

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes a low altitude Area Navigation route (T-Route) at Rockford, IL.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures," paragraph 311a, 311b, and 311k. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9S, Airspace Designations and Reporting Points, signed October 3, 2008, and effective October 31, 2008, is amended as follows:

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T-265 KELS, IL to VEENA, WI [New]

KELS, IL WP

(Lat. 41°26'20" N., long. 88°59'29" W.)

SIMMN, IL WP

(Lat. 41°58'50" N., long. 88°52'42" W.)

BULLZ, IL WP

(Lat. 42°27'27" N., long. 88°46'17" W.)

VEENA, WI WP

(Lat. 42°42'18" N., long. 88°18'14" W.)

* * * * *

Issued in Washington, DC, on September 1, 2009.

Ellen Crum,

Acting Manager, Airspace and Rules Group.

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 736, 740 and 746

[Docket No. 090414648–9652–01]

RIN 0694–AE60

Cuba: Revisions to Gift Parcel and Baggage Restrictions, Creation of License Exception for Donated Consumer Communications Devices and Expansion of Licensing Policy Regarding Telecommunications

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

ACTION: Final rule.

SUMMARY: This rule revises two existing License Exceptions concerning exports and reexports of gift parcels to Cuba and of personal baggage taken by individuals leaving the United States for travel to Cuba. It also creates a new License Exception authorizing the export and reexport to Cuba of certain donated consumer communications devices, including certain computers and software, mobile phones, and satellite receivers. Finally, this rule revises the scope of existing licensing policy regarding certain telecommunications links including satellite radio and satellite television services. These actions are among those directed by the President on April 13, 2009 to enhance the free flow of information to and from Cuba and to promote contacts between Americans and their relatives who reside in Cuba as a means of encouraging positive change in Cuba and are consistent with the ongoing support the United States has provided to individuals and nongovernmental organizations that support democracy-building efforts in Cuba. These actions do not suspend or terminate the United States embargo of Cuba.

DATES: *Effective Date:* This rule is effective September 3, 2009.

ADDRESSES: Although there is no comment period for this final rule, BIS welcomes any comments from the public on the amendments made by this rule. Comments may be submitted by e-mail directly to BIS at publiccomments@bis.doc.gov (please refer to RIN 0694–AE60 in the subject line); or by delivery to Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, Room H2705, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Comments on the information collection contained in this rule should also be sent to Jasmeet Seehra, Office of Management and Budget (OMB), by e-mail to jseehra@omb.eop.gov, or by fax to (202) 395–7285. Refer to RIN 0694–AE60 in all comments.

FOR FURTHER INFORMATION CONTACT:

Anthony Christino, Foreign Policy Division, Office of Nonproliferation and Treaty Compliance at (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. BIS administers export and reexport restrictions on Cuba consistent with the goals of the embargo and with relevant legislation, including the Cuban Liberty and Democratic Solidarity Act of 1996 (LIBERTAD). Accordingly, BIS may issue specific or general authorizations for limited types of transactions that support the goals of United States policy while the embargo remains in effect.

On April 13, 2009, the President directed the Secretary of the Treasury and the Secretary of Commerce, in consultation with the Secretary of State, to take certain actions to enhance the free flow of information to and from Cuba and to promote contacts between Americans and their relatives who reside in Cuba as a means of encouraging positive change in Cuba. In doing so, the President noted the United States policy of promoting democracy and human rights in Cuba and stated that “measures that decrease dependency of the Cuban people on the Castro regime and that promote contact between Cuban-Americans and their relatives in Cuba are means to encourage positive change in Cuba.” The policy of promoting human rights and democracy in Cuba has long been reflected in legislation. LIBERTAD’s

purpose, in part, is to help the Cuban people regain their freedom and prosperity. In addition, even before LIBERTAD, the Cuban Democracy Act of 1992 reflected Congressional support for assistance to encourage democracy in Cuba, stating that the U.S. Government may provide assistance, through appropriate nongovernmental organizations, for the support of individuals and organizations to promote nonviolent democratic change in Cuba.

