

U.S. Regulatory Amendments to Cuba Sanctions Since December 17, 2014

Overview: Since December 17, 2014

In addition to major milestones such as restoring diplomatic relations, re-opening embassies in Havana and Washington, reaching historic environmental and civil aviation agreements, and a variety of official delegation visits from both countries, the U.S. has made important changes to its regulatory framework toward Cuba.

Thanks to three rounds of regulatory amendments, the treatment of U.S. engagement with Cuba from a regulatory standpoint has changed significantly—though more remains to be done. This memo will analyze what has been done since that announcement, considering what further policy changes can and should be made to concretize the normalization effort.

Four Rounds of Changes: January 2015 - September 2015 - January 2016 – March 2016

The coordinated regulatory changes made by the U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC) and the Department of Commerce’s Bureau of Industry and Security (BIS) to the Cuban Assets Control Regulations (CACR) and Export Administration Regulations (EAR), respectively, are intended to implement the policy to engage and empower the Cuban people. Major changes in each round are outlined below.

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TRAVEL



January 16, 2015:

- **Facilitated travel to Cuba for authorized purposes in 12 categories by general license:**
 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
 8. Athletic and other competitions, and exhibitions
 9. Support for the Cuban people
 10. Humanitarian projects
 11. Activities of private foundations or research or educational institutes
 12. Export, import, or transmission of information or information materials
- **Authorized U.S. travelers to Cuba allowed to import up to \$400 worth of goods acquired in Cuba for personal use.** This includes no more than \$100 of alcohol or tobacco products.

September 15, 2015:

- Cruise ships and cargo ships authorized to go to Cuba without a special license.
- Authorized aircraft on temporary sojourn to remain in Cuba for up to 7 consecutive days and authorized vessels on temporary sojourn to remain in Cuba for up to 14 consecutive days.

January 27, 2016:

- Authorized travel categories were expanded to include:
 - organizing professional meetings or conferences in Cuba
 - disaster preparedness and response projects (included in “humanitarian projects”)
 - professional media or artistic productions in Cuba (including movies, TV, music)
 - amateur/semi-professional sports competitions, public performances, clinics, workshops, exhibitions
- OFAC amendments allow travel-related transactions by crews from airlines and vessels.

March 16, 2016:

- Authorized individual people-to-people travel by removing requirement that such educational travel be conducted under the auspices of an organization.
- Allow Cubans legally present in the U.S. to earn salaries and stipends beyond living expenses. For example, Cuban athletes, artists, performers, and others who obtain the requisite visas can travel to the U.S. and earn salaries in excess of basic living expenses
- Authorized certain dealings in Cuban-origin merchandise (e.g. Cuban rum or tobacco) by individuals for personal consumption while in a third-country, and to receive or obtain services from Cuba or a Cuban national that are ordinarily incident to travel and maintenance within a third country.

TELECOMMUNICATIONS



January 16, 2015:

- Authorized sale of certain communications items to eligible users in Cuba, including the sale of certain consumer communications devices, related software, applications, hardware.

September 15, 2015:

- U.S. telecommunications companies allowed to establish subsidiaries or joint ventures with Cuban companies and enter into licensing agreements with them to provide connectivity.
- Persons subject to U.S. jurisdiction will be allowed to import Cuban-origin mobile applications into the United States and to hire Cuban nationals to develop them.
- Certain commodities and software for use in software development may be exported or re-exported to eligible end-users in Cuba.

January 27, 2016:

- General policy of approval for exports/reexports of telecommunications items that improve communications to, from, and among Cuban people.
- General policy of approval for certain commodities and software to U.S. news bureaus in Cuba whose primary purpose is gathering and dissemination of news to general public.
- General policy of approval for certain commodities and software to human rights organizations or to individuals and NGOs that promote independent activity intended to strengthen civil society in Cuba.

March 16, 2016:

- OFAC authorized the importation of Cuban-origin software.

FINANCIAL SERVICES



January 16, 2015:

- Allow U.S. financial institutions to open correspondent accounts at Cuban financial institutions to facilitate the processing of authorized transactions.
- Travelers allowed to use U.S. credit and debit cards in Cuba.
- Authorized travelers allowed to engage in transactions ordinarily incident to travel within Cuba.
- U.S.-owned or -controlled entities in third countries, including banks, will be authorized to provide goods and services to an individual Cuban national located outside of Cuba, provided the transaction does not involve a commercial exportation of goods or services to or from Cuba.
- OFAC will generally authorize the unblocking of accounts of Cuban nationals who have permanently relocated outside of Cuba.

September 15, 2015:

- All persons subject to U.S. jurisdiction will be allowed to provide goods and services to individual Cuban nationals located outside of Cuba, provided there is no commercial exportation of goods or services to or from Cuba.

