a) introductory text;
- c. Redesignate paragraphs (b) and (c) as paragraphs (c) and (e);
- d. Add new paragraphs (b) and (d); and
- e. Revise newly redesignated paragraphs (c) and (e).

The revisions and additions read as follows:

§ 515.573 Physical presence and business presence in Cuba authorized; Cuban news bureaus.

(a) Physical presence: The persons listed in paragraphs (c) and (d) of this section are authorized to engage in all transactions necessary to establish and maintain a physical presence in Cuba to engage in transactions authorized pursuant to or exempt from the prohibitions of this part, including the following:

* * * * *

(b) Business presence. Except for transactions prohibited by § 515.208, the persons listed in paragraph (c) of this section are authorized to engage in all transactions necessary to establish and maintain a business presence in Cuba to engage in transactions authorized pursuant to or exempt from the prohibitions of this part, including the following: establishing and maintaining subsidiaries, branches, offices, joint ventures, franchises, and agency or other business relationships with any Cuban national, and entering into all necessary agreements or arrangements with such entity or individual.

(c) Persons authorized to establish physical and business presence. The following persons subject to U.S. jurisdiction may engage in the transactions authorized pursuant to paragraphs (a) and (b) of this section, provided that such transactions may only be engaged in to support transactions authorized by or exempt from the prohibitions of this part:

(1) Providers of telecommunications services authorized by § 515.542(b) through (d) or persons engaged in activities authorized by § 515.542(e);

(2) Providers of internet-based services authorized by § 515.578(a) or persons engaged in activities authorized by § 515.578(c) or (e);

(3) Exporters of goods authorized for export or reexport to Cuba by § 515.533 or § 515.559 or that are otherwise exempt;

Note to paragraph (c)(3): This section authorizes the assembly in Cuba of items exported or reexported pursuant to authorization by the Department of Commerce or OFAC or that are otherwise exempt but does not authorize the incorporation of Cuban-origin goods into items assembled pursuant to this section or the processing of raw materials into finished goods in Cuba.

(4) Entities providing mail or parcel transmission services authorized by § 515.542(a) or providing cargo transportation services in connection with trade involving Cuba authorized by or exempt from the prohibitions of this part; and

(5) Providers of travel and carrier services authorized by § 515.572.

Note to paragraph (c)(5): This authorization does not allow persons subject to U.S. jurisdiction to establish a physical or business presence in Cuba for the purpose of providing lodging services in Cuba.

(d) Persons authorized to establish physical presence. The following persons subject to U.S. jurisdiction may engage in the transactions authorized pursuant to paragraph (a) of this section, provided that such transactions may only be engaged in to support transactions authorized by or exempt from the prohibitions of this part:

(1) News bureaus whose primary purpose is the gathering and dissemination of news to the general public authorized by paragraph (e) of this section;

(2) Entities organizing or conducting educational activities authorized by § 515.565(a);

(3) Religious organizations engaging in religious activities in Cuba authorized by § 515.566;

(4) Entities engaging in non-commercial activities authorized by § 515.574 (Support for the Cuban People);

(5) Entities engaging in humanitarian projects set forth in § 515.575(b) (Humanitarian projects); and

(6) Private foundations or research or educational institutes engaging in transactions authorized by § 515.576.

* * * * *

12. In § 515.575, redesignate the Note to paragraph (a) as Note 1 to paragraph (a) and add Note 2 to paragraph (a) to read as follows:

§ 515.575 Humanitarian projects.

* * * * *

(a) * * *

Note 2 to paragraph (a): Transactions authorized by this paragraph include the provision of grants or awards for humanitarian projects in or related to Cuba that are designed to directly benefit the Cuban people as set forth in paragraph (b) of this section.

* * * * *

13. In § 515.577, revise paragraph (e) to read as follows:

§ 515.577 Authorized transactions necessary and ordinarily incident to publishing.

(e) Section 515.564(a)(2) authorizes the travel-related transactions set forth in § 515.560(c) and such additional transactions that are directly incident to attendance at or organization of professional meetings that are necessary and ordinarily incident to the publishing and marketing of written publications.

14. In § 515.578, revise the section heading, paragraph (d), and add a Note to § 515.578 to read as follows:

§ 515.578 Exportation, reexportation, and importation of certain internet-based services; importation of software.

* * * * *

(d) Software. The importation into the United States of Cuban-origin software is authorized.