This rule implements the portions of the President's directive that relate to the regulations of the Department of Commerce by changing the existing License Exceptions "Gift Parcels and Humanitarian Donations (GFT)" and "Baggage (BAG)," creating a new License Exception "Consumer Communications Devices (CCD)" and revising the scope of licensing policy applicable to certain telecommunications links and satellite radio and satellite television services.

The changes made by this rule are intended to update, consistent with LIBERTAD and other relevant legislation, certain provisions of the United States embargo of Cuba to: (i) Address the impact of economic and technological changes that have taken place in recent years; and (ii) ensure that the embargo continues to support the goals of promoting democracy in Cuba and providing support for the Cuban people. None of the changes made by this rule suspend or terminate the United States embargo of Cuba.

Specific Changes Implemented by This Rule

Changes to License Exception Gift Parcels and Humanitarian Donations (GFT)

License Exception Gift Parcels and Humanitarian Donations (GFT) (§ 740.12 of the EAR) generally authorizes, among other things, exports and reexports of gift parcels by an individual (donor) addressed to an individual or to a religious, educational or charitable organization (donee) for the use of the donee or the donee's immediate family. Prior to the publication of this rule, items eligible for export or reexport to Cuba in gift parcels were limited to food (including vitamins); medicines; medical supplies and devices (including hospital supplies and equipment for the handicapped); receive-only radio equipment for reception of commercial/civil AM/FM and short wave publicly available frequency bands, and batteries for such equipment; and mobile phones covered by Export Control Classification Numbers (ECCNs) 5A991 or 5A992,

software for those phones covered by ECCN 5D992, and batteries, memory cards, chargers and other accessories for such mobile phones. Additionally, the License Exception restricted recipients in Cuba to identified family members of the donor (grandparents, parents, siblings, children and grandchildren). Except for gift parcels of food, the License Exception restricted a donor to sending only one gift parcel per month to the same household in Cuba. The License Exception also limited the combined total domestic retail value of all items other than food included in a gift parcel to \$400.

This rule revises License Exception GFT to add clothing, personal hygiene items, seeds, veterinary medicines and supplies, fishing equipment and supplies, soap-making equipment, and non-sensitive items normally sent as gifts between individuals as items eligible for export or reexport to Cuba in gift parcels. The rule largely retains the restriction that precludes items listed in specific entries on the Commerce Control List. However, the rule does allow inclusion of consumer communications devices controlled by ECCNs 4A994, 4D994, 5A991, 5A992, 5D991, and 5D992. These devices, which are described in more detail in the discussion of the new License Exception for consumer communications devices below, are widely available consumer products, such as personal computers, that facilitate communications.

This rule also revises License Exception GFT to remove requirements that the donee be a member of the immediate family of the donor and that only one gift parcel per month be sent to the same household in Cuba. As revised, License Exception GFT authorizes a donor to send one gift parcel per month to any individual (other than certain Cuban Government or Cuban Communist Party officials) or to a charitable, educational, or religious organization in Cuba that is not administered or controlled by the Cuban government. For example, hospitals or schools administered or controlled by the Cuban Government are not eligible recipients under this License Exception. Further, this rule revises the License Exception to increase the combined total domestic retail value of all items included in a gift parcel from \$400 to \$800.

Changes to License Exception Baggage (BAG)

Prior to publication of this rule, and since 2004, the terms of License Exception BAG imposed a 44-pound weight limit on the personal baggage of

most travelers from the United States to Cuba. This rule removes that limit. This change implements the President's directive to lift weight restrictions on accompanied baggage.

This rule does not remove or relax any other restrictions that apply to License Exception BAG. The regulations continue to require that individuals leaving the United States temporarily (i.e., traveling) must bring back items exported or reexported under this License Exception unless they consume the items abroad or are otherwise authorized to dispose of them under the EAR.

Donated Consumer Communications Devices, Computers and Software

Prior to publication of this rule, with the exception of certain items authorized by License Exception GFT, the export or reexport to Cuba of donated consumer communications devices required an individual validated license.

