



## U.S. Changes Travel and Transportation Requirements to Cuba (Jan. 2015/updated Feb. 2015)

### Overview

On December 17, 2014, President Obama announced policy changes relating to Cuba. The President did not propose to lift the travel ban or the embargo. Rather, he directed the Office of Foreign Assets Control of the U.S. Department of the Treasury ("OFAC") and the Bureau of Industry and Security of the U.S. Department of Commerce ("BIS") to change various licensing requirements involving Cuba. He also directed the U.S. Department of State ("DOS") to consider diplomatic and other actions.

To implement the President's policy changes, OFAC published the amended Cuban Assets Control Regulations (the "CACR") on January 16, 2015. BIS also amended the Export Administration Regulations (the "EAR"). These amendments became effective January 16, 2015. The U.S. Department of Transportation ("DOT"), moreover, issued a notice to air carriers announcing its decision to defer action on any existing unused scheduled Cuba authority and on any new applications for such authority. And on February 23, 2015, DOS provided guidance on the items that may fall within an OFAC general license for imports.

These Federal agencies did not remove all of the restrictions on travel to or trade with Cuba. Most of the restrictions remain. However, OFAC made it easier for licensed individuals to travel to Cuba and for U.S. travel agencies, tour operators, and air carriers to provide services to Cuba. DOC, moreover, expanded the U.S. items that may be exported or reexported to Cuba.

This Advisory focuses specifically on travel, travel services and transportation services. It does not address other changes. The following pages summarize the relevant changes:



The firm's practice encompasses virtually every aspect of aviation law, including advising sellers of air transportation regarding compliance with Office of Foreign Asset Control regulations, the Export Administration Regulations, and the Department of Transportation's economic regulations and enforcement policies.

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## OFAC Amendments to the CACR

- **Travel to Cuba.** OFAC established new general licenses and expanded certain existing general licenses within 12 travel categories identified in the CACR. The general licenses allow qualifying persons to engage in travel-related transactions and certain other transactions without the need for obtaining specific (written) licenses from OFAC. U.S. persons must determine on their own whether they meet the conditions and qualify for the particular general license. If they do not qualify for any general license, U.S. persons must apply for and obtain specific licenses from OFAC, before they engage in travel-related transactions.
- **Travel Transactions by Licensed Travelers.** OFAC removed the per diem limitation, which previously limited how much licensed travelers could pay for hotel accommodations, meals, and ground transportation expenses in Cuba. OFAC also amended the CACR to allow licensed travelers to use credit and debit cards to pay for travel-related transactions in Cuba and to authorize U.S. financial institutions to process credit/debit card transactions. In addition, under the amended CACR, licensed travelers can carry up to \$10,000 in remittances to Cuba. Licensed travelers must qualify for a general license, or hold a specific license, to remit these funds to eligible Cuban donees.
- **Imports by Licensed Travelers.** OFAC allowed Licensed Travelers to import no more than \$400 worth of Cuban goods, including up to \$100 in alcohol and tobacco products.
- **Travel Services.** OFAC removed the specific licensing requirements and authorized – by general license – U.S. companies (travel agencies, tour operators, air carriers, and reservations systems) to offer travel services to, and engage in transactions on behalf of, licensed travelers. U.S. companies must (a) obtain a certification from each licensed traveler identifying the section that authorizes his or her travel, (b) obtain the full name and residential address of each licensed traveler, and (c) maintain records of all transactions involving Cuba for 5 years.
- **Transportation Services.** OFAC also removed the specific licensing requirement that applied to U.S. carriers and charter operators. These companies, under a new general license, may “provide carrier services by aircraft to, from, and within Cuba in connection with the travel or transportation to Cuba of persons, baggage, and cargo.” Importantly, this general license removed a previous restriction on scheduled air transportation services. U.S. carriers and charter operators must comply with the same documentation and recordkeeping requirements mentioned above.
- **Other Imports.** OFAC authorized (by general license) U.S. persons to import certain specified goods and services produced by independent Cuban entrepreneurs. On February 23, 2015, DOS clarified that U.S. persons must obtain documentary evidence of the entrepreneur’s independent status. For example, when the “entrepreneur” is an individual, the U.S. person should obtain a copy of the Cuban’s self-employment license. In the case of an entity, the U.S. person must obtain documentation that the entity is not owned or controlled by the Cuban government. This might be the certificate of incorporation.
- **Exports.** OFAC revised the definition of the “cash in advance” requirement for BIS-licensed or authorized exports. Whereas OFAC previously interpreted this term to mean “cash before shipment,” the CACR now requires “cash before transfer of title and control.”
- **Vessel Transactions.** OFAC maintained the requirement that vessel operators must obtain specific licenses before offering vessel transportation between the United States and Cuba. In addition, OFAC expanded the waiver that permits foreign vessels to enter the United States within 180 days of stopping in Cuba. Foreign vessels may enter the United States in four limited circumstances.

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## BIS Amendments to the EAR

- **New License Exception SCP.** BIS established a new license exception designed to support the Cuban people, strengthen civil society in Cuba, and improve and support the free flow of information in Cuba. This exception allows the exportation and reexportation of:
  - The following to support the Cuban people: (1) building materials, equipment and tools to construct or renovate privately-owned buildings; (2) tools and equipment for private sector agricultural activity; and (3) tools, equipment, supplies and instruments for private sector entrepreneurs;
  - The following to strength civil society: (a) donated items for scientific, archaeological, cultural, ecological, educational, historic preservation, or sporting activities (the “allowed activities”); (b) certain items for temporary use in these allowed activities or in professional research; and (c) certain items for human rights organizations, individuals, and non-government organizations that promote independent activity to strengthen Cuba’s civil society; and
  - The following to improve and support the flow of information: (i) certain sold or donated items for telecommunications, such as to access the Internet, use Internet services, or create or upgrade infrastructure; and (ii) certain items for news media personal or news bureaus engaged in gathering and disseminating news to the general public.
- **Amended License Exception GFT.** BIS amended the EAR to remove a requirement that consolidators must obtain export licenses. This requirement applied to companies that consolidated parcels into a single shipment and exported those shipments to foreign countries, including Cuba.
- **Amended License Exception CCD.** BIS removed the requirement that this license exception applied only to donations of certain consumer communications devices (referred to as “CCDs”). Licensed Exception CCD now applies to donations and sales of eligible items. BIS also clarified the descriptions of some items eligible for exportation under this license exception.

In addition to the above regulatory changes, DOT issued a notice to U.S. air carriers, clarifying the steps the U.S. government would need to take before it considered applications for scheduled authority to Cuba. The U.S. Government first must open discussions with the Cuban Government to establish a bilateral basis for expanding air services. When a bilateral understanding is reached, DOT plans to evaluate the U.S.-Cuba market and consider applications for U.S.-Cuba authority. Importantly, DOT confirmed that “carrier[s] holding long-dormant U.S.-Cuba authority would enjoy no advantage” over other U.S. airlines interested in serving the market. This notice confirmed that DOT was deferring action on all applications for scheduled authority to serve Cuba.

The United States continues to impose comprehensive economic sanctions against Cuba. The afore-mentioned regulatory changes are subject to limitations and/or conditions. U.S. persons must review the applicable regulations and consider carefully whether they meet the requirements. If you would like more information about these or any other regulatory changes involving Cuba, please do not hesitate to contact Lonnie A. Pera at Zuckert, Scutt & Rasengerger, L.L.P.

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