- Banking institutions will be able to open and maintain accounts for Cuban individuals for use while the Cuban national is located outside of Cuba, and to close such accounts.
- Allow certain persons and all authorized travelers to open and maintain bank accounts in Cuba for authorized purposes and in order to access funds for authorized transactions.
- Authorize all persons subject to U.S. jurisdiction to provide goods and services to Cuban nationals located outside of Cuba; and allow a number of other activities, including those related to legal services, imports of gifts, and educational activities.

January 27, 2016:

- Added an authorization for depository institutions to provide financing for such authorized exports (non-agricultural).

March 16, 2016:

- Allow Cubans legally present in the U.S. to earn salaries and stipends beyond living expenses. For example, Cuban athletes, artists, performers, and others who obtain the requisite visas will be able to travel to the U.S. and earn salaries and stipends in excess of basic living expenses.
- U.S. banking institutions authorized to process U-turn transactions in which Cuba or a Cuban national has an interest. This provision authorizes funds transfers from a bank outside the U.S. that pass through one or more U.S. financial institutions before being transferred to a bank outside the United States, where neither the originator nor the beneficiary is a person subject to U.S. jurisdiction.
- U.S. banking institutions will be authorized to process U.S. dollar monetary instruments, including cash and travelers' checks, presented indirectly by Cuban financial institutions. Correspondent accounts at third-country financial institutions used for such transactions may be denominated in U.S. dollars.
- U.S. banking institutions will be authorized to open and maintain bank accounts in the United States for Cuban nationals in Cuba to receive payments in the U.S. for authorized or exempt transactions and to remit such payments back to Cuba.

REMITTANCES

*Note: These changes apply only to non-family remittances. The limits on family remittances were removed entirely in April 2009.

January 16, 2015:

- Raise the limits on and generally authorize certain categories of remittances to Cuba and authorize banking institutions to process authorized remittances without a specific license.

September 15, 2015:

- Entirely removed the limits on donative remittances to Cuban nationals (other than prohibited Government or Cuban Communist Party officials), which had been set at \$2,000 per quarter.
- Entirely removed the limits on authorized remittances that individuals may carry to Cuba, previously \$10,000 for persons subject to U.S. jurisdiction and \$3,000 for Cuban nationals.
- Depository institutions allowed to maintain accounts for certain Cuban nationals present in the U.S. in a non-immigrant status; no longer required to block such accounts if not closed before departure.
- Removed the \$250 monthly limit on payments from previously blocked accounts held in the name of such Cuban nationals to more adequately allow access to funds for living expenses.

- Remittances from Cuba and from Cuban nationals in third countries to the U.S. authorized by general license, and financial institutions allowed to provide related services.
- Expanded general license authorized additional remittances to Cuban nationals in connection with the administration of estates.

EXPORT LICENSES & FINANCING

January 16, 2015:

- Regulatory interpretation of “cash in advance” is redefined from “cash before shipment” to “cash before transfer of title to, and control of,” exported items; to allow expanded financing of authorized trade.
- General license authorizing foreign vessels to enter the U.S. after engaging in certain trade with Cuba.
- General policy of approval for exports and reexports to Cuba of items for the environmental protection of U.S. and international air quality, and waters, and coastlines (including items related to renewable energy or energy efficiency).

January 27, 2016:

- OFAC amended regulations regarding non-agricultural export trade, and it is now possible for U.S. banks to provide direct financing for authorized exports to Cuba, as opposed to requiring cash-in-advance or routing through a third country.
- General licenses provided in a variety of categories, including:
 - Telecommunications items that improve communications to, from, and among Cubans
 - Certain agricultural items, such as insecticides and equipment
 - Items for safety of civil aviation and safe operation of commercial aircraft
- Pending case-by-case review, authorization to export to some Cuban state-owned enterprises (SOEs) that “provide goods and services for the use and benefit of the Cuban people.” This includes items for agricultural production, education, food processing, public transportation, wholesale distribution, and construction of facilities for supplying energy (among others). (Exports to SOEs that primarily generate revenue for the state are excluded, along with military, police, intelligence and security services.) As before, the general policy of denial remains in place for any exports or reexports to the Cuban military, police, intelligence and security services.

March 16, 2016:

- BIS generally authorized vessels to transport authorized cargo from the U.S. to Cuba and then sail to other countries with any remaining cargo that was unloaded in the United States.

SMALL BUSINESS PROMOTION



January 16, 2015:

- Certain micro-financing projects and entrepreneurial and business training, such as for private business and agricultural operations, will be authorized.
- Authorize commercial imports of certain independent Cuban entrepreneur-produced goods and services, as determined by the State Department, and U.S. sales to small businesses.

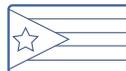
September 15, 2015:

- U.S. businesses in sectors such as construction, agriculture, shipping and telecommunications will be allowed to establish a physical presence in Cuba with a warehouse or office; may directly hire Cubans.

