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DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 515

Cuban Assets Control Regulations; Indirect Financing in Cuba, Civil Penalties.

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule; amendments.

SUMMARY: This rule amends the Cuban Assets Control Regulations to bring them into conformity with the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996. This rule adds a new prohibition on bank financing, and makes other changes to the regulations governing civil penalties consistent with amendments to the Trading with the Enemy Act contained in the Libertad Act.

EFFECTIVE DATE: March 12, 1996, except for the amendment to § 515.701 which is effective July 18, 1996.

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Background

The enactment on March 12, 1996, of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, sections 1-401, Pub. L. 104-114, 110 Stat.785 (the "Libertad Act") requires amendment of the Cuban Assets Control Regulations, 31 CFR part 515 (the "Regulations"), to effect certain changes in the enforcement of the Cuban embargo contained in the Libertad Act.

Section 515.208 is added to the Regulations to include a specific prohibition on knowingly making a loan, extending credit or other financing by a United States national, permanent resident alien, or a United States agency for the purpose of financing transactions involving confiscated property, the claim to which is owned by a United States national. (All transactions with respect to property or interests in property of the Cuban Government or Cuban nationals are prohibited pursuant to § 515.201 of the Regulations.) Sections 515.334, .335, .336, and .337 are added to the Regulations to incorporate definitions for "United States national," "confiscated," "property," and "permanent resident alien" as used in the Libertad Act's prohibition on financing, contained in § 515.208. Section 515.701 is amended to state that violations of the prohibition on financing are subject to the civil penalties described in that section.

Section 515.701 is further amended to describe the civil penalty authority contained in section 16 of the Trading with the Enemy Act, 50 U.S.C. App. 1-44, as amended by the Libertad Act. Certain restrictions on the use of civil penalty authority were eliminated by the Act and references to those restrictions are removed.

Because 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.

List of Subjects in 31 CFR Part 515

Administrative practice and procedure, Air carriers, Banks, banking, Cuba, Currency, Estates, Exports, Fines and penalties, Foreign investment in the United States, Foreign trade, Imports, Informational materials, Publications, Reporting and recordkeeping requirements, Securities, Shipping, Specially designated nationals, 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: 50 U.S.C. App. 144; 22 U.S.C. 6001-6010; 22 U.S.C. 2370(a); Pub. L. 104-114, 106 Stat. 785 (22 U.S.C. 6021-6091); Proc. 3447, 27 FR 1085, 3 CFR, 1959-1963 Comp., p. 157; E.O. 9193, 7 FR 5205, 3 CFR, 1938-1943 Comp., p. 1147; E.O. 9989, 13 FR 4891, 3 CFR, 1943-1948 Comp., p. 748; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614.

Subpart B—Prohibitions

2. Section 515.208 is added to read as follows:

§ 515.208 Restrictions on loans, credits and other financing.

No United States national, permanent resident alien, or United States agency may knowingly make a loan, extend credit or provide other financing for the purpose of financing transactions involving confiscated property the claim

to which is owned by a United States national, except for financing by a United States national owning such a claim for a transaction permitted under United States law.

Subpart C—Definitions

3. Section 515.311 is amended by redesignating the existing paragraph as (a) and adding paragraph (b) to read as follows:

§ 515.311 Property; property interests.

(a) * * *

(b) As used in § 515.208, the term *property* means any property (including patents, copyrights, trademarks, and any other form of intellectual property), whether real, personal, or mixed, and any present, future, or contingent right, security, or other interest therein, including any leasehold interest.

4. Section 515.334 is added to read as follows:

§ 515.334 United States national.

As used in § 515.208, the term *United States national* means:

(a) Any United States citizen; or

(b) Any other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or any commonwealth, territory, or possession of the United States, and which has its principal place of business in the United States.

5. Section 515.335 is added to read as follows:

§ 515.335 Permanent resident alien.

As used in § 515.208, the term *permanent resident alien* means an alien lawfully admitted for permanent residence into the United States.

6. Section 515.336 is added to read as follows:

§ 515.336 Confiscated.

As used in § 515.208, the term *confiscated* refers to:

(a) The nationalization, expropriation, or other seizure by the Cuban Government of ownership or control of property, on or after January 1, 1959:

(1) Without the property having been returned or adequate and effective compensation provided; or

(2) Without the claim to the property having been settled pursuant to an international claims settlement agreement or other mutually accepted settlement procedure; and

(b) The repudiation by the Cuban Government of, the default by the Cuban Government on, or the failure of the Cuban Government to pay, on or after January 1, 1959:

(1) A debt of any enterprise which has been nationalized, expropriated, or otherwise taken by the Cuban Government;

(2) A debt which is a charge on property nationalized, expropriated, or otherwise taken by the Cuban Government; or

(3) A debt which was incurred by the Cuban Government in satisfaction or settlement of a confiscated property claim.

Subpart G—Penalties

7. Section 515.701 is amended by removing paragraph (a)(5), redesignating paragraph (a)(6) as (a)(5), and adding paragraph (d) to read as follows:

§ 515.701 Penalties.

* * * * *

(d) Attention is directed to 22 U.S.C. 6033, which provides that a violation of the prohibition against extending a loan, credit, or other financing for the purpose of financing transactions involving confiscated property, as contained in § 515.208 of this part, shall be punishable by such civil penalties as are applicable to violations of this part.

Dated: July 2, 1996.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: July 9, 1996.

James E. Johnson,

Assistant Secretary (Enforcement).

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