Order Code RL31139

Cuba: U.S. Restrictions on Travel and Legislative Initiatives

Updated January 29, 2004

Mark P. Sullivan
Specialist in Latin American Affairs
Foreign Affairs, Defense, and Trade Division

Cuba: U.S. Restrictions on Travel and Legislative Initiatives

Summary

Restrictions on travel to Cuba have been a key and often contentious component in U.S. efforts to isolate the communist government of Fidel Castro for much of the past 40 years. Over time, there have been numerous changes to the restrictions, and for 5 years, from 1977 until 1982, there were no restrictions on travel to Cuba. In March 2003, the Administration eased restrictions on those visiting close family members in Cuba, while at the same time it eliminated travel for people-to-people educational exchanges unrelated to academic coursework. Enforcement of U.S. restrictions on Cuba travel has increased under the Bush Administration. On October 10, 2003, President Bush instructed the Department of Homeland Security to enforce the trade and travel embargo more strictly.

Major arguments made for lifting the Cuba travel ban are it hinders efforts to influence conditions in Cuba and may be aiding Castro by helping restrict the flow of information; it abridges the rights of ordinary Americans; and Americans can travel to other countries with communist or authoritarian governments. Major arguments in opposition to lifting the Cuba travel ban are American tourist travel would support Castro's rule by providing his government with millions of dollars in tourist receipts; there are legal provisions allowing travel to Cuba for humanitarian purposes that are used by thousands of Americans each year; and the President should be free to restrict travel for foreign policy reasons.

In the 108th Congress, both the House- and Senate-approved versions of the FY2004 Transportation-Treasury appropriations bill, H.R. 2989, had nearly identical provisions that would have prevented funds from being used to administer or enforce restrictions on travel or travel-related transactions. But the provisions were dropped in the conference report to the FY2004 Consolidated Appropriations Act, P.L. 108-199 (H.R. 2673, H.Rept. 108-401), which incorporated seven regular appropriations acts, including Transportation-Treasury appropriations. The conference to H.R. 2673 also dropped two Cuba provisions from the House version of H.R. 2989 on remittances and on people-to-people educational exchanges. In addition, the conference dropped a provision from the Senate version of the FY2004 agriculture appropriations bill that would have allowed travel to Cuba under a general license for travel related to the sale of agricultural and medical goods. The White House had threatened to veto any legislation that weakened economic sanctions against Cuba.

Among other Cuba measures introduced in the 108th Congress, two bills would specifically lift restrictions on travel to Cuba, S. 950 (Enzi) and H.R. 2071 (Flake). Three broader bills easing sanctions would also lift restrictions on travel: H.R. 188 (Serrano), S. 403 (Baucus), H.R. 1698 (Paul), and H.R. 3422 (Serrano).

This report will be updated to reflect major developments. For additional information, see CRS Report RL31740, *Cuba: Issues for the 108th Congress.*

Contents

Cuba: U.S. Restrictions on Travel and Legislative Initiatives

Most Recent Developments

On November 25, 2003, the conference report (H.Rept. 108-401) to P.L. 108-199 (H.R. 2673), the Consolidated Appropriations Act for FY2004, was filed in the House. The omnibus measure, which includes funding for Transportation-Treasury in Division F, dropped all provisions easing sanctions that had been included in the House and Senate versions of H.R. 2989. In addition, Division A of the omnibus, which funds agriculture appropriations, dropped a provision from the Senate-approved version of H.R. 2673 that would have eased travel restrictions for agricultural sales.

On November 6, 2003, the Senate approved its version of the FY2004 agriculture appropriations bill, H.R. 2673, with a provision that would allow travel to Cuba under a general license (without applying to the Treasury Department) for travel related to commercial sales of agricultural and medical goods. The House version has no such provision.

On October 23, 2003, during Senate floor consideration of the FY2004 Transportation-Treasury appropriations bill, H.R. 2989, the Senate approved by voice vote S.Amdt. 1900 (Dorgan) that would prevent funds from being used to administer or enforce restrictions on Cuba travel or travel-related transactions. The provision was nearly identical to one in the House version of the bill; the only difference is that the Senate language states that the provision shall take effect one day after enactment of the bill. A motion to table the Dorgan amendment was defeated by a vote of 59-36.

On October 10, 2003, President Bush instructed the Department of Homeland Security, as part of a broader initiative on Cuba, to increase inspections of travelers and shipments to and from Cuba in order to more strictly enforce the trade and travel embargo.

On September 9, 2003, the House approved the FY2004 Transportation-Treasury appropriations bill, H.R. 2989, with provisions that would prevent funds from being used to administer or enforce restrictions on travel and remittances, and from being used to eliminate the travel category of people-to-people exchanges.

On July 17, 2003, the Senate Appropriations Committee approved its version of the FY2004 agriculture appropriations bill, S. 1427, that included a provision (Section 760) allowing travel to Cuba under a general license (which does not require applying to the Treasury Department) for travel related to the commercial sale of agricultural and medical goods. In early June 2003, the Treasury Department rejected

an application to travel to Cuba for organizers of a second U.S. food and agribusiness fair in Havana.

On March 24, 2003, the Treasury Department's Office of Foreign Assets Control (OFAC) announced that the Cuba travel regulations were being amended to ease travel to Cuba for those visiting close relatives, to increase the amount a traveler may carry (up to $3,000), and to eliminate travel for people-to-people educational exchanges unrelated to academic coursework.

On February 13, 2003, the conference report (H.Rept. 108-10) to the FY2003 omnibus appropriations measure, H.J.Res. 2, was filed in the House without House and Senate provisions that would have eased restrictions on travel to Cuba. The White House had threatened to veto the omnibus bill if it contained provisions weakening the embargo on Cuba.

On January 29, 2003, OFAC published proposed enforcement guidelines for all its economic sanctions programs and additional guidelines for the Cuba sanctions program. The general guidelines provide a procedural framework for OFAC's enforcement of economic sanctions, while the Cuba specific guidelines consists of penalties for different embargo violations.