* * * * *

Note to § 515.578: For general licenses authorizing physical and business presence in Cuba for certain persons, see § 515.573. An authorization related to business presence was previously included in this section. For an authorization of certain telecommunications-related services, see § 515.542.

15. In § 515.584, revise paragraph (d) and paragraph (e) introductory text, add paragraph (g), a Note to paragraph (g), and paragraph (h) to read as follows:

§ 515.584 Certain financial transactions involving Cuba.

* * * * *

(d) Funds transfers. Any banking institution, as defined in § 515.314, that is a person subject to U.S. jurisdiction is authorized to process funds transfers originating and terminating outside the United States, provided that neither the originator nor the beneficiary is a person subject to U.S. jurisdiction.

(e) Unblocking of certain previously blocked funds transfers authorized. Any banking institution, as defined in § 515.314, that is a person subject to U.S. jurisdiction is authorized to unblock and return to the originator or originating financial institution or their successor-in-interest previously blocked funds transfers that could have been processed pursuant to paragraph (d) of this section, § 515.562(b), or § 515.579(b) if the processing of those transfers would have been authorized had they been sent under the current text of those provisions. Persons subject to U.S. jurisdiction unblocking funds transfers that were originally blocked on or after August 25, 1997, pursuant to this section must submit a report to the Department of the Treasury, Office of Foreign Assets Control, Attn: Sanctions Compliance & Evaluation Division, 1500 Pennsylvania Avenue N.W., Freedman's Bank Building, Washington, DC 20220 within 10 business days from the date such funds transfers are released. Such reports shall include the following:

* * * * *

(g) Any banking institution, as defined in § 515.314, that is a person subject to U.S. jurisdiction is authorized to accept, process, and give value to U.S. dollar monetary instruments presented for processing and payment by a banking institution located in a third country that is not a person subject to U.S. jurisdiction or a Cuban national and that has received the U.S. dollar monetary instruments from a financial institution that is a national of Cuba for which it maintains a correspondent account and which received the U.S. dollar monetary instruments in connection with an underlying transaction that is authorized, exempt, or otherwise not prohibited by this

part, such as dollars spent in Cuba by authorized travelers or a third-country transaction that is not prohibited by this part.

Note to paragraph (g): Correspondent accounts used for transactions authorized pursuant to § 515.584(g) may be denominated in U.S. dollars.

(h) Any banking institution, as defined in § 515.314, that is a person subject to U.S. jurisdiction is authorized to open and maintain accounts solely in the name of a Cuban national located in Cuba for the purposes only of receiving payments in the United States in connection with transactions authorized pursuant to, or exempt from the prohibitions of, this part and remitting such payments to Cuba.

16. In § 515.585, revise the section heading, add paragraph (c), and revise Note 3 to § 515.585 to read as follows:

§ 515.585 Certain transactions in third countries.

* * * * *

(c) Individuals who are persons subject to U.S. jurisdiction who are located in a third country are authorized to purchase or acquire merchandise subject to the prohibitions in § 515.204, including Cuban-origin goods, for personal consumption while in a third country, and

to receive or obtain services from Cuba or a Cuban national that are ordinarily incident to travel and maintenance within that country.

Note to paragraph (c): This section does not authorize the importation of merchandise, including as accompanied baggage. Please see § 515.544 for an authorization to import certain Cuban-origin merchandise from a third country.

* * * * *

Note 3 to § 515.585: Except as provided in paragraph (c) of this section, this section does not authorize any transactions prohibited by § 515.204, including the purchase and sale of Cuban-origin goods.

* * * * *

Dated: March 11, 2016

John E. Smith,
Acting Director, Office of Foreign Assets Control
BILLING CODE 4810-AL
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Billing Code: 3510-33-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Cuba: Revisions to License Exceptions and Licensing Policy

15 CFR Parts 736, 740, and 746

[Docket No. 160303178-6178-01]

RIN 0694-AG86

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule allows vessels departing the United States on temporary sojourn to Cuba with cargo for other destinations to travel to Cuba under a license exception rather than having to obtain a license for the cargo bound for those other destinations to transit Cuba. This rule also authorizes exports of certain items to persons authorized by the Department of the Treasury to establish and maintain a physical or business presence in Cuba. Finally, the rule would adopt a licensing policy of case-by-case review for exports and reexports of items that would enable or facilitate export of items produced by the private sector in Cuba, subject to certain limitations.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Foreign Policy Division, Bureau of Industry and Security, Phone: (202) 482-4252.

