

# *Doing Business in Cuba*

January 26, 2017

by

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FRIDAY, APRIL 27, 2012

### OFAC Subpoenas, Penalties and Voluntary Disclosures



Peter Quinter

At the Spring Meeting in New York City of the American Bar Association's Section of International Law, I presented a workshop on how to handle administrative subpoenas, investigations, and proposed penalties by the Office of Foreign Assets Control, U.S. Department of the Treasury. I also discussed how and when to submit a voluntary self-disclosure to the Office of Foreign Assets Control (OFAC).

#### Some practical advice provided during the workshop:

1. OFAC is very serious about its responsibilities regarding economic embargoes and sanctions so do not ignore any correspondence from OFAC, especially a subpoena.
2. OFAC regulations are complex so be sure to hire an attorney experienced with OFAC cases. Since OFAC regulations are Federal, you may hire an attorney anywhere in the United States. For example, your company may be located in Los Angeles, but you may hire an attorney in Miami.
3. Responding to an administrative subpoena should be done by your attorney, although an officer of the company should sign a declaration that all statements are true to the best of that officer's knowledge.
4. Your attorney should engage in conversation with the OFAC representative to get a better understanding of the investigation

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##### Sanction Law

OFAC's Interpretive Guidance Can Prove Dated

LA HABANA triathlon  
Campeonato Iberoamericano

 FEBRUARY 25 & 26, 2017 Havana, Cuba

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**SPRINT**

- » SWIM 0.5 mile
- » BIKE 12.4 miles
- » RUN 3.1 miles

**REGISTER**

**HALF IRON**

- » SWIM 1.2 mile
- » BIKE 56 miles
- » RUN 13.1 miles







# Federal Investigations – Legal Authority

1. Trading with the Enemy Act of 1917  
22 U.S.C. § 2778
2. International Emergency Economic Powers Act (IEEPA),  
50 USC § 1702.
3. 31 CFR Part 515 (CACR)



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## Resource Center

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### OFAC License Application Page

A license is an authorization from OFAC to engage in a transaction that otherwise would be prohibited. To apply for a License, click the link below or scroll down for more information on the different Licensing categories.

**IMPORTANT NOTE: December 1, 2014 - OFAC has disabled support for a certain encryption protocol that was supported by older Internet browsers (SSLv3 protocol) in response to a recently published vulnerability. Users with older browsers may find that if they connect to the Licensing Application they will get a blank page due to the fact that the SSLv3 protocol is no longer supported. In order to correct this problem users should upgrade their browser or enable TLS 1.0 by following these instructions.**

[APPLY FOR A LICENSE HERE](#)

#### Licensing Information by Category

Release of Blocked Funds

[Licensing Frequently Asked Questions](#)

Transactional

[Licensing Frequently Asked Questions](#)

Agricultural and Medical (TSRA)

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[TSRA Legal References](#)

[TSRA Applications Guidelines](#)

#### OFAC QUICK LINKS

- [Specially Designated Nationals \(SDN\) and Blocked Persons List](#)
- [Search OFAC's Sanctions Lists](#)
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O F A C

Office of Foreign Assets Control

#### Submitting a New License Application:

Applicants must first select the type of application that will be submitted from the following choices:

- Application to travel to Cuba
- Application for the release of a wire transfer blocked at a U.S. financial institution
- Application for a license or interpretive guidance in all other circumstances ("Transactional")
- Application to export agricultural commodities, medicine, or medical devices to Sudan or Iran pursuant to the Trade Sanctions Reform and Export Enhancement Act of 2000

**Detailed instructions will be provided for each of the different application types.**

#### Additional Information:

- All required fields are marked by a red asterisk: \*
- Help is available on each page by selecting the link in the bottom left corner.
- If you close your web browser before you have submitted your application, your changes will not be saved when you return.

