

U.S. Continues Incremental Easing of Cuban Sanctions

I. Overview

On January 27, 2016, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") released revised [Cuban Assets Control Regulations](#) ("CACR") to continue implementing policy changes announced by President Obama on December 17, 2014¹ and initiated on January 16, 2015. In a coordinated action, the U.S. Department of Commerce's Bureau of Industry and Security ("BIS") issued a [rule](#) updating U.S. export controls to facilitate permitted activities.² These revisions follow prior amendments to the OFAC and BIS regulations regarding Cuba published on September 21, 2015. The revised regulations, effective January 27, 2016, continue to ease U.S. sanctions on Cuba. General travel and tourism in Cuba remain prohibited to persons acting within U.S. jurisdiction, as does most commercial and financial activity.

The regulations build upon previously announced authorizations for travel and trade with Cuba, reducing friction encountered by those trying to take advantage of prior policy changes by addressing some of the most frequently encountered issues. Most notably, the new rules:

- Expand the categories for which licenses to export goods or services to Cuban consumers can be obtained;
- Ease the restrictions on financing authorized exports;
- Authorize additional travel-related transactions, including:
 - Blocked space, code-sharing, and leasing arrangements with Cuban entities for civil air service to Cuba, including with Cuban entities;
 - Travel to Cuba in connection with authorized service by aircraft and vessel crew and support personnel;
 - Travel to Cuba to organize permitted travel by U.S. persons;
- Facilitate creation of media or artistic productions in Cuba; and
- Ease licensing policies with respect to: (i) exports to human rights organizations and U.S. news bureaus in Cuba; (ii) certain agricultural items; (iii) telecommunications items; and (iv) items necessary to ensure the safety of civil aviation.

¹ 31 C.F.R. Part 515.

² 15 C.F.R. Part 740.

The primary sanctions on Cuba remain in place and are expected to do so over the medium term, in large part because congressional action would be required for more sweeping and permanent changes.

II. Summary of Changes

OFAC's amendments to the CACR accomplish the following:

- Remove the former restrictions on payment and financing terms for all exports from the United States or reexports of 100% U.S.-origin items from a third country that are licensed or otherwise authorized by the Department of Commerce, other than agricultural goods;³
- Permit persons subject to U.S. jurisdiction⁴ to enter into blocked space, code-sharing, and leasing arrangements, including with Cuban entities, to facilitate the provision of authorized carrier services directly or indirectly to Cuba;⁵
- Authorize travel-related transactions directly incident to authorized aircraft and vessel service between the United States and Cuba (e.g., overnight stays by crew);⁶
- Expand the general licenses relating to informational materials to permit media and artistic productions in Cuba, as well as the employment of Cuban nationals to create and disseminate new works;⁷
- Expand the general-licenses authorizing travel-related transactions to Cuba to include:
 - The organization of professional meetings or conferences in Cuba;⁸
 - The organization of authorized sporting events, public performances, and exhibitions in Cuba;⁹ and
 - Humanitarian activities relating to disaster preparedness and response.¹⁰

³ Restrictions on finance of most agricultural items or commodities will remain. Where export of these items is permitted, payment and financing terms are limited to (i) the payment of cash in advance, and (ii) financing by a banking institution located in a third country, so long as the banking institution is not a designated national, a U.S. citizen, a U.S. permanent resident alien, or an entity organized under the laws of the United States or any jurisdiction within the United States.

⁴ Under the CACR, this includes U.S. citizens, U.S. residents (including "green card" holders), entities organized under U.S. law, and entities owned or controlled by any of the foregoing. 31 C.F.R. § 515.329.

⁵ *Id.* § 515.572.

⁶ *Id.* § 515.533.

⁷ *Id.* § 515.545.

⁸ *Id.* § 515.564.

⁹ *Id.* § 515.567.

BIS's updated regulations expand the types of exports that are subject to a general policy of approval or will be considered on a case by case basis. Thus, while exports of these items to Cuba from the U.S. still require a license, licenses should be available. Among other things, the BIS amendments:

- Provide a general policy of approval for exports of:
 - Telecommunications items that would improve communications to, from, and among the Cuban people;¹¹
 - Certain commodities and software to human rights organizations or to individuals and non-governmental organizations that promote independent activity intended to strengthen civil society in Cuba;¹²
 - Commodities and software to U.S. news bureaus in Cuba;¹³
 - Certain agricultural items, such as insecticides, pesticides, and herbicides;¹⁴
 - Items that are necessary to ensure the safety of civil aviation and the safe operation of commercial aircraft engaged in international air transportation;¹⁵ and
 - Items that are necessary for the environmental protection of U.S. and international air quality, waters, or coastlines.¹⁶
- Create a case-by-case review policy for exports of items to meet the needs of the Cuban people, including exports and reexports to state-owned enterprises, agencies, and other organizations of the Cuban government that provide goods and services for the use and benefit of the Cuban people.¹⁷ This case-by-case analysis applies to exports of:

¹⁰ *Id.* § 515.575.

¹¹ 15 C.F.R. § 746.2(b)(2)(i).

¹² *Id.* § 746.2(b)(2)(ii).

¹³ *Id.* § 746.2(b)(2)(iii).

¹⁴ *Id.* § 746.2(b)(2)(iv).

¹⁵ *Id.* § 746.2(b)(2)(v).

¹⁶ *Id.* § 746.2(b)(2)(vi).

¹⁷ *Id.* § 746.2(b)(3). Because this policy is to meet the needs of the Cuban people, BIS will continue to deny licenses to (i) state-owned enterprises, agencies, and other organizations that primarily generate revenue for the state (including those engaged in tourism and those engaged in the extraction or production of raw materials) and (ii) the Cuban military, police, intelligence, or security services.

- Agricultural production, artistic endeavors, education, food processing, disaster preparedness and response, public health and sanitation, residential construction and renovation, and public transportation;
- Wholesale and retail distribution for domestic consumption; and
- Construction of facilities for treating public works (e.g., facilities for treating public water supplies, supplying electricity, and sports and recreation) and other infrastructure that directly benefits the Cuban people; and
- Aircraft or vessels on temporary sojourn to deliver humanitarian goods or services.

III. Additional Guidance

OFAC simultaneously issued new [frequently asked questions](#) (“FAQs”) to provide additional clarification related to the revised Cuban Regulations. The new FAQs focus primarily on the scope of authorized travel, banking and financing activities, and clarifying the new authorizations regarding exports. BIS also updated its [FAQs](#) related to Cuba. New additions include clarifications on the new policies of general approval for exports of certain categories of goods and the restrictions on exports to state-owned enterprises.

OFAC continues to emphasize that most transactions between persons subject to U.S. jurisdiction and Cuba, in particular activities related to tourism, remain prohibited. Persons subject to U.S. jurisdiction are prohibited from doing business or investing in Cuba unless licensed by OFAC. BIS similarly emphasizes that the new export approvals do not make fundamental changes to U.S. trade policy towards Cuba.

If you have any questions, please feel free to contact any of your regular contacts at the Firm, or [Paul Marquardt](#) of our Washington office, listed on our website at <http://www.clearygottlieb.com>.

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