SUPPLEMENTARY INFORMATION:

Background

On December 17, 2014, the President announced a historic new approach in U.S. policy toward Cuba. This approach recognized that increased engagement and commerce benefits the American and Cuban people, and sought to make the lives of ordinary Cubans easier and more prosperous. On January 16, 2015, the Bureau of Industry and Security (BIS) amended the Export Administration Regulations (EAR) to create License Exception Support for the Cuban People (SCP), which authorizes the export and reexport, without a license, of certain items to, among other objectives, improve the living conditions of the Cuban people (*see* 80 FR 2286). The rule also made other changes to license exceptions and licensing policy. *Id.*

On July 22, 2015, BIS published a rule implementing the May 29, 2015, rescission of Cuba's designation as a state sponsor of terrorism (*see* 80 FR 43314). That rule expanded certain license exception availability for exports and reexports to Cuba, including making general aviation aircraft eligible for temporary sojourns to Cuba.

On September 21, 2015, BIS published a rule to enhance support for the Cuban people (*see* 80 FR 56898). This rule expanded the scope of transactions that are eligible for License Exception SCP and made certain vessels on temporary sojourn to Cuba eligible for a license exception.

On January 27, 2016, BIS published a rule that amended the licensing policy in § 746.2 of the EAR to add a general policy of approval for certain exports and reexports previously subject to case-by-case review and a policy of case-by-case review for exports and reexports of items not eligible for License Exception SCP to meet the needs of the Cuban people, including exports and reexports made to state-owned enterprises and agencies and organizations of the

Cuban government that provide goods and services to the Cuban people, subject to certain restrictions (*see* 81 FR 4580).

Today, BIS is taking this action in coordination with the Department of the Treasury, Office of Foreign Assets Control (OFAC), which is amending the Cuban Assets Control Regulations (31 CFR part 515).

This rule revises License Exception Aircraft, Vessels and Spacecraft (AVS) in § 740.15 to authorize transit through Cuban territory of cargo, laden aboard a vessel on temporary sojourn to Cuba, that is destined for other countries rather than require a license for that cargo to transit Cuban territory provided that such cargo departs with the vessel at the end of its temporary sojourn, does not enter the Cuban economy and is not transferred to another vessel while in Cuba. This change allows for efficient use of vessels that carry cargo from the United States to Cuba and to other countries and allows exporter carriers to select efficient routes. This rule also adds a note reminding readers to consult Coast Guard regulations on unauthorized entry into Cuban territorial waters.

This rule revises License Exception SCP to authorize export or reexport of EAR99 items and items controlled on the Commerce Control List only for anti-terrorism reasons for use by persons authorized to establish and maintain a physical or business presence in Cuba by the Department of the Treasury, Office of Foreign Assets Control pursuant to 31 CFR 515.573 or pursuant to a specific license issued by OFAC. Prior to this rule, License Exception SCP enumerated the activities for which OFAC had authorized such physical or business presence by general license. Simultaneously with the publication of this rule, OFAC is publishing an amendment to 31 CFR 515.573 to authorize additional persons subject to U.S. jurisdiction to establish a business and physical presence in Cuba. BIS's intent is to authorize by license

exception the export and reexport of items needed to establish and maintain a physical or business presence in Cuba, to all persons authorized by OFAC to have such a presence. The simplest way to do this is to reference the applicable section in OFAC's Cuban Assets Control Regulations ("CACR"), *i.e.*, 31 CFR 515.573 and specific licenses issued by OFAC rather than to revise the EAR to repeat any changes made to that CACR section.

This rule also revises EAR licensing policy regarding Cuba to adopt a policy of case-by-case review of license applications to export or reexport items that will enable or facilitate exports from Cuba of items produced by Cuba's private sector. BIS is adopting this policy to reinforce the Cuba case-by-case licensing policy adopted prior to this rule, which focuses on exports and reexports that would be used in ways that meet the needs of the Cuban people. Enabling or facilitating exports of items produced by the Cuban private sector, under certain circumstances will also help meet the needs of the Cuban people and is consistent with the Administration's policy of supporting the ability of the Cuban people to gain greater control over their own lives and determine their country's future. However, BIS will conduct the case-by-case review consistent with the policy standard set forth in § 746.2(b)(3)(i) of the EAR, which provides that "BIS generally will deny applications to export or reexport items for use by state-owned enterprises, agencies, and other organizations that primarily generate revenue for the state, including those engaged in tourism and those engaged in the extraction or production of minerals or other raw materials. Applications for export or reexport of items destined to the Cuban military, police, intelligence or security services also generally will be denied."

