

SUPPORT FOR THE CUBAN PEOPLE

Background

On October 6 of this year, President Clinton announced a number of measures intended to further the ability of individual Americans and U.S. Non-Governmental Organizations (USNGOs) to contribute to the strengthening of civil society in Cuba. Among these measures was the decision to create a new license category in the Cuban Assets Control Regulations based on the provisions of the Cuba Democracy Act of 1992. On October 13 the Treasury Department issued regulation 515.574 based on the "Support for the Cuban People" section of the Cuban Democracy Act. This new regulation allows for the issuance of specific licenses for transactions related to activities that will support the development of civil society in Cuba. The license category broadens the scope of licensable activities beyond that which may be permitted under educational, research and humanitarian regulations.

The Treasury Department has authorized by general license commodity exports that have been licensed by the Commerce Department. A Department of Commerce regulation is planned that will cover commodity exports to Cuba when such exports are deemed to contribute to the same purpose for which the new Treasury regulation was issued. However, until this new Commerce Department license is issued, applicants for Treasury licenses under the Support for the Cuban People license category should be aware that the Commerce Department can only license exports of commodities authorized pursuant to present regulations permitting educational, religious and humanitarian exports.

The License Regulation

Section 515.574 Support for the Cuban People reads as follows:

"(a) Specific licenses may be issued on a case-by-case basis for transactions intended to provide support for the Cuban people including, but not limited to, the following:

- (1) Activities of recognized human rights organizations; and
- (2) Activities of individuals and non-governmental organizations which promote independent activity intended to strengthen civil society in Cuba.

(b) Licenses will only be issued pursuant to this section upon a clearly articulated showing that the proposed transactions are consistent with the purposes of this part and that no significant accumulation of funds or financial benefit will accrue to the government of Cuba."

The Application and Review Process

Applications should be submitted to the following address:

Director of the Office of Foreign Assets Control
Department of Treasury
1500 Pennsylvania Ave, N.W. - Annex
Washington, D.C. 20220
phone: (202) 622-2480 fax: (202) 622-1657

Applications for an OFAC Support for the Cuban People license will be referred by Department of Treasury to the Department of State for interagency review, prior to issuing or denying the license.

License applications should include information concerning:

- Description of the U.S. applicant, including relevant experience;
- Description of the Cuban counterpart organization;
- Description of the proposed activity, including proposed travel, commodities and financial transactions; and
- Description of proposed monitoring and evaluation arrangements.

Support for the Cuban People activities may include technical assistance, training, financial assistance and commodities. If commodities are included, a Commerce Department license should also be obtained by contacting the following:

Office of Exporter Services
P.O. Box 273
Bureau of Export Administration
Department of Commerce
Washington, D.C. 20230
phone: (202) 482-4811 fax: (202) 482-3617

Review Considerations

The following are some of the main factors that will be considered in reviewing applications.

Groundwork

License applications require "a clearly articulated showing" that the proposed transactions are consistent with the terms of the regulation. For most activities, this will require the applicant to be reasonably familiar with the target group and the realities of operating in Cuba. Other NGOs that have operated in Cuba provide an excellent source of information. Prospective license applicants who would like advice on their proposed activities prior to formally soliciting a license may contact Kevin Sullivan in the Department of State's Office of Cuban Country Affairs at 202-647-9273. You may also contact the co-chairs of the Support for the Cuban People Interagency Working Group -- Peter Orr, Senior Advisor for the Latin American Bureau at the Agency for International Development (202-647-9155) and Michael Ranneberger, Director of Cuban Affairs, Department of State (202-647-9272). In many instances the applicant may need to visit Cuba in order to develop a project proposal. Travel licenses will be granted for a limited period of time for organizations and individuals that need to conduct an on-island assessment to develop the specifics of a sound Support for the Cuban People activity. Licenses are encouraged to visit the U.S. Interest Section (phone: 537-320-551) for additional information that may be helpful in conducting their research and developing their proposals.

