

International Trade Alert

January 16, 2015

Obama Administration Loosens Restrictions on Cuba Travel and Commerce

On January 15, 2015, the U.S. Department of the Treasury, Office of Foreign Assets Control (OFAC) and the U.S. Department of Commerce, Bureau of Industry and Security (BIS) released regulatory amendments implementing the Cuba policy shift announced by President Obama in December 2014 (see prior alert here). These changes to the Cuban Assets Control Regulations (CACR) and the Export Administration Regulations (EAR) take effect on January 16, 2015.

While the Cuban embargo remains in place, the changes aim to further engage and empower the Cuban people by facilitating authorized travel to Cuba, authorizing certain commerce, allowing increased remittances and improving the flow of information to and from Cuba. In doing so, these new rules open opportunities in Cuba for companies and individuals in the United States and elsewhere.

Below, we focus on certain changes related to travel to, and commerce with, Cuba.

Travel to Cuba

Authorized Travel

OFAC issued general licenses for 12 existing categories of travel, and travel-related transactions, to, from or within Cuba that previously required a specific license (i.e., an application and a case-by-case determination). The categories are:

- family visits
- official business of the U.S. government, foreign governments and certain intergovernmental organizations
- journalistic activity
- professional research and professional meetings
- educational activities
- religious activities
- support for the Cuban people
- public performances, clinics, workshops, athletic and other competitions, and exhibitions
- humanitarian projects
- activities of private foundations or research or educational institutes
- exportation, importation or transmission of information or information materials
- certain authorized export transactions

For each of these categories, it is necessary to meet the criteria set forth in the regulations in order to qualify for the general license. Travel to Cuba for tourist activities, or any other activity not covered in the categories above, is still prohibited, consistent with the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA).

In addition, the amendments facilitate travel by:

- allowing authorized travelers to use credit or debit cards issued by a U.S. financial institution while in Cuba
- allowing U.S. insurance companies to offer global insurance policies and pay claims that cover individuals ordinarily resident outside of Cuba while traveling to or within Cuba
- eliminating the previous per-diem rate and specific dollar limit on expenses when traveling to Cuba
- permitting U.S. persons to return with goods valued at \$400 or less per person. These goods can include \$100 worth of alcohol and tobacco for personal use.

Travel and Carrier Services

Under the revised CACR, persons subject to U.S. jurisdiction can provide travel services and carrier services by aircraft, in connection with authorized travel, without the need for a specific license from OFAC. The new OFAC regulations allow scheduled operations by U.S. airlines, but this change can only take place after other regulatory approvals are obtained, such as approvals from the U.S. departments of Transportation and Homeland Security.

Commerce with Cuba and Cuban Nationals

OFAC and BIS are also amending the regulations to allow a number of other commercial activities, including those related to financial transactions, telecommunications, support for the Cuban people and other trade-related activities.

Financial Transactions

The revised regulations will allow financial institutions to provide certain services that were previously prohibited. These rules authorize depository institutions to open correspondent accounts at Cuban financial institutions and allow U.S. financial institutions to enroll merchants and process credit and debit card payments for authorized transactions. In addition, Cuban nationals living or located outside Cuba will also be permitted greater access to the U.S. financial system (e.g., the accounts of Cuban nationals who have permanently relocated outside of Cuba will be unblocked provided that certain conditions are met).

Telecommunications

To improve the free flow of information to, from and among the Cuban people, OFAC and BIS are making a number of changes related to telecommunications, including:

- creating a new OFAC general license to facilitate the establishment of commercial telecommunications facilities linking the United States or third countries and Cuba
- allowing commercial sales and exports of certain communications devices and software (e.g., certain computers, mobile phones, televisions, etc.) to Cuba by revising the EAR license exception Consumer Communications Devices (CCD) to eliminate the requirement that the items be donated (i.e., not sold) and to update the list of eligible items to reflect more recent technology; the new Support for the Cuban People (SCP) license exception, discussed below, also permits certain communications-related exports and reexports to Cuba
- instituting a BIS licensing policy that allows it to approve, on a case-by-case basis, applications for telecommunications-related exports and reexports not covered by a license exception
- establishing an OFAC general license authorizing the export or reexport to Cuba of certain Internet-based services such as email, social networking, web browsing and photo sharing.

Other Measures to Support the Cuban People

These new rules also include various other provisions intended to support the Cuban people:

- OFAC now authorizes certain micro-financing activities and entrepreneurial and business training, such as for private businesses and agricultural operations. It also permits certain commercial imports of specified goods and services produced by independent Cuban entrepreneurs, as determined by the State Department.
- BIS created the EAR SCP license exception that allows for the exports and reexports of certain items (EAR99- and AT-controlled items only) such as:
 - building materials, equipment and tools for use by the private sector to construct or renovate privately owned buildings, including privately owned residences, businesses, places of worship and building for private-sector social or recreational use
 - tools and equipment for private agricultural activity
 - tools, equipment, supplies and instruments for use by private-sector entrepreneurs (e.g., auto mechanics, barbers/hairstylists and restaurateurs).
- BIS has also established a general policy of approval for applications to export or reexport items necessary for the environmental protection or enhancement of U.S. and international air and water quality or coastlines, including items related to renewable energy and energy efficiency.
- OFAC has increased the amount of periodic remittances that may be sent to most Cuban nationals from \$500 per quarter to \$2,000 per quarter, and also increased the amount of cash that authorized travelers may carry to \$10,000 per trip.

Trade-Related Measures

Lastly, it is important to note that OFAC modified two long-standing rules impacting trade with Cuba:

- revising its interpretation of “cash in advance” from “cash before shipment” to “cash before transfer of title and control” to allow expanded financing options for authorized exports to Cuba
- authorizing foreign vessels to enter the United States after engaging in certain trade with Cuba.

Conclusion

Consistent with the above, these changes present new opportunities for a variety of companies and organizations across many industries. Since the embargo is still in place, however, taking advantage of these opportunities will generally require a deep understanding of the applicable rules to ensure that no violations of U.S. sanctions occur. Consequently, companies are at risk of civil and criminal liability in entering the Cuban market unless they take a cautious approach with the appropriate compliance measures in place.

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