

Regulatory Update: U.S. Government Amends Cuba Sanctions and Export Control Restrictions

The U.S. Departments of [Treasury](#) and [Commerce](#) last week unveiled new regulations giving effect to President Trump's June 16 National Security Presidential Memorandum ("NSPM"), which announced a tightening of the longstanding U.S. embargo of Cuba. The changes, which took effect November 9, restrict some travel to Cuba and financial transactions with Cuban parties tied to the military, while leaving a number of Obama-era changes in place.

Key Changes

The new regulations implement several key changes to the Cuba embargo that were previewed in the NSPM. First, the Treasury Department's Office of Foreign Assets Control ("OFAC") reinstated a prohibition on individual (self-directed) people-to-people travel to Cuba by persons subject to U.S. jurisdiction.¹ Second, OFAC issued regulations prohibiting direct financial transactions with entities on a new "[Cuba Restricted List](#)."

At the same time, though, the Commerce Department's Bureau of Industry and Security ("BIS") expanded in certain respects a key Cuba export license exception to authorize the export and reexport to Cuba of a potentially expanded range of items for use by the Cuban people and Cuban private sector.

Further, and notably, many Obama-era changes remain in place. The U.S. embassy in Havana remains open, although with reduced staffing due to recent acoustic attacks on U.S. diplomats. Aside from individual people-to-people travel, other travel authorizations in the Cuban Assets Control Regulations ("CACR") continue to be available. Additionally, [the announced changes](#) did not reverse the expansion of authorized trade in a number of other areas.

Cuba Restricted List

Among the most consequential regulatory changes last week for U.S. businesses operating or seeking to operate in Cuba is the listing by the U.S. State Department of more than 180 entities and sub-entities, including more than 80 hotels and other entities connected to the tourism industry, on the Cuba Restricted List. State determined that the listed entities are under the control of, or act for or on behalf of, Cuban military, intelligence, or security services or personnel, and that the disproportionate benefit of transactions with these parties does not accrue to the Cuban people or private Cuban enterprise.

These entities are now off-limits for new direct financial transactions by persons subject to U.S. jurisdiction, unless authorized by OFAC. "Direct" financial transactions include acting as an

¹ "Persons subject to U.S. jurisdiction" to whom the U.S. sanctions apply include U.S. companies and their non-U.S. branches; individual U.S. citizens and lawful permanent residents (green-card holders), wherever located or employed; any persons when physically present in the United States; and non-U.S. entities that are owned or controlled by a U.S. person.

originator on a transfer of funds to an entity on the list, or as the ultimate beneficiary on a transfer of funds whose originator is an entity on this list. Importantly, indirect transactions with entities on the Cuba Restricted List are not prohibited. Also, the list is limited to those entities specifically named on it (which State may periodically update), and does not extend to non-listed entities they own or control.

The new regulations include a grandfathering clause permitting commercial arrangements with entities on the Cuba Restricted List that were in place prior to the date such entity was listed. In addition, certain existing ventures in Cuba involving U.S. companies are not on the Cuba Restricted List.

Authorized Travel

The new OFAC regulations also end an Obama-era loosening of Cuba travel restrictions for what was known as individual “people-to-people” travel. Under a general license in the CACR, travelers could independently engage in self-directed people-to-people educational travel to Cuba so long as they maintained a full-time schedule of activities intended to enhance contact with the Cuban people, support civil society in Cuba, or promote the Cuban people’s independence from Cuban authorities. Now, persons subject to U.S. jurisdiction may engage in such travel only under the auspices of an organization subject to U.S. jurisdiction and when accompanied by a person subject to U.S. jurisdiction who is a representative of the sponsoring organization.

However, some independent travel to Cuba similar to that which was undertaken previously under the “people to people” travel general license still appears to be authorized. The revised regulations include several changes to the general license for “Support for the Cuban People,” which permits travel by human rights organizations, other independent organizations, and individuals and NGOs promoting independent activity to strengthen civil society in Cuba when the traveler engages in a full-time schedule of activities that enhance contact with the Cuban people, support civil society in Cuba, or promote the Cuban people’s independence from Cuban authorities, and result in meaningful interaction with individuals in Cuba. A note to the revised general license states that lodging in a private Cuban residence, eating at privately-owned Cuban restaurants, and shopping at privately-owned stores run by self-employed Cubans are examples of activities that qualify for this general license, though the traveler also must engage in additional activities in support for the Cuban people in order to use the general license.

Notably, OFAC has left other travel authorizations in place, so long as they do not entail prohibited dealings with entities on the Cuba Restricted List. Further, travel to Cuba from the United States by vessel and aircraft may continue.

Exports/Reexports to Support the Cuban People

In tandem with the OFAC regulatory changes, BIS also revised its licensing policy for Cuba and several license exceptions. In particular, it clarified that applications for licenses to export/reexport items subject to the U.S. Export Administration Regulations (“EAR”) to Cuba generally will be denied if the items are for use of parties on the Cuba Restricted List. BIS also limited exports under three license exceptions if the transaction involves an expanded group of prohibited Cuban government officials.

At the same time, however, BIS broadened and simplified its License Exception Support for the Cuban People (“SCP”). Instead of authorizing the export or reexport of non-sensitive U.S. items only for certain purposes, the exception now more broadly allows such exports and reexports “for use by the Cuban private sector for Cuban private sector economic activities,” which excludes items used to primarily generate revenue for or contribute to the operation of the state.

Effect

The regulatory changes implemented by the Trump Administration limit several prominent Obama-era changes, such as self-directed “people-to-people” travel, which was credited with expanding U.S. travel to Cuba, while also criticized by some as skirting the statutory ban on tourism. Further, the changes could constrain some trade given the new limitations on direct financial dealings with a range of Cuban entities, even despite further liberalization in the key license exception for exports and reexports that support the Cuban people. On the whole, the changes are limited in scope and retain most of the Obama era openings for travel and trade.