

## Trade & Customs - USA

### Departments of Treasury and Commerce Ease Cuba Restrictions

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On September 3 2009 the Departments of the Treasury and Commerce took action regarding President Obama's announcement in April 2009 that the US government would ease restrictions on Cuba. The president said that he wanted to promote a "freer flow of information and humanitarian items" to Cuba. The two departments published regulatory amendments that detail how the agencies will ease restrictions on travel to Cuba and open up business opportunities on the island for US telecommunications providers. However, while the new rules for family visits to Cuba are relatively straightforward, the travel rules for companies that supply telecommunications, agricultural and medical items still pose some hurdles.

The Department of the Treasury Office of Foreign Assets Control (OFAC) amended the Cuban Assets Control Regulations to authorize all transactions involved in the provision of telecommunications services between the United States and Cuba, including roaming service agreements with telecommunications service providers in Cuba. The OFAC amendments also authorize the establishment of facilities to provide telecommunications services linking the United States and Cuba, including fibre-optic cable and satellite facilities.

The OFAC also created a general licence for travel related to sales of telecommunications devices, including commercial marketing, sales negotiation, accompanied delivery and servicing in Cuba of telecommunications-related items. A general licence normally permits travel without any permission from or notification to the OFAC. However, this new general licence requires travellers to submit a written report describing the purpose and agenda of the travel at least 14 days in advance of each departure. In addition, travellers must report back to the OFAC within 14 days of their return regarding:

- the business activities conducted;
- the persons with whom the traveller met in the course of such activities; and
- the expenses incurred.

In addition, the OFAC created a similar general licence for travel related to sales of agricultural products, medicine and medical devices to Cuba, subject to the same reporting requirements as the general licence for telecommunications-related travel. It is unclear whether the reporting requirements will diminish enthusiasm among US companies to travel to Cuba to pursue authorized sales, particularly if there is a chance that portions of these reports might be released under the Freedom of Information Act.

The OFAC's new rules are accompanied by new rules from the Department of Commerce Bureau of Industry and Security (BIS) that (i) authorize the export of items that will improve communications services between the United States and Cuba, and (ii) expand the scope of items that US persons may donate to family members in Cuba. In addition, the BIS amended its licensing policy to permit case-by-case review of exports or re-exports of all items necessary to provide efficient and adequate telecommunications links, including satellite radio and satellite television, between the United States and Cuba. The BIS expressly recognized that the establishment of links through third countries may be necessary to establish adequate links between the United States and Cuba. The BIS amendments also authorize the donation of certain consumer telecommunications devices to Cuba under a new licence exception for consumer communications devices.

The OFAC's new rules effectively permit Cuban-Americans to visit close family relatives in Cuba as often as they like and to stay for as long as they like. The Bush administration limited travel to once every three years and limited trip durations to 14 days. The new rules also increase the amount that visitors may spend each day while in Cuba. Some have argued that a significant inflow of currency into Cuba through US relatives could help spur the development of small businesses, some of which the Cuban government allows.

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