



International Trade & Regulatory ADVISORY ■

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Changes to Cuba Sanctions Program Pursuant to National Security Presidential Memorandum

On Wednesday, November 8, 2017, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC), U.S. Department of State, and U.S. Department of Commerce's Bureau of Industry and Security (BIS) announced changes to the Cuba sanctions program. These changes, which took effect on November 9, 2017, implement President Trump's policy toward Cuba set forth in his June 16, 2017 [National Security Presidential Memorandum](#) (NSPM). The changes forbid direct financial transactions with entities connected to the Cuban military, intelligence, and security services and roll back certain travel-related authorizations.

The Treasury Department has released a [fact sheet](#) related to the changes, and OFAC has released a list of [frequently asked questions](#).

Entities Linked to the Cuban Military, Intelligence, and Security Services

In accordance with the NSPM, the State Department has published a list of entities and subentities subject to restrictions that are under the control of, or act for or on behalf of, the Cuban military, intelligence, or security services.

The list, called the State Department's [List of Restricted Entities and Subentities Associated with Cuba](#) ("Cuba Restricted List"), identifies 180 entities, including government ministries, holding companies, tourist agencies, hotels, stores, and entities serving the defense and security sectors. Key holding companies identified by the State Department include Grupo de Administración Empresarial S.A. (GAESA), Grupo de Turismo Gaviota (Gaviota), Compañía Turística Habaguanex S.A., and Corporación CIMEX S.A (CIMEX).

Entities or subentities owned or controlled by another entity or subentity on the Cuba Restricted List are not treated as restricted unless also specified by name on the list.

Subject to certain exceptions identified in the NSPM, U.S. persons are prohibited from engaging in direct financial transactions with entities on the Cuba Restricted List even if the transaction is incident to a general license. The regulations provide that a person engages in a direct financial transaction by acting as the originator on a transfer of funds (including by wire transfer, credit card, check, or cash payment) whose ultimate beneficiary is an entity listed on the Cuba Restricted List.

BIS has also established a general policy of denying license applications to export items for use by entities on the Cuba Restricted List unless the transaction is otherwise consistent with the NSPM (e.g., it supports Internet access for the Cuban people).

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Commercial and travel-related transactions with a listed entity or subentity in place prior to an entity or subentity's listing continue to be authorized.

Prohibited Officials

The definition of the term "prohibited officials of the Government of Cuba" has been expanded to include:

Ministers and Vice-Ministers; members of the Council of State and the Council of Ministers; members and employees of the National Assembly of People's Power; members of any provincial assembly; local sector chiefs of the Committees for the Defense of the Revolution; Director Generals and sub-Director Generals and higher of all Cuban ministries and state agencies; employees of the Ministry of the Interior (MININT); employees of the Ministry of Defense (MINFAR); secretaries and first secretaries of the Confederation of Labor of Cuba (CTC) and its component unions; chief editors, editors, and deputy editors of Cuban state-run media organizations and programs, including newspapers, television, and radio; and members and employees of the Supreme Court (Tribuno Supremo Nacional).

The expanded definition of prohibited official will affect existing OFAC general licenses for telecommunications transactions and remittances, which exclude dealings with prohibited officials.

Prohibited officials will also be ineligible for certain BIS license exceptions involving Cuba, including license exceptions gift parcels and humanitarian donations (GFT), consumer communications devices (CCD), and support for the Cuban people (SCP).

License Exception SCP

Pursuant to amendments to the Export Administration Regulations (EAR), BIS has simplified and expanded its license exception that authorizes certain license-free exports to the Cuban private sector with the exception of items primarily to generate revenue to the state or contribute to the operation of the state.

People-to-People Travel

Individual people-to-people nonacademic educational travel is no longer authorized.

People-to-people nonacademic travel "conducted under the auspices of an organization that is subject to U.S. jurisdiction and that sponsors such exchanges" continues to be authorized. Travelers must be "accompanied by a person subject to U.S. jurisdiction who is a representative of the sponsoring organization."

OFAC has added a "grandfathering" provision to authorize people-to-people travel that was authorized prior to June 16, 2017 (the date President Trump issued the NSPM) if the traveler already completed "at least one travel-related transaction (such as purchasing a flight or reserving accommodation)" before June 16, 2017.

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