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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740 and 746

[Docket No. 190524473-9473-01]

RIN 0694-AH87

Restricting the Temporary Sojourn of Aircraft and Vessels to Cuba

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: In this final rule, the Bureau of Industry and Security (BIS) further limits the types of aircraft that are authorized to fly to Cuba and the types of vessels that are authorized to sail to Cuba on temporary sojourn. Specifically, this rule amends License Exception Aircraft, Vessels and Spacecraft (AVS) in the Export Administration Regulations (EAR) to remove the authorization for the export or reexport to Cuba of most non-commercial aircraft and passenger and recreational vessels on temporary sojourn. Additionally, this rule amends the licensing policy for exports and reexports to Cuba of aircraft and vessels on temporary sojourn to establish a general policy of denial absent a foreign policy or national security interest as determined by the U.S. Government. Consequently, private and corporate aircraft, cruise ships, sailboats, fishing boats, and other similar aircraft and vessels generally will be prohibited from going to Cuba. BIS is making these amendments to support the Administration's national security and foreign policy decision to restrict non-family travel to Cuba to prevent U.S. funds from enriching the Cuban regime, which continues to repress the Cuban people and provides ongoing support to the Maduro regime in Venezuela. These amendments are consistent with the National Security

Presidential Memorandum on Strengthening the Policy of the United States Toward Cuba.
signed by the President on June 16, 2017.

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

FOR FURTHER INFORMATION CONTACT: Alan Christian, Foreign Policy Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, by email at Alan.Christian@bis.doc.gov, or by phone at (202) 482- 4252.

SUPPLEMENTARY INFORMATION:

Background

On June 16, 2017, President Trump announced changes to U.S. policy toward Cuba intended to enhance compliance with United States law; channel funds toward the Cuban people and away from the regime; encourage the Cuban government to address oppression and human rights abuses; further the national security and foreign policy interests of the United States, as well as express solidarity with the Cuban people; and lay the groundwork to improve human rights, encourage the rule of law, foster free markets and free enterprise, and promote democracy in Cuba. The President's policy is stated in the National Security Presidential Memorandum on Strengthening the Policy of the United States Toward Cuba (NSPM-5), dated June 16, 2017 (82 FR 48875, October 20, 2017). NSPM-5 also directs the Secretary of Commerce, as well as the Secretaries of State and the Treasury, to take certain actions to implement the President's Cuba policy. On November 9, 2017, the Department of Commerce's Bureau of Industry and Security

(BIS) and the Department of the Treasury's Office of Foreign Assets Control (OFAC) published rules in the **Federal Register** to implement certain portions of NSPM-5 (82 FR 51983 and 82 FR 51998, respectively). The Department of State also published the List of Restricted Entities and Subentities Associated with Cuba (Cuba Restricted List) (82 FR 52089), which is used by BIS in reviewing license applications submitted pursuant to the Export Administration Regulations (EAR) (15 C.F.R. parts 730-774) and by OFAC in prohibiting certain direct financial transactions pursuant to the Cuban Assets Control Regulations (CACR) (31 C.F.R. part 515). Additional entities and subentities have subsequently been added to the Cuba Restricted List (83 FR 57523, 84 FR 8939, and 84 FR 17228. Please also see the Department of State's website at: <https://www.state.gov/cuba-sanctions/cuba-restricted-list/>).

On April 17, 2019, the White House announced that the Administration is holding the Cuban regime accountable for repressing the Cuban people and supporting the Maduro regime in Venezuela through multiple actions, including by restricting non-family travel to Cuba, or in other words, "veiled tourism." Consequently, BIS is amending License Exception Aircraft, Vessels and Spacecraft (AVS) in § 740.15 of the EAR and the licensing policy for Cuba in § 746.2 to generally prohibit non-commercial aircraft from flying to Cuba and passenger and recreational vessels from sailing to Cuba.

Amendments to License Exception Aircraft, Vessels and Spacecraft (AVS)

Consistent with the embargo of Cuba, BIS authorization in the form of a license or license exception is required for the export or reexport to Cuba of all items subject to the EAR.

