

U.S. Treasury and Commerce Departments Issue Amended Regulations to Ease U.S. Sanctions Against Cuba

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International Trade Controls

The U.S. Treasury and Commerce Departments yesterday revised their regulations to expand permissible trade and travel involving Cuba, implementing a policy shift that the Obama Administration announced last month. The changes take effect today.

The U.S. Department of the Treasury, Office of Foreign Assets Control (“OFAC”) [amended](#) the Cuban Assets Control Regulations (“CACR”) to ease in various ways the longstanding embargo against Cuba, including with respect to telecommunications services, travel, financial services, and remittances. Concurrently, the U.S. Department of Commerce, Bureau of Industry and Security (“BIS”) [amended](#) the Export Administration Regulations (“EAR”) to authorize certain exports and reexports to Cuba, primarily of telecommunications-related items and goods in support of Cuban private-sector activities. President Obama had previewed these changes on December 17, 2014, as described in our prior [e-alert](#).

The changes leave intact much of the broad U.S. embargo against Cuba, which has been in place for more than 50 years and applies to the activities of “persons subject to U.S. jurisdiction.” This includes individual U.S. persons, wherever located or employed; U.S. companies and their non-U.S. branches; non-U.S. persons when present in the United States; and non-U.S. companies owned or controlled by U.S. persons. The Administration has acknowledged that various statutes limit the Executive Branch’s authority to lift certain elements of the embargo, including the prohibition on tourism travel to Cuba which remains in place.

Overview of Regulatory Revisions

OFAC’s revisions to the CACR relax prior restrictions primarily through the addition of new general licenses and the expansion of existing general licenses, thus allowing some activity by “persons subject to U.S. jurisdiction” that previously required a specific license from OFAC. In addition, definitions of some key terms have been revised, and dollar limits on certain types of transactions have been raised or eliminated.

Similarly, the new BIS rule creates a new license exception in the EAR and expands several existing license exceptions to permit additional exports and reexports to Cuba of certain goods, such as telecommunications items; building materials, equipment, and tools to construct privately owned buildings; tools and equipment for private-sector agricultural activities; and other items for Cuban entrepreneurs.

The agencies also issued [OFAC FAQs](#) and [BIS FAQs](#) to provide more guidance on the changes.

Below, we detail the regulatory changes in six areas: telecommunications, other U.S. trade, travel, financial services, remittances, and third-country trade with Cuban nationals.

Telecommunications

The amended CACR include a general license authorizing the establishment of telecommunications facilities to provide telecommunications services between the United States and Cuba or third countries and Cuba, including facilities that provide such services in Cuba. Previously, a general license was available only for communications between the United States and Cuba, with other transactions requiring specific licensing. In addition, the CACR now authorize transactions with telecommunications service providers (now including Cuban service providers) or individuals in order to provide telecommunications services to individuals in Cuba. Examples of permitted transactions include the payment of activation, installation, usage, roaming, maintenance, or termination fees.

Complementing the CACR changes, the BIS rule authorizes the export and reexport to Cuba of certain items for telecommunications, including for Internet access, use of Internet services, infrastructure creation, and upgrades. An expanded License Exception Consumer Communications Devices (“CCD”) now authorizes the *sale* to Cuba of consumer communications devices, as well as related software, applications, and hardware. Previously, these items were permitted to be exported to Cuba only as *donations*. This license exception permits sales to the Cuban government only for resale to the Cuban people, and applies to the export and reexport of computers, mobile phones, televisions, and a range of computing accessories and other similar devices that facilitate information exchange and communication. It is limited to certain enumerated items designated as EAR99 or controlled on the EAR’s Commerce Control List only for anti-terrorism (“AT”) reasons.

Expansions in Other U.S. Trade

The BIS rule also creates a new License Exception Support for the Cuban People (“SCP”) in the EAR that authorizes the export and reexport of certain other items to the Cuban private sector, as follows:

- Building materials, equipment, and tools for use by the private sector to construct or renovate privately owned buildings, such as residences, businesses, places of worship, or buildings for social or recreational use;
- Tools and equipment for private-sector agricultural activities; and
- Goods for use by private-sector entrepreneurs.

This license exception is limited to items designated as EAR99 or controlled on the Commerce Control List only for AT reasons. Although this license exception is for private-sector end users, BIS’s FAQs indicate that Cuban government import agencies and other government-owned, operated, or controlled entities may act as consignees to receive and effect delivery of eligible items. Under some circumstances, such as the export of mobile phones or consumer computers to support private-sector entrepreneurs, both License Exceptions CCD and SCP may apply. In those cases, the exporting party may rely on either license exception for authorization.

The BIS rule also enacts changes that seek to facilitate donations to Cuba and promote civil society and human rights. License Exception SCP permits the donation of items to Cuba for use in scientific, archaeological, cultural, ecological, educational, historic preservation, or sporting activities, as well as the temporary export of such items for up to two years by persons

departing the United States. The license exception also authorizes the export of certain items to human rights organizations, individuals, or non-governmental organizations that promote independent activity intended to strengthen civil society, and the export of certain items to media personnel in Cuba engaged in the dissemination of news to the general public. In addition, BIS expanded License Exception Gift Parcels and Humanitarian Donations (“GFT”) to allow consolidated shipments to Cuba of multiple parcels of qualified gifts or donations without a license.