Background

Since the United States imposed a comprehensive trade embargo against Cuba in the early 1960s, there have been numerous policy changes to restrictions on travel to Cuba. The embargo regulations do not ban travel itself, but place restrictions on any financial transactions related to travel to Cuba, which effectively result in a travel ban. Accordingly, from 1963 until 1977, travel to Cuba was effectively banned under the Cuban Assets Control Regulations (CACR) issued by the Treasury Department's Office of Foreign Assets Control (OFAC) to implement the embargo. In 1977, the Carter Administration made changes to the regulations that essentially lifted the travel ban. In 1982, the Reagan Administration made other changes to the CACR that once again restricted travel to Cuba, but allowed for travel-related transactions by certain categories of travelers. Under the Clinton Administration, there were several changes to the Treasury Department regulations, with some at first tightening the restrictions, and others later loosening the restrictions. The regulations that remain in place today are less restrictive than those in place from 1963 to 1977, but more restrictive than those in place from 1977-1982 when the travel ban was essentially lifted.

Chronology of Cuba Travel Restrictions

1960 — In the first trade restrictions on Cuba after the rise to power of Fidel Castro, President Eisenhower placed most U.S. exports to Cuba under validated license controls, except for nonsubsidized food, medicines, and medical supplies. The action did not include restrictions on travel.

1962/1963 — In February 1962, President Kennedy imposed a trade embargo on Cuba because of the Castro regime's ties to the Soviet Union. Pursuant to the President's directive, the Department of the Treasury's Office of Foreign Assets Control (OFAC) issued the Cuban Import Regulations. On July 9, 1963, OFAC issued a more comprehensive set of prohibitions, the Cuban Assets Control Regulations, which effectively banned travel by prohibiting any transactions with Cuba.

1977 — In March, the Carter Administration announced the lifting of restrictions on U.S. travel to Cuba that had been in place since the early 1960s. The Carter Administration lifted the travel ban by issuing a general license for travel-related transactions for those visiting Cuba. Direct flights were also allowed.

1982 — In April, the Reagan Administration reimposed restrictions on travel to Cuba, although it allowed for certain categories of travel, including travel by U.S. government officials, employees of news or film making organizations, persons engaging in professional research, or persons visiting their close relatives. It did not allow for ordinary tourist or business travel that had been allowed since the Carter Administration's 1977 action.

1984 — On June 28, the Supreme Court, in a 5-4 decision in the case of *Regan v. Wald*, rejected a challenge to the ban on travel to Cuba and asserted the executive branch's right to impose travel restrictions for national security reasons.

1993 — The Clinton Administration, in June 1993, slightly amended restrictions on U.S. travel to Cuba. Two additional categories of travel were allowed: travel to Cuba "for clearly defined educational or religious activities"; and travel "for activities of recognized human rights organizations." In both categories, travelers were required to apply for a specific license from OFAC.

1994 — In August, President Clinton announced several measures against the Cuban government in response to an escalation in the number of Cubans fleeing to the United States. Among these measures, the Administration tightened travel restrictions by prohibiting family visits under a general license, and allowing specific licenses for family visits only "when extreme hardship is demonstrated in cases involving extreme humanitarian need" such as terminal illness or severe medical emergency. Such visits required a specific license from OFAC. In addition, professional researchers were required to apply for a specific license, whereas since 1982 they had been able to travel freely under a general license. (*Federal Register*, August 30, 1994, pp. 44884-44886.)

1995 — In October, President Clinton announced measures to ease some U.S. restrictions on travel and other activities with Cuba, with the overall objective of promoting democracy and the free flow of ideas. The new measures included authorizing general licenses for transactions relating to travel to Cuba for Cuban Americans making yearly visits to close relatives in "circumstances that demonstrate extreme humanitarian need." This reversed the August 1994 action that required specific licenses. However, those traveling for this purpose more than once in a 12-month period would need to apply to OFAC for a specific license. In addition, the

new measures allowed for specific licenses for free-lance journalists traveling to Cuba. (*Federal Register*, October 20, 1995, pp. 54194-54198.)

1996 — On February 26, following the shootdown of two U.S. civilian planes two days earlier by Cuban fighter jets, President Clinton took several measures against Cuba, including the indefinite suspension of charter flights between Cuba and the United States. Qualified licensed travelers could go to Cuba, provided their flights were routed through third countries.

1998 — On March 20, following Pope John Paul II's January trip to Cuba, President Clinton announced several changes in U.S. policy toward Cuba, including the resumption of licensing for direct charter flights to Cuba. On July 2, OFAC issued licenses to nine air charter companies to provide direct passenger flights from Miami International Airport to Havana's Jose Marti Airport.

1999 — On January 5, President Clinton announced several measures to support the Cuban people that were intended to augment changes implemented in March 1998. Among the measures introduced was the expansion of direct passenger charter flights from additional U.S. cities other than Miami. In August, the State Department announced that direct flights to Cuba would be allowed from New York and Los Angeles. In addition, President Clinton also announced in January 1999 that measures would be taken to increase people-to-people exchanges. As a result, on May 13, 1999, OFAC issued a number of changes to the Cuba embargo regulations that effectively loosened restrictions on certain categories of travelers to Cuba. Travel for professional research became possible under a general license, and travel for a wide range of educational, religious, sports competition, and other activities became possible with specific licenses authorized by OFAC on a case-by-case basis. In addition, those traveling to Cuba to visit a close family member under either a general or specific license only needed to "demonstrate humanitarian need," as opposed to "extreme humanitarian need" that had been required since 1995. (*Federal Register*, May 13, 1999, pp. 25808-25820.)

2000 — In October, Congress approved and the President signed the Trade Sanctions Reform and Export Enhancement Act of 2000 (Title IX of P.L. 106-387), which included a provision that prohibited travel-related transactions for "tourist activities," which as set forth in Section 910(b)(2) of the Act are defined as any activity not authorized or referenced in the existing travel regulations (31 CFR 515.560, paragraphs (1) through (12)). The congressional action appeared to circumscribe the authority of the OFAC to issue specific travel licenses on a case-by-case basis that do not fit neatly withing the categories of travel already allowed by the regulations.

2001 — On July 12, 2001, OFAC published regulations pursuant to the provisions of the Trade Sanctions and Export Enhancement Act of 2000 (Title IX of P.L. 106-387) that prohibited travel-related transactions for "tourist activities." (*Federal Register*, July 12, 2001, pp. 36683-36688.) On July 13, 2001, President Bush announced that he had asked the Treasury Department to enhance and expand the capabilities of OFAC to prevent, among other things, "unlicensed and excessive travel."