§746.2(a)(1) of the EAR identifies the license exceptions, or portions thereof, that are available

for exports and reexports to Cuba, including paragraphs (a) and (d) of License Exception AVS in § 740.15 for, respectively, certain aircraft and vessels on temporary sojourn. Paragraph (a)(2) of License Exception AVS contains the terms and conditions that are specific to U.S. registered aircraft. This rule removes Cuba from eligibility for paragraph (a)(2)(ii), making general aviation (*e.g.*, private and corporate aircraft) and certain other aircraft ineligible for License Exception AVS when destined for Cuba. The only civil aircraft of U.S. registry that remain eligible for License Exception AVS when destined for Cuba are commercial aircraft operating under Air Carrier Operating Certificates or certain other Federal Aviation Administration certificates or specifications identified in paragraph (a)(2)(i). Making non-commercial aircraft ineligible for License Exception AVS when destined for Cuba supports the President's policy to restrict non-family travel to Cuba.

Additionally, this rule amends paragraph (a)(2)(i) of § 740.15 to make air ambulances operating under 14 CFR part 135 eligible for License Exception AVS. BIS routinely approved license applications for air ambulances to fly to Cuba on temporary sojourn before Cuba became eligible for paragraph (a)(2)(ii) in 2015. Given their use in evacuating individuals in medical distress with minimal advanced notice, air ambulances will remain eligible for the license exception when destined to Cuba.

Paragraph (d)(6) of License Exception AVS contains Cuba-specific terms and conditions for the temporary sojourn of vessels to Cuba. This rule amends paragraph (d)(6) to remove passenger and recreational vessels from eligibility for temporary sojourn to Cuba. Now only cargo vessels for hire for use in the transportation of separately authorized items are eligible for export or

reexport to Cuba on temporary sojourn provided all of the other terms and conditions of License Exception AVS are met. This rule also simplifies and makes conforming changes to paragraph (d)(6) of License Exception AVS. Making passenger and recreational vessels ineligible for License Exception AVS when destined for Cuba also supports the President's policy to restrict non-family travel to Cuba.

Amendment to Cuba Licensing Policy

When a license exception is not available, § 746.2(b) of the EAR explains that license applications for the export or reexport of items to Cuba are subject to a general policy of denial unless otherwise specified in that paragraph. This rule redesignates paragraph (b)(3)(ii) as (b)(4) and revises the text of the new paragraph (b)(4) to explain that applications for the export or reexport of most aircraft or vessels on temporary sojourn to Cuba are subject to a general policy of denial unless the export or reexport is consistent with the foreign policy or national security interests of the United States. Applications for the temporary sojourn of aircraft operated by certificated air carriers or cargo vessels for hire that are not eligible for License Exception AVS will be reviewed on a case-by-case basis, such as cargo vessels that may need to remain in Cuba beyond the 14-day limit in paragraph (d) of License Exception AVS due to port congestion. A note to paragraph (b)(4) explains that applications for private and corporate aircraft, cruise ships, sailboats, fishing vessels, and other similar aircraft and vessels will generally be denied. As a licensing policy of denial indicates, BIS will only issue licenses for the temporary sojourn to Cuba of non-commercial aircraft or non-cargo vessels if such action is consistent with the national security and foreign policy interests of the United States, such as the temporary sojourn of vessels for use in oil spill response. Given the Administration's stated objectives of holding

the Cuban regime accountable for its repression of the Cuban people, including by restricting non-family travel to Cuba, such licenses will be issued only in extraordinary circumstances. Thus, non-commercial aircraft and non-cargo vessels generally will be prohibited from going to Cuba.

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, distribute 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 final rule has been designated a “significant regulatory action,” although not economically significant, under section 3(f) of Executive Order 12866.
2. This final rule is not subject to the requirements of E.O. 13771 (82 FR 9339, February 3, 2017) because it is issued with respect to a national security function of the United States. This rule supports the Administration’s national security and foreign policy objectives per the direction provided to agencies in National Security Presidential Memorandum on Strengthening the Policy of the United States Toward Cuba (NSPM-5). National Security Presidential Memoranda are used to promulgate Presidential decisions on national security matters. Thus, the primary direct benefit of this rule is to improve national security. Restricting non-family travel to Cuba will limit aircraft and vessel traffic, thus steering money away from the Cuban regime and its military and security services who control the tourism industry in Cuba. Accordingly, this rule meets the requirements set forth in the April 5, 2017, OMB guidance implementing E.O.

13771. See <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2017/M-17-21-OMB.pdf>.

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

4. Pursuant to section 1762 of the Export Control Reform Act of 2018, Pub. L. No. 115-232, tit. 17, subtitle B, 132 Stat. 2208 (2018), which was included in the John S. McCain National Defense Authorization Act for Fiscal Year 2019, this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date.

5. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

6. Notwithstanding any other provision of law, no person may be required to respond to or 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 Office of Management and Budget (OMB) Control Number. This regulation involves a collection currently approved by OMB under control number 0694-0088, Simplified Network Application Processing System. This collection includes, among other things, license applications, and carries a burden estimate of 42.5 minutes for a manual or electronic submission for a total burden estimate of 31,878 hours. BIS expects the burden hours associated with this collection to minimally increase and have limited impact on the existing estimates. Any comments regarding the collection of information

associated with this rule, including suggestions for reducing the burden, may be sent 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.

List of Subjects

15 CFR Part 740

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements

15 CFR Part 746

Exports, Reporting and recordkeeping requirements

For the reasons set forth in the preamble, 15 CFR Chapter VII, Subchapter C is amended as follows:

PART 740 – [AMENDED]

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

Authority: Pub. L. 115-232, 132 Stat. 2208 (50 U.S.C. 4801 *et seq.*). 50 U.S.C. 4601 *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 8, 2018, 83 FR 39871 (August 13, 2018).

2. Section 740.15 is amended by:

- a. Revising paragraphs (a)(2)(i) introductory text, (a)(2)(ii) introductory text, and (d)(6);

b. Redesignate Note to paragraph (d) as Note 1 to paragraph (d);

c. Revise the newly redesignated Note 1 to paragraph (d).

The revisions read as follows:

§ 740.15 Aircraft, Vessels and Spacecraft (AVS).

* * * * *

(a) ***

(2) *U.S. registered aircraft.* (i) A civil aircraft of U.S. registry operating under an Air Carrier Operating Certificate, Commercial Operating Certificate, or Air Taxi Operating Certificate issued by the Federal Aviation Administration (FAA), conducting flights under operating specifications approved by the FAA pursuant to 14 CFR part 129, or air ambulances operating under 14 CFR part 135, may depart from the United States under its own power for any destination, provided that:

* * * * *

(ii) Any other operating civil aircraft of U.S. registry may depart from the United States under its own power for any destination, except to Cuba or a destination in Country Group E:1 (see supplement no. 1 to this part) (flights to these destinations require a license), provided that:

* * * * *

(d) ***

(6) *Cuba, eligible vessels and purposes.* For Cuba, only cargo vessels for hire for use in the transportation of items are eligible for this paragraph (d).

Note 1 to paragraph (d). *A vessel exported or reexported to a country pursuant to this paragraph (d) 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 or the United States.*

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PART 746 – [AMENDED]

3. The authority citation for 15 CFR part 746 continues to read as follows:

Authority: Pub. L. 115-232, 132 Stat. 2208 (50 U.S.C. 4801 *et seq.*); 50 U.S.C. 4601 *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, 68 FR 26459, 3 CFR, 2004 Comp., p. 320; Presidential Determination 2007-7, 72 FR 1899, 3 CFR, 2006 Comp., p. 325; Notice of May 9, 2018, 83 FR 21839 (May 10, 2018); Notice of August 8, 2018, 83 FR 39871 (August 13, 2018).

4. Section 746.2 is amended by:

- (a) Redesignating paragraph (b)(3)(ii) as paragraph (b)(4);
- (b) Adding and reserving new paragraph (b)(3)(ii); and
- (c) Revising newly redesignated paragraph (b)(4).

The addition and revision read as follows:

§ 746.2 Cuba.

* * * * *

(b) * * *

(ii) [Reserved]

(4) *Temporary sojourns of aircraft and vessels.* Applications for exports or reexports of aircraft or vessels on temporary sojourn to Cuba, other than aircraft operated by certificated air carriers or cargo vessels for hire, are subject to a general policy of denial unless consistent with the foreign policy or national security interests of the United States. Applications for exports or reexports of aircraft operated by certificated air carriers or cargo vessels for hire on temporary sojourn to Cuba may be authorized on a case-by-case basis.

Note 1 to paragraph (b)(4): Applications for exports or reexports of private and corporate aircraft, cruise ships, sailboats, fishing vessels, and other similar aircraft and vessels on temporary sojourn to Cuba will generally be denied.

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Dated: May 31, 2019.

Richard E. Ashooh,

Assistant Secretary for Export Administration.

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