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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 774

[Docket No. 160303184-8255-01]

RIN 0694-AG90

Reclassification of Targets for the Production of Tritium and Related Development and Production Technology Initially Classified Under the 0Y521 Series

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: In this rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to impose a license requirement on exports and reexports of specified target assemblies and components for the production of tritium under new Export Control Classification Number (ECCN) 1A231, and for the related “production” technology for 1A231 commodities covered under ECCNs 1E001 and 1E201. The items identified in this rule are controlled for nuclear nonproliferation (NP) Column 1 and anti-terrorism (AT) Column 1 reasons. These new classifications are the result of a U.S. Government proposal submitted and agreed to by members of the relevant multilateral regime, the Nuclear Suppliers Group (NSG), in June 2017. This final rule, as required under the 0Y521 procedure and in fulfillment of multilateral commitments, implements the multilateral control for the items adopted by the NSG.

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

FOR FURTHER INFORMATION CONTACT: Steven Clagett, Director, Nuclear and Missile Technology Controls Division, Office of Nonproliferation and Treaty Compliance, by phone at (202) 482-1641, or by email at Steven.Clagett@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

In 2012, BIS established the temporary classification ECCN 0Y521 series (encompassing ECCNs 0A521, 0B521, 0C521, 0D521, and 0E521) to identify items that warrant control on the Commerce Control List (CCL) because the items provide at least a significant military or intelligence advantage to the United States or for foreign policy reasons, but are not yet identified in an existing ECCN (77 FR 22191; April 13, 2012).

The license requirements and policies for the ECCN 0Y521 series appear in § 742.6(a)(7) of the EAR, and items classified under the series appear in supplement No. 5 to part 774.

Consistent with the procedure established in the April 13, 2012, rule, the Department of Commerce, with the concurrence of the Departments of Defense and State and in consultation with the Department of Energy, determined that targets made of or containing lithium “specially designed” for the production of tritium by insertion in the core of a nuclear reactor (“targets”) and the related “development” and “production” technology met the criteria for inclusion in the series. Controls on the targets and related technologies under 0Y521 series ECCNs 0A521 and 0E521, respectively, were published in an interim final rule, with request for comments, on August 8, 2016 (81 FR 52326). The items were controlled for regional stability (RS) Column 1 reasons to all destinations except Canada, and a case-by-case review policy applied to license applications. The only license exception available for these items was License Exception GOV

(Governments, international organizations, international inspections under the Chemical Weapons Convention, and the International Space Station (GOV)), which applies to all ECCN 0Y521 items if within the scope of § 740.11(b)(2)(ii) (Exports, reexports, and transfers (in-country) made by or consigned to a department or agency of the U.S. Government), as provided in § 740.2(a)(14). See also supplement No. 5 to part 774. BIS did not receive any comments in response to the August 8, 2016 rule.

Subsequent to the 0Y521 classification, and, as required by § 742.6(a)(7)(iii), within one calendar year of the August 8, 2016 rule providing for the temporary 0Y521 series classification, the U.S Government submitted a proposal to the NSG seeking a longer-term, multilateral classification for the targets and related technologies. The NSG adopted the United States' proposal. Therefore, as required under the 0Y521 ECCN series procedure and to fulfill the multilateral commitment made at the NSG, this final rule formally implements the adoption of a nuclear nonproliferation (NP) control for the items mentioned. This rule also implements an anti-terrorism (AT) control on the items.

Targets for the Production of Tritium and Related “Development” and “Production”

Technology Initially Classified Under the 0Y521 Series Reclassified to a Nuclear

Nonproliferation Multilateral Control Under the EAR

License Requirements

In this rule, BIS amends the EAR to add a new ECCN, 1A231, for specified target assemblies and components for the production of tritium, and to impose a license requirement on exports and reexports of items classified thereunder. ECCN 1A231 will be inserted between

ECCNs 1A227 and 1A290 on the CCL. Specifically, this rule imposes a license requirement on exports and reexports of such items if they are either (a.) target assemblies made of or containing lithium enriched in the lithium-6 isotope “specially designed” for the production of tritium through irradiation, including insertion in a nuclear reactor; or (b.) components “specially designed” for the target assemblies specified in Item paragraph a. of new ECCN 1A231. A Technical Note to paragraph b. provides that components “specially designed” for target assemblies for the production of tritium may include lithium pellets, tritium getters, and specially-coated cladding.