2003 — On January 29, 2003, OFAC published proposed enforcement guidelines (as an appendix to 31 CFR Part 501) for all its economic sanctions programs and additional guidelines (as an appendix to 31 CFR Part 515) for the Cuba sanctions program. The general guidelines provide a procedural framework for OFAC's enforcement of economic sanctions, while the Cuba specific guidelines consists of penalties for different embargo violations. (*Federal Register*, January 29, 2003, pp. 4422-4429.) Several companies, non-profit legal organizations, law firms, and other groups made comments to OFAC raising a number of concerns with the new guidelines. (See OFAC's website for comments on the proposed guidelines: [http://www.treas.gov/offices/enforcement/ofac/interim/enforcement_gd.html]).

On March 24, 2003, OFAC announced that the Cuba travel regulations were being amended to ease travel to Cuba for those visiting close relatives. (*Federal Register*, March 24, 2003, pp. 14141-14148.) Travel is now permitted to visit relatives to within three degrees of relationship of the traveler and is not restricted to travel in circumstances of humanitarian need. The new regulations also increased the amount a traveler may carry, up to $3,000 (compared to $300 previously), although the limit of $300 per quarter destined for each household remains. Finally, the regulations were tightened for certain types of educational travel. People-to-people educational exchanges unrelated to academic coursework are no longer allowed. Some groups have lauded the restriction of these educational exchanges because they believe they have become an opportunity for unrestricted travel; others criticize the Administration's decision to restrict the second largest category of travel to Cuba in which ordinary people have been able to travel and exchange with their counterparts on the island.

On October 10, 2003, President Bush instructed the Department of Homeland Security, as part of a broader initiative on Cuba, to increase inspections of travelers and shipments to and from Cuba in order to more strictly enforce the trade and travel embargo.

Current Permissible Travel to Cuba

As noted above, in March 2003, OFAC amended the travel regulations. Restrictions were eased for those visiting close relatives in Cuba, while the category of people-to-people educational exchanges unrelated to academic coursework was eliminated as a permissible category of travel allowed under the regulations.

At present, certain categories of travelers may travel to Cuba under a *general* license, which means that there is no need to obtain special permission from OFAC.[1] The travel regulations can be found at 31CFR 515.560, which references other sections of the Cuban Assets Control Regulations for travel-related transaction licensing criteria. The general license categories include:

---

[1] For an overview of the Treasury Department regulations on travel to Cuba, see OFAC's website [http://www.treas.gov/ofac/]. OFAC has also published "Comprehensive Guidelines for License Applications to Engage in Travel-Related Transactions Involving Cuba," available at the website.

- U.S. government officials traveling on official business (31 CFR 515.562);

- Persons regularly employed as journalists by a news reporting organization or by persons regularly employed as supporting broadcast or technical personnel (31 CFR 515.563);

- Persons visiting a close relative in Cuba who is a national of Cuba (once every 12 months) (31 CFR 515.561);

- Full-time professionals conducting professional research in their areas (provided that the research is of a noncommercial, academic nature, that the research comprises a full work schedule in Cuba, and that the research has a substantial likelihood of public dissemination) or attending professional meetings or conferences in Cuba organized by an international professional organization, institution, or association that regularly sponsors meetings or conferences in other countries (31 CFR 515.564); and

- Amateur or semi-professional athletes participating in competitions, provided that the competition is held under the auspices of the international sports federation for the relevant sport, that U.S. participants are selected by the U.S. federation for the relevant sport, and that the competition is open for attendance, and in relevant situations, for the Cuban public (31CFR 515.567).

In addition, a wide variety of travelers engaging in educational, religious, humanitarian, and other activities may be eligible for *specific* licenses. Applications for *specific* licenses are reviewed and granted by OFAC on a case by case basis. Some specific licenses may authorize multiple trips to Cuba over an extended period of time. The specific license categories include:

- Persons visiting a close relative in Cuba who is a national of Cuba more than once in any 12-month period or visiting a close relative who is not a national of Cuba (31 CFR 515.561);

- Free-lance journalists (31 CFR 515.563);

- Professional researchers undertaking research or attending professional meetings who do not qualify for a general license (31 CFR 515.564);

- Accredited U.S. academic institutions, whose students and employees engage in a structured educational program as part of a course, noncommercial academic research related to professional qualification, a formal course of study at a Cuban academic institution, teaching at a Cuban academic institution, sponsorship of a Cuban scholar to teach or engage in other scholarly activity at a U.S. college or university, or educational exchanges sponsored by Cuban or U.S. secondary schools (CFR 515.565);

- U.S. religious organizations, for its members undertaking religious activities in Cuba (31 CFR 515.566);

- Those involved in public performances, clinics, workshops, athletic and other competitions, and exhibitions, provided that the event is open for attendance, and in relevant situations, participation by the Cuban public, and that all profits are donated to an independent nongovernmental organization in Cuba or a U.S.-based charity (31 CFR 515.567);

- Those traveling for activities in support of the Cuban people, such as activities of recognized human rights organizations, activities designed to promote a rapid, peaceful transition to democracy, and activities intended to strengthen civil society (31 CFR 515.574)

- Those involved in humanitarian projects in Cuba, such as medical and health-related projects, construction projects, intended to benefit legitimately independent civil society groups, environmental projects, projects involving non-formal educational training, within Cuba or off island, on topics including civil education, journalism, advocacy and organizing, adult literacy and vocational skills, community-based grass roots projects, projects suitable to the development of small-scale enterprise, projects related to agricultural and rural development that promote independent activity, and projects involving the donation of goods to meet basic human needs (31 CFR 515.576);

- Those involved in activities of private foundations or research or education institutes that have an established interest in international relations to collect information related to Cuba for noncommercial purposes (31 CFR 515.576);
- Those involved in the importation, exportation, or transmission of informational materials (31CFR 515.545); and

- Those involved in activities related to marketing, sales negotiation, accompanied delivery, or servicing of exports to Cuba authorized by the Department of Commerce or such activities allowed by U.S.-owned or controlled foreign firms (31CFR 515.533 and 31 CFR 515.559).

