

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

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International Trade Controls

The U.S. Treasury and Commerce Departments today issued amended regulations that expand the scope of permissible trade with and travel to Cuba. Among the more significant changes, the regulations now authorize persons subject to U.S. jurisdiction to open offices, warehouses, and retail outlets in Cuba to conduct trade in telecommunications and other items licensed by the U.S. government for export or reexport to Cuba. The changes, which are effective today, represent further steps to implement a policy shift announced by the Obama Administration in [December 2014](#), building upon an earlier easing of the Cuban trade embargo that took effect in [January 2015](#).

The U.S. Department of the Treasury's 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, certain categories of authorized 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 items related to telecommunications and travel (including certain aviation and vessel traffic) and goods in support of Cuban private-sector activities.

The changes continue to 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. citizens and permanent residents (so-called "green-card holders"), wherever located or employed; legal entities organized under U.S. laws and their non-U.S. branches or offices; 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. Further, the EAR continues to broadly restrict exports and reexports to Cuba, except for those goods that can be shipped under a Commerce Department license or specified license exceptions.

Overview of Regulatory Revisions

OFAC's revisions to the CACR relax prior restrictions primarily by issuing or expanding general licenses to, among other things:

- Further facilitate trade and business by persons subject to U.S. jurisdiction with Cuba under certain circumstances, including authorizing such persons who qualify for existing

categories of authorized trade to establish a physical presence in Cuba, such as through leasing offices, warehouses, classrooms, or retail outlet space and employing personnel;

- Permit expanded travel to Cuba for authorized purposes and related activities, including authorizing persons subject to U.S. jurisdiction to provide carrier service to Cuba by vessel, authorizing them to visit or accompany a family member who is authorized to travel to Cuba, and allowing persons authorized to visit Cuba to open and maintain bank accounts for authorized transactions while in Cuba;
- Further expand the telecommunications and internet-based services general licenses and related activities; and
- Remove limits on certain remittances to and from Cuba, including unblocking such remittances previously blocked.

Similarly, the new BIS rule significantly eases restrictions on exports and reexports to Cuba through the expansion of license exceptions. Most significantly, the revised regulations:

- Expand the scope of the License Exception Support for the Cuban People (“SCP”) to authorize certain exports and reexports of items to Cuba for use in establishing, maintaining, and operating a permissible physical presence in Cuba;
- Expand the scope of License Exceptions SCP and Consumer Communications Devices (“CCD”) by removing the requirement that eligible items be sold or donated to Cuba, thus allowing items also to be leased or loaned;
- Expand authority in License Exception SCP for temporary export and reexport of certain tools of trade for many travel categories, and for installation or repair of authorized items in Cuba;
- Authorize most vessels and commercial aircraft to make temporary sojourns to Cuba under the License Exception Aircraft, Vessels and Spacecraft (“AVS”); and
- Establish a new Cuba licensing policy to consider on a case-by-case basis applications for licenses to export or reexport items that promote safety within the civil aviation industry.

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

Below, we detail the regulatory changes in the following areas: trade/business by persons subject to U.S. jurisdiction, travel, telecommunications, banking, remittances, and other areas.

Trade/Business by Persons Subject to U.S. Jurisdiction

The amended CACR include a revised general license to authorize persons subject to U.S. jurisdiction to establish a physical presence, such as an office or other facility, in Cuba to facilitate authorized transactions. This authorization, which previously covered only news bureaus, has been expanded to cover: exporters or reexporters of goods authorized by the CACR for shipment to Cuba, including items authorized for export or reexport by the Commerce Department (e.g., food, medicine, or medical devices, aviation and vessel safety items, building materials, supplies to private entrepreneurs, and telecommunications devices); providers of authorized mail and parcel transmission services and cargo transportation services; providers of telecommunications or internet-based services; entities organizing or conducting certain educational activities; religious organizations; and providers of travel and carrier services.

These individuals and entities are authorized to lease physical premises, obtain goods and services for use in those premises, and pay fees related to opening offices, stores, warehouses, or classrooms in Cuba. They also can conduct marketing related to establishing a physical presence, and employ in these premises Cuban nationals and/or persons subject to U.S. jurisdiction, who can establish domicile in Cuba for purposes of working in these establishments. In addition, OFAC is authorizing the individuals and entities who are permitted to establish these premises to also open and maintain bank accounts at financial institutions in Cuba for use in authorized transactions.

Under the BIS amendments, License Exception SCP has been broadened in several ways. It now authorizes exports and reexports of non-sensitive items from the U.S. for use in establishing, maintaining, or operating a physical presence in Cuba. In order to qualify for this license exception, the end-user must be engaged in specific activities authorized by the CACR, such as the provision of telecommunications services, facilities, or internet-based services, or mail or parcel transmission services in Cuba. The items to be exported or reexported must be non-sensitive items, classified either as “EAR99” under the EAR or controlled on the EAR’s Commerce Control List (“CCL”) only for antiterrorism (“AT”) reasons.