In addition, pursuant to this rule, the related “production” technology for the items controlled under the new ECCN 1A231 entry is classified under existing ECCNs 1E001 and 1E201. Consequently, a reference to ECCN 1A231 has been added to the headings of ECCN 1E001 and ECCN 1E201 and to the License Requirements section of ECCN 1E001. The items classified under new ECCN 1A231 and under existing ECCNs 1E001 and 1E201 in this rule are controlled for nuclear nonproliferation (NP) Column 1 and anti-terrorism (AT) Column 1 reasons.

License Exceptions

License Exception availability for items specified under new ECCN 1A231, and the related technology specified under existing ECCNs 1E001 and 1E201, is consistent with Category 1 NP controlled end items and related technology and provisions, as described in §742.3 of the EAR.

Licensing Policy

Applications for licenses to export and reexport the target assemblies and components covered under ECCN 1A231 and the related technology controlled under ECCNs 1E001 and 1E201 will be reviewed using the factors described in paragraph (b) – Licensing policy – of §742.3 of the EAR, which include: the appropriateness of the stated end-use, including specifically for the stated end-user; the items’ significance for nuclear purposes; whether the items are to be used in certain specified types of research; the types of assurances or guarantees given against use for nuclear explosive purposes or proliferation; whether any party to the transaction has been engaged in clandestine or illegal procurement activities; whether an application for a license to export or reexport to the end-user has previously been denied or whether the end-user has previously diverted items to unauthorized activities which were received under a license, a license exception, or shipped with no license required; whether the transaction would present an unacceptable risk of diversion to a nuclear explosive activity or unsafeguarded nuclear fuel-cycle activity, as described in § 744.2(a) of the EAR; and consideration of factors related to the nonproliferation credentials of the importing country.

Conforming Amendment

Finally, in this rule, BIS amends the EAR to make a conforming change. Specifically, BIS amends supplement No. 5 to part 774 – Items Classified Under ECCNs 0A521, 0B521, 0C521, 0D521 and 0E521 – to remove the existing references to the targets under “0A521. Systems, Equipment and Components.”, and the related technology under “0E521. Technology.”

Export Administration Act

Although the Export Administration Act of 1979 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, 78FR 16129 (March 13, 2013) and as extended by the Notice of August 15, 2017, 82FR 39005 (August 16, 2017), 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 of 1979, 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, 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 rule has been determined to be not significant for purposes of Executive Order 12866. This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall a 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 affects two approved collections: (1) the Simplified Network Application Processing + System (control number 0694-0088), which carries a burden hour estimate of 43.8 minutes manual or electronic and includes, among other things, license applications; and (2) License Exceptions and Exclusions (control number 0694-0137). BIS does not believe that this rule will materially increase the number of submissions under these collections. Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget, by email at jseehra@omb.eop.gov or by fax to (202) 395-7285 and to Steven Clagett, BIS, at Steven.Clagett@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 prior notice, the opportunity for public comment 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)). BIS, with the concurrence of the U.S. Departments of Defense and State, and after consultation with the Department of Energy, is implementing this rule which identifies items to be controlled for nuclear nonproliferation and anti-terrorism reasons. This action fulfills the United States' commitment to implement controls agreed to and adopted by members (including the United States) of the relevant multilateral regime (the Nuclear Suppliers Group). These items were previously and temporarily classified for regional stability reasons under the ECCN 0Y521 series, indicating that the above-referenced agencies determined that the items should be controlled for export because the items provide at least a significant military or intelligence

advantage to the United States or for foreign policy reasons. This rule is necessary to effect the nuclear nonproliferation and anti-terrorism foreign policy goals of the United States, and therefore to ensure the security interests of the United States. Implementation upon publication will allow BIS to continue to prevent exports of these items to users and for uses that pose a threat to the United States or its allies. If BIS delayed this rule to allow for prior notice and opportunity for public comment, the resulting delay in implementation, instead of immediate implementation simultaneous with formal removal of the temporary 0Y521 ECCN from supplement No. 5 to part 774, increases the opportunity for the export of these items to users and uses that pose a proliferation threat, thereby undermining the purpose of the initial rule and this subsequent rule. This rule serves, appropriately, as notice to the public of the longer-term control of the items mentioned.