This rule creates a narrowly tailored License Exception Consumer Communications Devices (CCD) to authorize the export and reexport to Cuba of donated consumer communications devices that are necessary to provide efficient and adequate telecommunications services between the United States and Cuba. In generally authorizing the export or reexport of donated consumer communication devices to Cuba through a new License Exception, this rule strengthens the United States' commitment to the support of individuals and organizations to promote nonviolent democratic change in Cuba, consistent with the goals of LIBERTAD and the Cuban Democracy Act of 1992, and recognizes that recent changes in communications technology have facilitated the widespread dissemination of information and personal communications in ways that have become increasingly essential for democratic movements across the world. This rule is also consistent with the President's goal, as stated in his April 13 memorandum, to promote contacts between Americans and their relatives who reside in Cuba as a means of encouraging positive change in Cuba.

New License Exception CCD authorizes the export or reexport of specific commodities and software that are widely available for retail purchase and that are commonly used to exchange information and facilitate interpersonal communications. However, consistent with 22 U.S.C. 6005(a), this new License Exception does not authorize U.S.-owned or controlled entities in third countries to

engage in reexports of foreign produced commodities to Cuba for which no license would be issued by the Treasury Department pursuant to 31 CFR 515.559. This License Exception is valid only for exports or reexports to Cuba. The commodities and software exported or reexported under this License Exception must be donated, but the License Exception provides no limits on value or frequency of shipments. Eligible end-users for items exported or reexported pursuant to this License Exception are individuals in Cuba other than designated Cuban Government and Communist Party officials, and also independent non-governmental organizations in Cuba. As is the case with exports or reexports under License Exception GFT, exports or reexports under License Exception CCD may not be made to organizations administered or controlled by the Cuban Government.

The items authorized for export or reexport under the new License Exception are commodities and software (except "encryption source code") related to basic personal communications devices that are widely available for retail purchase in the United States. These items include: Mobile phones, including cellular and satellite telephones; subscriber information module (SIM) cards; personal digital assistants; laptop and desktop computers and peripherals such as monitors, graphics accelerator cards, data storage devices and media such as disk drives, flash drives, writable compact disks and floppy disks, keyboards, mice, and printers including commodities possessing IEEE 802.15.1 "Bluetooth" wireless personal area networking (WPAN) capability; Internet connectivity devices including those possessing IEEE 802.11 "Wi-Fi" and IEEE 802.16 "WiMax" wireless capabilities; satellite-based television and radio receivers; digital music and video players and recorders; personal two-way radios; digital cameras and memory cards therefor; and batteries, chargers, carrying cases and similar accessories for the equipment authorized by this rule. This rule also authorizes the export and reexport of basic software for laptop and desktop computers such as: Computer operating systems and software (except "encryption source code") that enable activities such as word processing, producing spread sheets, producing graphics presentations, sending and receiving e-mail, Web browsing or developing relational databases. When applicable, the rule describes these items as they are classified on the Commerce Control List:

- Computers classified under ECCN 4A994.b or designated EAR99 that do not exceed an adjusted peak performance of 0.02 weighted teraflops;
- Disk drives and solid state storage equipment classified as ECCN 5A992 or designated EAR99;
- Input/output control units (other than industrial controllers designed for chemical processing) designated EAR99;
- Graphics accelerators and graphics coprocessors designated EAR99;
- Monitors classified under ECCN 5A992 or designated EAR99;
- Printers classified under ECCN 5A992 or designated EAR99;
- Modems classified under ECCNs 5A991.b.2 or 5A992 or designated EAR99;
- Network access controllers and communications channel controllers classified under ECCN 5A991.b.4 or designated EAR99;
- Keyboards, mice and similar devices designated EAR99;
- Mobile phones, including cellular and satellite telephones, personal digital assistants, and subscriber information module (SIM) cards and similar devices classified under ECCNs 5A992 or 5A991 or designated EAR99;
- Memory devices classified under ECCN 5A992 or designated EAR99;
- "Information security" equipment, "software" (except "encryption source code") and peripherals classified under ECCNs 5A992 or 5D992 or designated EAR99;
- Digital cameras and memory cards classified under ECCN 5A992 or designated EAR99;
- Television and radio receivers classified under ECCN 5A992 or designated EAR99;
- Recording devices classified under ECCN 5A992 or designated EAR99;
- Batteries, chargers, carrying cases, and accessories for the equipment described above that are designated EAR99; and
- "Software" (except "encryption source code") classified under ECCNs 4D994, 5D991 or 5D992 or designated EAR99 to be used for equipment described above.