Other expansions to SCP authorize items to be exported or reexported in support of the free flow of information to, from, and among the Cuban people, including loans and leases of items, in addition to the sales and donations that were previously permitted.

Finally, BIS also has expanded License Exception SCP to authorize temporary exports of certain tools of the trade (including non-sensitive commodities, software, and technology) to install, service, or repair certain items in Cuba, and kits of replacement parts or components for items exported to Cuba under a Commerce license or license exception or non-U.S. origin items owned and used exclusively by individuals or private-sector entities, and not the Cuban Government, Cuban Communist Party, or officials thereof. Related changes permit certain temporary reexports (not just temporary exports) by travelers to Cuba of qualifying items for eligible end uses, and add professional meetings to the list of authorized end uses. As a result, business travelers should be able to carry laptops, tablets, and smartphones for temporary export or reexport while on professional travel to Cuba (provided the devices and loaded software are EAR99 or controlled on the CCL only for antiterrorism reasons).

Travel

The new regulations also amend the CACR to authorize various types of travel-related activities. Prior regulations authorized carrier services by air; the new revision authorizes persons subject to U.S. jurisdiction to provide carrier services by vessel, without the need for specific licenses from OFAC, and adds an authorization to provide certain lodging services aboard such vessels in connection with such transportation. OFAC also has clarified that, in addition to persons subject to U.S. jurisdiction traveling under OFAC authorization, carriers also may transport between Cuba and the United States (i) certain Cuban nationals resident in or applying for residency in the United States; (ii) third country nationals with a visa or other travel authorization issued by the United States; and (iii) third-country nationals traveling on official business of a government, multinational organization in which the United States is a member, and their contractors.

The CACR also have been amended to allow persons subject to U.S. jurisdiction (and persons traveling with them who share a common dwelling as a family) to visit a close relative located in

Cuba, or to accompany a close relative traveling to Cuba pursuant to U.S. government authorizations involving: official government business; journalistic activity; professional research; educational activities; religious activities; humanitarian projects; and activities of private foundations or research or educational institutes.

Further, under the revised CACR, individuals authorized to travel to Cuba also may open and maintain bank accounts in Cuba in order to access funds while located in Cuba for authorized transactions, and may close such accounts.

The Cuba-related revisions to the EAR permit greater use of License Exception AVS authorizing certain aircraft and vessel voyages to Cuba. Aircraft on temporary sojourn to Cuba may remain in Cuba for up to 7 consecutive days without applying for a BIS license. Similarly, under the regulatory changes made effective today, License Exception AVS permits temporary sea voyages from the United States to Cuba for certain categories of vessels, including cargo vessels to transport items, passenger vessels transporting individuals and/or items, and recreational vessels used for travel to Cuba authorized by the Treasury Department. Under this license exception, authorized vessels on temporary sojourns to Cuba may remain in Cuba for a period not exceeding 14 consecutive days before departing for the United States or a country to which the vessel could enter without an export license. Additionally, License Exception AVS also may now be used to export and reexport to Cuba equipment and spare parts designated as EAR99 or controlled under the CCL only for antiterrorism reasons for permanent use on vessels and aircraft that have departed the United States for Cuba.

In the interest of international aviation and passenger safety, the new Commerce regulations also feature a case-by-case review of license applications for exports/reexports to Cuba of items related to commerce aviation safety, including aircraft parts and components that do not qualify for export under AVS, software/technology related to flight safety, airport safety equipment, airport screening devices, and related items. The OFAC rule also adds a general license to the CACR authorizing persons subject to U.S. jurisdiction to engage in all transactions necessary to provide air ambulance and related services, including medical evacuation, for individual travelers in Cuba.

Telecommunications

OFAC has revised the CACR in several respects to “further enhance the free flow of information to, from, and among the Cuban people and to better provide efficient and adequate telecommunications services between the United States and Cuba.” First, it has amended the CACR to authorize persons subject to U.S. jurisdiction to establish and maintain a business presence in Cuba in order to provide authorized telecommunications and internet-based services, including through the establishment of subsidiaries, branches, offices, joint ventures, franchises, and agency or other business relationships with any Cuban individual or entity. In addition, under the revised CACR, persons subject to U.S. jurisdiction are authorized to enter into licensing agreements related to telecommunications-related services authorized under the CACR, and to market such services.

In addition, the OFAC rule revises the CACR to authorize the importation into the United States of Cuban-origin mobile applications. The revised CACR also authorize the employment of Cuban nationals by persons subject to U.S. jurisdiction to develop such mobile applications.