Further, BIS finds good cause to waive the 30-day delay in effectiveness under 5 USC 553(d)(3). Immediate implementation of these changes, based upon a description agreed to by the U.S. and its multilateral export control regime allies, will allow BIS to continue to prevent exports of these items to users and for uses that pose threats to the security interests to the United States or its allies particularly in relation to nuclear nonproliferation and anti-terrorism. If BIS delayed this rule to allow for a 30-day delay in effectiveness, the resulting delay in implementation would afford an opportunity for the export of these items to users and uses that pose such threats, thereby undermining the purpose of the rule. In addition, no comments were submitted in response to the preceding interim final rule of August 8, 2016 (81 FR 52326). 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.

List of Subjects in 15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

Accordingly, part 774 of the Export Administration Regulations (15 CFR parts 730-774) is amended as follows:

PART 774-[AMENDED]

1. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 42 U.S.C. 2139a; 15 U.S.C. 1824a; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; 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 15, 2017, 82 FR 39005 (August 16, 2017).

2. In supplement No. 1 to part 774, Category 1, add Export Control Classification Number (ECCN) 1A231 between ECCNs 1A227 and 1A290 to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

1A231 Target assemblies and components for the production of tritium as follows (See List of Items Controlled):

License Requirements

Reason for Control: NP, AT

Control(s)	Country Chart (See Supplement No. 1 to part 738)
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: N/A

GBS: N/A

CIV: N/A

List of Items Controlled

Related Controls:

See ECCNs 1E001 (“production”) and 1E201 (“use”) for technology for items controlled by this entry.

Related Definitions: N/A

Items:

- a. Target assemblies made of or containing lithium enriched in the lithium-6 isotope “specially designed” for the “production” of tritium through irradiation, including insertion in a nuclear reactor;
- b. Components “specially designed” for the target assemblies specified in item a.

Technical Note to ECCN 1A231.b.: Components “specially designed” for target assemblies for the “production” of tritium may include lithium pellets, tritium getters, and specially-coated cladding.

- 3. In supplement No. 1 to part 774, Category 1, Export Control Classification Number (ECCN) 1E001 is revised to read as follows:

1E001 “Technology” according to the General Technology Note for the “development” or “production” of items controlled by 1A002, 1A003, 1A004, 1A005, 1A006.b, 1A007, 1A008, 1A101, 1A231, 1B (except 1B608, 1B613 or 1B999), or 1C (except 1C355, 1C608, 1C980 to 1C984, 1C988, 1C990, 1C991, 1C995 to 1C999).

License Requirements

Reason for Control: NS, MT, NP, CB, RS, AT

<i>Control(s)</i>	<i>Country Chart (See Supp. No. 1 to part 738)</i>
NS applies to “technology” for items controlled by 1A002, 1A003, 1A005, 1A006.b, 1A007, 1B001 to 1B003, 1B018, 1C001 to 1C011, or 1C018	NS Column 1

NS applies to “technology” for items controlled by 1A004	NS Column 2
MT applies to “technology” for items controlled by 1A101, 1B001, 1B101, 1B102, 1B115 to 1B119, 1C001, 1C007, 1C011, 1C101, 1C102, 1C107, 1C111, 1C116, 1C117, or 1C118 for MT reasons	MT Column 1
NP applies to “technology” for items controlled by 1A002, 1A007, 1A231, 1B001, 1B101, 1B201, 1B225, 1B226, 1B228 to 1B234, 1C002, 1C010, 1C111, 1C116, 1C202, 1C210, 1C216, 1C225 to 1C237, or 1C239 to 1C241 for NP reasons	NP Column 1
CB applies to “technology” for items controlled by 1C351, 1C353, or 1C354	CB Column 1
CB applies to “technology” for materials controlled by 1C350 and for chemical detection systems and dedicated detectors therefor, in 1A004.c, that also have the technical characteristics described in 2B351.a	CB Column 2
RS applies to technology for equipment controlled in 1A004.d	RS Column 2
AT applies to entire entry	AT Column 1

