

Alert

September 29, 2020



Up in Smoke: OFAC Further Erodes Obama-Era Cuba Rules

On September 24, 2020, the U.S. Department of the Treasury Office of Foreign Assets Control (OFAC) amended the Cuban Assets Control Regulations (CACR) to further restrict U.S. engagement with Cuba in order to deny revenue to the Cuban regime. OFAC also published a number of Frequently Asked Questions to help clarify the amendments. The regulations, which are effective immediately, target several areas that had been to some degree liberalized by the Obama administration, including lodging in Cuba, the importation of Cuban alcohol and tobacco products, and certain categories of authorized travel.

Lodging in Cuba

Persons subject to U.S. jurisdiction are now prohibited from lodging, paying for lodging, or making a reservation on behalf of a third party at a property identified by the U.S. Secretary of State as one that is owned or controlled by the Cuban government, a prohibited official of the Cuban Government, a prohibited member of the Cuban Communist Party, or a close relative of any of the foregoing. The names, addresses, and other details of properties subject to this prohibition will be identified in a new "Cuba Prohibited Accommodations List" published by the State Department.¹

OFAC advised that lodging arrangements at any prohibited properties will be permitted as long as those arrangements were initiated prior to the State Department's addition of the property to the list as published in the Federal Register. Once the list is published, new lodging-related transactions with such properties are prohibited.

Imports of Alcohol and Tobacco Products

Previously, U.S. persons were allowed to bring Cuban-origin alcohol and tobacco products into the United States in their accompanied baggage as long as the goods were for personal/non-commercial use. The CACR now prohibit importation of Cuban-origin alcohol and tobacco products into the United States from Cuba or third countries. U.S. persons are still allowed to purchase and consume such products outside of the United States.

Travel-Related Restrictions

Under the CACR, U.S. persons wishing to travel to Cuba must be authorized to do so by either a general or specific license from OFAC. Although OFAC has published several general licenses for certain categories of travel, the September 2020 amendment eliminates provisions within two such categories.

With regard to the general license for travel and transactions incident to professional research and meetings in Cuba, OFAC has eliminated the general authorization for U.S. persons to organize or attend professional meetings and conferences. U.S. individuals will still be generally authorized to conduct research, but those wishing to attend professional meetings or conferences will have to apply for and be granted a specific license from OFAC.

In addition, OFAC has significantly curtailed the general license related to public performances, clinics, workshops, athletic and non-athletic competitions, and exhibitions. All of these activities



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will now require a specific license, except for athletic competitions involving amateur or semi-professional athletes or teams that meet the following criteria:

1. The athletic competition in Cuba is held under the auspices of the international sports federation for the relevant sport;
2. The U.S. participants in the athletic competition are selected by the U.S. federation for the relevant sport; and
3. The competition is open for attendance, and in relevant situations, participation, by the Cuban public.

The CACR continue to evolve under the Trump administration's foreign policy to deny the Cuban regime sources of revenue. We encourage anyone interested in transacting business with Cuba or a Cuban national to seek the advice of legal counsel. We will continue to monitor developments regarding these policy changes and will provide further guidance as details become available.

¹ This should not be confused with the Cuba Restricted List, which is also published by the State Department. The Cuba Restricted List identifies entities with which U.S. persons are prohibited from engaging in direct financial transactions because such transactions would disproportionately benefit the Cuban military, intelligence, and security services at the expense of the Cuban people or private enterprise in Cuba. While there is significant overlap between the Cuba Restricted List and the Cuba Prohibited Accommodations List, they are not identical and U.S. persons traveling to Cuba should review both lists.