March 16, 2016:

- Case-by-case review for exports and re-exports of items that would enable or facilitate exports from Cuba or items produced by the private sector.
- Expanded the existing authorization for “physical presence” (such as an office, retail outlet, or warehouse) to include entities that engage in authorized humanitarian projects, non- commercial activities intended to provide support for the Cuban people, and private foundations or research or educational institutes engaging in certain authorized activities.
- Expanded the existing authorization for “business presence” (such as a joint venture) to include exporters of goods that are authorized for export or re-export to Cuba or that are exempt, entities providing mail or parcel transmission services or cargo transportation services, and providers of carrier and travel services to facilitate authorized transactions. The physical and business presence authorizations permit exporters and re-exporters of authorized or exempt goods to assemble such goods in Cuba.

SUPPORT FOR THE CUBAN PEOPLE



January 16, 2015:

- A licensing exception for export and re-export of certain products that provide support for the Cuban people in three areas: improving living conditions and supporting independent economic activity; strengthening civil society; and improving communications.

September 15, 2015:

- License Exception no longer limited to sales or donations; intended to support other types of transactions, such as leases and loans of eligible items for use by eligible end-users.

March 16, 2016:

- OFAC will authorize the provision of educational grants and awards, and clarify that an existing authorization applies to the provision of grants and awards for the humanitarian projects authorized in OFAC’s regulations. This step will further enable U.S. support for educational projects in Cuba and U.S. participation in philanthropic efforts.

LEGAL SERVICES



September 15, 2015:

- Existing general license authorizing provision of certain legal services to Cuba and Cuban nationals was expanded to allow the receipt of payment for such services.
- General license authorizing persons subject to U.S. jurisdiction to receive, and make payment for, certain legal services from Cuba or Cuban nationals.

AVIATION



September 15, 2015:

- Case-by-case review policy for exports and reexports to Cuba of items to help ensure the safety of civil aviation and the safe operation of commercial passenger aircraft.

January 27, 2016:

- Allow entry into blocked space, code-sharing, and leasing arrangements with Cuban airlines.
- Authorized transactions by the crew of aircraft or other vessels.
- General policy of approval for exports and reexports of items necessary to ensure safety and safe operation of commercial aircraft engaged in international air transportation, including the export or reexport of such aircraft leased to state-owned enterprises.

EDUCATIONAL ACTIVITIES



September 15, 2015:

- General license, additional educational activities involving Cuba and Cuban nationals, including the provision of standardized testing services and internet-based courses.
- Authorized academic exchanges and joint non-commercial academic research with universities or academic institutions in Cuba and travel-related transactions in connection with these activities.

NOTABLE INDUSTRY IMPACTS from January 2016

Agriculture:

General policy of approval for exports and reexports of some agricultural items, but not those defined as agricultural commodities, which are governed by a separate license exception. Examples of authorized exports: agricultural equipment (hand tools or motorized); pesticides, insecticides, or herbicides; wood furniture; clothing manufactured from plant or animal materials; or cosmetics (unless derived entirely from plant materials). Items for use in “agricultural production” reviewed on a case-by-case basis.

Energy:

Case-by-case review for exports and reexports of items for use in construction of Facilities for supplying electricity or other energy to the Cuban people.

Infrastructure:

Case-by-case review policy for exports and reexports of items related to food processing, public health and sanitation, residential construction and renovation, and public transportation; and for items for use in construction of:

- Facilities for treating public water supplies
- Facilities for supplying electricity or other energy to the Cuban people
- Sports and recreation facilities
- Other infrastructure that directly benefits the Cuban people

REMAINING ACTIONS THAT COULD BE TAKEN

By the Administration:

- Negotiate a settlement of the outstanding “certified property claims,” and support private negotiations to settle legal judgments entered against Cuba.
- Allow Americans to take advantage of medical advances in Cuba by licensing both clinical trials and sales of Cuban pharmaceuticals in the United States, and joint ventures between U.S. and Cuban pharmaceutical companies. Also, extend a general license to pharmaceutical companies to conduct clinical trials in Cuba.
- Issue additional guidance (via OFAC) to banks and financial institutions that would clarify concerns over potential enforcement actions resulting from processing authorized payments to Cuba.
- Remove regulations that expose third-country banks to U.S. legal sanctions for processing financial transactions between Cuba and third-country firms.
- Expand opportunities for the U.S. hospitality industry by creating exceptions within the hospitality sector for U.S. companies to operate in Cuba in ways that would directly benefit the Cuban people; i.e., construct facilities for medical tourism or rehabilitation centers.”
- Allow philanthropic organizations to undertake projects in Cuba, provide payments to participating Cuban nationals and institutions, and require deliverables and reports at the end of the project.
- Allow U.S. insurance providers to insure U.S. and other foreign business operations in Cuba, as well as Cuban private business operations.

By Congress:

- Eliminate restrictions on travel to Cuba, and on transactions incident to such travel:
 - [Freedom to Travel to Cuba Act of 2015](#)
- Allow financing for agricultural exports to Cuba:
 - [Cuba Agricultural Exports Act](#)
- Fully lift all economic sanctions against Cuba:
 - [Cuba Trade Act of 2015](#)
- Allow American companies to build telecommunications infrastructure in Cuba:
 - [Cuba Data Act of 2015](#)