

February 11, 2015

MEMORANDUM FOR: Directors, Field Operations  
Director, Preclearance  
Office of Field Operations

FROM: (b) (6), (b) (7)(C) s/  
Acting Executive Director  
Admissibility and Passenger Programs

SUBJECT: Updated Guide: New Amendments to the Cuban Assets Control  
Regulations Allow the Importation of Certain Goods by  
Authorized Travelers from Independent Entrepreneurs

In December 2014, President Obama announced his intent to re-establish diplomatic relations with Cuba. The President did not lift the embargo against Cuba, and absent a democratic or transitional government in Cuba, this would require a statutory change by the U.S. Congress. Since the announcement, the Department of the Treasury's Office of Foreign Assets Control (OFAC) has amended the Cuba Assets Control Regulations (CACR), effective January 16, 2015, to authorize travel within certain categories to and from Cuba and to allow certain imports from, and exports to Cuba.

This office's objective is to issue policy statements to provide general guidance to the field regarding revisions to sections of the CACR. The following supersedes the guidance issued on January 16, 2015.

### **Travelers Authorized**

In all 12 existing statutory categories of authorized travel, travel previously authorized by specific license will be authorized by general license, subject to appropriate conditions. This means that individuals who meet the conditions set forth in the regulations will not need to apply for specific license to travel to Cuba. The Cuba embargo is still in effect as it has not been lifted by the U.S. Congress. Therefore, any traveler outside of these 12 categories is not licensed to travel to Cuba and may be subject to civil penalties or other sanctions administered/determined by OFAC. OFAC and the Department of Commerce's Bureau of Industry and Security (BIS) are responsible for all relevant licensing determinations.

The 12 statutory categories of authorized travel are: family visits; official business of the U.S. government, foreign governments, and certain intergovernmental organizations; journalistic activity; professional research and professional meetings; educational activities; religious

activities; public performances, clinics, workshops, athletic and other competitions, and exhibitions; support for the Cuban people; humanitarian projects; activities of private

foundations or research or educational institutes; exportation, importation, or transmission of information or information materials; and certain authorized export transactions.

### **Importation of Goods**

Section 515.560 of the CACR authorizes certain U.S. travelers to Cuba to import as accompanied baggage up to \$400 worth of goods acquired in Cuba for personal use. This includes no more than \$100 of combined alcohol and tobacco products. Any importation of goods with a value greater than these thresholds which is not authorized by the Section 515.582 exception outlined below pertaining to goods **purchased** from independent Cuban entrepreneurs, is prohibited.

### **Application of Duties**

All travelers, including those from Cuba, must comply with all applicable laws and regulations. This includes the Harmonized Tariff Schedule of the United States (“HTSUS”) (2015) limitations on personal exemptions and rules of duty extended to non-residents and returning U.S. residents. With regard to travelers returning from Cuba, the personal use exemptions for accompanied baggage imported for personal use applies to all goods, regardless of whether they are **purchased** from independent Cuban entrepreneurs, subject to the \$400 and \$100 limitations mentioned above. The personal use exemptions are set forth in HTSUS Subchapter 9804 and 19 CFR Part 148, Subparts D and E. For returning residents coming from Cuba, the personal use exemption from duty applies to the entire \$400 worth of accompanying baggage, which may include up to \$100 of alcoholic beverages or tobacco products so long as the alcoholic beverages do not exceed 1 liter and the tobacco products do not exceed 200 cigarettes or 100 cigars. If the alcoholic beverages or tobacco products exceed these quantitative limits, but still fall below the \$100 limitation, they may still be imported by the traveler, subject to the legal limitation of applicable State laws, but the excess amounts are subject to a flat 4% rate of duty, and any applicable IRS taxes, pursuant to HTSUS 9816.00.20 and 19 CFR 148.101, which impose a duty rate of 4% of the fair retail value on goods from a Column 2 country.

For example, traveler A is a returning U.S. resident who is bringing from Cuba as accompanied baggage for personal use \$400 worth of goods. Of the \$400, \$100 consists of 3 liters of alcoholic beverages. Traveler A is only liable for duty and tax on 2 liters of alcoholic beverages, i.e., the amount in excess of the personal exemption from duty.

### **Exception for Goods Produced by Independent Cuban Entrepreneurs**

An exception to the \$400/\$100 value limitations in Section 515.560 of the CACR is found at 31 C.F.R. 515.582 (copied below). This provision authorizes the importation of certain goods, both for personal and commercial use, **purchased** from independent Cuban entrepreneurs that have obtained a license from the Cuban Government to operate as an independent Cuban entrepreneur. These goods may be imported without a value limitation.

In order to qualify for this exception, the traveler must be bringing in an item which is both an acceptable *good* and from a licensed *entrepreneur*.

