

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 implement a provision of the Omnibus Appropriations Act, 2010, containing an interpretation of the term "payment of cash in advance," which is used to describe one of the two payment or financing terms for authorized exports from the United States to Cuba pursuant to the Trade Sanctions Reform and Export Enhancement Act of 2000.

DATES: Effective Date: [INSERT DATE OF FILING FOR PUBLIC INSPECTION].

FOR FURTHER INFORMATION CONTACT: Assistant Director for Compliance, Outreach & Implementation, tel.: 202/622-2490, Assistant Director for Licensing, tel.: 202/622-2480, Assistant Director for Policy, tel.: 202/622-4855, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202/622-2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (www.treas.gov/ofac) or via facsimile through a 24-hour fax-on demand service, tel.: 202-622-0077.

Background

Section 908(b)(1) of the Trade Sanctions Reform and Export Enhancement Act of 2000 (22 U.S.C. 7207(b)(1)) ("TSRA") specifies that the only payment or financing terms U.S. persons

may provide for authorized sales of agricultural commodities or products to Cuba or any person in Cuba are (1) "payment of cash in advance," or (2) financing by third-country financial institutions (excluding U.S. persons or Government of Cuba entities). On February 22, 2005, OFAC amended section 515.533 of the Cuban Assets Control Regulations, 31 CFR part 515 (the "CACR"), to clarify that the term "payment of cash in advance" means that payment is received by the seller or the seller's agent prior to shipment of the goods from the port at which they are loaded.

OFAC is further amending section 515.533 of the CACR to implement Section 619 of the Omnibus Appropriations Act, 2010 (Pub. L. 111-117, 123 Stat. 3034), which directs that during Fiscal Year 2010, for the purposes of TSRA, "...the term 'payment of cash in advance' shall be interpreted as payment before the transfer of title to, and control of, the exported items to the Cuban purchaser."

Public Participation

Because the amendments of the CACR 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 CACR are contained in the Reporting, Procedures and Penalties Regulations, 31 CFR part 501. Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505-0164. 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

Banks, Banking, Cuba, Currency, Exports, Foreign trade.

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: 18 U.S.C. 2332d; 22 U.S.C. 2370(a), 6001-6010; 22 U.S.C. 7201-7211; 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); Pub. L. 104-114, 110 Stat. 785 (22 U.S.C. 6082); 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 E—Licenses, Authorizations, and Statements of Licensing Policy

2. Amend § 515.533 by revising paragraph (a)(2)(i) to read as follows:

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

(a) * * *

(2) * * *

(i)(A) Payment of cash in advance. Except as provided in paragraph (a)(2)(i)(B) of this section, for the purposes of this section, the term "payment of cash in advance" means that payment is received by the seller or the seller's agent prior to shipment of the goods from the port at which they are loaded;

(B) Payment of cash in advance during Fiscal Year 2010. For sales of agricultural items delivered to Cuba between October 1, 2009, and September 30, 2010, or delivered pursuant to a contract entered into between October 1, 2009, and September 30, 2010, and shipped within twelve months from the signing of the contract, the term "payment of cash in advance" shall mean payment before the transfer of title to, and control of, the exported items to the Cuban purchaser;

Note to § 515.533(a)(2)(i)(B): The payment rule set forth in this paragraph is required by Section 619 of the Omnibus Appropriations Act, 2010 (Pub. L. 111-117).

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Dated: March 5, 2010

Adam J. Szubin,
Director, Office of Foreign Assets Control.

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