This change implements the President's directive to authorize, consistent with national security concerns, the export or reexport to Cuba of donated personal communications devices through a license exception.

Revised Scope of Licensing Policy Regarding Telecommunications

Prior to publication of this rule, § 746.2(b)(2) of the EAR stated that export of "Telecommunications commodities may be authorized on a case-by-case basis, provided the

commodities are part of an FCC-approved project and are necessary to provide efficient and adequate telecommunications between the United States and Cuba."

This rule revises the text of § 746.2(b)(2) of the EAR to ensure that the licensing policy allows for case-by-case review of exports or reexports of all items necessary to provide efficient and adequate telecommunications links, including satellite radio and satellite television, between the United States and Cuba consistent with the President's April 13, 2009 directive. The scope of items eligible for export or reexport now includes any item (commodity, technology, or software) necessary to provide efficient and adequate telecommunications links between the United States and Cuba, including links established through third countries, and including links to provide satellite radio or satellite television services to Cuba. In making this change, BIS notes that the establishment of links through third countries may be necessary to establish efficient and adequate links between the United States and Cuba. These changes are consistent with the goal of enhancing communications to promote democracy in Cuba.

Technical and Conforming Changes

Although individual gift parcels may be eligible for export pursuant to License Exception GFT, as set forth in § 740.12(a) of the EAR, consolidated shipments of multiple gift parcels are not eligible for export under this License Exception. BIS has issued a number of licenses to parties authorizing them to export consolidated shipments of gift parcels to Cuba. As part of this rule, BIS is amending General Order No. 4, found in Supplement No. 1 to part 736 of the EAR, to authorize such license holders to export consolidated shipments of all gift parcels that are eligible for License Exception GFT as of the effective date of this rule. This modification is appropriate because some previously-issued licenses for consolidated shipments limit the eligible commodities and software, eligible recipients, or limits on frequency or dollar value based on the restrictions of License Exception GFT in place at the time the consolidation license was issued. The amended General Order does not, however, increase the total value of exports permitted under, or extend the expiration date of, any license. Amending the General Order to modify existing licenses in such a manner will facilitate implementation of the policy underlying this rule by

allowing consolidators to include all gift parcels consistent with the provisions of License Exception GFT in their consolidated shipments immediately rather than having to wait until they obtain a new license. Consolidators will still need to apply for new licenses when their existing licenses have been completely used or have expired.

Section 740.2(a)(6) of the EAR precludes use of any License Exception to export or reexport to Cuba unless the License Exception is listed in the License Exception paragraph pertaining to Cuba in part 746. This rule revises § 746.2(a)(1) to list the new “Consumer Communications Devices” License Exception that this rule creates.

Change to Prohibitions Applying to Gift Parcels Generally

Although not related to the President’s April 13, 2009 directive, this rule also makes ineligible for inclusion in gift parcels to any destination items listed on the Commerce Control List with “encryption items” (EI) as a reason for control. BIS is making this change because of the sensitivity of such items. Items controlled for EI reasons employ sophisticated encryption techniques and have not been designated as “mass market” items by the United States Government. Such items are not eligible for export or reexport under License Exception GFT because they are not normally exchanged between individuals as gifts. However, because of the potential use of items controlled for EI reasons by persons abroad to harm U.S. national security, foreign policy and law enforcement interests, BIS is adding EI as a reason for control that explicitly precludes use of License Exception GFT to any destination. The other reasons for control that trigger this preclusion are national security, nuclear nonproliferation, chemical and biological weapons and missile technology.

