



The Impact on Life Sciences Companies of Changes to Cuba Sanctions Program

Michael E. Burke

On December 18, 2014, President Obama announced that the United States would reduce the more-than-fifty-year-old comprehensive economic sanctions program against Cuba. Liberalization of this sanctions program will benefit life sciences companies in several ways:

1. It will make it easier for employees of U.S.-based life sciences companies to travel to Cuba, including engaging in certain business-related travel. This change will not make travel to Cuba (which requires U.S. citizens obtain an entry visa prior to departure) as easy as travel to, say, Canada, but it will reduce the compliance burden on, and the export control risk facing, U.S. life sciences companies as to Cuba-related travel.
2. Revisions to the sanctions program will authorize expanded commercial sales/exports from the United States of certain goods and services. A specific list of 'authorized' U.S.-origin goods/products has not been developed, but life sciences companies whose product portfolios include agricultural or livestock products should see a specific opportunity.
3. The proposed changes will facilitate the processing of authorized financial transactions between the United States and Cuba. U.S. financial institutions will be permitted to open correspondent accounts at Cuban financial institutions. These new links will make it easier, faster, and more efficient for U.S. life sciences companies to be paid on future Cuba business.
4. Non-U.S. affiliates of U.S. life sciences companies will be allowed to provide services to, and engage in financial transactions with, Cuban individuals in third countries. Previously, U.S. companies and their non-U.S. affiliates were prohibited from transacting with any Cuban national anywhere in the world.
5. The policy revisions call for the issuance of general licenses to unblock the accounts at U.S. banks of Cuban nationals who have relocated outside of Cuba. This will enable U.S. life sciences companies to transact as to the unblocked assets.
6. U.S. export controls as to Cuba will become more consistent with those of our largest trading partners, including Canada and European Union member states. The controls will not be exactly the same, but the conflict between these control regimes will be reduced. Increased consistency will enable non-U.S. life sciences companies to coordinate their export compliance strategy more efficiently and will reduce the that they could violate (or be seen to violate) their home country's law by abiding by the U.S. sanctions program against Cuba.

The most important point to be taken from the various U.S. government announcements on this topic is from an update to Office of Foreign Assets Control ("OFAC") at the U.S. Department of the Treasury OFAC's sanctions FAQ webpage:

OFAC will implement the Treasury-specific changes via amendments to its Cuban Assets Control Regulations. The Department of Commerce will implement the remainder of the changes via amendments to its Export Administration Regulations. OFAC expects to issue its regulatory amendments in the coming weeks. None of the announced changes takes effect until the new regulations are issued.

In other words, the timing, structure, and substance of amendments will take some time to develop. We don't yet know, for example, the precise list of products or goods that will be 'authorized' for export to Cuba from the U.S. under these revisions. We don't know whether potential U.S. exporters will have some form of notice or other screening requirement in order to avail themselves of the to-be-drafted authorization. It remains possible—probable even—that U.S. economic sanctions would remain in force as against parts of the Cuban government and companies or persons closely associated with the Cuban government. Congress will have to legislate to change certain aspects of the Cuban Sanctions Program, and it is not known whether they have the desire or political will to so act.

However, life sciences companies should do (at least) two things in the near term to position themselves to benefit from these proposed changes: (i) review your export compliance policy to determine what can or should be changed in light of potential changes to the sanctions program; and (ii) carefully evaluate how your company could begin to access the Cuban market.

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