

**BILLING CODE 3510–33–P**

**DEPARTMENT OF COMMERCE**

**Bureau of Industry and Security**

**15 CFR Parts 740, 746 and 772**

**[Docket No.]**

**RIN 0694-AG67**

**Enhancing Support for the Cuban People**

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Final rule.

**SUMMARY:** This rule amends the Export Administration Regulations (EAR) to expand the scope of License Exception Support for the Cuban People (SCP) to facilitate engagement between the American and Cuban people; the free flow of information to, from, and among the Cuban people; and independent economic activity generated by Cuba's private sector. It also makes temporary sojourns of most vessels to Cuba eligible for License Exception Aircraft, Vessels and Spacecraft (AVS). Additionally, this rule creates a case-by-case review policy of license applications to export and reexport to Cuba items to ensure the safety of civil aviation and safe operation of commercial passenger aircraft. Finally, it amends the deemed export and deemed reexport license requirements for releases of technology and source code to Cuban nationals; removes certain unintended restrictions on exports and reexports under License

Exception SCP and License Exception Consumer Communications Devices (CCD); and makes certain technical corrections to License Exception Agricultural Commodities (AGR).

**DATES:** This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Foreign Policy Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, Phone: (202) 482-4252.

**SUPPLEMENTARY INFORMATION:**

**Background**

The United States maintains a comprehensive embargo on trade with Cuba. Pursuant to that embargo, all items that are subject to the Export Administration Regulations (EAR) require a license for export or reexport to Cuba unless authorized by a license exception. The Bureau of Industry and Security (BIS) administers export and reexport restrictions on Cuba consistent with U.S. policy and relevant law. Accordingly, BIS may issue specific or general authorizations in the form of licenses or license exceptions for transactions that support the goals of United States policy while the embargo remains in effect.

On December 17, 2014, the President announced that the United States is taking steps to chart a new course in bilateral relations with Cuba and to further engage and empower the Cuban people. The President explained that these steps build upon actions taken since 2009 that have been aimed at supporting the ability of the Cuban people to gain greater control over their own lives and determine their country's future. On January 16, 2015, the Commerce and Treasury

Departments took coordinated actions to implement certain elements of this policy, including changes to licensing policy and license exceptions in the EAR that are consistent with U.S. support for the Cuban people (*see* 80 FR 2286 and 80 FR 2291). Additionally, BIS published a rule implementing the rescission of Cuba's State Sponsor of Terrorism designation on July 22, 2015 (*see* 80 FR 43314).

Today, the Commerce and Treasury Departments are taking additional coordinated actions in support of the President's Cuba policy. This rule amends the terms of existing license exceptions that are available for Cuba, increases the number of license exception provisions that are available for Cuba, and creates a new licensing policy in the EAR to further promote private sector economic activity in Cuba, facilitate travel to Cuba for authorized purposes, and help ensure safety in civil aviation and safe operation of commercial passenger aircraft. This rule also makes the deemed export and deemed reexport license requirements for Cuba consistent with other sanctioned destinations.

### **Specific Changes Made by This Rule**

#### *Expansion of License Exception Support for the Cuban People (SCP)*

This rule revises § 740.21(b) and (d)(1) of the EAR to remove a requirement that items must be sold or donated when exported or reexported to authorized end-users in Cuba under License Exception Support for the Cuban People (SCP). Paragraph (b) authorizes certain exports and reexports to improve living conditions and support independent economic activity in Cuba. Paragraph (d)(1) authorizes certain exports and reexports to improve the free flow of information to, from, and among the Cuban people. When License Exception SCP was created in January 2015, BIS included text regarding sales or donations in paragraphs (b) and (d)(1) to clarify that

the provisions were not limited to exports and reexports of *donated* items. However, the construction of the sentences addressing sales or donations inadvertently precluded other types of exports and reexports intended to be covered under the license exception, such as those involving leased or loaned items. Consequently, BIS is removing the portions of paragraphs (b) and (d)(1) of License Exception SCP that refer to sales or donations of items to eliminate those unintended restrictions.

