

# The U.S. Government Takes Steps to Further Normalize Relations with Cuba in Advance of President Obama's Visit

March 18, 2016

Days before President Obama's planned visit to Cuba, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) [1] and the U.S. Department of Commerce's Bureau of Industry and Security (BIS)[2] issued yet another round of rules liberalizing U.S. trade relations with Cuba. Consistent with the Administration's policy toward Cuba, these new rules, which took effect on March 16, 2016, aim to improve the lives of the Cuban people and encourage more active engagement between the United States and Cuba, while at the same time limiting any benefits to the Cuban government-run economy and Cuban military, police, security, and intelligence entities.

## Changes to OFAC's Cuba Sanctions Program

OFAC announced the following changes to its Cuban Assets Control Regulations (CACR), which expand travel opportunities to Cuba, strengthen U.S. trade and commercial opportunities in Cuba, and reduce barriers to financial transactions involving Cuba.

### **Travel and Related Transactions:**

- People-to-People Educational Travel: Previously, U.S. persons were only authorized to travel under the general license permitting people-to-people educational travel if the trips took place under the auspices of an organization subject to U.S. jurisdiction; all travelers were required to be accompanied by a representative of the sponsoring organization. Under the new rule, which was implemented to make authorized travel to

## Authors

John R. Shane  
Partner  
202.719.7222  
jshane@wiley.law

Daniel B. Pickard  
Partner  
202.719.7285  
dpickard@wiley.law

Lori E. Scheetz  
Partner  
202.719.7419  
lscheetz@wiley.law

Tessa Capeloto  
Partner  
202.719.7586  
tcapeloto@wiley.law

Daniel P. Brooks  
Of Counsel  
202.719.4183  
dbrooks@wiley.law

## Practice Areas

Export Controls and Economic Sanctions  
International Trade

Cuba more accessible, U.S. persons may engage in people-to-people educational travel outside the auspices of such an organization, provided that the traveler engages in a full-time schedule of educational exchange activities intended to enhance contact with the Cuban people, support Cuban civil society, and/or promote the Cuban people's independence from Cuban authorities, and that will result in a meaningful interaction between the traveler and Cuban persons. Individuals seeking to avail themselves of this general license must maintain proper documentation related to the authorized travel. Significantly, OFAC's prohibition on tourist travel to Cuba remains in place.

- Payment of Salaries: Cuban nationals in the United States in a non-immigrant status or pursuant to other non-immigrant travel authorization are now permitted to earn a salary or compensation, consistent with their visa terms, provided that they are not subject to a special tax assessment by the Cuban government.
- Cuban-Origin Merchandise: OFAC will permit certain transactions in Cuban-origin goods by individuals for personal consumption while in a third country (e.g., Americans traveling in Europe can purchase and consume Cuban-origin cigars while abroad). In addition, OFAC will allow U.S. persons to receive or obtain services from Cuba or a Cuban national that are ordinarily incident to travel and maintenance within a third country.

#### **Banking and Financial Services:**

- U-Turn Payments through the U.S. Financial System: U.S. financial institutions are now permitted to process U-turn transactions in which Cuba or a Cuban national has an interest. U-turn transactions involve fund transfers from a bank outside of the United States that pass through one or more U.S. financial institutions before being transferred to another bank outside the United States. OFAC's authorization covers situations where neither the originator nor beneficiary is subject to U.S. jurisdiction.
- Processing of U.S. Dollar Monetary Instruments: U.S. banking institutions are now authorized to process U.S. dollar monetary instruments that are presented indirectly by Cuban financial institutions. These instruments include cash and travelers' checks. Furthermore, correspondent accounts at third-country banks that are used for such transactions may be denominated in U.S. dollars.
- U.S. Bank Accounts for Cuban Nationals: U.S. banks can open and maintain bank accounts in the United States so that Cuban nationals in Cuba can receive payments in the United States for permitted or exempt transactions and remit those payments back to Cuba.