This rule revises Note 1 to § 746.2(b)(3)(i) of the EAR, which describes a condition that will generally be included on licenses to prohibit reexport of the items authorized by the license or use of those items to enable or facilitate exports from Cuba. The revision makes clear that the

condition applies to reexports from Cuba or uses that enable or facilitate exports from Cuba that primarily generate revenue for the state. BIS is making this change because enabling or facilitating exports of items produced by the Cuban private sector under certain circumstances will help meet the needs of the Cuban people and is consistent with the Administration's policy of supporting the ability of the Cuban people to gain greater control over their own lives and determine their country's future.

Specific changes made by this rule.

This rule revises § 736.2(b)(8) of the EAR, which prohibits shipments from transiting certain destinations, to explicitly state that the prohibition does not apply if a license or license exception authorizes the in-transit shipment.

This rule revises § 740.15(d)(6) of the EAR to authorize temporary sojourn to Cuba of a vessel carrying cargo destined to other countries provided that such cargo departs with the vessel at the end of its temporary sojourn to Cuba, does not enter the Cuban economy and is not transferred to another vessel while in Cuba.

This rule revises § 740.21(e) to remove the individual references to categories of persons authorized by OFAC to establish and maintain a physical or business presence in Cuba pursuant to 31 CFR 515.573, and to authorize exports and reexports to all such persons and to persons whose physical or business presence is authorized by a specific license issued by OFAC.

This rule revises § 746.2(b)(3)(i), to add a paragraph (b)(3)(i)(D), which sets a policy of case-by-case review of items that will enable or facilitate export from Cuba of items produced by the Cuban private sector. It also revises Note 1 to clarify that the license condition described therein is intended to preclude use of items authorized by licenses bearing that condition from

being reexported from Cuba or being used to enable or facilitate exports from Cuba that primarily generate revenue for the state.

BIS is making these changes to facilitate further support of and engagement with the Cuban people.

Export Administration Act

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended by the Notice of August 7, 2015, 80 FR 48233 (August 11, 2015), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a “significant regulatory action,” although not economically significant, under section 3(f) of Executive Order 12866.

Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number. This rule involves a collection of information approved under OMB control number 0694-0088—Simplified Network Application Processing+ System (SNAP+) and the Multipurpose Export License Application, which carries an annual estimated burden of 31,833 hours. BIS believes that this rule will have no material impact on that burden. To the extent that it has any impact, BIS believes that the benefits of this rule justify any additional burden it creates. This rule does not impose any new license requirements, it creates less restrictive licensing policies (*i.e.*, the policies under which the decision to approve or deny a license application is made) for exports and reexports to Cuba. These less restrictive policies might increase the number of license applications submitted to BIS because applicants might be more optimistic about obtaining approval. However, the benefit to license applicants in the form of greater likelihood of approval justifies any additional burden. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget, by email at jseehra@omb.eop.gov or by fax to (202) 395-7285 and to William Arvin at william.arvin@bis.doc.gov.

3. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking and the opportunity for public participation, and a delay in effective date,

are inapplicable because this regulation involves a military or foreign affairs function of the United States (*see* 5 U.S.C. 553(a)(1)). This rule is part of a foreign policy initiative to change the nature of the relationship between Cuba and the United States announced by the President on December 17, 2014. Delay in implementing this rule to obtain public comment would undermine the foreign policy objectives that the rule is intended to implement. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553, or by any other law, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

List of Subjects

15 CFR Part 736

Exports

15 CFR Part 740

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements

15 CFR Part 746

Exports, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 15 CFR Chapter VII, Subchapter C is amended as follows:

PART 736 – [AMENDED]

1. The authority citation for part 736 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 2151 note; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p. 168; Notice of May 6, 2015, 80 FR 26815 (May 8, 2015); Notice of August 7, 2015, 80 FR 48233 (August 11, 2015); Notice of November 12, 2015, 80 FR 70667 (November 13, 2015).

2. Section 736.2 is amended by revising paragraph (b)(8)(i) to read as follows:

§ 736.2 General prohibitions and determination of applicability.

* * * * *

(b) * * *

(8) * * *

(i) *Unlading and shipping in transit.* You may not export or reexport an item through, or transit through a country listed in paragraph (b)(8)(ii) of this section, unless a license exception or license authorizes such an export or reexport directly to or transit through such a country of transit, or unless such an export or reexport is eligible to such a country of transit without a license.