This rule revises paragraph (c)(2) of License Exception SCP to authorize certain temporary *reexports* to Cuba. Paragraph (c)(2) previously authorized certain temporary *exports* of items to Cuba from the United States for use in scientific, archeological, cultural, ecological, educational, historic preservation, or sporting activities, or in the traveler's professional research. This change authorizes travelers departing the United States *or* a foreign country to temporarily export or reexport authorized items to Cuba for eligible end-uses. Additionally, this rule adds professional meetings to the list of eligible end-uses in paragraph (c)(2). This rule also introduces a requirement that the items remain under the traveler's "effective control." The existing EAR definition of effective control in § 772.1 applies to this use of the term. The scope of eligible items (EAR99 or controlled on the CCL only for anti-terrorism reasons) is unchanged.

This rule adds a new paragraph (d)(4) to License Exception SCP to authorize exports and reexports of commodities and software to individuals and private sector entities in Cuba that will be used to develop software that will improve the free flow of information or that will support private sector activities described in paragraph (b) of License Exception SCP. The Cuban Government, Cuban Communist Party and certain officials thereof are designated as ineligible end users for commodities and software exported under paragraph (d)(4). Existing text in paragraph (d) limits the commodities and software authorized for export or reexport under this

new paragraph (d)(4) to those that are either EAR99 (*i.e.*, items subject to the EAR but not specified in any ECCN) or controlled on the CCL for anti-terrorism reasons only. For example, to qualify for export or reexport under new paragraph (d)(4), a general purpose software development kit must be either EAR99 or controlled in an ECCN where the only reason for control that applies to that kit is anti-terrorism and the kit's use in Cuba will be to develop software that will improve the free flow of communication and/or that will support private sector activities described in paragraph (b) of License Exception SCP.

This rule adds new paragraph (e) to License Exception SCP. Paragraph (e)(1) authorizes the export and reexport to Cuba of certain items for use by United States Persons (as defined in § 772.1 of the EAR) to establish, maintain, and operate physical premises in Cuba. Any resulting payments for leasing such physical premises are permitted only to the extent authorized by § 515.573 of the Cuban Assets Control Regulations (31 CFR 515.573). To be eligible for the exception under paragraph (e)(1), the end-users must be (1) entities organizing or conducting educational activities in Cuba authorized by the Department of the Treasury, Office of Foreign Assets Control (OFAC); (2) freight forwarders, common carriers and courier delivery services of authorized items transported between the United States and Cuba; (3) religious organizations engaging in religious activities in Cuba authorized by OFAC; or (4) persons that export or reexport any of the following items to Cuba:

- Aircraft or vessels on temporary sojourn that are authorized pursuant to paragraph (a) or (d) of License Exception Aircraft, Vessels and Spacecraft (AVS) in § 740.15 or license;
- Agricultural commodities that are authorized pursuant to License Exception Agricultural Commodities (AGR) in § 740.18 or license;

- Consumer communications devices that are authorized pursuant to License Exception Consumer Communications Devices (CCD) in § 740.19 or license;
- Materials, equipment, tools, supplies, or instruments that are authorized pursuant to paragraph (b) of License Exception SCP in § 740.21 or license;
- Telecommunications items that are authorized pursuant to paragraph (d)(1) of License Exception SCP in § 740.21 or license; or
- Medicines or medical devices that are authorized pursuant to license.

Items eligible for export and reexport to Cuba pursuant to paragraph (e)(1) of License Exception SCP are limited to those designated as EAR99 (*i.e.*, items subject to the EAR but not specified in any ECCN) or controlled on the CCL only for anti-terrorism reasons.

Paragraph (e)(2) of License Exception SCP authorizes the export and reexport to Cuba of certain items for use by certain additional eligible end-users to establish, maintain, and operate physical premises in Cuba. Any resulting payments for leasing such physical premises are permitted only to the extent authorized by § 515.573 of the Cuban Assets Control Regulations (31 CFR 515.573). To be eligible for this paragraph (e)(2), the end-users must be authorized by OFAC to provide telecommunications services and establish telecommunications facilities pursuant to 31 CFR 515.542(b)-(e) or to provide internet-based services pursuant to 31 CFR 515.578, including subsidiaries, branches, offices, joint ventures, franchises, and agency or other business relationships with any entity or individual who is a national of Cuba. The items authorized pursuant to paragraph (e)(2) are limited to those designated as EAR99 (*i.e.*, items subject to the EAR but not specified in any ECCN) or controlled on the CCL only for anti-terrorism reasons.