The BIS rule institutes a new general policy of approval -- but not a general license -- for license applications to export or reexport items to Cuba for environmental protection of U.S. and international air quality, waters, and coastlines. This includes items related to renewable energy or energy efficiency. Although exports and reexports in this category still require a license, applications for such licenses will generally be approved.

There were no changes to the EAR provisions governing the export and reexport of agricultural commodities, which are subject to a preexisting license exception, or the export and reexport of medicines or medical devices, which require a license. However, to facilitate financing of such exports to Cuba and newly permissible dealings, the amended CACR revise the definition of the term “cash in advance” to mean “payment before transfer of title and control.” Previously, the term required payment before shipment.

OFAC also has expanded the authorization for Cuban imports into the United States. In addition to allowing authorized travelers to return to the United States with certain amounts of Cuban goods (as detailed below), the revisions to the CACR allow the importation into the United States of certain goods and services produced by independent Cuban entrepreneurs. These items will be set forth on a list that the State Department will publish separately, known as the “515.582 List.”

Travel

The amended CACR contain general licenses authorizing travel to Cuba related to 12 categories of activity: (1) family visits; (2) official business of the U.S. government, foreign governments, and certain intergovernmental organizations; (3) journalistic activity; (4) professional research and professional meetings; (5) educational activities; (6) religious activities; (7) public performances, clinics, workshops, athletic and other competitions, and exhibitions; (8) support for the Cuban people; (9) humanitarian projects; (10) activities of private foundations or research or educational institutes; (11) exportation, importation, or transmission of information or informational materials; and (12) certain export transactions that may be considered for authorization under existing regulations and guidelines. Previously, some of these categories of travel required a specific license. Note that the regulations define detailed criteria that the traveler and the travel plans must meet in order to qualify for these categories of travel, and impose certain conditions on the scope of travel. For example, the traveler must generally maintain a full-time schedule of activity in the relevant activity while in Cuba.

The allowable types of travel have been expanded within a number of these 12 categories:

- Authorized travel for official business of the U.S. government, foreign governments, or certain intergovernmental organizations now extends to contractors and grantees of those institutions.

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- Authorized travel related to journalistic activities now covers not only full-time journalists and supporting broadcast or technical personnel, but also freelance journalists as long as they have a prior record of freelance journalistic activity.
- Authorized travel for educational activities now includes educational exchanges by Cuban or U.S. secondary schools and is no longer limited to travel related to accredited U.S. graduate and undergraduate degree-granting institutions. In addition, educational exchange programs that are sponsored, organized, and led by an organization and promote people-to-people contact were previously eligible for specific licensing, but are now authorized by a general license.
- For authorized family visits, the “close relative” who can be visited now includes not only Cuban nationals, but also persons ordinarily resident in Cuba, students or faculty members engaging in authorized educational activities, or persons there on official government business.
- Authorized travel for professional research and professional meetings may now relate to the traveler’s profession, professional background, or area of expertise instead of being limited to only non-commercial, academic research.
- Authorized travel for marketing, sales negotiation, accompanied delivery, or servicing in Cuba of items eligible for export licensing by the Commerce Department now extends to the broader range of items that are now eligible for Commerce Department licensing. In the past, travel in these categories was authorized if related to sales of medical supplies, food and agricultural products, and some telecommunications products and services that were “eligible” for Commerce licensing. Given the scope of new License Exceptions SCP and CCD, described above, the OFAC general license authorizes business travel for these purposes related to the wider range of products eligible for License Exception SCP.

The revised CACR also permit authorized travelers to make travel arrangements through any service provider that complies with OFAC regulations governing travel to Cuba. Airlines and tour operators no longer need to be specifically licensed. However, until the Department of Transportation restores scheduled service to Cuba, authorized travelers should continue to make travel arrangements through presently available charter service providers. Airlines and other travel service providers must obtain a certification from each traveler identifying the applicable regulation that authorizes his or her travel and maintain these records for five years. Note that the general license authorizes travel services only to travelers authorized by the CACR to travel, and does not authorize travel services to persons who are not subject to U.S. jurisdiction and thus do not need CACR authorization for Cuba travel.

In addition, authorized travelers are no longer subject to a per-diem limit on spending during travel, as they were previously under the CACR. Further, upon their return to the United States, travelers may import up to \$400 per person of goods from Cuba for personal use, including no more than \$100 of alcohol and tobacco products.

Consistent with the easing of travel restrictions, persons subject to U.S. jurisdiction are also authorized to issue or provide coverage for global health, life, and travel insurance policies for individuals ordinarily resident in a country outside of Cuba who travel to or within Cuba, and to pay claims arising from events that occur during travel to Cuba.