Rulemaking Requirements

1. This rule has been determined to be a significant rule under Executive Order 12866.

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, unless that collection of information displays a currently valid Office of Management and Budget Control Number. This rule involves a collection of information that has been approved by OMB under control number 0694–0088, which carries a burden hour estimate of 58 minutes to

prepare and submit form BIS–748P. Miscellaneous and recordkeeping activities account for 12 minutes per submission. BIS believes that this rule will make no material change to the number of submissions or to the burden imposed by this collection.

3. This rule does not contain policies with Federalism implications as that term is defined in 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)). 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 Part 736

Exports.

15 CFR Part 740

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

15 CFR Part 746

Exports, Reporting and recordkeeping requirements.

■ Accordingly, the Export Administration Regulations (15 CFR chapter VII, subchapter C) are amended as follows:

PART 736—[AMENDED]

■ 1. The authority citation for part 736 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 2151 note; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp. p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, May 13, 2004; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009); Notice of November 10, 2008, 73 FR 67097 (November 12, 2008).

■ 2. General Order Number 4 of Supplement No. 1 to Part 736 is amended by revising the introductory text and by revising paragraph (b) to read as follows:

Supplement No. 1 to Part 736—General Orders

* * * * *

General Order No. 4 of June 13, 2008, as amended on September 3, 2009, amending existing licenses for exports of consolidated gift parcels to Cuba due to changes in License Exception GFT.

* * * * *

(b) Notwithstanding any statements to the contrary on the license itself, licenses authorizing the export to Cuba of consolidated gift parcels described in paragraph (a) of this order that are valid on September 3, 2009 authorize the export of consolidated shipments to Cuba of gift parcels that comply with the requirements of License Exception GFT found in § 740.12(a) of the EAR as of September 3, 2009.

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PART 740—[AMENDED]

■ 3. The authority citation for part 740 is revised 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 13, 2009, 74 FR 41325 (August 14, 2009).

■ 4. Section 740.12 is amended by revising paragraphs (a)(2)(i), (a)(2)(iii), (a)(2)(iv) and (a)(2)(v) to read as follows:

§ 740.12 Gift parcels and humanitarian donations.

(a) * * *

(2) * * *

(i) *Item limitations.*

(A) *Prohibited items.*

(1) For Cuba no items listed on the Commerce Control List other than items listed in § 740.19(b) of the EAR may be included in a gift parcel.

(2) For all destinations, no items controlled for chemical and biological weapons (CB), missile technology (MT), national security (NS), nuclear proliferation (NP) or encryption items (EI) reasons on the Commerce Control List (Supplement no. 1 to part 774 of the EAR) may be included in a gift parcel.

(3) *Items prohibited for destinations in Country Group D:1 or E:2.* For destinations in Country Group D:1 or E:2, military wearing apparel may not be included in a gift parcel regardless of whether all distinctive U.S. military insignia, buttons, and other markings are removed.

(4) Gold bullion, gold taels, and gold bars are prohibited as are items intended for resale or reexport.

(B) *Eligible items.* For all destinations, eligible items are food (including vitamins); medicines, medical supplies and devices (including hospital supplies and equipment and equipment for the handicapped); receive-only radio

equipment for reception of commercial/civil AM/FM and short wave publicly available frequency bands, and batteries for such equipment; clothing; personal hygiene items; seeds; veterinary medicines and supplies; fishing equipment and supplies; soap-making equipment; as well as all other items of a type normally sent as gifts between individuals (including items listed in § 740.19(b) of the EAR) except for those items prohibited in paragraph (a)(2)(i)(A) of this section. Items in gift parcels must be in quantities normally given as gifts between individuals.

Example to paragraph (a)(2)(i)(B) of this section. A watch or piece of jewelry is normally sent as a gift. However, multiple watches, either in one package or in subsequent shipments, would not qualify for such gift parcels because the quantity would exceed that normally given between individuals. Similarly, a sewing machine or bicycle within the value limit of this License Exception may be an appropriate gift. However, subsequent shipments of the same item to the same donee would not be a gift normally given between individuals.

