



DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 774

[Docket No. 201215-0342]

RIN 0694—AH89

Technical Amendments to the Export Administration Regulations: Export Control Classification Number 0Y521 Series Supplement— Extension of Software Specially Designed To Automate the Analysis of Geospatial Imagery Classification

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Interim final rule; technical amendment.

SUMMARY: On January 6, 2020, the Bureau of Industry and Security (BIS) amended the Export Administration Regulations (EAR) to add Software Specially Designed to Automate the Analysis of Geospatial Imagery to the 0Y521 Temporary Export Control Classification Numbers (ECCN) Series as 0D521. In this action BIS extends that status for a year pursuant to the 0Y521 series extension procedures.

DATES: This rule is effective January 6, 2021.

FOR FURTHER INFORMATION CONTACT: Aaron Amundson, Director, Information Technology Division, Office of National Security and Technology Transfer Controls, at email Aaron.Amundson@bis.doc.gov or by phone at (202) 482–5299.

SUPPLEMENTARY INFORMATION:

Background

On January 6, 2020, the Bureau of Industry and Security (BIS) amended the Export Administration Regulations (EAR) with an interim final rule to add Software Specially Designed to Automate the Analysis of Geospatial Imagery to the 0Y521 Temporary Export Control Classification Numbers (ECCN) Series as 0D521. More specifically, the software was described

as Geospatial imagery “software” “specially designed” for training a Deep Convolutional Neural Network to automate the analysis of geospatial imagery and point clouds. *See* 85 FR 459.

BIS established the ECCN 0Y521 series in a final rule published April 13, 2012 (72 FR 22191) (hereinafter “April 13 rule”) to identify items that warrant control on the Commerce Control List (CCL) but are not yet identified in an existing ECCN. Items in the 0Y521 series of ECCNs are added upon a determination by the Department of Commerce, with the concurrence of the Departments of Defense and State, and other agencies as appropriate, that the items warrant control for export because the items may provide a significant military or intelligence advantage to the United States or because foreign policy reasons justify control. The ECCN 0Y521 series is a temporary holding classification.

Under the procedures established in the April 13 rule and codified at § 742.6(a)(8)(iii) of the EAR, items classified under ECCN 0Y521 remain so classified for one year from the date they are listed in supplement no. 5 to part 774 of the EAR, unless the items are re-classified under a different ECCN or the 0Y521 classification is extended.

BIS may extend an item’s ECCN 0Y521 classification for two one-year periods, provided that the U.S. Government has submitted a proposal to the relevant multilateral regime(s) (e.g. the Wassenaar Arrangement) to obtain multilateral controls over the item, with the understanding that multilateral controls are preferable when practical. Further extension beyond three years may occur only if the Under Secretary for Industry and Security makes a determination that such extension is in the national security or foreign policy interest of the United States. Any extension or re-extension of control of an ECCN 0Y521 item, including the determination by the Under Secretary, shall be published in the **Federal Register**.

In this action, BIS extends the status of an item classified under a 0Y521 ECCN for a year consistent with procedures that allow such an extension. Specifically, in this case the U.S. Government submitted a proposal for multilateral control of the 0D521 software specially designed to automate the analysis of geospatial imagery, as described in the January 6, 2020

interim final rule, to the relevant multilateral regime (the Wassenaar Arrangement) in a timely manner, within the first year of the item's 0D521 classification. However, due to the pandemic, the regime did not convene and therefore did not consider acceptance of the proposal. An extension of time is appropriate in order for the U.S. Government to continue its effort at the Wassenaar Arrangement in 2021.

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (50 U.S.C. 4801–4852) that provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule.

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 interim final rule has been designated to be not significant for purposes of Executive Order 12866. The requirements of Executive Order 13771 do not apply because the rule is not significant.

2. Notwithstanding any other provision of law, no person is required to respond to, nor is 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 does not involve any collection of information.

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

4. Pursuant to section 1762 of ECRA (see 50 U.S.C. 4821), this action is exempt from the Administrative Procedure Act requirements (under 5 U.S.C. 553) for notice of proposed rulemaking, opportunity for public participation, and delay in effective date. This rule only updates Supplement No. 5 to Part 774 to the EAR by extending the date of the period of validity of 0D521 software in Supplement No. 5 to Part 774 for one year. This revision is merely technical and in accordance with established 0Y521 ECCN series procedure and purpose, which was proposed to the public and subject of comment. This rule clarifies information, which serves to avoid confusing readers about the 0D521 item's status. It does not alter any right, obligation or prohibition that applies to any person under the EAR.

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.

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 through 774) is amended as follows:

PART 774 – THE COMMERCE CONTROL LIST

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

AUTHORITY: 50 U.S.C. 4801-4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 8720; 10 U.S.C. 8730(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. 1824; 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.

Supplement No. 5 to Part 774 [Amended]

2. In Supplement No. 5 to part 774, amend the table, under the heading “0D521. Software” entry No 1, by revising the date in the third column to read: “January 6, 2022”.

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Deputy Assistant Secretary for Export Administration

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