#### Terms of Agreement:

- ATTACH COPIES OF ANY DOCUMENTS RELATED TO THE UNDERLYING TRANSACTION (E.G., TECHNICAL SPECIFICATIONS; OFFICIAL COMMODITY CLASSIFICATION FROM THE U.S. DEPARTMENT OF COMMERCE; INVOICES; BILLS OF LADING; COPY OF THE ORIGINAL PAYMENT OR TRANSFER INSTRUCTIONS; OR COPIES OF GOVERNMENT-ISSUED IDENTIFICATION SUCH AS PASSPORT,



## 31 CFR § 515.204

(a) Except as specifically authorized by the Secretary of the Treasury by means of regulations, rulings, instructions, licenses, or otherwise, no person subject to the jurisdiction of the United States may purchase, transport, import, or otherwise deal in or engage in any transaction with respect to any merchandise outside the United States if such merchandise:

- (1) Is of Cuban origin; or
- (2) Is or has been located in or transported from or through Cuba; or
- (3) Is made or derived in whole or in part of any article which is the growth, produce or manufacture of Cuba.

**31 CFR § 515.329 Person subject to the jurisdiction of the United States;  
person subject to U.S. jurisdiction.**

The terms *person subject to the jurisdiction of the United States* and *person subject to U.S. jurisdiction* include:

- (a) Any individual, wherever located, who is a citizen or resident of the United States;
- (b) Any person within the United States as defined in §515.330;
- (c) Any corporation, partnership, association, or other organization organized under the laws of the United States or of any State, territory, possession, or district of the United States; and
- (d) *Any corporation, partnership, association, or other organization, wherever organized or doing business, that is owned or controlled by persons specified in paragraphs (a) or (c) of this section*

# Pre-January 2015 Prohibitions on Cuban Cigars

There is a total ban on the importation into the United States of Cuban-origin cigars and other Cuban-origin tobacco products. This prohibition extends to such products acquired in Cuba, irrespective of whether a traveler is licensed by the Office of Foreign Asset Controls (OFAC) to engage in Cuba travel related transactions, and to such products acquired in third countries by any U.S. Traveler, including purchases at duty-free shops. Contrary to what many people may believe, it is illegal for travelers to bring into the United States Cuban cigars acquired in third countries, such as Canada, United Kingdom, or Mexico.



## **What are the travel authorizations in the Cuba program?**

OFAC has issued general licenses within the 12 categories of authorized travel for many travel-related transactions to, from, or within Cuba that previously required a specific license (i.e., an application and a case-by-case determination).

Travel-related transactions are permitted by general license for certain travel related to the following activities:

- 1) family visits;
- 2) official business of the U.S. government, foreign governments, and certain intergovernmental organizations
- 3) journalistic activity;
- 4) professional research and professional meetings
- 5) educational activities;
- 6) religious activities
- 7) public performances, clinics, workshops, athletic and other competitions, and exhibitions
- 8 support for the Cuban people
- 9) humanitarian projects
- 10) activities of private foundations or research or educational institutes
- 11) exportation, importation, or transmission of information or information materials
- 12) and certain authorized export transactions.



# Export Enforcement Federal Agencies

1. OFAC



2. BIS



3. TSA



Transportation  
Security  
Administration

4. CBP



5. U.S. Census Bureau



6. Homeland Security Investigations



# Federal Investigations

1. Visit by Special Agent to workplace
2. Summons by BIS or HSI
3. Administrative subpoena by OFAC
4. Federal Court subpoena
5. Federal court seizure, search or arrest warrant

# WHAT TO DO IN AN OFAC INVESTIGATION?

- OFAC Requirement to Furnish Information
- OFAC Administrative Subpoena

Penalty of \$20,000 to \$50,000 for no response

## 31 CFR § 501.602

# Reports to be furnished on demand.

The Director may, through any person or agency, conduct investigations, hold hearings, administer oaths, examine witnesses, receive evidence, take depositions, and require by subpoena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to any matter under investigation, regardless of whether any report has been required or filed in connection therewith.