Paragraph (e)(3) of License Exception SCP authorizes the export and reexport to Cuba of certain items to be given away for free as gifts for promotional purposes, such as pens, notepads, hats, and t-shirts. Items eligible for export or reexport to Cuba pursuant to this paragraph (e)(2) are limited to those items of a type normally given away for free as gifts for promotional purposes that are designated as EAR99 (*i.e.*, items subject to the EAR but not specified in any ECCN).

BIS is creating paragraph (e) of License Exception SCP to facilitate engagement between the U.S. and Cuban people; the free flow of information to, from, and among the Cuban people; and independent economic activity in Cuba generated by Cuba's private sector.

This rule also creates new paragraph (f) to License Exception SCP to authorize certain temporary (not to exceed one year) exports and reexports to Cuba of EAR99 items and items controlled on the CCL only for anti-terrorism reasons. Paragraph (f) authorizes exports and reexports of the following:

- Commodities and software as tools of trade for use by the exporters or employees of the exporters to install, service or repair items that are subject to the EAR and that have been exported or reexported to Cuba under a license or license exception, or foreign-origin items that are not subject to the EAR but are owned and used exclusively by private sector entities in Cuba;
- Technology as tools of trade for use by certain persons for the installation, servicing or repair of items that are subject to the EAR and that have been exported or reexported to Cuba under a license or license exception, or foreign-origin items that are not subject to the EAR but are owned and used exclusively by private sector entities in Cuba;

- Kits of replacement parts or components for items that have been exported or reexported to Cuba under a license or license exception, or foreign-origin items that are not subject to the EAR but are owned and used exclusively by private sector entities in Cuba;
- Commodities and software for exhibition or demonstration at trade shows or to parties eligible to receive items under License Exception SCP; and
- Containers that are necessary for shipment of commodities being exported or reexported to Cuba under a license or license exception;

BIS is creating paragraph (f) of License Exception SCP to help support authorized travel and commerce.

*Expansion of License Exception Consumer Communications Devices (CCD)*

This rule revises § 740.19(a) of the EAR to remove references to sales or donations of eligible items authorized under License Exception CCD. License Exception CCD authorizes certain exports and reexports to improve the free flow of information to, from, and among the Cuban and Sudanese people. When License Exception CCD was created in September 2009 to authorize certain exports and reexports to Cuba, the license exception included a donation requirement. BIS revised License Exception CCD in January 2015 to authorize sales, in addition to donations, and to update the list of eligible items. (Sudan was added as an authorized destination in February 2015.) Instead of merely removing the word “donated” from paragraph (a) of License Exception CCD, the January 2015 revision added the phrase “either sold or” to that paragraph. That phrasing inadvertently precluded other types of exports and reexports intended to be authorized by the license exception, such as those involving leased or loaned



items. Consequently, this rule removes phrase “either sold or donated” from paragraph (a) to eliminate that unintended restriction.

*Availability of License Exception Aircraft, Vessels and Spacecraft (AVS)*

This rule revises § 764.2(a)(1)(x) of the EAR to make paragraphs (b) and (d) of License Exception AVS available for Cuba. It also amends § 740.15(b) and (d) of the EAR to add to License Exception AVS paragraphs (d)(4) and (d)(6) described below that apply only to Cuba.

Paragraph (b) of License Exception AVS authorizes certain exports and reexports of equipment and spare parts for permanent use on vessels and aircraft departing the United States. This paragraph also authorizes certain exports of ship and plane stores for use on board vessels and aircraft departing the United States. Paragraph (d) of License Exception AVS authorizes certain exports and reexports of vessels on temporary sojourn. Paragraph (a) of License Exception AVS, which authorizes certain exports and reexports of aircraft on temporary sojourn, was, prior to publication of this rule, available for Cuba.

This rule adds a note to paragraph (a) prohibiting an aircraft exported or reexported to a country pursuant to that paragraph from remaining in that country for more than seven consecutive days before it departs for a country to which it may be exported without a license.

This rule also adds new paragraph (b)(4) to License Exception AVS to specify that the commodities eligible for export and reexport to Cuba pursuant to paragraph (b) are limited to those designated as EAR99 (*i.e.*, items subject to the EAR but not specified in any Export Control Classification Number (ECCN)) or controlled on the Commerce Control List (CCL) only for anti-terrorism reasons.

