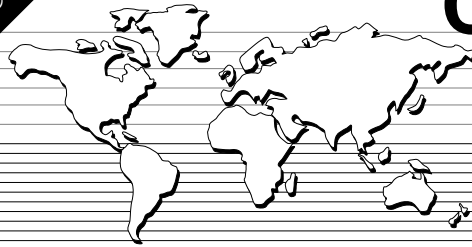




U.S. Department of the Treasury  
Office of Foreign Assets Control



# CIVIL PENALTIES

## Rights and Procedures — Cuba Program

### A. Your Rights

■ **RIGHT TO RESPOND IN WRITING** - You have the right to respond to the Office of Foreign Assets Control ("OFAC") in writing within 30 days of the mailing or other service of your Prepenalty Notice. In your written response, you should state why you believe there should not be a penalty and/or forfeiture, or why the penalty should be less than the amount proposed in your Prepenalty Notice. You must admit or deny each of the alleged violations listed in the "Violations" section of your Prepenalty Notice. If you do not address a particular alleged violation, OFAC will consider that you have admitted that violation. Any defense or explanation you have previously made to OFAC, the U.S. Customs Service, or any other agency must be repeated in your written response. Any defense you wish to assert must be included in your written response. You must sign your written response. If you do not submit a written response, you may be issued a final Penalty Notice imposing the penalty proposed in your Prepenalty Notice.

■ **RIGHT TO AGENCY HEARING AND PRE-HEARING DISCOVERY** - You have the right to an agency hearing in Washington, D.C. to present your defenses to the imposition of the penalty and/or forfeiture proposed in your Prepenalty Notice. You also have the right to pre-hearing discovery, including review of all non-privileged documents that OFAC used as the basis for issuing your Prepenalty Notice. If you wish to request an agency hearing and pre-hearing discovery, you must include these requests in your written response. A mere reservation of your right to a hearing and pre-hearing discovery in your written response will not be considered by OFAC to assert or preserve your hearing and pre-hearing discovery rights. If you do not include requests for a hearing and pre-hearing discovery in your written response, filed by the due date specified in "B" below, you will waive these rights. OFAC will then proceed to determine whether to impose, reduce, or cancel the penalty and/or forfeiture proposed in your Prepenalty Notice based on any written response you have submitted and any relevant facts. Sections 515.705-.717 of the Cuban Assets Control Regulations, 31 C.F.R. Part 515, explain the hearing procedures. You may also withdraw a hearing request once made and seek administrative determination, but the withdrawal must be made in writing.

Please note that OFAC is currently suspending all discovery deadlines that follow receipt of any request for a hearing and pre-hearing discovery. If you request a hearing and pre-hearing discovery, OFAC will inform you as soon as those discovery deadlines are reinstated.

■ **RIGHT TO JUDICIAL REVIEW** - If OFAC eventually imposes a penalty and/or forfeiture in this matter, you have the right to seek judicial review of that final agency action in a federal court.

### B. Due Date

If your Prepenalty Notice was mailed to you, your written response must be postmarked or date-stamped by the U.S. Postal Service (or foreign postal service, if mailed abroad) or courier service provider (if transmitted to OFAC by courier) on or before the 30<sup>th</sup> day after the postmark date on the envelope in which you received your Prepenalty Notice or, if you refused delivery or otherwise avoided receipt, on or before the 30<sup>th</sup> day after the date on OFAC's stamped postal receipt. You should retain copies of dated courier receipts or other evidence of the date of mailing.

If your Prepenalty Notice was personally delivered to you (not mailed), your written response must be postmarked or date-stamped, as described above, on or before the 30<sup>th</sup> day after the date of delivery. If you choose to send a copy of your written response by facsimile (202/622-1657), you must also send your response to OFAC by mail or courier and your response must be postmarked or date-stamped, as described above, on or before the applicable due date listed above. If a due date falls on a federal holiday or weekend, that due date is extended to include the following business day.

### C. OFAC's Mailing Address

Office of Foreign Assets Control, Civil Penalties Program, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220.

### D. Election of Proceedings (options available to you)

■ **ADMINISTRATIVE DISPOSITION** - You may submit a written response, as described in A. above, to OFAC concerning your Prepenalty Notice. OFAC will review your written response and determine whether to impose, reduce, or cancel the penalty proposed in your Prepenalty Notice. If you do not submit a written response within the relevant 30 day period, you may be issued a final Penalty Notice assessing the penalty proposed in your Prepenalty Notice.

■ **AGENCY HEARING** - You may request an agency hearing and pre-hearing discovery (as described in A. above) in your written response. Please note the current suspension of discovery deadlines explained in A. above. If a hearing is requested, the final disposition of your case will be determined by a hearing officer.

■ **SETTLEMENT** - You may call the OFAC contact person listed below if you wish to negotiate a settlement to resolve this matter informally. A settlement can be reached anytime before you are issued a Penalty Notice or if you decide to withdraw a hearing request after you have made one. Please note that settlement talks do not take the place of a written response and the existence of settlement talks will not postpone the 30-day due date for submission of your written response including your requests for a hearing and pre-hearing discovery, unless a settlement is reached prior to that 30-day due date.

