

## **Updated Guidance Regarding Available EAR License Exceptions for Exports of U.S. origin gas and petroleum products to Cuban Private Sector Entities and Activities**

- The Bureau of Industry and Security (BIS) has been receiving questions from potential exporters on the EAR requirements and potential EAR authorizations that may be available to authorize exports and reexports of U.S. origin gas and petroleum products for private sector use, including for addressing humanitarian needs in Cuba.
- In general, a license is required to export and reexport gas and other petroleum products that are subject to the EAR to Cuba pursuant to § 746.2(a). However, as with any export or reexport that is subject to a license requirement, the exporter or reexporter should first evaluate whether a license exception is available to authorize the export or reexport.
- In particular, exporters and reexporters of gas and petroleum products to the Cuban private sector should review the general restrictions under § 740.2 and § 740.21 License Exception Support for the Cuban People (SCP). As explained below, gas and other petroleum products exported and reexported to Cuban private sector entities or individuals for personal use may be authorized under License Exception SCP.
- Exporters and reexporters are advised that if a license application is submitted to BIS that otherwise meets the terms and conditions of License Exception SCP, those applications will be returned without action (RWA'd) by BIS with a direction to the applicant to export or reexport the items pursuant to License Exception SCP.
- BIS provides the following FAQ to further assist public understanding:

**Q.1:** Would License Exception Support for the Cuban People (SCP) (§ 740.21 of the EAR) allow an exporter or reexporter to export or reexport gas and other petroleum products to Cuban private sector entities for private sector use, or directly to individual Cubans for their personal or family use?

**A.1:** Yes, provided that all the applicable terms and conditions of License Exception SCP are met. Specifically, there are two authorizing paragraphs under License Exception SCP under paragraph (b) (*Improving living conditions and supporting independent economic activity*), which may be available to authorize these types of exports and reexports of gas and other petroleum products to Cuba. License Exception SCP provides a general authorization for exports under certain applicable conditions, as explained below, and does not contain any specific limitations on applicability based on quantity, or value of the items, or exporter or reexporter.

**§ 740.21(b)(1). Exports to private sector for private sector use.**

If the gas and other petroleum products are being exported for use by the Cuban private sector for private sector use, then paragraph (b)(1) of License Exception SCP, which authorizes items for use by the Cuban private sector for private sector economic activities, may be available to authorize these types of exports and reexports.

To qualify, exports must be both (1) for use by the Cuban private sector, (2) for private sector economic activities, including those addressing humanitarian needs in Cuba. Per § 740.21(b)(1)(i) and (ii), License Exception SCP does not apply to any transactions, whether to Cuban private sector entities or otherwise, which primarily generate revenue for the state; or contribute to the operation of the state, including through the construction or renovation of state-owned buildings.

**§ 740.21(b)(2). Exports sold directly to individuals in Cuba for their personal use.**

If the gas and other petroleum products are sold directly to individuals in Cuba for their personal use, then paragraph (b)(2) of SCP, which authorizes items sold directly to individuals in Cuba for their personal use or their immediate family's personal use, may be available to authorize exports and reexports of gas and other petroleum products.

Paragraph (b)(2) does not require the gas and other petroleum products to be exported or reexported directly; the gas and other petroleum products must ultimately be destined for these eligible end users and their families for their personal use.

This authorization applies only if the gas or other petroleum products are sold directly to individual Cubans for their personal use or the use of their immediate family. It does not apply if any of the products are sold or transferred to proscribed persons or entities in Cuba, including employees of the Ministry of Defense or Ministry of the Interior, senior officials of certain Cuban government organizations, labor unions, and other Cuban government affiliated organizations, including entities listed on the U.S. State Department's Cuba Restricted List, see 31 CFR 515.209.

**Note:** *Exporters and reexporters are responsible for ensuring that all of the applicable terms and conditions of License Exception SCP are met. Please review EAR § 740.21 -- License Exception Support for Cuban People (SCP) -- carefully to ensure that your transaction meets all the criteria for use of the license exception.*