#### **Trade and Commerce:**

- Physical and Business Presence: The revised regulations expand OFAC's existing authorization for U.S. persons to maintain a "physical presence" (e.g., office, store, or warehouse) in Cuba to include entities engaged in authorized humanitarian projects and noncommercial activities that provide support for the Cuban people, along with private foundations, research, or educational institutions engaged in authorized activities under the CACR. OFAC has also expanded its existing authorization permitting a

“business presence” (e.g., joint venture) in Cuba to include exporters of goods that are authorized to Cuba or that are exempt from the CACR, entities providing authorized mail or parcel transmission services or cargo transportation services, and providers of authorized carrier and travel services.

- Software Importation: OFAC now permits the importation of Cuban-origin software.

#### **Grants and Awards:**

- OFAC's amendments allow for the provision of educational grants and awards to Cuban nationals. They also clarify that the agency's existing authorization applies to the provision of grants and awards for the humanitarian projects permitted in the CACR.

#### **Amendments to BIS's Export Controls on Cuba**

BIS's amendments to its Cuba-related export controls build on the Administration's recent measures to ease trade restrictions on Cuba and complement the changes made by OFAC.

#### **Case-by-Case Licensing Policy for Cuba's Private Sector:**

Almost all exports of U.S. items to Cuba require a BIS license<sup>[3]</sup>, and with few exceptions, license applications are subject to a policy of denial. Among the more significant changes to U.S. policy, the new rule permits a case-by-case review, rather than the general policy of denial, of license applications for items that will enable or facilitate the export of items produced by Cuba's private sector. Prior to this rule, BIS's license exceptions and beneficial licensing policies generally have been limited to activities in Cuba. This change recognizes that enabling or facilitating exports of items by private businesses and entrepreneurs in Cuba can empower the Cuban people and foster growth of the private sector. BIS will continue to deny applications to export or reexport items for use by state-owned enterprises, agencies, and other organizations that primarily generate revenue for the state, as well as applications to export or reexport items destined to the Cuban military, police, intelligence, or security services.

#### **Easing of Restrictions on Vessels on Temporary Sojourn to Cuba:**

BIS's new rule also revises License Exception Aircraft, Vessels and Spacecraft (AVS)<sup>[4]</sup> in the EAR to permit vessels departing the United States on temporary sojourn to Cuba to carry cargo bound for other destinations without the need to obtain a BIS license. To be eligible for this license exception, the cargo must depart with the vessel at the end of its temporary sojourn, cannot enter the Cuban economy (i.e., be removed from the vessel for use in Cuba), and cannot be transferred to another vessel while in Cuba. This relaxation allows for more effective use of vessels and the selection of efficient shipping routes.

#### **Authorizations for New End-Users Permitted to Establish a Presence in Cuba:**

Additionally, the EAR's License Exception Support for the Cuban People (SCP)<sup>[5]</sup> permits exports and reexports to Cuba of certain items subject to low-level export controls for use by eligible end-users to establish, maintain, or operate a physical or business presence in Cuba. BIS's rule updates this exception to account for

OFAC's newly authorized end-users. For example, exporters of authorized or exempt goods, which are now permitted to establish and maintain a business presence in Cuba, can take advantage of License Exception SCP to export certain items that are necessary for their business use in Cuba.

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Although the Cuba embargo remains in place, the Administration continues to find creative ways to chip away at the restrictions in an effort to build a stronger and more open relationship with the Cuban people. Should you have any questions about U.S. sanctions and export controls applicable to Cuba, please do not hesitate to contact us.

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[1] *Cuban Assets Control Regulations*, 81 Fed. Reg. 13,989 (Office of Foreign Assets Control Mar. 16, 2016) (final rule).

[2] *Cuba: Revisions to License Exceptions and Licensing Policy*, 81 Fed. Reg. 13,972 (Bureau of Industry and Security Mar. 16, 2016) (final rule).

[3] 15 C.F.R. § 746.2.

[4] 15 C.F.R. § 740.15.

[5] 15 C.F.R. § 740.21.