Estimates of U.S. Travelers to Cuba

There appears to be no precise data on the number of individuals traveling to Cuba, including both legal and illegal travelers (meaning those traveling without authorization from OFAC). State Department officials maintain that the agency does not collect statistics on American travel to Cuba, while the Treasury Department's Office of Foreign Assets Control maintains that there are so many general licenses (for which individuals do not have to apply) that it is not possible to arrive at an accurate number of U.S. travelers to Cuba.

Nevertheless, while the U.S. government does not collect overall statistics on U.S. travelers to Cuba, OFAC Director Richard Newcomb estimated in congressional testimony that 150,000-200,000 Americans traveled to Cuba in 2001, with about one-third of that number without permission from OFAC.[2] This includes legal travelers leaving directly from the United States on charter flights, and both legal and illegal travelers going indirectly through third countries. For 2002, press estimates maintain that as many as 220,000 Americans visited Cuba, with as many as 60,000 traveling there illegally.[3]

The largest category of legal to travel has consisted of Cuban Americans visiting their families. For example in 2000, a *Chicago Tribune* article estimated that, with more than 176,000 Americans visiting Cuba that year, 124,000 consisted of Cuban Americans on visits to their families for humanitarian reasons, 30,000 were visitors on a variety of U.S.-approved exchanges and research trips, and the remainder, some 22,000, traveled without authorization from OFAC.[4]

Press reports maintain that the number of Americans traveling to Cuba will decline in 2004 because of increased U.S. enforcement of the travel restrictions and because of the Administration's elimination of the license category of people-to-people educational exchanges unrelated to academic coursework. Some travel service providers maintain that the elimination of the people-to-people trips will significantly reduce the number of Americans visiting Cuba.[5] On the other hand, some observers point out that travel by Cuban Americans visiting their families could increase since the regulations broadened the definition of close relatives.[6]

---

[2] "Hearing of the Senate Appropriations Committee, Subcommittee on Treasury and General Government," Federal News Service, February 11, 2002.

[3] Alicia C. Shepard, "A Crackdown Worthy of Castro; More Fines, Arbitrary Enforcement. When Will We Wise Up About Travel to Cuba?" *Washington Post*, July 14, 2003.

[4] Laurie Goering, "Cuba Readies for Fall of U.S. ban on Visits; Relaxed Embargo Would Jolt Tourism," *Chicago Tribune*, August 14, 2001, p. 4.

[5] Helena Payne, "Cuba Sees Drop in Number of U.S. Visitors," *Associated Press*, January 28, 2004.

[6] Madeleine Marr, "New Travel Rules Make Life Easier for Cuban Americans," *Miami Herald*, January 18, 2004.

OFAC Review of Travel and Carrier Service Providers

OFAC is responsible for regulating the activities of more than 200 licensed travel and carrier service providers (travel agencies, tour operators, and airline companies) around the country, some two-thirds of which are concentrated in Miami.[7] The licensed service providers must keep records for each transaction, including transactions between service providers. The record keeping must include details about individual travelers and their circumstances sufficient to allow identification and verification that the transactions comply with the Cuban Assets Control Regulations (CACR) implemented by OFAC. Individuals traveling to Cuba under the authorization of OFAC must maintain records of all travel transactions for 5 years [pursuant to 31 CFR Parts 501.60l and 501.602].

The CACR spells out the requirements for travel service providers (TSP) and carrier service providers (CSP) to put procedures in place to establish that each customer is in full compliance with the regulations.[8] The regulations require such providers to demonstrate that they require each customer to attest, in a signed statement, to his or her qualification for authorized travel. The statement must provide facts supporting the customer's belief that he or she qualifies for travel to Cuba according to the categories of travel set forth in the CACR.

As part of the compliance process, licensed travel agencies must provide details about travelers to the air carriers prior to the air carriers accepting a reservation or selling a seat on a flight. This information consists of the passenger's full name, mother's maiden name, address, date of birth, passport number and country of issuance, airport of departure from the United States, and whether travel is under a general or specific license. The licensed air carrier in turn must provide detailed information to OFAC in Washington by electronic mail 48 to 72 hours prior to departure of the flight. This consists of 1) the information provided by the travel service provider (TSP) on each authorized traveler; 2)U.S. departure and return dates; and 3) the name of the TSP who arranged for the travel. Generally what happens is that travelers fill out a travel affidavit with the TSP providing the information, including what type of license they are traveling under, and the TSP then provides information to the carrier service provider before a reservation is actually made.

Passengers on direct flights to Cuba need to fill out an OFAC Outbound Declaration Card (entitled *Travel to Cuba).* Carrier Service Providers are required to ensure that every passenger receives one of the cards as part of the check-in

---

[7] OFAC also regulates the activities of companies that forward remittances to Cuban according to the restrictions set forth in the Cuban Assets Control Regulations. See U.S. Department of the Treasury, Office of Foreign Assets Control, *Authorized Providers of Air, Travel, and Remittance Forwarding Services to Cuba*, November 20, 2003.

[8] 31 CFR 515.572. In addition, OFAC has a circular outlining responsibilities of travel and carrier service providers for Cuba travel. See U.S. Department of the Treasury, Office of Foreign Assets Control, *Circular 2001, Travel, Carrier and Remittance Forwarding Service Provider Program*, September 2001.

procedure at the ticket counter assigned to the charter. CSPs must collect the completed and signed cards before the passenger boards the plane, and must make the completed cards available to the U.S. Customs Service inspector at the departure gate for review. If no inspector is present or if the inspector returns the cards to the CSP, then the cards must be forwarded to the OFAC-Miami office.

Enforcement of Cuba Travel Restrictions

Enforcement of U.S. restrictions on Cuba travel has increased under the Bush Administration. President Bush announced in a July 13, 2001 statement that he had asked the Treasury Department to enhance and expand the enforcement capabilities of the Office of Foreign Assets Control. The President noted the importance of upholding and enforcing the law in order to prevent, among other things, "unlicensed and excessive travel" and to ensure that humanitarian and cultural exchanges actually reach pro-democracy activists in Cuba.[9]

In 2001, there was a large increase in the number of Americans receiving enforcement letters from OFAC for violating the Cuba travel restrictions. The prosecution of embargo violators entails a range of measures from initial letters of inquiry to actual penalties being imposed. OFAC issued 188 pre-penalty notices in 2000, while the number rose to 697 in 2001; the level dropped to 447 in 2002 and to 350 in 2003, reportedly because of the public attention to increased enforcement in recent years.[10] According to OFAC Director Richard Newcomb, typical penalties range from $3,000 to $7,500 but the majority of cases are settled for less [11] Under the Trading with the Enemy Act, the Secretary of the Treasury may impose civil fines up to $55,000 for violation of the Cuban Assets Control Regulations.

