



## Revised U.S. Regulations Support Cuba's Private Sector, but Travel Restrictions Remain

### IN SHORT

**The Situation:** Regulations implementing tightened U.S. policy towards engagement with Cuba have rolled back a number of Obama-era initiatives and are effective immediately.

**The Result:** Provisions that encourage Cuban private sector economic activities remain largely intact, but a new prohibition against direct transactions with entities on the newly-created "Cuba Restricted List" may make travel to Cuba more complicated.

**Looking Ahead:** The publication of the revised regulations reduces some of the uncertainty for companies who had begun to wade into Cuba. However, the scope of authorized activities remains narrow and the addition of yet another screening list that must be checked increases compliance burdens.

In June 2017, President Trump issued a National Security Presidential Memorandum ("NSPM") revising U.S. policy towards engagement with Cuba. As we described in our [Commentary](#), at the time, the announced rollback of Obama-era sanctions relief envisioned in that policy would not take effect until revisions to the Cuban Assets Control Regulations ("CACR") and Export Administration Regulations ("EAR") were published. The revised regulations have now been issued and are effective immediately.

Prior to the change in policy, most transactions and trade remained prohibited by the long-standing embargo. However, the CACR and EAR authorized certain transactions and trade in less-sensitive goods, technology, and software to support the Cuban people and to encourage private-sector economic activity. For those who had begun to make use of the general licenses or license exceptions that authorized such activity to trade in Cuba, those authorities largely remain unchanged. However, traveling to Cuba to support such business will become more complicated.

#### The Revised Cuban Assets Control Regulations

The revised CACR now prohibit direct transactions with entities or subsidiaries identified by the U.S. Department of State as being under the control of or acting on behalf of the Cuban military, intelligence, or security services ("Cuba Restricted List"):

- Twenty-seven hotels and ten stores in Havana and old Havana controlled by Corporacion CIMEX SA, Compania Touristica Habaguanex, SA, the Grupo de Administracion Empresarial SA (also known as "GAESA"), and Grupo Turismo Gaviota are now off limits to U.S. persons. These entities control large segments of the hospitality industry in Cuba.
- The Cuba Restricted List also includes hotels in Santiago de Cuba, Varadero, Pinar del Rio, Baracoa, Cayos de Villa Clara, Holgun, Jardines del Rey, and Topes de Collantes.
- The new prohibitions also extend to other areas of the Cuban economy, including listed container terminals, providers of customs services, real estate firms, satellite television providers, and a number of other businesses that travelers may encounter, including shopping malls, rum producers, and beverage manufacturers.

Beyond potential business implications, the revised CACR once again prohibit individually arranged "people-to-people" educational travel that many U.S. persons had used to travel to Cuba. As announced in June, the regulations allow for those who had made travel arrangements prior to the June 16, 2017, announcement to continue with those plans, provided that travel does not include new travel-related transactions with entities on the Cuba Restricted List after November 9, 2017. People-to-people educational travel must now be conducted under the auspices of an organization subject to U.S. jurisdiction and accompanied by an employee or agent of that organization.

#### Changes to Export Administration Regulations

Like the CACR, revisions to the EAR reflect the administration's support for free enterprise in Cuba, while cracking down on those that support the Cuban government or its officials. The Bureau of Industry and Security simplified and expanded the License Exception Support for the Cuban People, 15 C.F.R. § 740.21. Now, all eligible items (which excludes medicine, medical devices, or agricultural commodities) that are designated EAR99 or that are controlled for antiterrorism purposes only may be exported or reexported to Cuba for use in Cuban private sector activities, except for items that would be



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used to primarily generate revenue for the state or contribute to the operation of the state.

Conversely, the Bureau of Industry and Security implemented a policy of denial for license applications for the export or reexport of items to entities or subentities on the Cuba Restricted List, unless those transactions are determined to be consistent with the NSPM.

The CACR and EAR revisions also expand the definition of individuals considered to be prohibited officials of the Government of Cuba, which limits the availability of license exceptions available to export or reexport items subject to the EAR to those officials, whether related to their government function or not.

### Working with the New Regulations

For those who had begun to take advantage of the previously eased sanctions, the release of the regulations implementing the policy change announced in the NSPM is likely welcome news, reducing the uncertainty of how far the rollback might go.

Although many of the provisions authorizing private sector economic activity remain, the scope of general licenses and license exceptions for authorized transactions with, and exports of goods and technology to, Cuba remains narrow.

Finally, it should be noted that while commercial screening tools are beginning to rollout revisions to their screening databases to reflect the new Cuba Restricted List, the online tools provided by the government do not appear to have been updated at this time. Accordingly, compliance officials must exercise caution when screening counterparties to avoid falling prey to a false negative screening result.

Department of State as being under the control of or acting on behalf of the Cuban military, intelligence, or security services.



## TWO KEY TAKEAWAYS

1. The publication of revised regulations regarding economic activity with Cuba reduces some of the uncertainty for companies pursuing opportunities there, but the range of allowed activities is limited.
2. U.S. companies taking advantage of the limited opportunities to conduct business in Cuba must be cautious regarding transactions with hotels, stores, and other tourist-related businesses to ensure they are not on the Cuba Restricted List.

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