*Regarding goods:* The Department of State will issue a list of prohibited goods. The list will exclude goods that fall within certain Sections and Chapters of the HTSUS from qualifying for this exception.

*Regarding entrepreneurs:* The Cuban entity must be a private business, such as a self-employed entrepreneur or other private entity, which is not owned or controlled by the Government of Cuba. Travelers engaging in these transactions are required to obtain evidence that demonstrates this status and should be prepared to furnish such evidence to U.S. Government authorities upon request. Evidence could include a copy of the entrepreneur's license and an invoice or purchase order demonstrating that the goods were purchased from the specific entrepreneur. Whether a traveler presents adequate evidence that a good qualifies from importation and that it was bought from a licensed independent Cuban entrepreneur should be determined on a case-by-case basis by the inspecting officer.

Imports under Section 515.582 (i.e., imports from licensed independent entrepreneurs not on the Department of State's prohibited list) must comply with all current U.S. Customs and Border Protection (CBP) formal and informal entry requirements, as applicable. This means that, while there is no value cap on the amount of goods that could be imported under this provision, the applicable duties in the HTSUS must be considered. In particular, HTSUS 9804.00.65 allows for articles for personal use not over \$800 in fair retail value to be imported from a Column 2 country duty-free. *See also*, 19 C.F.R. 148.33. HTSUS 9816.00.20 allows for articles for personal use, up to a value of \$1,000 in fair retail value, to be imported from a Column 2 country at a duty rate of 4% of the fair retail value. Thus, any articles imported under this section for personal use with a value of under \$800 can be imported duty free, and any articles imported for personal use with a value between \$800 and \$1800, will be subject to a flat 4% rate of duty. Any articles valued over \$1800, regardless of whether they are for personal use, will be subject to entry and should be classified, appraised, and assessed duty appropriately under the HTSUS Column 2 specific rates. *See also*, 19 C.F.R. 148.101, 148.102. Any commercial importation, i.e., not an importation for personal use, is subject to entry requirements and the payment of applicable duties, fees and taxes.

*Example:*

A traveler from Cuba arrives with 2 liters of alcohol valued at \$90, personal souvenir items valued at \$300, and items purchased from an independent entrepreneurial craftsman valued at \$550.

*Alcohol:* The traveler is within the value restriction of \$100 imposed by the CACR, so both liters may enter the United States pursuant to federal regulation. The first liter of alcohol is duty-free for a Column 2 country under the HTSUS. The second liter of alcohol is subject to a 4% duty, pursuant to HTSUS 9816.00.20, as it is being imported from a Column 2 country.

*Souvenir Items:* The traveler is within the \$400 total value (including alcohol and tobacco) allowed by Section 515.560 of the CACR. Therefore, the goods may enter the United States duty free as these are personal use items. If the traveler has greater than \$400 of goods, (including alcohol and tobacco) such items should not enter the United States unless they are purchased from a licensed independent Cuban entrepreneur and the goods are not on the prohibited items list issued by the State Department. If these conditions are not met, the goods should be detained and seizure coordinated with OFAC.

*Items from the Independent Entrepreneur:* Assuming that the items are not prohibited by the Department of State list, the CBP may verify that the traveler has evidence the goods were purchased from an independent entrepreneur. If the CBPO is satisfied that the goods were purchased from an independent entrepreneur, then there is no value restriction on these items so they may enter the United States. If these goods are for personal use they qualify, up to \$800, for an exemption from duty; the amount in excess of \$800 will be subject to the flat 4% rate of duty. If the goods are a commercial importation, the personal use exemptions do not apply, and the goods must be entered and are subject to applicable duties, fees and taxes. Note that the goods may qualify for informal entry as they are under the \$2,500 informal entry threshold.

Please note that while these revised regulations may facilitate certain travel and trade with Cuba, all other laws and regulations applicable to international travel and the importation/exportation of goods continue to apply. This means that all United States agency requirements applicable to a particular import still must be met, such as regulations of the Food and Drug Administration, the Consumer Product Safety Commission, and the Animal and Plant Health Inspection Service.

### **31 C.F.R. Section 515.582 Importation of certain goods and services produced by independent Cuban entrepreneurs.**

Persons subject to U.S. jurisdiction are authorized to engage in all transactions, including payments necessary to import certain goods and services produced by independent Cuban entrepreneurs as determined by the State Department and set forth on the State Department's Section 515.582 List, located at <http://www.state.gov/e/eb/tfs/spi/>.

Note 1 to Section 515.582: As of the date of publication in the Federal Register of the final rule including this provision, the State Department's Section 515.582 List has not yet been published on its website. The State Department's Section 515.582 List also will be published in the Federal Register, as will any changes to the List.

Note 2 to Section 515.582: Imports authorized by this section are not subject to the limitations set forth in Section 515.560(c).