

# U.S. Treasury and Commerce Departments Further Ease Cuba Travel and Trade Restrictions

March 17, 2016

International Trade Controls

---

The U.S. Treasury and Commerce Departments this week issued amended regulations that expand the scope of permissible trade with and travel to Cuba. The changes, which went into effect yesterday, build on previous steps by the Obama Administration (most recently on [January 27, 2016](#)) to implement the policy shift toward Cuba that it announced in [December 2014](#).

The U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") [amended](#) the Cuban Assets Control Regulations ("CACR") to authorize people-to-people educational travel to Cuba by individuals not under the auspices of an organization sponsoring such travel, as had previously been required. This change has the potential to significantly expand travel to Cuba by persons subject to U.S. jurisdiction, although tourist travel by such persons remains prohibited. OFAC also amended the CACR to expand access by Cuba and Cuban nationals to U.S. financial institutions and U.S.-dollar-denominated payments and to authorize additional business and physical presence in Cuba by U.S. companies.

Concurrently, the U.S. Department of Commerce, Bureau of Industry and Security ("BIS") [amended](#) the Export Administration Regulations ("EAR") to harmonize with OFAC's revised regulations and permit additional transactions in several areas.

[OFAC](#) and [BIS](#) have published new Frequently Asked Questions ("FAQs") and a [Joint Fact Sheet](#) to provide further information on these revisions, which are the fifth round of changes in Cuba trade control measures that the Administration has made since announcing the policy shift 15 months ago.

The amended regulations continue to leave intact major elements of the 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 lawful permanent residents ("green-card holders"), wherever located or employed; legal entities organized under U.S. law 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. Further, the EAR continue to broadly restrict exports and reexports to Cuba of goods, software, and technology subject to the EAR, except where authorized by a license or license exception.

Below, we detail these regulatory changes as they apply to the following areas: travel, trade/commerce by persons subject to U.S. jurisdiction, and financial services.

## Travel

The revised CACR significantly relax the restrictions on people-to-people educational travel to Cuba. OFAC amended the general license in Section 515.565(b) of the CACR to remove the requirements that people-to-people educational travel take place under the auspices of an organization subject to U.S. jurisdiction and that travelers be accompanied by a representative of that organization. U.S. persons therefore may now independently engage in people-to-people educational travel to Cuba. However, travelers relying on this general license must maintain records demonstrating that they have engaged in a full-time schedule of educational exchange activities that are intended to enhance contact with the Cuban people, support civil society in Cuba, or promote the Cuban people's independence from Cuban authorities. The travelers' activities must also result in meaningful interaction with individuals in Cuba, and may not predominately involve interactions with prohibited officials of the Government of Cuba or prohibited members of the Cuban Communist Party. Tourist travel remains off limits.

To illustrate the difference between prohibited tourist travel and permissible people-to-people educational travel, OFAC's revised regulations include several examples. Examples of educational travel that would qualify for this general license include travel that involves learning side-by-side with Cubans in areas such as environmental protection or the arts; participating in discussions with Cuban artists, community arts leaders, city planners, and architects; meetings with farmers and produce sellers; and extended dialogues with religious leaders—in all cases where the traveler maintains a full-time schedule of these activities.

On the other hand, the examples also describe a scenario in which a person subject to U.S. jurisdiction “plans to travel to Cuba to rent a bicycle to explore the streets of Havana, engage in brief exchanges with shopkeepers while making purchases, and have casual conversations with waiters at restaurants and hotel staff.” The regulations advise that these activities would not qualify for the general license since “none of these activities are educational exchange activities that will result in meaningful interaction between the traveler and individuals in Cuba.” In another example, a traveler plans to engage in authorized people-to-people activities—including discussions with Cuban farmers and produce sellers about farming and agricultural practices, and dialogue with religious leaders about the impact of African traditions and religion—but will spend part of the trip at the beach. Because the traveler will not be maintaining a full-time schedule of authorized activities on each day of the trip, the travel is not authorized under the OFAC general license for people-to-people travel.

The revised CACR also authorize persons subject to U.S. jurisdiction who are located in a third country to purchase Cuban-origin goods for personal consumption while in a third country (not for import into the United States), such as Cuban-origin alcohol and tobacco products. These persons also could receive or obtain services from Cuba or Cuban nationals that are ordinarily incident to travel and maintenance within that third country.

Finally, the revised CACR now authorize Cuban nationals in the United States in a non-immigrant status or pursuant to other non-immigrant travel authorization to receive compensation in excess of amounts covering their living expenses and acquisition of goods for personal consumption, so long as the Cuban national is not subject to any special Cuban tax assessment related to such compensation. A related new provision of the regulations authorizes the sponsorship or hiring of a Cuban national to work in the United States, so long as the employment does not involve payments to the Cuban government in connection with the sponsorship.