Applicants, Capabilities and Accountability

An important factor in licensing determinations is the degree of assurance that the USG can have that the applicant has the wherewithal to ensure that the proposed activity will be carried out as described in the

license application and consistent with embargo regulations. Prior experience with the type of activity proposed and/or prior experience and familiarity with Cuba, while not an absolute requirement, do serve to indicate that the application has the ability to effectively carry out the activity in Cuba as proposed. Clearly some activities would demand greater experience than others. The applicant's plans for monitoring the activity and ensuring accountability will also be an important consideration in the review process.

Cuban Counterpart Organizations

Whether a proposed activity is considered to promote the purposes of the Support for the Cuban People regulation will depend in large part upon the designated Cuban counterparts and/or beneficiaries. Recognized Cuban human rights organizations are specifically mentioned in the regulation as an eligible category. For these organizations and other truly independent NGOs, such as churches and church-affiliated organizations and independent professional organizations such as the independent economists, a fairly broad range of assistance will be considered for licensing. There is no ambiguity in the role that these organizations have in strengthening civil society in Cuba, and the U.S. Government particularly encourages support to them. Applicants should understand that many independent organizations in Cuba are not officially recognized by the Cuban Government.

On the other hand, there are a large number of organizations in Cuba that are classified by the government of Cuba as NGOs, but which to a degree are affiliated with and/or controlled by the government. Some have been established by the government to pursue the political aims of the government or to attract external assistance. Within this broad array, different organizations evidence varying degrees of independence of thought and action.

With the aim of promoting a diverse civil society in Cuba, the USG will consider applications for assistance that may involve the participation of government-affiliated NGOs where there is evidence that the particular organization demonstrates a degree of independence. Given the connection of these organizations with the Cuban Government, it becomes particularly important that the license applicant's proposed project clearly and credibly contribute to furthering the independence of the organization, or of the group within the organization that is involved in the activity. A higher degree of monitoring by the applicant will also be necessary when undertaking an activity with a counterpart organization that is not truly independent. Licensees may be called upon to subsequently provide documentation to confirm that the terms of the license were adhered to.

Promoting Independent Activity

For a Cuban civic organization that is already truly a-independent, virtually any assistance activity that would strengthen that organization's ability to carry out its mandate would serve the purposes of strengthening civil society. For an organization that is subject to a degree of government control, the proposals must convincingly demonstrate the potential to increase the autonomy of the organizations. Potential activities could be aimed at increasing the self-management of and pluralism within the organization or at reducing its dependence on ideas, initiative and direction from the government.

Activities by nonprofit USNGOs to promote independent economic activity may also be considered for approval under the Support for the Cuban People license regulation. Examples of potential beneficiaries include the self-employed, private farmers, and young people interested in training to become

entrepreneurs. Consistent with the embargo, however, U.S. commercial entities will not be eligible for such licenses.

For the purposes of licensing Support for the Cuban People, "independent activity" means activity that is undertaken at an organization's own initiative and that is not directed or controlled by the Cuban Government. Independence does not require that a Cuban organization take any outward position of criticism toward the Cuban Government. In the context of the Cuban Government's restrictions on free expression and association, however, an organization's willingness to articulate ideas that may not accord with official government positions or communist party doctrine is certainly an indicator of independence.

Minimizing Funds to the Government

Direct transfers of funds to the Cuban Government or its agencies to conduct activities generally will not be licensed. Hotel expenses, the purchase of essential project commodities in state stores, and customs duties are examples of expenditures that would normally be permitted. Applications should contain cost estimates for all financial transactions covered by the license request, and should include the means by which funds will be transferred to Cuba. Whether the proposed activity "provides a significant accumulation of funds or financial benefit" to the government of Cuba will be determined based on the merits and reasonable needs of the activity.

These guidelines were prepared under the direction of the Special Adviser to the President and the Secretary of State for Cuba by the Support for the Cuban People Interagency Working Group. The Working Group is chaired by the Department of State and A.I.D. and includes representatives from the NSC, the Department of Treasury and Commerce and USIA.