### E. Collection

If OFAC issues you a final Penalty Notice after reviewing any timely written response you may have submitted, you have 30 days to remit or otherwise make arrangements for payment. Any penalty not timely paid will be referred for administrative collection measures or to the United States Department of Justice for collection litigation. Please note that any person issued a penalty by a federal agency must provide a taxpayer identification number/Social Security number. OFAC discloses that it intends to use that number for collecting and reporting any delinquent penalty amount(s).

### F. Contact Person

Please feel free to contact Mrs. B.S. Scott, Chief, Civil Penalties Program, (202) 622-6140, if you have any questions or if you wish to discuss informal settlement of this proposed penalty.

- see inside -

## FREQUENTLY ASKED QUESTIONS ABOUT OFAC CIVIL PENALTIES

The following Questions and Answers have been prepared in an effort to assist you in understanding the procedures followed by the Office of Foreign Assets Control ("OFAC") in administering its Civil Penalties Program. These Questions and Answers are not part of your Prepenalty Notice nor are they formal interpretations of any law or regulations administered by OFAC. Accordingly, although every attempt has been made to provide Questions and Answers that are useful and accurate, only the Regulations (and not these Questions and Answers) provide the authoritative statement of your rights and the procedures to be followed.

**Q:** *What is a Prepenalty Notice?*

**A:** A Prepenalty Notice is a letter from OFAC informing you that OFAC intends to penalize you for possible violations of the OFAC regulations. This notice is the first stage in a penalty procedure, and you have several options for responding.

**Q:** *Is the Prepenalty Notice charging you with a crime?*

**A:** No. The notice is informing you that OFAC believes you may have violated its regulations and seeks a monetary penalty and/or forfeiture.

**Q:** *Do you have a right to respond to the Prepenalty Notice?*

**A:** Yes. You have the right to make a formal written response. You may also begin settlement negotiations by phone, but such negotiations do not take the place of a written response unless a settlement is reached.

**Q:** *What is your deadline for responding to a Prepenalty Notice?*

**A:** Your response to your Prepenalty Notice must be postmarked or date-stamped by the U.S. Postal Service (or foreign postal service, if mailed abroad) or courier service provider (if transmitted to OFAC by courier) on or before the 30<sup>th</sup> day after the following: after the postmark date on the envelope in which you received your Prepenalty Notice--if the Prepenalty Notice was mailed to you; after the date on OFAC's stamped postal receipt--if you refused delivery or otherwise avoided receipt of the Prepenalty Notice; after the date of delivery to you--if your Prepenalty Notice was personally delivered to you. If a due date falls on a federal holiday or weekend, that deadline is extended until the following business day.

**Q:** *What forms do you need to complete your written response?*

**A:** There are no forms and you may simply send a handwritten or typed letter.

**Q:** *What should you include in your written response?*

**A:** Your written response must include your full name, address, telephone number, and facsimile number, if available. You must either admit or deny each specific violation alleged in the "Violations" section of your Prepenalty Notice. You must also state if you have no knowledge of a particular violation. Include any information you wish to supply in your defense, whether or not you have previously submitted that information to OFAC, the U.S. Customs Service, or any other agency. Any evidence which you may have that substantiates a defense or other factor which you wish OFAC to consider should be submitted with your response. Also, if you wish to request a hearing and pre-hearing discovery (such as a review of the non-privileged documents OFAC relied upon in issuing the Prepenalty Notice), you must include these requests in your timely-filed written response; if you do not, you will lose the opportunity to make these requests.

**Q:** *Where do you send your written response?*

**A:** Send your written response to: Office of Foreign Assets Control, Civil Penalties Program, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220. We suggest that you use certified or registered mail, return receipt requested (or similar services provided by courier services), which will provide you with evidence of the date of mailing and the date of receipt by OFAC.

**Q:** *Can you fax a copy of your written response?*

**A:** You can fax a copy of your written response to OFAC at (202)622-1657, but you must also send your response to OFAC at the above address by mail or courier, postmarked or date-stamped on or before the relevant 30-day deadline.

**Q:** *What happens if you do not file a written response to the Prepenalty Notice?*

**A:** If you do not file a written response, OFAC will conclude that you have decided not to respond to your Prepenalty Notice and you may be issued a final Penalty Notice imposing the penalty proposed in your Prepenalty Notice. You will also waive your right to a hearing and pre-hearing discovery.

**Q:** *Do you have a right to an agency hearing? Where would this hearing be held?*

**A:** You have a right to an agency hearing to present your case before a final penalty is imposed. The hearing will be held in Washington, D.C.

**Q:** *How do you request a hearing?*

**A:** Your request for a hearing must be included in your written response, and it must be filed at OFAC within the relevant 30-day deadline. Either you or your lawyer must sign the hearing request.

**Q:** *Can you review the documents OFAC used in determining to issue the Prepenalty Notice?*

**A:** If you request a hearing, you may also request pre-hearing discovery (including a review of the non-privileged documents OFAC has relied upon). However, you must include your request in your written response, which must be filed at OFAC within the relevant 30-day deadline.

