

## CLIENT MEMORANDUM

# Obama Administration Issues Regulations Implementing Cuba Initiative

January 20, 2015

## AUTHORS

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On January 16, 2015, the U.S. Treasury Department's Office of Foreign Assets Control (OFAC) and the U.S. Commerce Department's Bureau of Industry and Security (BIS) issued new regulations on Cuba. These regulations, which are effective immediately, implement the changes in U.S. policy toward Cuba announced by President Obama on December 17, 2014.<sup>1</sup> While the Cuba trade embargo remains in effect, the revised regulations ease existing sanctions related to travel, remittances, trade, and banking. The amended regulations are intended to facilitate authorized travel, increase business opportunities for U.S. exporters and importers in support of private enterprise in Cuba, and enhance commerce and communications between Cuba and the United States. More information on the revised regulations is provided below.

- **Travel Opportunities and Travel Services Are Expanded Through General Licenses.** Prior to January 16, individuals and groups seeking to travel to Cuba were required to obtain a specific OFAC license for travel-related transactions to, from, or within Cuba for authorized categories of activity (cultural, religious, informational, etc.). Under the revised regulations, travel and travel-related transactions are authorized by general license for twelve (12) categories of travel, and specific licenses will no longer be required. Those traveling to Cuba for authorized purposes may spend money freely in Cuba and bring back \$400 worth of Cuban goods (of which \$100 may be

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<sup>1</sup> Fact Sheet: *Charting a New Course on Cuba*, Office of the Press Secretary, The White House (Dec. 17, 2014), available [here](#).

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tobacco or alcohol products). In addition, a new general license allows travel agents and carriers to provide services for authorized travel; specific licenses are no longer required. Finally, OFAC has expanded the general license for travel-related activities to permit the use of U.S. credit and debit cards in Cuba for authorized transactions.

- **Remittances to Cuba Are Liberalized.** Remittance levels will be raised from \$500 to \$2,000 per quarter for general remittances to Cuban nationals.<sup>2</sup> Donative remittances to individuals and nongovernmental organizations in Cuba are also generally authorized to support humanitarian projects, the Cuban people, and the development of private businesses in Cuba; a specific license is no longer required. In addition, the new general licenses authorize U.S. banking institutions to process authorized remittances to Cuba without having to obtain a specific license. Finally, travelers may now carry up to \$10,000 in remittances to Cuba.
- **Encouraging Private Sector Economic Activity.** The new regulations will also encourage private sector economic activity through the creation of a new license exception to permit the exportation of certain products to Cuba from the United States and the expansion of the general license for humanitarian projects.
  - **New License Exception SCP.** The BIS regulations create license exception, “Support for the Cuban People” (SCP), which allows for the export of goods for private-sector economic activity in Cuba. As a result, a specific license for individual transactions is no longer required. Items authorized for export include certain building materials for private-sector construction, including private residences, buildings, or churches. The regulations also allow for the license-free export of goods for use by private-sector Cuban entrepreneurs, including auto mechanics, barbers, hairstylists, restaurateurs, farmers and others.

Companies are required to keep sufficient records to verify that there was a private-sector end use for any exports. The regulations do not spell out what would constitute “sufficient record keeping” under this requirement; these records may be investigated at the discretion of BIS.

- **Expansion of the General License for Humanitarian Projects.** The existing general license for humanitarian projects was expanded to authorize a variety of new endeavors to encourage private enterprise in Cuba, including:
  - Medical and health-related projects
  - Construction projects to benefit independent civil society groups
  - Environmental projects

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<sup>2</sup> Remittances to certain government officials and members of the Communist party remain prohibited. These remittances may not be used for purposes of emigration. Emigration remittances remain unchanged and are provided for in Sec. 515.570(e) of the Cuban Assets Control Regulations (31 C.F.R. 515.570(e)).