* * * * *

(iii) *Frequency.*

(A) Except for gift parcels of food to Cuba, not more than one gift parcel may be sent from the same donor to the same donee in any one calendar month.

(B) There is no frequency limit on gift parcels of food to Cuba.

(C) Parties seeking authorization to exceed the frequency limit due to compelling humanitarian concerns (e.g., for certain gifts of medicine) should submit a license application in accordance with §§ 748.1, 748.4 and 748.6 of the EAR to BIS with complete justification.

(iv) *Value.* The combined total domestic retail value of all commodities and software in a single gift parcel may not exceed \$800. This limit does not apply to food sent in a gift parcel to Cuba.

(v) *Ineligible recipients.*

(A) No gift parcel may be sent to any of the following officials of the Cuban Government: 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).

(B) No gift parcel may be sent to any of the following officials or members of the Cuban Communist Party: 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.

(C) No gift parcel may be sent to organizations administered or controlled by the Cuban Government or the Cuban Communist Party.

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§ 740.14 [Amended]

■ 4. Section 740.14 is amended by:

■ a. removing “(h)” from the last sentence of paragraph (b)(4) introductory text and adding “(g)” in its place;

■ b. removing paragraph (g); and

■ c. redesignating paragraph (h) as paragraph (g).

■ 5. A new § 740.19 is added to read as follows:

§ 740.19 Consumer Communications Devices (CCD).

(a) *Authorization.* This License Exception authorizes the export or reexport of commodities and software described in paragraph (b) to Cuba subject to the conditions in paragraphs (c) and (d) of this section. This section does not authorize U.S.-owned or -controlled entities in third countries to engage in reexports of foreign produced commodities to Cuba for which no license would be issued by the Treasury Department pursuant to 31 CFR 515.559. Cuba is the only eligible destination under this License Exception.

(b) *Eligible Commodities and Software.* Commodities and software eligible for export or reexport under this section are:

(1) Computers designated EAR99 or classified under Export Control Classification Number (ECCN) 4A994.b that do not exceed an adjusted peak performance of 0.02 weighted teraflops;

(2) Disk drives and solid state storage equipment classified under ECCN 5A992 or designated EAR99;

(3) Input/output control units (other than industrial controllers designed for chemical processing) designated EAR99;

(4) Graphics accelerators and graphics coprocessors designated EAR99;

(5) Monitors classified under ECCN 5A992 or designated EAR99;

(6) Printers classified under ECCN 5A992 or designated EAR99;

(7) Modems classified under ECCNs 5A991.b.2, or 5A992 or designated EAR99;

(8) Network access controllers and communications channel controllers classified under ECCN 5A991.b.4 or designated EAR99;

(9) Keyboards, mice and similar devices designated EAR99;

(10) Mobile phones, including cellular and satellite telephones, personal digital assistants, and subscriber information module (SIM) cards and similar devices classified under ECCNs 5A992 or 5A991 or designated EAR99;

(11) Memory devices classified under ECCN 5A992 or designated EAR99;

(12) “Information security” equipment, “software” (except “encryption source code”) and peripherals classified under ECCNs 5A992 or 5D992 or designated EAR99;

(13) Digital cameras and memory cards classified under ECCN 5A992 or designated EAR99;

(14) Television and radio receivers classified under ECCN 5A992 or designated EAR99;

(15) Recording devices classified under ECCN 5A992 or designated EAR99;

(16) Batteries, chargers, carrying cases and accessories for the equipment described in this paragraph that are designated EAR99; and

(17) “Software” (except “encryption source code”) classified under ECCNs 4D994, 5D991 or 5D992 or designated EAR99 to be used for equipment described in this paragraph (b).

(c) *Donation Requirement.* This License Exception authorizes the export or reexport of eligible commodities and software that will be donated by the exporter or reexporter to an eligible end-user or to eligible end-users free of charge. The payment by an end-user of any handling charges arising within the importing country or any charges levied by the government of the importing country shall not be considered a charge for purposes of this paragraph.