**Q:** *What happens if you do not request a hearing and pre-hearing discovery or if you cancel a scheduled hearing?*

**A:** If you do not request a hearing and pre-hearing discovery in your written response or if you cancel a scheduled hearing, you will have waived your right to a hearing and pre-hearing discovery. OFAC will then base its decision of whether to impose a penalty and/or forfeiture on your written response (if submitted) and any relevant facts that are available.

**Q:** *If you request a hearing and pre-hearing discovery, what happens next?*

**A:** If you request a hearing and pre-hearing discovery, OFAC will send you a letter confirming receipt of your requests and either informing you of the date of your hearing or notifying you that OFAC has not yet set a hearing date and will inform you when the date is set. The hearing procedures (including pre-hearing discovery deadlines) are set out for you in sections 515.705-717 of the Cuban Assets Control Regulations.

**Q:** *How soon after you request a hearing and pre-hearing discovery does the pre-hearing discovery have to begin?*

**A:** OFAC has suspended all discovery deadlines that follow receipt of any hearing and pre-hearing discovery requests until further notice. If you request a hearing and pre-hearing discovery, you may begin pre-hearing discovery at any time, but OFAC will not be required to respond to your discovery requests (nor will you be required to respond to OFAC's discovery requests) until OFAC has informed you that the discovery deadlines have been reinstated.

**Q:** *Can I change my mind and withdraw a hearing request?*

**A:** Yes, you may withdraw a hearing request that you have made. OFAC will then proceed to consider the case administratively without a hearing unless you decide to enter into settlement negotiations.

**Q:** *Is settlement an option? If so, how is this arranged?*

**A:** Yes, settlement is an option. You may offer a settlement in your written response, or you may contact the OFAC Civil Penalties Program to discuss a settlement at any time prior to the issuance of a final Penalty Notice. You may discuss settlement even after you have requested an agency hearing. Please note that settlement discussions do not take the place of a written response and will not postpone the 30-day due date for submission of your written response and request for a hearing and pre-hearing discovery, unless a settlement is actually completed prior to the 30-day due date.

**Q:** *What is the effect of a settlement with OFAC?*

**A:** A settlement amount agreed upon and paid ends any further enforcement action by OFAC with respect to the OFAC violations which were alleged in the Prepenalty Notice. No Penalty Notice is subsequently issued, nor is there a formal finding by OFAC that the alleged violations were, in fact, committed. The settlement amount paid is considered a voluntary payment, not a penalty. If the actions or transactions which produced the violations alleged by OFAC also involved alleged violations of laws enforced by other Federal agencies (such as the U.S. Customs Service), the settlement entered into with OFAC does not preclude further civil penalty or other action by such other agencies for the alleged violations of the laws they enforce unless the settlement agreement so states and is agreed to by the other agencies involved (sometimes referred to as a "global settlement").

**Q:** *Can you arrange an installment plan to pay a settlement?*

**A:** Yes, once you and OFAC have agreed upon a settlement amount, you can arrange an installment payment plan with the Treasury Department's Financial Management Division. OFAC will assist you in contacting the appropriate person there.

**Q:** *Do you need to submit a written response if a settlement is reached?*

**A:** No, you do not need to submit a written response if a settlement is reached before the 30-day written response period has ended.

**Q:** *What happens if you do not reach a settlement with OFAC within 30 days?*

**A:** If you do not reach a settlement with OFAC within 30 days, OFAC will proceed with a final determination and will base its decisions of whether to impose a penalty and/or forfeiture only on your written response (if submitted) and any other relevant facts. At that point, OFAC generally is not required to consider issues discussed and defenses presented during settlement negotiations unless they are repeated in a formal written response.

**Q:** *What happens if you do not pay the penalty assessed by OFAC?*

**A:** All unpaid penalties are referred either for Treasury Department administrative collection measures or to the United States Department of Justice for collection litigation in federal court. Administrative collection usually includes interest, charges, and fees. Administrative collection measures may include referring the unpaid penalty to a private collection agency or offsetting the amount due against other payments made by the U.S. Government to you, such as income tax refunds.

**Q:** *Can you arrange an installment plan to pay an assessed penalty?*

**A:** Yes, arrangements can be made upon request to the Treasury Department's Financial Management Division.

**Q:** *Whom can you contact at OFAC to further discuss this matter?*

**A:** You can contact **Mrs. B.S. Scott, Chief, Civil Penalties Program, at (202)622-6140.**

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The Treasury Department's Office of Foreign Assets Control administers sanctions programs involving Libya, Iraq, Sudan, the Federal Republic of Yugoslavia (Serbia and Montenegro), the Western Balkans, Cuba, the National Union for the Total Independence of Angola (UNITA), North Korea, Iran, Syria, Burma (Myanmar), Sierra Leone, Liberia, Foreign Terrorist Organizations, designated terrorists and narcotics traffickers, and the proliferation of weapons of mass destruction. For additional information about the sanctions, please contact the:

**OFFICE OF FOREIGN ASSETS CONTROL**  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, N.W.  
Washington, D.C. 20220  
202/622-2520

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