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- Training in entrepreneurship and business and vocational skills
  - Projects suitable to the development of small-scale private enterprise
  - Projects related to agricultural and rural development
  - Microfinancing projects
- **Expanding Communications, Internet Access, and Telecommunications Services.** The new regulations also expand the ability of U.S. companies to export communications products to Cuba, provide telecommunications and Internet-access services, and increase communications with Cuba.
    - **Increased Access to Communications.** The existing license exception under the BIS regulations for Consumer Communications Devices (CCD) was expanded to allow for the commercial export and sale of certain communications devices, such as mobile phones, commercial telecommunications, recording equipment, and televisions. This license exception also allows for the export of items pertaining to Cuba's telecommunications infrastructure to expand access to commercial telecommunications and Internet services.
    - **Mail.** The existing general license for mail was expanded to authorize all transactions, including payments, incident to the transmission of mail.
    - **Telecommunications Services.** OFAC expanded the existing general license for telecommunications services to authorize transactions to provide commercial telecommunications services and facilities linking third countries to Cuba. In addition, the expanded general license authorizes the entry into and the performance of contracts with all telecommunications providers in Cuba, without restriction. However, those utilizing the expanded general license are required to provide reports to OFAC on a semiannual basis.
    - **Internet-Based Services.** The regulations broaden the general license for Internet-based services to include certain software design, business consulting, and information technology management services (including cloud storage).
  - **Supporting Civil Society in Cuba.** The revised regulations also allow for the export of items to human rights groups and other independent civil groups in Cuba. The license exception also allows for the donation of items pertaining to cultural, scientific, and sporting activities.
  - **Authorization on Imports From Cuba.** As noted above, authorized travelers will be permitted to import up to \$400 in goods, provided that the merchandise is for personal use only and consists of no more than \$100 in tobacco or alcohol products. The OFAC regulations also authorize the importation of certain goods and services

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“produced by independent Cuban entrepreneurs”; however, the State Department has yet to determine what items will be eligible for import under this provision.

- **Facilitating Authorized Transactions Between the United States and Cuba.** The new OFAC regulations allow U.S. financial institutions to open accounts at Cuban financial institutions to facilitate the processing of authorized transactions. In addition, OFAC’s previous “cash-in-advance” requirement for exports to Cuba has been replaced by a “cash before transfer of title and control” policy. This new policy allows for shipments to be paid for in cash after they leave a U.S. port and before they are transferred to a Cuban purchaser, promising to provide more efficient financing of authorized trade with Cuba.
- **Applying Cuba Sanctions in Third Countries.** The new regulations create a new general license authorizing U.S.-owned or -controlled entities in third countries to provide services to and engage in financial transactions with Cuban nationals in third countries, provided these individuals no longer reside in Cuba. In addition, general licenses will, among other measures, unblock the accounts at U.S. banks of Cuban nationals who have relocated outside of Cuba; permit U.S. persons to participate in third-country professional meetings and conferences related to Cuba; and allow foreign vessels to enter the United States after engaging in certain humanitarian trade with Cuba.

To summarize, the new regulations represent the most significant expansion of trade and travel opportunities with Cuba in the last 50 years. They are, however, both limited in scope in relation to the overall Cuban trade embargo and subject to further interpretation and compliance scrutiny by OFAC and BIS. The most comprehensive prohibitions and restrictions against doing business with Cuba, including transactions involving Cuban government entities and large-scale investment in Cuba, have been codified into U.S. law and can only be changed or repealed by action of the U.S. Congress.

While legislation has been introduced in the U.S. House of Representatives to repeal the statutory embargo, the political controversy surrounding U.S.-Cuba relations effectively precludes such legislation from serious consideration for the foreseeable future. Congressional opponents of liberalizing relations with Cuba may not have the votes to prohibit implementation of the Obama Administration’s regulatory changes, but they are sufficiently powerful to assure that the existing trade embargo remains largely in effect, possibly until there is a generational change in Cuba’s leadership and a major shift in U.S. public opinion.

### Related Links

Amendments to the Cuban Assets Control Regulations (CACR), available [here](#).

Amendments to the Export Administration Regulations (EAR), available [here](#).

Department of Treasury Cuba Sanctions FAQs, available [here](#).

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If you have any questions about this memorandum or would like additional information, please contact Russell L. Smith (202-303-1116, [rsmith@willkie.com](mailto:rsmith@willkie.com)), Miriam A. Bishop (202-303-1126, [mbishop@willkie.com](mailto:mbishop@willkie.com)) or the Willkie attorney with whom you regularly work.

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January 20, 2015

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