

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 six 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.

Six Rounds: January 2015 - June 2015 - September 2015 - January 2016 - March 2016 - October 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

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.

October 17, 2016:

- Removed the monetary value limitations on what authorized travelers may import from Cuba

into the U.S. as baggage, including eliminating the value limit on alcohol and tobacco products (e.g. rum and cigars).

- Persons subject to U.S. jurisdiction will be further authorized to import Cuban-origin merchandise acquired in third countries into the U.S. as accompanied baggage, again without value limitations.
- OFAC removed the prohibition on foreign travelers importing Cuban-origin alcohol and tobacco products into the U.S. as accompanied baggage. In all cases, the Cuban-origin goods must be imported for personal use, and normal limits on duty and tax exemptions will apply.
- The authorized travel category of professional research and professional meetings now allows for the attending or organizing professional meetings or conferences in Cuba whose purpose is the promotion of tourism.
- Persons subject to U.S. jurisdiction will be authorized to make remittances to third-country nationals for travel to, from, or within Cuba, provided the travel would be authorized by general license for a person subject to U.S. jurisdiction.
- OFAC clarified that providers of travel and carrier services may collect and retain either a copy of the traveler's specific license or the traveler's specific license number, in order to reduce burden of recordkeeping.

☐ 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.

October 17, 2016:

- OFAC removed requirement for “100% U.S.-origin items” to minimize the need to obtain a specific license for the export (& re-export from a third country) to Cuba of authorized items. Does NOT authorize transactions between a U.S.-owned or -controlled firm in a third country and Cuba for exporting non-US or non-Cuba items to Cuba (e.g. does not authorize a U.S.

subsidiary in Mexico to export commodities produced in Mexico to Cuba, for which a specific license would be required).

- BIS will generally authorize exports of certain consumer goods that are sold online or through other means directly to eligible individuals in Cuba for their personal use.
- Clarified that only “agricultural commodities” are subject to payment and financing limitations under the Trade Sanctions Reform & Export Enhancement Act of 2000 (TSRA). This clarifies that agricultural items, such as pesticides and tractors, are authorized by BIS for export or re-export to Cuba and are not subject to restrictions on payment terms.
- General license added to authorize import into U.S. or a third country of items previously exported or re-exported to Cuba, which will allow for the service and repair of authorized items that have been exported to Cuba (e.g. if an authorized item has been exported to Cuba, it may be returned to the U.S. for service and repairs).
- Added an exception to the 180-day rule (that prohibits foreign vessels that call on Cuban ports for trade purposes from entering US ports for 180 days) for foreign vessels that have carried authorized items from a third country to Cuba.
- BIS will generally authorize air cargo to transit Cuba, complementing an existing general authorization for cargo transiting Cuba aboard vessels. (Transit is intended to mean the cargo is not removed from the aircraft or vessel for use in Cuba.)
- General license authorizing persons subject to U.S. jurisdiction to enter into certain contingent contracts; the underlying transactions must be authorized by OFAC or another federal agency (or must not require authorization).
- BIS revision of Cuban nationals that are ineligible to receive gift parcels, consumer communication devices, or software to members of the Council of Ministers, flag officers of the Revolutionary Armed Forces, and members of the Politburo.



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.

October 17, 2016:

- Expanded authorization for grants, scholarships, and awards to Cuba or Cuban nationals to include those related to scientific research and religious activities.
- New authorization that will allow persons subject to U.S. jurisdiction to provide services to Cuba or Cuban nationals related to developing, repairing, maintaining, and enhancing certain Cuban infrastructure in order to directly benefit the Cuban people. [OFAC: “Infrastructure” in this case means systems and assets used to provide the Cuban people with goods and services produced by the public transportation, water management, waste management, non-nuclear electricity generation, and electricity distribution sectors, as well as hospitals, public housing, and primary and secondary schools.]



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.

October 17, 2016:

- New general license authorizing provision of service aimed at ensuring safety in civil aviation and the safe operation of commercial aircraft to Cuba and Cuban nationals, wherever located.



HEALTHCARE

October 17, 2016:

- General license for engaging in joint medical research projects with Cuban nationals, for commercial and non-commercial medical research.
- General license for transactions incident to obtaining approval from Food and Drug Administration (FDA) of Cuban-origin pharmaceuticals. The license includes discovery and development, pre-clinical/clinical research, regulatory review, regulatory approval and licensing, regulatory post-market activities, and import of Cuban-origin pharmaceuticals to the U.S.
- Authorized importation, marketing, sale or other distribution of FDA-approved Cuban-origin pharmaceuticals into the U.S.
- Authorized opening bank accounts at Cuban financial institutions for persons engaging in authorized activities outlined above.

 **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.
- 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.

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- 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](#)