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## OFAC and BIS Announce Further US Sanctions Authorizations and Export Licensing Policies for Cuba

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The US Departments of the Treasury and Commerce are taking further action to implement President Obama's initiatives to normalize US-Cuba relations and to “engage and empower the Cuban people.”

The measures announced today by the US Department of the Treasury Office of Foreign Assets Control (OFAC) include:

- removing certain payment and financing restrictions for authorized exports and reexports to Cuba of non-agricultural items or commodities;
- permitting blocked space, code-sharing, and leasing arrangements with Cuban airlines to further facilitate authorized travel to Cuba;
- authorizing additional travel-related and other transactions incident to the temporary sojourn of aircraft and vessels; and
- expanding travel authorizations related to professional meetings and other events, disaster preparedness and response projects, and information and information materials, including transactions incident to professional media or artistic productions, in Cuba.

They will take effect tomorrow, January 27, 2016.

### **Non-Agricultural Export Trade Financing**

Under the amended Cuban Assets Control Regulations (CACR), there will be no restrictions on payment and financing terms for exports and certain reexports of non-agricultural US-origin goods that are authorized by the US Department of Commerce. The prior rule required that only payment of cash in advance, or financing by a third-country bank, were permissible for such exports or reexports. A parallel amendment to the CACR will permit depository institutions to provide financing for such transactions. These steps are designed to alleviate significant impediments to financing

authorized trade between the United States and Cuba or trade involving exports of US-origin goods from a third country to Cuba.

### **Air Carrier Services**

The US policy shift seeking to ease prior travel restrictions has required a series of changes to both the CACR and the Export Administration Regulations (EAR) related to air carrier services. Today, OFAC announced an amendment to the CACR to authorize the entry into blocked space, code-sharing, and leasing arrangements, including the entry into such arrangements with a Cuban national. In parallel, the US Department of Commerce Bureau of Industry and Security (BIS) is amending the EAR to ease its licensing policy for exports and reexports of items that are necessary to ensure the safety of civil aviation and the safe operation of commercial aircraft engaging in international air transportation, including when such exports or reexports are to Cuban state-owned enterprises. The amendment by BIS includes an acknowledgement that Cuban state-owned enterprises' access to aircraft meeting US Federal Aviation Administration and European Aviation Safety Agency operating standards contributes to civil aviation safety.

### **Temporary Sojourn**

OFAC is expanding an existing general license to include travel-related and other transactions directly incident to the facilitation of the temporary sojourn of aircraft and vessels that have been authorized by BIS for US-Cuba travel and that are transporting authorized travelers. This includes transactions by aircraft or vessel personnel (such as crew). BIS today added the term "reexport" to its existing statement of a policy of case-by-case review of applications for aircraft or vessels on temporary sojourn to Cuba; this step reflects BIS practice of generally applying the same licensing policy to exports and reexports of a given item.

### **Information and Informational Materials**

OFAC is expanding existing authorizations for transactions directly incident to the export, import, or transmission of informational materials to include professional media or artistic productions in Cuba. Beginning tomorrow, movies and television programs, music recordings, and the creation of other artworks may be produced in Cuba without the need for specific OFAC licensing. This expanded authorization covers both transactions incident to such production, as well as travel-related transactions. OFAC is also explicitly authorizing transactions relating to the creation, dissemination, or artistic or other substantive alteration or enhancement of informational materials, including employment of Cuban nationals and the remittance of royalties or other payments.

### **Additional Travel-Related Transactions**

OFAC is making several additional amendments to the CACR to authorize travel-related and other transactions to organize (as opposed to merely attend) professional meetings or conferences in Cuba, and to organize amateur and semi-professional international sports federation competitions

and public performances, clinics, workshops, other athletic or non-athletic competitions, and exhibitions in Cuba. OFAC is also expanding the list of humanitarian projects for which travel is authorized to include disaster preparedness and response.

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In addition, BIS amendments to the EAR will establish a more favorable licensing policy with respect to exports and reexports destined for Cuba. Specifically, BIS is revising its licensing policy to a stance of general approval for exports and reexports of:

- telecommunications items that would improve communications to, from, and among the Cuban people;
- certain commodities and software to human rights organizations or to individuals and non-governmental organizations that promote activity intended to strengthen civil society in Cuba;
- commodities and software to US news bureaus in Cuba whose primary purpose is the gathering and dissemination of news to the general public; and
- agricultural items that are outside the scope of “agricultural commodities” as defined in the EAR (e.g., insecticides, pesticides, and herbicides) as well as non-EAR99 items that are not eligible for License Exception Agricultural commodities (AGR).

BIS is also amending the exceptions to its general policy of denial by adopting a case-by-case review policy for exports and reexports of certain items to meet the needs of the Cuban people, including those to Cuban state-owned enterprises, agencies, and other organizations of the Cuban government that provide goods and services for the use and benefit of the Cuban people. BIS expects this policy to permit additional exports and reexports of items for agricultural production, artistic endeavors, education, food processing, disaster preparedness, relief and response, public health and sanitation, residential construction and renovation, and public transportation. The amended EAR will specifically identify items for use in construction of facilities for treating public water supplies, facilities for supplying electricity or other energy to the Cuban people, sports and recreational facilities, and other infrastructure that directly benefits the Cuban people. Finally, exports and reexports to wholesalers and retailers of items for domestic consumption by the Cuban people will likewise benefit from this more favorable licensing policy.

By contrast, BIS will continue to generally deny license applications for exports or reexports of items for use by Cuban military, police, intelligence, and security services, or for use by Cuban state-owned enterprises, agencies, or other Cuban government organizations that primarily generate revenue for the state, including those engaged in tourism and mineral/raw material extraction.

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We note that many of these new OFAC authorizations and BIS licensing policies contain limitations,

so it is important to ensure that proposed transactions impacted by today's actions are carefully reviewed for ongoing compliance. This is because OFAC and BIS have made clear that, despite the recent easing of US restrictions, they intend to enforce existing Cuba-related prohibitions. Moreover, while the Obama Administration has taken important initiatives to normalize US-Cuba relations, the US trade embargo against Cuba remains codified in legislation and cannot be lifted without further Congressional action. Thus, the current state of eased, but not fully removed restrictions on US dealings with Cuba will likely remain in place for the foreseeable future-as will its continuing compliance challenges.

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