

BIS issues final rule restricting additional exports and reexports to Cuba

22 October 2019

On 21 October 2019 the Bureau of Industry and Security (BIS) issued a final rule amending Cuba-related provisions in the Export Administration Regulations (EAR). The new rule further restricts exports and reexports of items to Cuba, consistent with the Trump administration's goal of decreasing Cuban government revenue and other benefits it derives from exports and reexports. Most significantly, the de minimis threshold for exports to Cuba of non-U.S.-origin items has been reduced from 25 percent to 10 percent controlled U.S.-origin content, putting Cuba in the same category as other comprehensively sanctioned countries (e.g., Iran and North Korea). Other changes include narrowing of License Exception Aircraft, Vessels and Spacecraft (AVS) and License Exception Support for the Cuban People (SCP).

De minimis rule changes from 25 percent threshold to 10 percent

A BIS license, or license exception, will now be required to export or reexport non-U.S.-made items to Cuba that contain greater than 10 percent controlled U.S.-origin content (by value). BIS will operate under a general policy of denial of license applications for exports to Cuba of items containing more than de minimis U.S. content, unless another licensing policy applies as described in 15 Code of Federal Regulations § 746.2(b).

Policy of denial for lease of aircraft to Cuban state-owned airlines

The new rule sets forth a general policy of denial of license applications to export or reexport aircraft leased to Cuban state-owned airlines. Such applications previously were subject to a policy of approval. BIS will also be revoking existing licenses for such exports or reexports within seven days of the rule change.

Clarifications and amendments made to License Exception AVS

The new rule clarifies that aircraft and vessels subject to the EAR that are leased or chartered by a Cuban national, or nationals of terrorist-supporting countries, are not eligible for License Exception AVS. It also adds restrictions on the sale or transfer of operational control of foreign and U.S.-registered aircraft. License Exception AVS is, however, still available for export or reexport to Cuba of cargo vessels for hire or temporary sojourn, provided that all conditions are met. BIS will operate under a general policy of denial for licenses related to aircraft and vessels chartered by, or on behalf of, the Cuban government. BIS will review license applications for other Cuban nationals pursuant to the original general policy of approval.

Revisions made to License Exception SCP

BIS has made changes to narrow License Exception SCP to ensure the Cuban people, not the government, are the beneficiaries of items exported or reexported under this authorization. License applications for the export or reexport of these items no longer eligible for License Exception SCP will be reviewed under the general policy of denial, with exceptions (i.e., 15 Code of Federal Regulations § 746.2(b)).

- **Donated items:** Prior to the issuance of this new rule, License Exception SCP allowed export or reexport of certain donated items for scientific, technological, archeological, cultural, ecological, educational, historic preservation, or sporting activities. The new rule now excludes donations to organizations administered or controlled by the Cuban government or communist party.
- **Telecommunications infrastructure items:** The license exception allowing export or reexport of items for telecommunications infrastructure creation and upgrades has been clarified – the license exception will only cover infrastructure items. The export or reexport to Cuba of items used to connect individuals (non-backbone items) to Cuban government-related end users will require a license.
- **Promotional items:** The rule eliminates the authorization for export or reexport of free items used for promotional purposes. BIS' concern is that the Cuban government has been the primary beneficiary of these items. For that reason, promotional items used by the Cuban private sector are still within License Exception SCP so long as they meet the relevant criteria. Items to be exported or reexported to the Cuban government will require a license.

BIS also updated their [Cuba Frequently Asked Questions](#) document pursuant to these changes. These rule changes are in furtherance of the Trump administration's policy on Cuba as articulated in the [National Security Presidential Memorandum on Strengthening the Policy of the United States Toward Cuba](#) of **16 June 2017**. This is the latest in a series of regulations tightening restrictions on activities related to Cuba.

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