

Alert

September 28, 2015



Transportation & Logistics Alert

News Concerning Recent Transportation or Logistics Issues

OFAC and BIS Announce Further Easing of Cuba Sanctions

Effective September 21, 2015, the Department of Treasury's Office of Foreign Assets Control (OFAC) and the Commerce Department's Bureau of Industry and Security (BIS) have amended the Cuban Assets Control Regulations and Export Administration Regulations relating to trade between the United States and Cuba. These regulatory changes build on earlier revisions published in January 2015 and further ease sanctions related to authorized travel, telecommunications, Internet-based services, business operations in Cuba, and remittances. They do not, however, lift the sanctions, and most prohibitions remain in place. Key provisions of the amendments include:

Vessel and Aircraft Operations

With regard to travel, persons subject to U.S. jurisdiction may now transport authorized travelers to Cuba by vessel pursuant to a general license. Relatedly, in connection with such transportation, OFAC has also authorized certain lodging services aboard those vessels. This means that U.S. persons interested in providing ferry service between Cuba and the United States may do so without the need to obtain a specific license from OFAC as long as they are transporting U.S. persons who are otherwise authorized to travel to Cuba.¹ Such service can only be conducted between the United States and Cuba, without stops in third countries. Depending on the nature of the operation, authorization from other agencies, such as the U.S. Coast Guard, Department of Homeland Security, and/or Department of Transportation may still be required.

In addition, BIS has expanded its License Exception for Vessels, Aircraft and Spacecraft (AVS) to allow vessels to transport authorized cargo (for example, agricultural commodities or other authorized items deemed to be "Support for the Cuban People") and passengers without having to obtain an export license for the vessel. License exception AVS authorizes aircraft to remain in Cuba for up to seven days and vessels to remain in Cuba for up to 14 days while on a temporary sojourn from the United States.

The BIS rules also provided a statement of licensing policy regarding exports or re-exports to Cuba of items to ensure the safety of civil aviation and safe operation of commercial passenger aircraft. Whereas previously applications to export items, such as aircraft parts and components, software and technology related to safety of flight, and air traffic control and airport safety equipment, were governed by a general policy of denial, they will now be reviewed on a case-by-case basis.

Commercial and Financial Transactions

The general prohibition on U.S. exports to Cuba remains in effect. However, U.S. persons are now allowed to provide goods and services to individual Cuban nationals located outside of Cuba. Previously, such activity was limited to foreign entities owned or controlled by U.S. persons (e.g., foreign subsidiaries of U.S. companies). In addition, banking institutions will be able to open, maintain and close accounts for Cuban individuals for use while the Cuban national is located outside of Cuba. We would further note, however, that the prohibition on shipments or the provision of services to individuals and entities on the Specially Designated Nationals and Blocked Persons List (SDN List) remains, regardless of where they are located.



Donald J. Kassilke

Member

dkassilke@cozen.com
Phone: (202) 463-2506
Fax: (202) 912-4830



Rachel Welford

Associate

rwelford@cozen.com
Phone: (202) 912-4825
Fax: (202) 304-1451

Related Practice Areas

- Transportation & Trade

Physical Presence and Operations in Cuba

In order to facilitate authorized transactions, persons subject to U.S. jurisdiction may now establish a physical presence in Cuba, such as an office, retail outlet or warehouse, as long as those persons are engaged in certain categories of activities. These categories include: news bureaus; exporters of certain authorized goods (e.g., agricultural products and materials for construction or renovation of privately owned buildings); entities providing mail or parcel transmission services or certain cargo transportation services; providers of telecommunications or Internet-based services; and providers of carrier and certain travel services. These persons will also be authorized to employ Cuban nationals, open and maintain bank accounts in Cuba, and employ persons subject to U.S. jurisdiction in Cuba. Certain exports and re-exports of items to Cuba for purposes of establishing, maintaining, or operating a physical presence in Cuba are also now authorized pursuant to a revised License Exception Support for the Cuban People (SCP).

It is important to understand that other than the limited relief specified in the amended regulations, no other sanctions with Cuba have been lifted. As such, persons subject to U.S. jurisdiction remain generally prohibited from doing business with or investing in Cuba unless licensed by OFAC.

We will continue to monitor developments regarding these policy changes and will provide further guidance as details are announced.

Should you have any questions regarding U.S. sanctions against Cuba or any other U.S. sanctions program, please do not hesitate to contact a member of Cozen O'Connor's Transportation & Logistics Group.

¹ U.S. persons wishing to travel to Cuba must be authorized to do so by either a general or specific license from OFAC. To date, OFAC has issued a general license for 12 categories of travel. These include travel related to family visits, official U.S. government business, journalistic activity, professional research and meetings, educational activities, religious activities, public performances and athletic exhibitions, support for the Cuban people, humanitarian projects, activities of private foundations or research institutes, transmission of informational materials, and certain export transactions authorized by Department of Commerce regulations. U.S. persons that do not fall within one of these categories must apply for and obtain a specific license from OFAC before traveling to Cuba. Such applications are typically denied.