## Trade and Commerce

The changes announced this week also expand certain types of permissible trade and commerce with Cuba, mainly centered on the establishment and maintenance of offices, warehouses, retail outlets, and other facilities in Cuba by persons subject to U.S. jurisdiction.

In particular, OFAC amended the CACR to expand the existing authorization for persons subject to U.S. jurisdiction to establish a business presence in Cuba that includes subsidiaries, branches, offices, joint ventures, franchises, and agency or other business relationships with Cuban entities or individuals. The types of persons now authorized to establish such a business presence has been expanded beyond providers of telecommunications and internet services to include exporters of goods that are authorized for export or reexport to Cuba or that are exempt, entities providing mail or parcel transmission services or authorized cargo transportation services, and providers of authorized carrier and travel services. OFAC also has clarified that items authorized for export or reexport to Cuba, or exempt from licensing requirements, can be assembled in Cuba as part of the authorization related to establishing a physical and business presence. However, the regulations note that it is not permissible for persons subject to U.S. jurisdiction to establish a physical or business presence in Cuba in order to provide lodging services.

OFAC also expanded the types of entities that are authorized to engage in transactions necessary to establish and maintain a physical presence in Cuba to include entities engaging in non-commercial activities authorized by EAR License Exception Support for the Cuban People (SCP); entities engaging in authorized humanitarian projects; and private foundations or research or educational institutes engaging in authorized transactions.

Relatedly, BIS made concurrent changes to the EAR, including revising License Exception SCP to authorize export or reexport of items that are non-sensitive for export control purposes—EAR99 items and items controlled on the Commerce Control List only for anti-terrorism reasons—for use by persons authorized to establish and maintain a physical or business presence in Cuba.

The changes include several other updates relating to trade and commerce with Cuba:

- OFAC expanded the CACR's authorization related to the import into the United States of Cuban-origin mobile applications to include Cuban-origin software in general.
- For vessels departing the United States for Cuba laden with cargo for other destinations, BIS now authorizes those vessels to sail to other countries with cargo not offloaded in Cuba pursuant to License Exception Aircraft, Vessels and Spacecraft (AVS).
- Additionally, BIS established a licensing policy for the export and reexport of items that would support exports from Cuba of items produced by Cuba's private sector; applications for licenses for such exports and reexports will now be considered on a case-by-case basis. The policy is not intended to support reexports of items from Cuba or exports from Cuba that primarily enrich the Cuban government.

## Financial Services

OFAC also made several revisions to the CACR to expand access by Cuba and Cuban nationals to the U.S. dollar and U.S. financial institutions.

## International Trade Controls

- U.S. financial institutions are now authorized to process “U-turn” payments in which Cuba or Cuban nationals have an interest. These are funds transfers from banks outside of the United States that are destined for banks outside of the United States which go through one or more U.S. financial institutions, where neither the originator nor the beneficiary is a person subject to U.S. jurisdiction.
- U.S. financial institutions are now authorized to process U.S. dollar monetary instruments presented indirectly by Cuban financial institutions.
- U.S. banking institutions are now authorized to open and maintain bank accounts in the United States for Cuban nationals in Cuba to receive payments in the United States for authorized or exempt transactions, and to remit such payments back to Cuba.

Finally, OFAC expanded the CACR to authorize the provision of educational grants and awards, including scholarships, to Cuban nationals or in which Cuba or Cuban nationals have an interest.

\* \* \*

We are following these developments closely and will provide further updates on Cuba trade controls as the situation develops.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our International Trade Controls team:

<b>Peter Flanagan</b>	+1 202 662 5163	<a href="mailto:pflanagan@cov.com">pflanagan@cov.com</a>
<b>Corinne Goldstein</b>	+1 202 662 5534	<a href="mailto:cgoldstein@cov.com">cgoldstein@cov.com</a>
<b>Peter Lichtenbaum</b>	+1 202 662 5557	<a href="mailto:plichtenbaum@cov.com">plichtenbaum@cov.com</a>
<b>Kimberly Strosnider</b>	+1 202 662 5816	<a href="mailto:kstrosnider@cov.com">kstrosnider@cov.com</a>
<b>David Addis</b>	+1 202 662 5182	<a href="mailto:daddis@cov.com">daddis@cov.com</a>
<b>Stephen Bartenstein</b>	+1 202 662 5471	<a href="mailto:sbartenstein@cov.com">sbartenstein@cov.com</a>
<b>Daniel Eagles</b>	+1 202 662 5529	<a href="mailto:deagles@cov.com">deagles@cov.com</a>

This information is not intended as legal advice. Readers should seek specific legal advice before acting with regard to the subjects mentioned herein.

Covington & Burling LLP, an international law firm, provides corporate, litigation and regulatory expertise to enable clients to achieve their goals. This communication is intended to bring relevant developments to our clients and other interested colleagues. Please send an email to [unsubscribe@cov.com](mailto:unsubscribe@cov.com) if you do not wish to receive future emails or electronic alerts.