Beginning in April 2003, OFAC began making available a regular listing of civil penalties enforcement information for its sanctions programs, including violations of the Cuba travel regulations.[12] According to a Treasury Department spokesmen, the information was being made available to make the process more transparent to the public. Some observers, however, maintain that few details are provided on the violations.[13] Since April 2003, enforcement actions for the Cuba travel regulations include penalties against such companies as Metso Minerals, Zim American Israeli Shipping Company, Playboy Enterprises, Omega World Travel, Mr. Travel, Havanatur & Travel Service, American Airlines, Cuba Paquetes, and MRP Group

---

[9] White House, "Statement by President Bush on Cuba: Toward a Democratic Cuba," July 13, 2001.

[10] Tom Carter, "U.S. Clamping Down on Americans' Visits to Havana," *Washington Times*, January 25, 2004.

[11] "Hearing of the Senate Foreign Relations Committee: Challenges for U.S. Policy Toward Cuba.,"Federal News Service, October 2, 2003.

[12] See OFAC's website for information on civil enforcement actions: [http://www.treas.gov/offices/enforcement/ofac/civpen/penalties/index.html]

[13] Rex Nutting, "U.S. Companies Quietly Caught Trading with the Enemy," *CBS Market Watch*, April 15, 2003.

Inc., while a number of other companies have received penalties for violating other aspects of the Cuba embargo regulations. In addition, the listing shows that numerous individuals have had penalties assessed or reached informal settlements for alleged violations of the travel regulations.

Many individuals who have received pre-penalty notices from OFAC have requested administrative hearings, as provided for by law (Trading with the Enemy Act). Several non-profit legal organizations, such as the New York-based Center for Constitutional Rights, are representing clients who have received letters of inquiry or pre-penalty notices from OFAC for traveling to Cuba. In late 2003, OFAC contracted with other federal agencies for three administrative law judges to conduct hearings on alleged violations of Cuba sanctions, most involving violations of travel restrictions; hearings are expected to begin in early 2004.

On October 10, 2003, President Bush instructed the Department of Homeland Security (DHS) to enforce the trade and travel embargo more strictly. As a result, inspections of passengers traveling to and from Cuba have been stepped up. According to Asa Hutchinson, DHS Under Secretary for Border and Transportation Security, in the first two months of increased inspections, some 600 violations were detected, almost half involving passengers from Cuba carrying an excess of tobacco and alcohol; 171 people were denied permission to travel to Cuba because they did not have the proper OFAC license, and 44 people arriving in the United States did not have the proper licenses.[14]

Arguments for Lifting Cuba Travel Restrictions

Those who argue in favor of lifting restrictions on travel to Cuba contend that the travel ban hinders U.S. efforts to influence political and economic conditions in Cuba. Supporters of a change in Cuba travel policy argue that U.S. support for democracy in Latin America, a region that is now more democratic than at any time in history, has been augmented by person-to-person contact and exchanges. The exception to democracy in the region is Cuba, where the United States continues to maintain a policy of isolation. They argue that the best way to realize change in Cuba is to lift restrictions, allowing a flood of U.S. citizens to travel and engage in conversations with average Cubans. They point to the influence of person-to-person contact in Russia and Eastern European nations which they argue ultimately helped lead to the fall of communism in the Soviet bloc. They maintain that restricting travel by ordinary Americans prevents interaction and information exchanges with ordinary Cubans, exchanges that can help break down the Cuban government's tight control and manipulation of news; that the current travel ban actually supports the Cuban government in its efforts to restrict information provided to the Cuban people; and that it in effect supports Castro's totalitarian control over Cuba.

A second argument made by those who want to lift travel restrictions is that the ban abridges the rights of ordinary Americans to travel. They argue that the U.S.

---

[14] U.S. Department of Homeland Security. "Under Secretary Asa Hutchinson Touts Cuban Enforcement Success," Press Release, December 10, 2003.

government should not be requiring Cuban Americans to apply for a license to travel more than once a year to visit sick or dying family members. They contend that such restrictions on the right to travel subvert the first amendment right of free speech.

Those in favor of lifting the travel ban also argue that U.S. citizens can travel to other communist or authoritarian governments around the world, such as the People's Republic of China, Vietnam, Burma, and Iran. They point out that Americans could travel to the Soviet Union before its breakup. Supporters of changing travel policy toward Cuba argue that their proposals would still allow the President to prohibit such travel in times of war or armed hostilities, or if there were imminent danger to the health or safety of Americans. They argue that these conditions do not exist with regard to Cuba, and point to a May 1998 Defense Intelligence Agency report that concluded that "Cuba does not pose a significant military threat to the U.S. or to other countries in the region."[15]

Those arguing for lifting travel restrictions also point to human rights activists in Cuba who themselves argue for the lifting of such sanctions. According to the prominent Cuban human rights activist Elizardo Sanchez: "The more Americans on the streets of Cuban cities, the better for the cause of a more open society in Cuba."[16]

Supporters of lifting the travel ban maintain that such a move would not lift the underlying U.S. embargo on trade and financial transactions with Cuba. They point to the 1977-82 period when the travel ban was essentially lifted, but the overall embargo remained in place.

Finally, some supporters of lifting the travel restrictions argue that the U.S. economy would benefit from increased demand for air and cruise travel, which reportedly would expand U.S. economic output. According to a recent report prepared for the Center for International Policy, a policy group that advocates lifting the embargo, U.S. economic output would expand by $1.18 - $1.61 billion, with the creation of between 16,888 and 23,020 jobs if travel restrictions were lifted.[17]

---

[15] Defense Intelligence Agency. Report on Cuban Threat to U.S. National Security. May 6, 1998.

[16] Congressional Record, July 25, 2001, p. H4599.