(d) *Eligible End-users—(1)*

Organizations. This License Exception may be used to export or reexport eligible commodities and software to and for the use of independent non-governmental organizations. The Cuban Government or the Cuban Communist Party and organizations they administer or control are not eligible end-users.

(2) *Individuals.* This License Exception may be used to export eligible commodities and software to and for the use of individuals other than the

following officials of the Cuban Government and Cuban Communist Party:

(i) *Ineligible Cuban Government Officials*. 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).

(ii) *Ineligible Cuban Communist Party Officials*. 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.

PART 746—[AMENDED]

■ 6. The authority citation for part 746 is revised 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, 3 CFR, 2001 Comp., p. 783; 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 August 13, 2009, 74 FR 41325 (August 14, 2009).

■ 7. Section 746.2, is amended by adding a paragraph (a)(1)(xiii) and by revising paragraph (b)(2) to read as follows:

§ 746.2 Cuba.

- (a) * * *
- (1) * * *

(xiii) Commodities and software authorized under License Exception Consumer Communications Devices (CCD) (*see* § 740.19 of the EAR).

* * * * *

- (b) * * *

(2) Items may be authorized for export or reexport to Cuba on a case-by-case basis, provided the items are necessary to provide efficient and adequate telecommunications links between the

United States and Cuba, including links established through third countries, and including the provision of satellite radio or satellite television services to Cuba.

* * * * *

Dated: September 1, 2009.

Matthew S. Borman,

Acting Assistant Secretary for Export Administration.

[FR Doc. E9–21402 Filed 9–3–09; 4:15 pm]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 090126062–91139–01]

RIN 0694–AE54

Revisions to Certain End-User Controls Under the Export Administration Regulations; Clarification Regarding License Requirements for Transfers (in-country) to Persons Listed on the Entity List

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to make revisions to three sections that are used by the United States Government as the basis for placing persons onto the Entity List. These three sections specified license requirements for exports and reexports to persons listed on the Entity List, however; the sections were silent regarding whether or not the scope of the licensing requirements included transfers (in-country). This rule adds transfers (in-country) to the scope of the license requirements under each of the three sections. As a result of adding transfers (in-country) to these three end-user controls, all of the end-use and end-user controls that are used as a regulatory basis for placing persons on the Entity List now specify that the scope of the license requirements includes exports, reexports, and transfers (in-country).

The Entity List provides notice to the public that certain exports, reexports, and transfers (in-country) to parties identified on the Entity List require a license from the Bureau of Industry and Security (BIS) and that availability of License Exceptions in such transactions is limited.

DATES: *Effective Date:* This rule is effective September 8, 2009. Although there is no formal comment period,

public comments on this regulation are welcome on a continuing basis.

ADDRESSES: You may submit comments, identified by RIN 0694–AE54, by any of the following methods:

E-mail: publiccomments@bis.doc.gov. Include “RIN 0694–AE54” in the subject line of the message.

Fax: (202) 482–3355. Please alert the Regulatory Policy Division, by calling (202) 482–2440, if you are faxing comments.

Mail or Hand Delivery/Courier: Timothy Mooney, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, *Attn:* RIN 0694–AE54.

Send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by e-mail to Jasmeet.K.Seehra@omb.eop.gov or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230. Comments on this collection of information should be submitted separately from comments on the final rule (*i.e.*, RIN 0694–AE54)—all comments on the latter should be submitted by one of the three methods outlined above.

FOR FURTHER INFORMATION CONTACT: Elizabeth Scott Sangine, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, Department of Commerce, *Phone:* (202) 482–3343, *Fax:* (202) 482–3911, *E-mail:* bscott@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

The Entity List provides notice to the public that certain exports, reexports, and transfers (in-country) to parties identified on the Entity List require a license from the Bureau of Industry and Security (BIS) and that availability of license exceptions in such transactions is limited. Persons are placed on the Entity List on the basis of certain sections of part 744 (Control Policy: End-User and End-Use Based) of the EAR.

The End-User Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from or changes to the Entity