

Temporary Sojourn License Applications for Aircraft and Vessels to Cuba

Temporary Sojourn License Applications for Aircraft to Cuba:

Under 15 C.F.R. § 746.2(b)(5), applications for exports of aircraft on temporary sojourn to Cuba will be considered on a case-by-case basis. These guidelines are meant to inform export license applicants of the criteria that will be considered in such case-by-case evaluations.

License Guidelines

Generally speaking, temporary sojourn licenses for aircraft not engaged in regularly scheduled commercial passenger/cargo service will be granted only in limited circumstances. The following are the specific criteria that the Bureau of Industry and Security (BIS) will consider in evaluating license applications:

1. Whether the export of the aircraft is explicitly and primarily to facilitate the delivery of humanitarian goods or religious articles, or is otherwise in the foreign policy interests of the United States. No license will be approved to facilitate unlawful activity of any kind.
2. Whether the capacity of the aircraft, both in terms of cargo and passengers, is appropriately suited to the proposed use of the aircraft. Generally, the cargo capacity of the aircraft should not greatly exceed the volume of cargo being carried.
3. Whether the use of the aircraft is necessary to accomplish the purpose of the temporary sojourn. The applicant should take into account the other means of travel and freight service to Cuba that are available (e.g. charter and third country air services and commercial freight service).

To aid BIS in evaluating applications, applicants are required to submit the following information:

- The cargo capacity of the aircraft, represented in cubic feet.
- The passenger capacity of the aircraft.
- The inventory of the proposed cargo, including the volume in cubic feet of the cargo.
- Full identifying information concerning the designated ultimate consignee and/or end user(s) and stated end use for authorized exports to Cuba that will be facilitated by the aircraft (e.g., specific churches, human rights organizations or individuals or non-governmental organizations that promote independent activity intended to strengthen civil society in Cuba who will receive the exported goods)
- The number of proposed passengers and an explanation of why that number of passengers is essential to unloading and/or delivering exported goods once they are unloaded.

- The length of time the aircraft will remain on the ground in Cuba and rationale for why the aircraft will be in Cuba for that period of time.
- License numbers and expiration dates of the valid BIS license(s) authorizing export of the goods, and, if available, the Office of Foreign Assets Control (OFAC) travel license(s) for passengers accompanying the goods.

Even if an applicant holds a BIS license for the export of goods to Cuba and an OFAC license authorizing travel to Cuba, approval of a temporary sojourn license authorizing the export of an aircraft not engaged in regularly scheduled passenger/cargo service to Cuba is not assured.

We invite applicants to submit any additional information supporting a claim that the use of such an aircraft to facilitate the delivery of authorized exports to Cuba is necessary. A determination regarding a license application to export an aircraft to Cuba does not reflect a reanalysis of the merits of any existing BIS or OFAC license and does not affect the validity of such licenses. Applicants who do not receive authorization to export an aircraft to Cuba are not prohibited from using other lawful means to carry out transactions or to transport exports that are authorized by the United States. Currently, there are U.S.-based charter companies that fly into five airports in Cuba under valid U.S. authorization. Several commercial flights to Cuba are also available from third countries. Both commercial air and commercial sea freight service to Cuba are available to facilitate approved exports to Cuba.

License Conditions

All licenses for the temporary sojourn of aircraft to Cuba are subject to the following conditions:

1. Not later than 10 calendar days after the return from each authorized trip made to Cuba, the licensee shall provide an inventory of the goods and the number of passengers transported to Cuba to the Department of Commerce for each flight made under the approved license.
2. The licensee is responsible for ensuring that only export goods licensed by BIS and passengers licensed by OFAC may be transported by the aircraft. No goods or passengers may be loaded onto or board the aircraft while that aircraft is in Cuba.
3. The licensee is responsible for ensuring that neither the aircraft nor its parts, components or equipment are disposed of in Cuba.
4. The licensee is responsible for ensuring that no national security controlled equipment or technical data is accessible to Cuban nationals at any time during the aircraft's temporary sojourn, including when the aircraft is being serviced.
5. The licensee is responsible for ensuring that the licensed aircraft travels directly between the United States and Cuba, without landing in a third country. In the event that an in-flight emergency requires the licensed aircraft to land in a third country while in transit between the United States and Cuba, the licensee is responsible for submitting a written report to BIS within 15 calendar days of the incident, describing in narrative form (a) the nature of the emergency, (b) the date, location, and condition of the emergency landing, (c) the circumstances under which the aircraft was able to continue its journey. Note: No goods or passengers may be loaded onto or board the aircraft when an emergency landing

is made but necessary replacement parts or components may be installed on the aircraft to ensure the safe completion of its journey.

6. All reports are to be sent to one of the following addresses: CONDITION FOLLOW-UP; OPERATIONS SUPPORT DIVISION; 14TH STREET AND PENNSYLVANIA AVENUE, NW; ROOM 2705; WASHINGTON, DC 20230 OR CONDITION FOLLOW-UP; OPERATIONS SUPPORT DIVISION; PO BOX 273; WASHINGTON, DC 20044 OR VIA EMAIL TO EARREPTS@BIS.DOC.GOV

Licenses will generally authorize a maximum of four trips to Cuba. A temporary sojourn license is valid for one year from the date of issuance.

Temporary Sojourn License Applications for Vessels to Cuba:

Under 15 C.F.R. § 746.2(b)(5), applications for exports of vessels on temporary sojourn to Cuba will be considered on a case-by-case basis. Generally speaking, temporary sojourn licenses will not be granted unless the vessel is solely registered to transport goods and is engaged in the regular transport of bulk commodities. Exceptions will be granted only in circumstances consistent with the foreign policy interests of the United States.