[17] *The Impact on the U.S. Economy of Lifting Restrictions on Travel to Cuba*, The Brattle Group, Washington, D.C. Prepared by Dorothy Robyn, James D. Reitzes, and Bryan Church. July 15, 2002.

Arguments for Maintaining Cuba Travel Restrictions

Those favoring the continuation of current restrictions on travel to Cuba point out that there are already significant provisions in U.S. law permitting Americans to travel there for legitimate reasons that support the Cuban people and not the Cuban government. They point out that in 2000 some 154,000 Americans traveled to Cuba legally under the various provisions of the Cuban embargo regulations, many of whom were Cuban Americans visiting family members.[18] Other categories of travel allowed include students, journalists, researchers, artists, musicians, and athletes. Supporters of restrictions point out that the Clinton Administration had already loosened travel restrictions significantly as part of an effort to increase people-to-people contact.

A second argument made for maintaining current restrictions on travel to Cuba is that lifting the travel ban entirely will open the floodgates to American tourist travel that will support Castro's rule by providing his government with millions in tourist receipts. Advocates of restricting travel oppose any loosening that could prolong the Castro regime by propping it up with increased income. In contrast to those supporting tourist travel, they believe that continued travel restrictions will help influence Cuba's policy. They argue that since the collapse of the Soviet Union and the loss of Soviet subsidies to Cuba, the travel and embargo regulations have contributed to Castro's decision to cut the military's size and budget by half since 1989 and to introduce limited economic reforms. Lifting travel restrictions, they argue, would eliminate the U.S. leverage on Cuba to enact further reforms.

Those favoring the maintenance of current travel restrictions argue that the reality of the human rights situation dispels the notion that American tourists would be engaging in exchanges with ordinary Cubans. They maintain that the thousands of European, Canadian, and other tourists who travel to Cuba each year largely stay in tourist hotels that are off limits to most Cubans and thus have no discernable effect on the human rights situation in Cuba.

Some opposed to lifting travel restrictions argue that there should be tourist travel as long as Cuba provides refuge to violent criminals who have escaped U.S. justice. Reportedly more than 75 federal fugitives are hiding out in Cuba, including convicted murderer Joanne Chesimard, who killed a New Jersey state trooper in 1973.[19]

Finally, many opponents of legislation to lift the Cuba travel restrictions argue that the authority to impose such restrictions is an important foreign policy tool for the President. They point out that the President has the authority to restrict travel when it is in the national security or foreign policy interests of the United States, and

---

[18] Laurie Goering, "Cuba Readies for Fall of U.S. Ban on Visits; Relaxed Embargo Would Jolt Tourism," *Chicago Tribune*, August 14, 2001. p. 4.

[19] Elaine de Valle and Luisa Yanez, "Is Cuba Hinting at Spy Deal?" *Miami Herald*, July 9, 2001, p. 1B.

has utilized that policy tool when needed. They point to current Treasury Department regulations restricting travel to Libya and Iraq, as well as past instances of regulations restricting travel to Vietnam and North Korea. With regard to Cuba, they point to the 1984 Supreme Court decision in the case of *Regan v. Wald* that upheld restrictions on travel to Cuba imposed by the Reagan Administration.

Legislative Action and Initiatives in the 106th Congress

The only action completed by the 106th Congress relating to Cuba travel involved a tightening of travel restrictions. The final version of the FY2001 agriculture appropriations measure (P.L. 106-387, Title IX, Trade Sanctions Reform and Export Enhancement Act of 2000) included a provision that restricts travel to Cuba to those categories of non-tourist travel already allowed by the Treasury Department regulations. Section 910 of the law provides that neither general nor specific licenses for travel to Cuba can be provided for activities that do not fit into the 12 categories expressly authorized in the Cuban Assets Control Regulations, Section 515.560 (a) of Title 31, CFR, paragraphs (1) through (12).

As noted in the law, the Secretary of the Treasury may not authorize travel-related transactions "for travel to, from, or within Cuba for "tourist activities," which are defined as any activity that is not expressly authorized in the 12 categories of the regulations. The provision prevents the Administration from loosening the travel restrictions to allow tourist travel. This, in effect, strengthens restrictions on travel to Cuba and somewhat circumscribes the authority of OFAC to issue specific travel licenses on a case-by-case basis under Section 515.560 (b) of Title 31, CFR. OFAC in the past has utilized that section to provide specific licenses for activities that do not fit neatly within the categories of travel set forth in 515.560 (a), including such travel for medical evacuations of Americans legally in Cuba and for U.S. contractors servicing the needs of the U.S. Interests Section. (Regulations implementing the provision of the law were issued by OFAC on July 12, 2001.)

In other legislative action, the Senate considered the issue of travel to Cuba in June 30, 1999 floor action on the FY2000 Foreign Operations Appropriations bill, S. 1234. An amendment was introduced by Senator Christopher Dodd that would have terminated regulations or prohibitions on travel to Cuba and on transactions related to such travel in most instances.[20] The Senate defeated the amendment by tabling it in a 55-43 vote on June 30, 1999. On November 10, 1999, Senator Dodd introduced identical language as S. 1919, the Freedom to Travel to Cuba Act of 2000, but no action was taken on the bill.

The House took up the issue of travel to Cuba when it considered H.R. 4871, the Treasury Department appropriations bill, on July 20, 2000. A Sanford

---

[20] The Dodd amendment allowed for travel restrictions to be imposed if the United States is at war with Cuba, if armed hostilities are in progress, or when threats to physical safety or public health exist. Under current law, the Secretary of State has the same authority to restrict travel (22 USC 211a).

amendment was approved (232-186) to prohibit funds in the bill from being used to administer or enforce the Cuban Assets Control Regulations with respect to any travel or travel-related transaction. Subsequently, the language of the amendment was dropped from a new version of the FY2001 Treasury Department appropriations bill, H.R. 4985, introduced on July 26. H.R. 4985 was appended to the conference report on the Legislative Branch appropriations bill — H.R. 4516, H.Rept. 106-796 — in an attempt to bypass Senate debate on its version of the Treasury appropriations bill, S. 2900. The Senate initially rejected this conference report on September 20, 2000, by a vote of 28-69, but later agreed to the report, 58 -37, on October 12. The House had agreed to the conference report earlier, on September 14, 2000, by a vote of 212 - 209.

