

ARTICLE

BIS Publishes Sweeping Amendments Easing Trade Restrictions on Cuba

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To read about the OFAC amendments concerning sanctions, click [here](#).

The U.S. Department of Commerce's Bureau of Industry and Security (BIS) published sweeping amendments to the Export Administration Regulations (EAR), implementing the changes first announced by the President on December 17, 2014 and paving the way for increased trade and engagement with Cuba. Unlike other sanctions programs, BIS has primary jurisdiction over exports to Cuba; indeed, the U.S. Treasury Department's Office of Foreign Assets Control's (OFAC) Cuban Assets Control Regulations include a general license permitting exports of U.S.-origin goods if authorized by BIS.¹ The EAR require a license to export and reexport all items subject to the EAR, including EAR99 items, to Cuba, unless certain limited license exceptions apply.² BIS's amendments generally are designed to ease these export restrictions in order to help improve living conditions, empower private sector economic activity, strengthen civil society, and promote the free flow of information in Cuba, as well as to simplify the donation process and protect the environment.

New License Exception SCP: One of the most significant changes published today is the creation of new License Exception Support for the Cuban People (SCP). This new exception to the EAR's licensing requirements authorizes exports and reexports of certain items subject to low-level export controls (*i.e.*, EAR99 items or items controlled for export only for anti-terrorism reasons) to improve living conditions and promote economic activity in Cuba.³ In this regard, License Exception SCP authorizes exports and reexports, whether sold commercially or donated, of building materials, equipment, and tools for use by the private sector to construct or renovate privately-owned

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buildings; tools and equipment for private sector agricultural activity; and tools, equipment, supplies, and instruments for use by private sector entrepreneurs.

To help strengthen civil society in Cuba, License Exception SCP also authorizes certain exports and reexports of donated items subject to low-level controls to be used in scientific, archaeological, cultural, ecological, educational, historic preservation, or sporting activities, along with the temporary export (for a two-year period) of certain items by persons departing the United States for their use in such activities or for professional research. The activities generally cannot relate to military items or items controlled for export purposes for reasons other than anti-terrorism controls. In addition, items subject to low-level controls are authorized for export and reexport to human rights organizations, individuals, and non-government organizations that promote independent activity intended to strengthen Cuba's civil society.

Finally, to improve and support the free flow of information in Cuba, License Exception SCP permits the export and reexport of items subject to low-level controls for telecommunications, such as access to the Internet, use of Internet services, and the creation and upgrade of telecommunications infrastructure, and items for use by news media personnel and U.S. news bureaus.

Revisions to License Exception CCD: BIS's amendments also revise License Exception CCD, which authorizes exports and reexports of specified consumer communications devices (*e.g.*, mobile phones, computers, modems, etc.) to eligible individuals and independent non-governmental organizations in Cuba.⁴ The amendment removes the requirement that such items be donated, increasing the incentive to ship these items to Cuba by permitting their commercial sale. BIS's revision to License Exception CCD also updates the list of eligible items under the exception.

Expansion of License Exception GFT: Further, the new rule expands License Exception GFT, which permits certain shipments of gift parcels and humanitarian donations to individuals and religious, charitable, and educational organizations in Cuba.⁵ The revisions remove a note that previously prohibited consolidated shipments of multiple parcels to individuals in Cuba and other foreign countries. Although the former requirement was not limited to Cuba, practically speaking, BIS had received license applications to cover consolidated shipments only for Cuba and thus sought to eliminate this burdensome technical limitation.

Favorable Licensing Policy for Environmental Protection: BIS now has a general policy of approval for license applications for items necessary for the environmental protection of U.S. and international air quality, waters, and coastlines. The new favorable licensing policy includes items related to renewable energy and energy efficiency, making it easier for companies in these industries to receive approved licenses for shipments to Cuba.

BIS's new authorizations, along with OFAC's amendments to its Cuba sanctions regulations, not only chart a new course in U.S. relations with Cuba, but also loosen trade restrictions and effectively open a market that has long been closed to U.S. manufacturers and exporters.

[1] 31 C.F.R. § 515.533.

[2] 15 C.F.R. §§ 746.1(a)(1) & 746.2.

[3] License Exception SCP is in new § 740.21 of the EAR.

[4] 15 C.F.R. § 740.19.

[5] 15 C.F.R. § 740.12.