Additionally, this rule adds new paragraph (d)(6) to License Exception AVS. Paragraph (d)(6) provides that only certain categories of vessels, as defined in 46 U.S.C. 2101, when engaged in specified activities are eligible for the license exception when destined for Cuba. The types of vessels and activities eligible for temporary sojourn to Cuba are as follows.

(1) Freight vessels, seagoing barges, tankers (transporting agricultural commodities as defined in § 772.1 of the EAR), and towing vessels that are involved in the transportation of items.

(2) Passenger vessels that are transporting passengers and items that other than automobiles unless the export of the automobile to Cuba is authorized by a license issued by BIS. The export or reexport to Cuba of personally-owned vehicles is not normally necessary to support authorized travel. However, if the need arises, the exporter or reexporter may submit a license application to BIS for review pursuant to the licensing policy in § 746.2 of the EAR.

(3) Recreational vessels destined for Cuba that meet one of the following criteria:

- The recreational vessels are necessary for and will be used in athletic competitions held under the auspices of the international sports federation for the relevant sport; or
- The recreational vessels are necessary for use in athletic or non-athletic sports competitions that are open for attendance, and in relevant situations participation, by the Cuban public.

Finally, this rule adds a note to paragraph (d) prohibiting a vessel exported or reexported to a country pursuant to that paragraph from remaining in that country for more than 14 consecutive days before it departs for a country to which it may be exported without a license.

BIS is making paragraphs (b) and (d) of License Exception AVS available for Cuba to help facilitate authorized travel and commerce. For clarity, BIS is adding notes to paragraphs (a)

and (d) specifying the amount of time an aircraft or vessel exported or reexported to a country pursuant to the paragraphs may remain in that country. Previously, BIS interpreted paragraph (a) to authorize temporary sojourns consisting of only one overnight stay while in-country (*see* 57 FR 30899, July 13, 1992). BIS selected the time periods of seven days for aircraft and 14 days for vessels based on its experience in licensing aircraft and vessels for temporary sojourn to Cuba. The vast majority of such licenses were for stays of seven days or less for aircraft and 14 days or less for vessels.

#### *New Licensing Policy for Civil Aviation Safety*

This rule amends the licensing policy for Cuba in § 746.2 of the EAR to add a policy of case-by-case review of license applications for exports and reexports of items to provide safety in civil aviation and safe operation of commercial passenger aircraft. Items that will be reviewed pursuant to this policy include aircraft parts and components related to safety of flight, weather observation stations, airport safety equipment, and commodities used for security screening of passengers. BIS is adding this licensing policy to support international aviation and passenger safety.

#### *Scope of License Requirements for Deemed Exports and Reexports*

This rule amends the license requirements for Cuba in § 746.2 of the EAR to specify that a license is required for the release of technology or source code on the CCL to Cuban nationals in the United States or a third country, but not for the deemed export or deemed reexport of technology or source code designated as EAR99. As described in § 734.2(b), any release of technology or source code subject to the EAR is deemed to be an export to the home country or countries of the foreign national unless the foreign national is lawfully admitted for permanent

residence in the United States or unless the foreign national is a protected individual under the Immigration and Nationality Act (8 U.S.C. 1324b(a)(3)). Additionally, any release of technology or source code subject to the EAR to a foreign national of another country is deemed to be a reexport to the home country or countries of the foreign national unless the foreign national is lawfully admitted for permanent residence. Prior to this amendment, a license was required for the deemed export or deemed reexport of any technology or source code subject to the EAR to a Cuban national. BIS is making this change for consistency with the current deemed export and deemed reexport license requirements for other sanctioned destinations.

*Technical Corrections to License Exception Agricultural Commodities (AGR)*

On July 22, 2015, BIS published a rule implementing the rescission of Cuba's State Sponsor of Terrorism designation (80 FR 43314). Among other amendments, that rule removed Cuba from Country Group E:1 in Supplement No. 1 to Part 740 of the EAR, which changed the general *de minimis* level for Cuba from 10 to 25 percent. Although the rule made certain technical and conforming changes to the EAR, BIS overlooked references to the former 10 percent *de minimis* level in paragraph (b)(3) of License Exception Agricultural Commodities (AGR) in Section 740.18 of the EAR. Consequently, this rule corrects the *de minimis* percentages referenced in paragraph (b)(3) of License Exception AGR.