In parallel with OFAC's revision, BIS has revised License Exception CCD, which authorizes certain exports and reexports of consumer communications devices to cover both the loan and lease of such devices, as well as the sale and donation as previously were authorized.

Finally, the revised CACR authorize certain services related to exports of consumer communications devices not eligible for License Exception CCD under the EAR but authorized pursuant to an individual license from the Department of Commerce. The revised CACR also authorize services related to exports of certain commodities and software authorized pursuant to the Commerce Department's License Exception SCP in support of the free flow of information. Further, the new revisions will authorize persons subject to U.S. jurisdiction to provide services related to all such items that were exported to Cuba from a third country. The OFAC rule also removes a restriction relating to organizations administered or controlled by the Government of Cuba or the Cuban Communist Party with respect to certain internet-based services (such as instant messaging, chat and email, and social networking) authorized pursuant to the CACR.

Expansions in Remittances and other Financial Transactions

The OFAC rule amends the CACR to authorize the following types of financial transactions, which primarily relate to individual Cuban nationals and to the activities of the U.S. and foreign governments or intergovernmental organizations:

- Removing the limitation on many types of remittances to or involving Cuban nationals;
- Unblocking of certain previously blocked remittances and funds transfers including remittances to non-family members and funds transfers for the official business of foreign governments and certain intergovernmental organizations;
- Account access for Cuban nationals present in the United States;
- Remittances to the United States from Cuba or by certain Cuban nationals from third countries; and
- Estate-related transactions.

Other Transactions

In addition, the CACR and EAR have been amended to authorize other types of transactions, including:

- Legal Services: The revised CACR generally authorize receipt of payment for the provision of authorized legal services to Cuba or a Cuban national other than prohibited officials of the Government of Cuba and prohibited members of the Cuban Communist Party. In addition, to bring the CACR into line with other sanctions regimes, OFAC is adding a general license to authorize payments from outside the United States for the provision of authorized legal services to or on behalf of prohibited officials of the Government of Cuba and prohibited members of the Cuban Communist Party. In addition, the OFAC rule adds an authorization to allow persons subject to U.S. jurisdiction, subject to certain conditions, to receive and make payments for certain legal services from Cuba or Cuban nationals.
- Goods and services to Cuban nationals in third countries. The revised CACR also allow persons subject to U.S. jurisdiction to provide goods and services to Cuban national individuals located in a third country, whereas previously this provision allowed such

goods or services to be provided only by non-U.S. entities owned or controlled by U.S. persons. The goods and services may not be for export, directly or indirectly, to or from Cuba. The amendments also allow banking institutions to open, maintain, and close bank accounts for such Cuban nationals.

- Gift imports sent to the United States. The revised CACR generally authorize the importation into the United States of merchandise from Cuba or Cuban-origin merchandise from a third country that is intended as gifts, subject to certain conditions.
- Educational activities. The new CACR contains an expanded general license to allow additional educational activities that are authorized in other sanctions programs administered by OFAC, including the provision of standardized testing services and internet-based courses to Cuban nationals, as well as to authorize U.S. and Cuban universities to engage in academic exchanges and joint non-commercial academic research.
- Ordinarily incident transactions. OFAC has amended the CACR to include a new general license, similar to that found in other sanctions programs, authorizing any transactions that are “ordinarily incident” to authorized transactions. Previously, the CACR had included authorizations for ordinarily incident transactions in connection with certain general licenses, but this new authorization makes clear that any transactions that are ordinarily incident to any licensed transaction also are authorized, subject to the limitations in the new general license. OFAC also has clarified that ordinarily incident transactions include payments made using online payment platforms for authorized transactions.
- Deemed export and reexport license requirements concerning technology and source code. In an effort to bring the Commerce Department’s Cuba-related regulations in line with those impacting other sanctioned countries, the amended rules specify that the release of technology or source code controlled under a specific Export Control Classification Number (“ECCN”) on the Commerce Control List to Cuban nationals in the U.S. or a third country requires a license. However, a license is not required for such a deemed export or deemed reexport of technology or source code that is designated as EAR99.
- Humanitarian projects. OFAC also amended the CACR to explicitly include disaster relief and historical preservation as authorized humanitarian projects.
- Cuban official missions. The revised CACR authorize the transfer of funds on behalf of official missions of the Government of Cuba in the United States.

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The changes being implemented today are among the incremental changes that the Administration has concluded that it can institute without congressional action. It remains to be seen whether these changes will be followed by more sweeping changes following action from Congress.

We are following these sanctions developments closely and will provide further updates as the situation develops. In addition, Covington counsels clients on a [wide range of matters impacting U.S.-Cuba economic relations](#). For example, our team assists clients in assessing and complying with changes in U.S. sanctions, taking advantage of new business opportunities that

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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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