Reporting Requirements

See § 743.1 of the EAR for reporting requirements for exports under License Exceptions, and Validated End-User authorizations.

List Based License Exceptions (See Part 740 for a description of all license exceptions)

CIV: N/A

TSR: Yes, except for the following:

- 1) Items controlled for MT reasons; or
- 2) Exports and reexports to destinations outside of those countries listed in Country Group A:5 (See Supplement No. 1 to part 740 of the EAR) of “technology” for the “development” or production” of the following:

(a) Items controlled by 1C001; or

(b) Items controlled by 1A002.a which are composite structures or laminates having an organic “matrix” and being made from materials listed under 1C010.c or 1C010.d.

Special Conditions for STA

STA: License Exception STA may not be used to ship or transmit “technology” according to the General Technology Note for the “development” or “production” of equipment and materials specified by ECCNs 1A002, 1C001, 1C007.c or d, 1C010.c or d or 1C012 to any of the destinations listed in Country Group A:6 (See Supplement No.1 to part 740 of the EAR).

List of Items Controlled

Related Controls (1) Also see ECCNs 1E101, 1E201, and 1E202. (2) See ECCN 1E608 for “technology” for items classified under ECCN 1B608 or 1C608 that, immediately prior to July 1, 2014, were classified under ECCN 1B018.a or 1C018.b through .m (note that

ECCN 1E001 controls “development” and “production” “technology” for chlorine trifluoride controlled by ECCN 1C111.a.3.f – see ECCN 1E101 for controls on “use” “technology” for chlorine trifluoride). (3) See ECCN 1E002.g for control libraries (parametric technical databases) “specially designed” or modified to enable equipment to perform the functions of equipment controlled under ECCN 1A004.c (Nuclear, biological and chemical (NBC) detection systems) or ECCN 1A004.d (Equipment for detecting or identifying explosives residues). (4) “Technology” for lithium isotope separation (see related ECCN 1B233) and “technology” for items described in ECCN 1C012 are subject to the export licensing authority of the Department of Energy (see 10 CFR part 810). (5) “Technology” for items described in ECCN 1A102 is “subject to the ITAR” (see 22 CFR parts 120 through 130).

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

4. In supplement No. 1 to part 774, Category 1, Export Control Classification Number (ECCN) 1E201 is revised to read as follows:

1E201 “Technology” according to the General Technology Note for the “use” of items controlled by 1A002, 1A007, 1A202, 1A225 to 1A227, 1A231, 1B201, 1B225, 1B226, 1B228 to 1B232, 1B233.b, 1B234, 1C002.b.3 and b.4, 1C010.a, 1C010.b, 1C010.e.1, 1C202, 1C210, 1C216, 1C225 to 1C237, 1C239 to 1C241 or 1D201.

License Requirements

Reason for Control: NP, AT

Control(s) *Country Chart*

(See Supp. No.

1 to part 738).

NP applies to entire entry, NP Column 1
for items controlled for
NP reasons

AT applies to entire entry AT Column 1

List Based License Exceptions (See Part 740 for a description of all license exceptions)

CIV: N/A

TSR: N/A

List of Items Controlled

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

Supplement No. 5 to Part 774 [Amended]

5. Amend supplement No. 5 to part 774 by removing and reserving entries for item “No. 1” under the subheading “0A521. Systems, Equipment and Components.”, and for item “No. 1” under the subheading “0E521. Technology.”

Dated: March 30, 2018.

Matthew S. Borman,

Deputy Assistant Secretary for

Export Administration.

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