*Conforming changes to definition of U.S. person.*

Paragraph (a) of the definition of U.S. Person in § 772.1 of the EAR identifies the EAR provisions to which the definition applies. This rule adds a reference to § 740.21(e)(1) to paragraph (a) of the definition. Paragraph (b) of the definition identifies EAR provisions that have definitions that have definitions that are specific to those provisions. This rule adds a

reference to § 740.21(f)(2) to paragraph (b) of the definition. Both changes are to make those paragraphs conform to charges that this rule makes to § 740.21.

### **Export Administration Act**

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended by the Notice of August 7, 2015, 80 FR 48233 (August 11, 2015), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

### **Rulemaking Requirements**

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a “significant regulatory action,” although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid OMB control number. This rule involves a collection of information approved under OMB control number 0694-0088 – Simplified Network Application Processing+ System (SNAP+) and the Multipurpose Export License Application, which are the methods for submitting all license applications, commodity classification requests and similar requests to BIS. The estimated annual total burden of all of those submissions is 31,833 hours. BIS believes that this rule will slightly reduce that burden because additional transactions will be eligible for export or reexport to Cuba pursuant to license exception, thereby reducing the number of license applications submitted to BIS.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget, by e-mail at [jseehra@omb.eop.gov](mailto:jseehra@omb.eop.gov) or by fax to (202) 395-7285 and to William Arvin at [william.arvin@bis.doc.gov](mailto:william.arvin@bis.doc.gov).

3. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States (*See* 5 U.S.C. 553(a)(1)). This rule is a part of a foreign policy initiative to change the nature of the relationship between Cuba and the United States announced by the President on December 17, 2014. Delay in implementing this rule to obtain public comment would

undermine the foreign policy objectives that the rule is intended to implement. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553, or by any other law, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are not applicable.

## **List of Subjects**

### *15 CFR Parts 740*

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

### *15 CFR Part 746*

Exports, Reporting and recordkeeping requirements.

### *15 CFR Part 772*

Exports

For the reasons set forth in the preamble, the Export Administration Regulations (15 CFR Parts 730-774) are amended as follows:

## **PART 740 – [AMENDED]**

1. The authority citation for 15 CFR Part 740 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 7201 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

2. Section 740.15 is amended by adding

a. A note to paragraph (a);

b. Paragraphs (b)(4);

c. Paragraph (d)(6); and

d. A note to paragraph (d). The additions to read as follows:

**§ 740.15 Aircraft, vessels and spacecraft (AVS).**

\* \* \* \* \*

(a) \* \* \* \* \*

*Note to paragraph (a).* An aircraft exported or reexported to a country pursuant to this paragraph may not remain in that country for more than seven consecutive days before it departs for a country to which it may be exported without a license.

(b) \* \* \* \* \*

(4) *Cuba.* Only items designated as EAR99 or controlled on the Commerce Control List (CCL) (Supplement No. 1 to Part 774 of the EAR) only for anti-terrorism reasons (*i.e.*, anti-terrorism must be the only reason for control that applies to the item as set forth in the Export Control Classification Number (ECCN) that controls the item) are eligible for export or reexport to Cuba pursuant to this paragraph (b).

\* \* \* \* \*

(d) \* \* \*

(6) *Cuba.* Only the types of vessels (as defined in 46 U.S.C. 2101) listed in this paragraph (d)(6) departing for Cuba for the purposes listed in this paragraph (d)(6) may depart of for Cuba pursuant to this paragraph (d).



- (i) Freight vessels, seagoing barges, tankers (transporting agricultural commodities as defined in § 772.1 of the EAR) and towing vessels for use in the transportation of items;
- (ii) Passenger vessels for use in the transportation of passengers or items other than automobiles unless the export of the automobile to Cuba is authorized by a license issued by BIS; and
- (iii) Recreational vessels that are necessary for and will be used in:
  - (A) Athletic competitions held under the auspices of the international sports federation for the relevant sport; or
  - (B) Athletic or non-athletic sports competitions that are open for attendance, and in relevant situations participation, by the Cuban public.

*Note to paragraph (d).* A vessel exported or reexported to a country pursuant to this paragraph may not remain in that country for more than 14 consecutive days before it departs for a country to which it may be exported without a license.

\* \* \* \* \*

#### **Section 740.18 – [Amended]**

3. Section 740.18 is amended by removing the number “10%” wherever it appears in paragraph (b)(3) and adding in its place the number “25%”.