Legislative Action and Initiatives in the 107th Congress[21]

In the 107th Congress, while there were various measures introduced that would have eliminated or eased restrictions on travel to Cuba, and while the House voted in both the first and second sessions to prohibit spending to administer the travel regulations, no legislative action was completed by the end of the second session.

First Session Action. During July 25, 2001 floor action on H.R. 2590, the FY2002 Treasury Department appropriations bill, the House approved an amendment that would prohibit spending for administering Treasury Department regulations restricting travel to Cuba. H.Amdt. 241, offered by Representative Flake (which amended H.Amdt. 240 offered by Representative Smith), would prohibit funding to administer the Cuban Assets Control Regulations (administered by OFAC) with respect to any travel or travel-related transaction. The amendment was approved by a vote of 240 to 186, compared to a vote of 232-186 for a similar amendment in last year's Treasury Department appropriations bill.

The Senate version of H.R. 2590, approved September 19, 2001, did not include any provision regarding U.S. restrictions on travel to Cuba, and the provision was not included in the House-Senate conference on the bill (H.Rept. 107-253). During Senate floor debate, Senator Byron Dorgan noted that he had intended to offer an amendment on the issue, but that he decided not to because he did not want to slow passage of the bill. He indicated that he would support the House provision during conference, but ultimately, however, the House-Senate conference report on the bill did not include the Cuba provision. In light of the changed congressional priorities in the aftermath of the September 11 attacks on New York and Washington, conference negotiators reportedly did not want to slow passage of the bill with any controversial provisions. The Bush Administration had threatened to veto the Treasury bill if it included the Cuba travel provision.

---

[21] For a complete listing and discussion of all Cuba bills in the 107th Congress, see CRS Report RL30806, *Cuba: Issues for the 107th Congress.*

Second Session Action. The Cuba travel issue received further consideration in the second session of the 107th Congress. A bipartisan House Cuba working group of 40 Representatives vowed as one of its goals to work for a lifting of travel restrictions. On February 11, 2002, the Senate Appropriations Committee's Subcommittee on Treasury and General Government held a hearing on the issue, featuring Administration and outside witnesses.

The travel issue was part of debate during consideration of the FY2003 Treasury Department appropriations bill (H.R. 5120 and S. 2740). Secretary of State Colin Powell and Secretary of the Treasury Paul O'Neill said they would recommend that the President veto legislation that includes a loosening of restrictions on travel to Cuba (or a weakening of restrictions on private financing for U.S. agricultural exports to Cuba).[22] The White House also stated that President Bush would veto such legislation.[23]

In July 23, 2002 floor action on H.R. 5120, the House approved three Cuba sanctions amendments, including one on the easing of travel restrictions offered by Representative Jeff Flake. The House approved the Flake travel amendment (H.Amdt. 552), by a vote of 262-167, that would provide that no funds could be used to administer or enforce the Treasury Department regulations with respect to travel to Cuba. The Flake amendment would not prevent the issuance of general or specific licenses for travel to Cuba. Some observers raised the question of whether the effect of this amendment would be limited since the underlying embargo regulations restricting travel would remain unchanged; enforcement action against violations of the relevant embargo regulations could potentially take place in future years when the Treasury Department appropriations measure did not include the funding limitations on enforcing the travel restrictions.[24]

During consideration of H.R. 5120, the House also rejected two Cuba amendments. A Rangel amendment (H.Amdt. 555), rejected by a vote of 204-226, would have prevented any funds in the bill from being used to implement, administer, or enforce the overall economic embargo of Cuba, which includes travel. A Goss amendment (H.Amdt. 551), rejected by a vote of 182-247, would have provided that any limitation on the use of funds to administer or enforce regulations restricting travel to Cuba or travel-related transactions would only apply after the President certified to Congress that certain conditions were met regarding biological weapons and terrorism.[25] The rule for the bill's consideration, H.Res. 488 (H.Rept. 107-585), had provided that the Goss amendment would not be subject to amendment.

---

[22] U.S. Department of State, International Information Programs, Washington File, "Bush Administration Opposes Legislative Efforts to Amend Cuba Policy," July 16, 2002.

[23] White House, Press Briefing by Ari Fleischer, July 24, 2002.

[24] "House Approves Limits on Treasury Enforcement of Cuba Embargo," *Inside U.S. Trade*, July 26, 2002.

[25] For further information on the issues of biological weapons and terrorism as they relate to Cuba, see CRS Report RL30806, *Cuba: Issues for the 107th Congress*, by Mark P. Sullivan.

The House subsequently passed H.R. 5120 on July 24, 2002, by a vote of 308-121, with the three Cuba amendments, including the Flake Cuba travel amendment.

The Senate version of the Treasury Department appropriations measure, S. 2740, as reported by the Senate Committee on Appropriations on July 17, 2002 (S.Rept. 107-212), included a provision, in Section 516, that was similar, although not identical, to the Flake amendment described above. It provided that no funds may be used to enforce the Treasury Department regulations with respect to any travel or travel-related transactions, but would not prevent OFAC from issuing general and specific licenses for travel to Cuba. In addition, Section 124 of the Senate bill stipulated that no Treasury Department funds for "Departmental Offices, Salaries, and Expenses" may be used by OFAC, until OFAC has certain procedures in place to expedite license applications for travel to Cuba.

Congress did not complete action on the FY2003 Treasury Department appropriations measure before the end of the 107th Congress, so action was deferred until the 108th Congress.

Additional Legislative Initiatives. Several other initiatives were introduced in the 107th Congress that would have eased U.S. restrictions on travel to Cuba, but no action was taken on these measures.

- H.R. 5022 (Flake), introduced June 26, 2002, would have lifted all restrictions on travel to Cuba.

- Several broad bills would have lifted all sanctions on trade, financial transactions, and travel to Cuba: H.R. 174 (Serrano), the Cuban Reconciliation Act, introduced January 3, 2001, and identical bills S. 400 (Baucus) and H.R. 798 (Rangel), the Free Trade with Cuba Act, introduced February 27 and 28, 2001, respectively.