Financial Services

In the banking area, the amended CACR authorize depository institutions to take the previously prohibited steps of opening and maintaining correspondent accounts at Cuban financial institutions to facilitate the processing of transactions authorized under U.S. law. However, the reverse -- i.e., Cuban banks opening accounts at U.S. financial institutions -- is *not* allowed. The regulations also do not authorize financial institutions in the United States or otherwise subject to U.S. jurisdiction to provide bank accounts to or for the benefit of Cuba or a blocked Cuban national (except in limited circumstances for Cuban nationals lawfully admitted to the United States).

U.S. depository institutions are permitted under the revised CACR to process wire transfers originating and terminating outside the United States where neither the originator nor the beneficiary is a person subject to U.S. jurisdiction if the transaction would be authorized by the CACR if the originator or beneficiary were subject to U.S. jurisdiction. When dealing with prohibited funds transfers, U.S. depository institutions are permitted under the revised CACR to reject those transactions if they originate and terminate outside the United States and neither the originator nor the beneficiary is a person subject to U.S. jurisdiction, so long as no prohibited official of the government of Cuba or prohibited Cuban Communist Party member has an interest in the transfer. Previously, financial institutions were required to block such transfers.

The revised CACR also authorize all transactions incident to the processing and payment of credit and debit cards involving travel-related transactions authorized by the regulations, which were previously prohibited.

Taken together, these measures are intended to improve the speed and efficiency of authorized payments between the United States and Cuba, and to reduce practical barriers to the increased interaction between the two countries authorized by the amended regulations.

Remittances

The amended CACR also relax limits on remittances provided to Cuban nationals. Persons subject to the jurisdiction of the United States may now provide remittances of up to \$2,000 in any consecutive three-month period to Cuban nationals (other than certain prohibited Cuban government and Cuban Communist Party officials) for purposes other than emigration. Previously, the limit was \$500. An authorized traveler to Cuba now may carry up to \$10,000 in remittances per trip, raised from the prior limit of \$3,000.

Persons subject to the jurisdiction of the United States also may provide remittances to individuals and independent nongovernmental entities in Cuba to support:

- Humanitarian projects in or related to Cuba that are designed to directly benefit the Cuban people;
- The Cuban people through activities of recognized human rights organizations; independent organizations designed to promote a rapid, peaceful transition to democracy; and activities of individuals and non-governmental organizations that promote independent activity intended to strengthen civil society in Cuba; and
- The development of private businesses, including small farms.

Certain previous authorizations for remittances were not changed by the amended CACR. For example, persons subject to the jurisdiction of the United States are still permitted to provide

unlimited remittances to religious organizations in Cuba. The same remains true for remittances to close relatives who are Cuban nationals as long as the remittances are not made for emigration-related purposes and the relatives are not prohibited Cuban government and Cuban Communist Party officials. In addition, the rule on emigration-related remittances remains the same, authorizing remittances up to \$1,000 for emigration purposes before the payees have received a valid U.S. visa and another \$1,000 after a visa has been obtained.

Third-Country Trade with Cuban Nationals

The regulatory changes also affect persons and entities outside the United States or Cuba. As noted above, in addition to restricting trade with Cuba by U.S. persons and companies, the CACR also restrict trade by non-U.S. companies that are owned or controlled by U.S. persons. This has been controversial internationally, with numerous jurisdictions (including Canada, Mexico, and the European Union) enacting measures that purport to “block” the extraterritorial application of the Cuban sanctions.

Under the amended CACR, U.S.-owned or -controlled entities in third countries are now authorized to provide goods and services, including financial services, to individual Cuban nationals who are located outside of Cuba, provided that the transaction does not involve exporting directly or indirectly goods or services to or from Cuba. For example, a U.S.-owned hotel chain outside the United States could provide hotel rooms, and serve food to, Cuban nationals in that third country. However, the CACR continue to prohibit most exports by U.S.-owned or -controlled entities outside the United States to Cuba, including the provision of goods or services to Cuban nationals (or others) for subsequent export to Cuba.

The revised CACR have expanded the requirements under the general license that unblocks the accounts of Cuban nationals who have taken up permanent residence outside of Cuba (other than certain prohibited Cuban government and Cuban Communist Party officials). The scope of required documentation has been relaxed, so that if government-issued documents are not available, evidence of two years’ residence in a single country outside of Cuba, or the person’s certification that he or she has no intention to return to Cuba, is now sufficient.

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As the President acknowledged in his December announcement, the Administration cannot fully lift the embargo without action by Congress. An existing statutory framework continues to constrain the President’s power to change certain aspects of the embargo, such as tourism travel and exports to Cuba by U.S.-owned or -controlled subsidiaries in foreign countries. The President has pledged to work with Congress in a “debate about lifting the embargo.” We discussed these statutory limits in greater detail on Covington’s [Global Policy Watch blog](#). Thus, it remains to be seen whether the changes being implemented today will be followed by more sweeping changes.

We are following these sanctions developments closely and will provide further updates as the situation develops. In addition, Covington has launched a [Cuba Working Group](#) to assist clients in assessing and complying with changes in U.S. sanctions, taking advantage of new business opportunities that may develop with respect to Cuba, shaping additional policy changes by the Administration or Congress, and preserving U.S. claims regarding Cuban property.

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