#### **Section 740.19 – [Amended]**

4. Section 740.19 is amended by removing the words “either sold or donated” and the commas that precede and follow them from paragraph (a).

5. Section 740.21 is amended by:

- a. Removing the sentence “The item may be either for commercial sale or donated” and the period that follows it from paragraph (b);
- b. Revising paragraph (c)(2), introductory text;
- c. Redesignating paragraph (c)(2)(iii) and (iv) as paragraphs (c)(2)(iv) and (v) respectively;
- d. Adding a new paragraph (c)(2)(iii);
- e. Removing the words “either sold or donated” and the commas that precede and follow them from paragraph (d)(1);
- f. Adding paragraph (d)(4); and
- f. Adding paragraphs (e) and (f). The revision and additions to read as follows:

**§ 740.21 Support for the Cuban People (SCP).**

\* \* \* \* \*

(c) \* \* \* \* \*

(2) The *temporary* export or reexport to Cuba of items by travelers to Cuba for the travelers’ use in scientific, archeological, cultural, ecological, educational, historic preservation, or sporting activities, or professional meetings or research. The following requirements apply:

\* \* \*

(iii) The items must remain under the traveler’s “effective control” while in Cuba.

\* \* \* \* \*

(d) \* \* \* \* \*

(4) The export or reexport to Cuba of commodities or software that will be used by individuals or private sector entities to develop software that will improve the free flow of information or that will support private sector activities described in paragraph (b) of this section.

The following are ineligible end-users:

(i) The Cuban Government or the Cuban Communist Party and organizations they administer or control;

(ii) Ministers and vice-ministers; members of the Council of State; members of the Council of Ministers; members and employees of the National Assembly of People's Power; members of any provincial assembly; local sector chiefs of the Committees for the Defense of the Revolution; Director Generals and sub-Director Generals and higher of all Cuban ministries and state agencies; employees of the Ministry of the Interior (MININT); employees of the Ministry of Defense (MINFAR); secretaries and first secretaries of the Confederation of Labor of Cuba (CTC) and its component unions; chief editors, editors and deputy editors of Cuban state-run media organizations and programs, including newspapers, television, and radio; or members and employees of the Supreme Court (Tribuno Supremo Nacional); and

(iii) Members of the Politburo; the Central Committee; Department Heads of the Central Committee; employees of the Central Committee; and the secretaries and first secretaries of provincial Party central committees.

(e) *Facilitating engagement, communications, and commerce.* This paragraph authorizes the export or reexport to Cuba of certain items intended to facilitate engagement between the U.S. and Cuban people; the free flow of information to, from, and among the Cuban people; and

independent economic activity in Cuba. The export or reexport must be within one or more of the following categories:

(1) The export or reexport to Cuba of items for use by eligible end-users to establish, maintain, or operate physical premises in Cuba. Any resulting payments for leasing such physical premises are permitted only to the extent authorized by § 515.573 of the Cuban Assets Control Regulations (31 CFR § 515.573). The items authorized pursuant to this paragraph (e)(1) are limited to those designated as EAR99 (*i.e.*, items subject to the EAR but not specified in any ECCN) or controlled on the CCL only for anti-terrorism reasons. To be eligible, the end-users must be “U.S. Persons,” as defined in § 772.1 of the EAR, and must fall within one of the following categories:

(i) Entities organizing or conducting educational activities in Cuba authorized by the Department of the Treasury, Office of Foreign Assets Control (OFAC) pursuant to 31 CFR § 515.565(a);

(ii) Freight forwarders, common carriers and courier delivery services authorized by OFAC pursuant to 31 CFR § 515.542(a) or involved in the transportation of authorized items between the United States and Cuba;

(iii) Religious organizations engaging in religious activities in Cuba authorized by OFAC pursuant to 31 CFR § 515.566; or

(iv) A person that exports or reexports to Cuba any of the following items:

(A) Aircraft or vessels on temporary sojourn that are authorized pursuant to paragraph (a) or (d) of License Exception Aircraft, Vessels and Spacecraft (AVS) in § 740.15 or license;

(B) Agricultural commodities that are authorized pursuant to License Exception Agricultural Commodities (AGR) in § 740.18 or license;

(C) Consumer communications devices that are authorized pursuant to License Exception Consumer Communications Devices (CCD) in § 740.19 or license;

(D) Materials, equipment, tools, supplies, or instruments that are authorized pursuant to paragraph (b) of this section or license;

(E) Telecommunications items that are authorized pursuant to paragraph (d)(1) of this section or license; or

(F) Medicines or medical devices that are authorized pursuant to license.

