

ALERT

# Agencies Amend Cuba Sanctions to Implement President Trump's June National Security Presidential Memorandum

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November 13, 2017

Last week, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC), the U.S. Department of Commerce's Bureau of Industry and Security (BIS), and the U.S. Department of State took steps to implement restrictions on tourism and trade with Cuba, which were announced by President Trump in June. Consistent with the National Security Presidential Memorandum on Strengthening the Policy of the United States Toward Cuba, the State Department published a list of restricted entities in Cuba's military, intelligence, and security services sectors (Cuba Restricted List). At the same time, OFAC amended its Cuban Assets Control Regulations (CACR) and BIS amended its Export Administration Regulations (EAR) to strictly enforce the statutory ban on tourism in Cuba and to restrict the flow of money and U.S. goods to entities on the Cuba Restricted List.

## Increased Restrictions on Certain Financial Transactions and Travel

The Cuba Restricted List includes entities or subsidiaries that the State Department has identified as being under the control of, or acting for or on behalf of, the Cuban military, intelligence, or security services or personnel. The list includes, but is not limited to, the Ministry of the Interior, Ministry of the Revolutionary Armed Forces, holding companies such as GAESA, Gaviota, and CIMEX (and specified subsidiaries of each), numerous hotels in Cuba, and entities determined to be directly serving the Cuban Defense and Security Sectors. Pursuant to OFAC's amendments to the CACR, U.S. persons are now prohibited from engaging in certain direct financial transactions with the entities and subsidiaries identified on the Cuba Restricted List. This could prove particularly troublesome for U.S.

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## Practice Areas

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Export Controls and Economic Sanctions  
International Trade

companies seeking to do business in the Cuban hospitality sector, as many flagship hotels in Cuba are now off-limits unless specifically authorized. Notably, commercial engagements in place with such entities prior to November 9, 2017 remain authorized.

In addition, the CACR now prohibit individual people-to-people nonacademic educational travel to Cuba. Instead, such travel can now be engaged in only under the auspices of an organization subject to U.S. jurisdiction that sponsors such exchanges to promote people-to-people contact, and such travelers must be accompanied by a representative of the sponsoring organization. The remaining categories of travel previously authorized under general licenses remain authorized, provided that the travel does not involve direct financial transactions with entities and subsidiaries identified on the Cuba Restricted List.

OFAC is also amending the definition of "Officials of the Government of Cuba" to include certain additional individuals. While previously limited to members of the Council of Ministers and flag officers of the Revolutionary Armed Forces, the new definition now also includes, but is not limited to, Ministers and Vice Ministers, members of the Council of State, members and employees of the National Assembly of People's Power, members of any provincial assembly, Director Generals and sub-Director Generals and higher of all Cuban ministries and state agencies, and certain editors of Cuban state-run media organizations and programs. U.S. persons are prohibited from engaging in specified transactions with such prohibited officials.

### **Expanded Restrictions on Trade in Goods with the Cuban Government**

Although most trade with Cuba is prohibited by the statutory embargo, BIS considers certain types of export license applications on a case-by-case basis or under a general policy of approval. One such type of transaction subject to case-by-case review involves exports of items to state agencies or government-owned companies to meet the needs of the Cuban people, such as products for infrastructure benefitting the Cuban people. Even before BIS's amendments, the agency typically denied these applications if the items were for use by government entities that primarily generate revenue for the state. BIS's changes clarify that it also generally will deny applications of goods for use by entities on the State Department's Cuba Restricted List, with certain limited exceptions (*e.g.*, the export furthers U.S. national security or foreign policy interests).

Consistent with OFAC's amendment to the definition of prohibited government officials, BIS also made corresponding expansions to its list of Cuban government officials, thereby rendering these individuals ineligible for three license exceptions in the EAR—License Exceptions Gift Parcels and Humanitarian Donations (GFT), Consumer Communications Devices (CCD), and Support for the Cuban People (SCP).

While the administration clamped down on certain transactions with the Cuban government, BIS also simplified and expanded License Exception SCP to further support Cuba's fledgling private sector. Previously, this exception permitted exports of certain items, such as tools, for certain private sector end-uses in Cuba, such as private building construction and agricultural activities. The new rule removes these limitations and instead generally authorizes exports of EAR99 items and other items subject to low level export controls for use by the Cuban private sector for private sector economic activities. Nevertheless, U.S. exporters relying on this exception must ensure that the items are not going to be used primarily to generate revenue for the state

or to contribute to the operation of the state (*e.g.*, construction of Cuban government-owned buildings).

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Both OFAC and BIS emphasized that the changes to the Cuba rules of engagement do not impact commercial engagements or approved licenses that were in place prior to the issuance of the revised regulations. Going forward, however, many of the limitations introduced by the agencies may well have a chilling impact on travel and trade with Cuba.