- S. 1017 (Dodd) and H.R. 2138 (Serrano), the Bridges to the Cuban People Act of 2001, introduced June 12, 2001, would, among other provisions, have removed all restrictions on travel to Cuba by U.S. nationals or lawful permanent resident aliens.

- Several bills would, among other provisions, have repealed the travel restrictions imposed in the 106th Congress by the Trade Sanctions Reform and Export Enhancement Act of 2000 (P.L. 106-387, Title IX, Section 910). These include: identical bills S. 402 (Baucus) and H.R. 797 (Rangel), the Cuban Humanitarian Trade Act of 2001, introduced February 27 and 28, 2001; S. 171 (Dorgan), introduced January 24, 2001; and S. 239 (Hagel), the Cuba Food and Medicine Access Act of 2001, introduced February 1, 2001.

Legislative Action and Initiatives in the 108th Congress[26]

Since action on FY2003 Treasury Department appropriations was not completed before the end of the 107th Congress, the 108th Congress faced early action on it and other unfinished FY2003 appropriations measures. The final version of the FY2003 omnibus appropriations measure, H.J.Res. 2 (P.L. 108-7), which included Treasury Department appropriations, did not include provisions affecting restrictions on travel to Cuba. The White House had threatened to veto the measure if it contained provisions weakening the embargo. While the Senate version did not include the Senate Appropriations Committee provision from the 107th Congress that would have eased travel restrictions by prohibiting any funding for enforcing the Cuba travel regulations, it did include a provision (contained in Division J, Section 124) that would have expedited action on travel applications for travel by OFAC within 90 days of receipt. Ultimately, however, the Senate provision was dropped in the conference report (H.Rept. 108-10) on the omnibus measure.

In the 108th Congress, several bills have been introduced that would lift or ease restrictions on travel to Cuba, and as in the past several years, there was action on the Treasury appropriations bill to ease Cuba sanctions. The White House again threatened to veto any legislation that would weaken economic sanctions against Cuba.

Both the House and Senate versions of the FY2004 Transportation-Treasury appropriations bill, H.R. 2989, had nearly identical provisions that would have prevented funds from being used to administer or enforce restrictions on travel or travel-related transactions. But the provisions were dropped in the conference report to the FY2004 Consolidated Appropriations Act, P.L. 108-199 (H.R. 2673, H.Rept. 108-401, filed November 25, 2003), which incorporated seven regular appropriations acts, including Transportation-Treasury appropriations. The conference also dropped two Cuba provisions from the House version of H.R. 2989 that would have eased restrictions on remittances and on people-to-people educational exchanges.

The House provisions had been approved during September 9, 2003, House floor consideration of the H.R. 2989: H.Amdt. 375 (Flake), approved by a vote of 227-188, would have prevented funds from enforcing travel restrictions (Section 745 of the House version); H.Amdt. 377 (Delahunt), approved by a vote of 222-196, would have prevented funds from enforcing restrictions on remittances (Section 746); and H.Amdt. 382 (Davis), approved by a vote of 246-173, would have prohibited funds from being used to eliminate the travel category of people-to-people educational exchanges (Section 749).

During Senate floor consideration of H.R. 2989 on October 23, 2003, the Senate approved by voice vote S.Amdt. 1900 (Dorgan), nearly identical to the Flake amendment noted above that would have prevented funds from being used to

---

[26] For a complete listing and discussion of all Cuba bills in the 108th Congress, see CRS Report RL31740, *Cuba: Issues for the 108th Congress.*

administer or enforce restrictions on travel or travel-related transactions (Section 643 of the Senate version). A motion to table the Dorgan amendment was defeated by a vote of 59-36. The Senate approved the bill by a vote of 91-3. The only difference between the Senate and House language was that the Dorgan amendment, as amended by S.Amdt 1901 (Craig), provided that the section would take effect one day after enactment of the bill.

In other action, the conference on the FY2004 Consolidated Appropriations Act, P.L. 108-199 (H.R. 2673), also dropped a provision in the Senate version of the FY2004 agriculture appropriations bill that would have allowed travel to Cuba under a general license for travel related to the sale of agricultural and medical goods. On July 17, 2003, the Senate Appropriations Committee approved its version of the FY2004 agriculture appropriations bill, S. 1427, that included a provision (Section 760) allowing travel to Cuba under a general license (which does not require applying to the Treasury Department) for travel related to the commercial sale of agricultural and medical goods. The Senate included this provision when it approved H.R. 2673 on November 6, 2003. The House-passed version of the bill, H.R. 2673, had no such provision. At present, such travel to Cuba is allowed with OFAC's approval of a specific license. In early June 2003, the Treasury Department rejected an application to travel to Cuba for organizers of a second U.S. food and agribusiness fair in Havana.[27] The first such trade fair, held in September 2002, featured some 288 exhibitors from more than 30 states and resulted in millions in U.S. agricultural sales to Cuba.[28]

Among other initiatives introduced in the 108th Congress, two bills would specifically lift restrictions on travel to Cuba: S. 950 (Enzi), introduced April 30, 2003, and H.R. 2071 (Flake), introduced May 13, 2003. H.R. 3422 (Serrano), introduced October 30, 2003, would, among other provisions, lift restrictions on travel to Cuba. Three broad legislative initiatives have been introduced that would lift all Cuba embargo restrictions, including those on travel: H.R. 188 (Serrano), introduced January 7, 2003, S. 403 (Baucus), introduced February 13, 2003, and H.R. 1698 (Paul), introduced April 9, 2003.

Cuba's human rights crackdown in 2003 had an impact on momentum behind legislative proposals to ease U.S. sanctions policy toward Cuba. For example, although the House approved amendments to the FY2004 Transportation-Treasury appropriations bill, H.R. 2989, that would ease Cuba sanctions, the amendments were approved with less support than similar amendments in 2002. A Flake amendment to the FY2003 appropriations bill that would have prohibited funds from being used to enforce travel restrictions had been approved by a vote of 262-167, compared to a similar Flake amendment to the FY2004 measure approved by a vote of 227-188.

---

[27] Nancy San Martin, "U.S. Pulls Plug on Cuba Expo," *Miami Herald*, June 18, 2003.

[28] Nancy San Martin, U.S. Official Dampens Trade-Show Enthusiasm with Talks of Cuban Credit," *Miami Herald*, September 29, 2002.