(2) The export or reexport to Cuba of certain items for use by eligible end-users to establish, maintain, and operate physical premises in Cuba. Any resulting payments for leasing such physical premises are permitted only to the extent authorized by § 515.573 of the Cuban Assets Control Regulations (31 CFR § 515.573). To be eligible for this paragraph (e)(2), the end-users must be authorized by OFAC to provide telecommunications services and establish telecommunications facilities pursuant to 31 CFR § 515.542(b)-(e) or to provide internet-based services pursuant to 31 CFR § 515.578, including subsidiaries, branches, offices, joint ventures, franchises, and agency or other business relationships with any entity or individual who is a national of Cuba. The items authorized pursuant to this paragraph (e)(2) are limited to those designated as EAR99 (*i.e.*, items subject to the EAR but not specified in any ECCN) or controlled on the CCL only for anti-terrorism reasons.

(3) The export or reexport to Cuba of items to be given away for free as gifts for promotional purposes. Items authorized pursuant to this paragraph are limited to those items of a type normally given away for free as gifts for promotional purposes that are designated as EAR99 (*i.e.*, items subject to the EAR but not specified in any ECCN).

(f) *Temporary exports and reexports to Cuba.* This paragraph authorizes the export or reexport to Cuba, for periods not exceeding one year, of certain items designated as EAR99 or controlled only for anti-terrorism reasons on the CCL (*i.e.*, anti-terrorism must be the only reason for control that applies to the item as set forth in the ECCN that controls the item). If any other reason for control applies to the item, it is not authorized for export or reexport by this paragraph. This paragraph does not authorize any transaction if the exporter or reexporter has “knowledge” that the item is intended to remain in Cuba for more than one year; if an order to acquire the item, such as a purchase order, has been received before shipment; or when the item is for subsequent lease or rental. The export or reexport must be within one or more of the following categories.

(1) *Tools of trade – commodities and software.* Commodities or software to be used by the exporter or reexporter or its employees for the installation, servicing or repair of items that are subject to the EAR and that have been exported or reexported to Cuba under a license or license exception, or foreign-origin items that are not subject to the EAR that are owned and used exclusively by private sector entities in Cuba, may be exported or reexported under this paragraph. The commodities or software must remain under the “effective control” of the exporter or reexporter or its employees. Examples of security precautions to help prevent unauthorized access include the following:

- (i) Use of secure connections, such as Virtual Private Network connections, when accessing IT networks for activities that involve the transmission and use of the software authorized under this license exception;
- (ii) Use of password systems on electronic devices that store the software authorized under this license exception; and

(iii) Use of personal firewalls on electronic devices that store the software authorized under this license exception.

(2) *Tools of trade – technology.* Technology to be used by a ‘U.S. person’ exporter or reexporter or its employees who are traveling to or on temporary assignment in Cuba for the installation, servicing or repair of items that are subject to the EAR and that have been exported or reexported to Cuba under a license or license exception, or foreign-origin items that are not subject to the EAR that are owned and used exclusively by private sector entities in Cuba, may be exported or reexported under this paragraph. For purposes of this paragraph, a ‘U.S. person’ is: an individual who is a citizen of the United States, an individual who is “lawfully admitted for permanent residence” in the United States as defined by 8 U.S.C. 1101(a)(20) or an individual who is a protected individual as defined by 8 U.S.C. 1324b(a)(3). U.S. person also means any juridical person organized under the laws of the United States, or any jurisdiction within the United States (*e.g.*, corporation, business association, partnership, society, trust, or any other entity, organization or group that is authorized to do business in the United States). If the employee who will use the technology is not a ‘U.S. person,’ the release of that technology to that employee must either not require a license or be authorized by a license or a license exception other than this section before it may be exported or reexported to that employee under this paragraph. The exporter or reexporter and the recipient of the technology must take security precautions to protect against unauthorized release of the technology while the technology is being shipped or transmitted and used overseas. Examples of security precautions to help prevent unauthorized access include the following:

(i) Use of secure connections, such as Virtual Private Network connections, when accessing IT networks for e-mail and other business activities that involve the transmission and use of the technology authorized under this license exception;

(ii) Use of password systems on electronic devices that will store the technology authorized under this license exception; and

(iii) Use of personal firewalls on electronic devices that will store the technology authorized under this license exception.

