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EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 740.20, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

§ 740.21 Support for the Cuban People (SCP).

(a) *Introduction.* This License Exception authorizes certain exports and re-exports to Cuba that are intended to support the Cuban people by improving their living conditions and supporting independent economic activity; strengthening civil society in Cuba; and improving the free flow of information to, from, and among the Cuban people.

(b) *Improving living conditions and supporting independent economic activity.* This paragraph authorizes the export or reexport to Cuba of 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). If any other reason for control applies to the item, it is not authorized for export or reexport by this paragraph. The item must be within one or more of the following categories:

(1) Items for use by the Cuban private sector for private sector economic activities, except for items that would be used to:

(i) Primarily generate revenue for the state; or

(ii) Contribute to the operation of the state, including through the construction or renovation of state-owned buildings.

(2) Items sold directly to individuals in Cuba for their personal use or their immediate family's personal use, other than officials identified in paragraphs (d)(4)(ii) or (iii) of this section.

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than officials identified in paragraphs (d)(4)(ii) or (iii) of this section.

(c) *Strengthening civil society.* This paragraph authorizes the export or re-export to Cuba of certain items for use in specified activities that can strengthen civil society. The items authorized pursuant this paragraph are limited to those 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. The export or reexport must be within one or more of the following categories:

(1) The export or reexport to Cuba of *donated* items for use in scientific, archaeological, cultural, ecological, educational, historic preservation, or sporting activities. The items may not be donated to organizations administered or controlled by the Cuban government or communist party, and must support eligible activities independent of the Cuban government and communist party. The activities may not relate to the "development," "production," "use," operation, installation, maintenance, repair, overhaul or refurbishing of any item enumerated or otherwise described on the United States Munitions List (22 CFR part 121) or of any item enumerated or otherwise described on the Commerce Control List (supplement no. 1 to part 774 of the EAR) unless the only reason for control that applies to that item, as set forth in the ECCN that controls that item, is anti-terrorism.

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

(i) The research must be directly related to traveler's profession, professional background or area of expertise, including area of graduate-level full-time study.

(ii) The activities or research may not relate to the “development,” “production,” “use,” operation, installation, maintenance, repair, overhaul or refurbishing of any item enumerated or otherwise described on the United States Munitions List (22 CFR part 121) or of any item enumerated or otherwise described on the Commerce Control List (supplement no. 1 to part 774 of the EAR) unless the only reason for control that applies to that item as set forth in the ECCN that controls that item is anti-terrorism.

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

(iv) Items authorized for temporary export by this paragraph must be returned to the United States within two years of the date of export from the United States unless:

(A) The items are consumed in Cuba; or

(B) The exporter applies for and receives a license from BIS, prior to the expiration of the two year period, authorizing the items to remain in Cuba for longer than two years.

(v) Paragraph (c)(2) of this section does not authorize exports if, at the time of the export, the exporter has “knowledge” that the item exported will remain in Cuba for more than two years.

(3) The export or reexport to Cuba of items to human rights organizations, individuals or non-governmental organizations that promote independent activity intended to strengthen civil society.

(d) *Improving communications.* This paragraph authorizes the export or reexport to Cuba of certain items intended to improve the free flow of information to, from, and among the Cuban people. The items authorized pursuant to this paragraph are limited to those 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. The export or reexport must be within one or more of the following categories:

(1) The export or reexport to Cuba of items for the creation and upgrade of telecommunications *infrastructure* to improve the free flow of information to, from, and among the Cuban people, including infrastructure that enables access to the internet and use of internet services. For infrastructure items that would be used to connect specific end users, those items may be used to connect individual Cubans or the Cuban private sector only (*e.g.*, not Cuban government ministries or state-owned enterprises).

(2) The export or reexport to Cuba of items for use by news media personnel engaged in the gathering and dissemination of news to the general public and who are:

(i) Regularly employed as journalists by a news reporting organization;

(ii) Regularly employed as supporting broadcast or technical personnel;

(iii) Freelance journalists with a record of previous journalistic experience working on a freelance journalistic project; or

(iv) Broadcast or technical personnel with a record of previous broadcast or technical experience who are supporting a freelance journalist working on a freelance journalistic project.

(3) The export or reexport to Cuba of items for use by U.S. news bureaus engaged in the gathering and dissemination of news to the general public.

(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 the 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.

(e) *Facilitating engagement, communications, and commerce.* This paragraph (e) 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 persons authorized by the Department of the Treasury, Office of Foreign Assets Control (OFAC) to establish and maintain a physical or business presence in Cuba pursuant to 31 CFR 515.573 or pursuant to a specific license issued by OFAC. 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.

(2) [Reserved]

NOTE TO PARAGRAPH (e): Any resulting payments associated with establishing or maintaining a physical or business presence in Cuba, such as lease payments, are permitted only to the extent authorized by 31 CFR 515.573 or a specific license issued by OFAC.

(f) *Temporary exports and reexports to Cuba.* This paragraph (f) 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 (f). 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 (f). For purposes of this paragraph (f)(2), 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 email 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 (f)(3) 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)).

(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 (f). 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 (f) 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.

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§ 740.22 Authorized Cybersecurity Exports (ACE).

(a) *Scope.* License Exception ACE authorizes export, reexport, and transfer (in-country), including deemed exports and reexports, of ‘cybersecurity items,’ as set forth in paragraph (b) of this section, subject to the restrictions set forth in paragraph (c) of this section. Deemed exports and reexports are authorized under this license exception, except for deemed exports or reexports to E:1 and E:2 nationals as described in