* * * * *

PART 740 – [AMENDED]

3. The authority citation for part 740 continues to as follows:

Authority: 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 7201 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

4. Section 740.15 is amended by revising paragraph (d)(6) to read as follows:

§ 740.15 Aircraft, vessels and spacecraft (AVS).

* * * * *

(d) * * *

(6) *Cuba*—(i) *Eligible vessels and purposes.* Only the types of vessels listed in this paragraph (d)(6)(i) departing for Cuba for the purposes listed in this paragraph (d)(6)(i) may depart for Cuba pursuant to this paragraph (d). Vessels used to transport both passengers and items to Cuba may transport automobiles only if the export or reexport of the automobiles to Cuba has been authorized by a separate license issued by BIS (*i.e.*, not authorized by license exception).

(A) Cargo vessels for hire for use in the transportation of items;

(B) Passenger vessels for hire for use in the transportation of passengers and/or items; and

(C) Recreational vessels that are used in connection with travel authorized by the Department of the Treasury, Office of Foreign Assets Control (OFAC).

Note to paragraph (d)(6)(i)(C): Readers should also consult U.S. Coast Guard regulations at 33 CFR Part 107 Subpart B – Unauthorized Entry into Cuban Territorial Waters.

(ii) *Intransit cargo*. Cargo laden on board a vessel may transit Cuba provided:

(A) The vessel is exported or reexported on temporary sojourn to Cuba pursuant to this paragraph (d) or a license from BIS; and

(B) The cargo departs with the vessel at the end of its temporary sojourn to Cuba, does not enter the Cuban economy and is not transferred to another vessel while in Cuba.

Note to paragraph (d). A vessel exported or reexported to a country pursuant to this paragraph (d) may not remain in that country for more than 14 consecutive days before it departs for a country to which it may be exported without a license or the United States.

* * * * *

5. Section 740.21 is amended by:

a. Revising paragraph (e)(1);

b. Removing paragraph (e)(2);

c. Redesignating paragraph (e)(3) as (e)(2); and

d. Revising the note to paragraph (e).

The revisions read as follows:

§ 740.21 Support for the Cuban People (SCP).

* * * * *

(e) * * *

(1) The export or reexport to Cuba of items for use by persons authorized by the Department of the Treasury, Office of Foreign Assets Control (OFAC) to establish and maintain a physical or business presence in Cuba pursuant to 31 CFR 515.573 or pursuant to a specific license issued by OFAC. The items authorized pursuant to this paragraph (e)(1) are limited to those designated as EAR99 (i.e., items subject to the EAR but not specified in any ECCN) or controlled on the CCL only for anti-terrorism reasons.

* * * * *

Note to paragraph (e). Any resulting payments associated with establishing or maintaining a physical or business presence in Cuba, such as lease payments, are permitted only to the extent authorized by 31 CFR 515.573 or a specific license issued by OFAC.

* * * * *

PART 746 – [AMENDED]

6. The authority citation for part 746 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 287c; Sec 1503, Pub. L. 108-11, 117 Stat. 559; 22 U.S.C. 6004; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p 168; Presidential Determination 2003-23, 68 FR 26459, 3 CFR, 2004 Comp., p. 320; Presidential Determination 2007-7, 72 FR 1899, 3 CFR, 2006 Comp., p. 325; Notice of May 6, 2015, 80 FR 26815 (May 8, 2015); Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

7. Section 746.2 is amended by:

- a. Removing the word “and” from the end of paragraph (b)(3)(i)(B);
- b. Removing the period from the end of paragraph (b)(3)(i)(C) and adding “; and” in its place;
- c. Adding paragraph (b)(3)(i)(D); and
- d. Revising Note 1 to paragraph (b)(3)(i).

The addition and revision read as follows:

§ 746.2 Cuba.

* * * * *

(b) * * *

(3) * * *

(i) * * *

(D) Items that will enable or facilitate export from Cuba of items produced by the private sector.

Note 1 to paragraph (b)(3)(i): Licenses issued pursuant to the policy set forth in this paragraph generally will have a condition prohibiting both reexports from Cuba to any other destination and uses that enable or facilitate the export of goods or services from Cuba, that primarily generate revenue for the state.

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Dated: March 14, 2016

Kevin J. Wolf

Assistant Secretary for Export Administration

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