(3) *Kits of replacement “parts” or “components.”* Kits consisting of replacement “parts” or “components” for items that have been exported or reexported to Cuba under a license or license exception, or foreign-origin items that are not subject to the EAR that are owned and used exclusively by private sector entities in Cuba, may be exported or reexported under this paragraph provided:

(i) The kits remain under “effective control” of the exporter or reexporter or its employees; and

(ii) All parts and components in the kit are returned, except that one-for-one replacements may be made in accordance with the requirements of License Exception Servicing and Replacement of Parts and Equipment (RPL) and the defective parts and components returned (see Parts, Components, Accessories and Attachments in § 740.10(a) of this part).

(4) *Exhibition and demonstration.* Commodities or software for exhibition or demonstration at trade shows, or to any entity that would be eligible to receive the commodities or software under paragraphs (a) through (e) of this section, may be exported or reexported under this paragraph. The commodities or software must remain under the “effective control” of the exporter or reexporter or its private sector agent, may not be exhibited or demonstrated at any one location



for more than 30 days and may not be used for more than the minimum extent required for effective exhibition or demonstration.

(5) *Containers*. Containers that would require a license for export or reexport to Cuba but that are necessary for shipment of commodities being exported to Cuba under a license or license exception may be exported or reexported to Cuba. However, this paragraph does not authorize the export of the container's contents, which, if not exempt from licensing, must be separately authorized for export or reexport under either a license or a license exception.

## **PART 746 – [AMENDED]**

6. The authority citation for 15 CFR Part 746 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 287c; Sec 1503, Pub. L. 108-11, 117 Stat. 559; 22 U.S.C. 6004; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p 168; Presidential Determination 2003-23 of May 7, 2003, 68 FR 26459, May 16, 2003; Presidential Determination 2007-7 of December 7, 2006, 72 FR 1899 (January 16, 2007); Notice of May 6, 2015, 80 FR 26815 (May 8, 2015); Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

7. Section 746.2 is amended by:

- a. Revising paragraph (a), introductory text;
- b. Revising paragraph (a)(1)(x);
- c. Revising paragraph (a)(2); and

d. Adding paragraph (b)(6) to read as follows:

**§ 746.2 Cuba.**

(a) *License requirements.* As authorized by section 6 of the Export Administration Act of 1979, as amended (EAA) and by the Trading with the Enemy Act of 1917, as amended, you will need a license to export or reexport all items subject to the EAR (see part 734 of the EAR for the scope of items subject to the EAR) to Cuba, including any release of technology or source code subject to the EAR to a Cuban national, except as follows:

(1) \* \* \*

(x) Aircraft, vessels and spacecraft (AVS) for certain aircraft on temporary sojourn; equipment and spare parts for permanent use on a vessel or aircraft, and ship and plane stores; or vessels on temporary sojourn (see §740.15(a), (b), and (d) of the EAR).

\* \* \* \* \*

(2) *Deemed exports and deemed reexports.* A license is not required to release technology or source code subject to the EAR but not on the Commerce Control List (i.e., EAR99 technology or source code) to a Cuban national in the United States or a third country.

(b) \* \* \*

(6) License applications for exports or reexports of items to ensure safety in civil aviation, including the safe operation of commercial passenger aircraft will be considered on a case-by-case basis.

**PART 772 – [AMENDED]**

8. The authority citation for 15 CFR Part 772 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

9. In § 772.1, the definition of U.S. Person is amended by revising:

a. Paragraph (a), introductory text; and

paragraph (b). The revisions to read as follows.

**§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).**

\* \* \* \*

*U.S. Person.* (a) For purposes of §§740.21(e)(1), 744.6, 744.10, 744.11, 744.12, 744.13 and 744.14 of the EAR, the term U.S. person includes:

\* \* \* \* \*

(b) See also §§ 740.9, 740.14, 740.21(f)(2) and parts 746 and 760 of the EAR for definitions of “U.S. person” that are specific to those sections and parts.

\* \* \* \* \*

Dated:

Kevin J. Wolf

Assistant Secretary for Export Administration