# OFAC Responses to Apparent Violations

An OFAC Investigation May Lead to:

- No Action
- Request for Further Information
- Cautionary Letter
- Finding of Violation (Non-Monetary)
- Civil Monetary Penalty
- Criminal Referral
- Other
  - License Suspension
  - Cease and Desist Order

# U.S. Department of Commerce's Bureau of Industry and Security (BIS) Licensing Policy

There is a general policy of denial for exports and re-exports to Cuba of items subject to the Export Administration Regulations (EAR), as described in Section **746.2(b)** of the EAR. However, there are exceptions to the general policy of denial, some of which are listed below:

- Medicines and medical devices, whether sold or donated, are generally approved.
- Items to ensure the safety of civil aviation and the safe operation of commercial aircraft engaged in international air transportation are generally approved.
- Items necessary for the environmental protection of U.S. and international air quality, waters and coastlines, including items related to renewable energy or energy efficiency, are generally approved.
- Telecommunications items that would improve communications to, from, and among the Cuban people are generally approved.
- Items to meet the needs of the Cuban people, including items for export or reexport to state-owned enterprises, agencies, and other organizations of the Cuban government that provide goods and services for the use and benefit of the Cuban people, are reviewed on a case-by-case basis.

# License Exceptions: Support for the Cuban People

License Exception Support for the Cuban People (SCP) (Section 740.21 of the EAR) authorizes the export and reexport of certain items to Cuba that are intended to improve the living conditions, support independent economic activity, strengthen civil society, improve the free flow of information and facilitate travel and commerce. Items eligible for export and reexport to Cuba pursuant License Exception SCP must be for certain specified end uses and end user and are limited to those designated as EAR99 (i.e., items subject to the EAR but not specified on the Commerce Control List (CCL) or controlled on the CCL only for anti-terrorism reasons.



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

Dear \_\_\_\_\_ :

This responds to your request of November 21, 2015 and supplemental information provided on February 4, 2016 (together, the "Application"), to the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC), requesting authorization on behalf of \_\_\_\_\_ to invest in \_\_\_\_\_ in Cuba, whose primary objective is the development of air sports, as stated in the Application.

The Cuban Assets Control Regulations, 31 C.F.R. Part 515 (the "Regulations"), administered by OFAC, prohibit all persons subject to the jurisdiction of the United States from dealing in property in which Cuba or a Cuban national has an interest, unless authorized by a general or specific license or exempt. *See* 31 C.F.R. §§ 515.201, 515.204.

OFAC has reviewed your request and determined that the issuance of a specific license authorizing \_\_\_\_\_ to invest in the \_\_\_\_\_ in Cuba is beyond the scope of current licensing policy. Accordingly, your Application is hereby denied.

If you have any additional questions about the Regulations or about the economic sanctions programs administered by OFAC, you may refer to our website at [www.treasury.gov/ofac](http://www.treasury.gov/ofac) or call our office at (202) 622-2480.

Sincerely,

Jeanette A. Miller  
Assistant Director, Licensing  
Office of Foreign Assets Control

12/07/2016

Date



# Voluntary Self-Disclosure: What is a violation?

- (a) Engaging in prohibited conduct
- (b) Causing, aiding, or abetting a violation
- (c) Solicitation
- (d) Conspiracy
- (e) Acting with knowledge of a violation
- (f) Possession with intent to export illegally
- (g) Misrepresentation and concealment of facts
- (h) Evasion
- (j) License alteration
- (k) Acting contrary to the terms of a denial order

# U.S. Company Pays OFAC \$434,000

- Ameron International Corporation, Pasadena, California paid to settle embargo violations.
- **The Colombian branch** office of Ameron's U.S. subsidiary, American Pipe & Construction International, on 2 occasions sold concrete pipe to a consortium in which a Cuban company was a partner.

# OFAC Penalties

- **Halliburton**

- Violated 31 CFR 515.201(b)
- Paid \$304,706 settlement
- Halliburton exported goods and services in support of oil and gas exploration to company in Angola in which Cuba or a Cuban national had an interest
- Halliburton **“knew or should have known”** that Cuba Petroleo was a 5% owner of the Angola company

## OFAC Penalties

- WATG Holdings (Irvine, CA)
  - violated 31 CFR 515.201
  - paid \$140,000 in settlement

WATG-UK dealt in property in which Cuba or its nationals had an interest by entering into a contract to perform architectural work for a hotel project in Cuba for which it received payment from a Qatari company in 2010

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