

Rules and Regulations

Federal Register

Vol. 87, No. 4

Thursday, January 6, 2022

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 774

[Docket No. 211222–0267]

RIN 0694–AH89

Export Control Classification Number 0Y521 Series Supplement—Extension of Controls on an Emerging Technology (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. BIS first extended controls on this emerging technology for a second year pursuant to the 0Y521 series extension procedures on January 6, 2021, and in this action extends these controls a second time for an additional year for a total of three years of this control since it was added to the EAR on January 6, 2020.

DATES: This rule is effective January 6, 2022.

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 an emerging technology—Software Specially Designed to Automate the Analysis of Geospatial Imagery—to the 0Y521 Temporary Export Control Classification Numbers (ECCN) Series as 0D521. (85 FR 459, January 6, 2020). 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. The following year, BIS extended that status for a year. (86 FR 461, January 6, 2021). These actions are consistent with Section 1758 (50 U.S.C. 4801) of the Export Control Reform Act of 2018 (ECRA), which requires the Department of Commerce to establish appropriate controls on the export, reexport, or transfer (in-country) of emerging and foundational technologies.

BIS established the ECCN 0Y521 series (April 13, 2012, 72 FR 22191) 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 set forth in Section 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 second time for an additional year, for a total of three years of this control since it was added to the EAR on January 6, 2020, consistent with procedures that allow such an extension. Specifically, in this case the U.S. Government submitted a proposal for multilateral control of software specially designed to automate the analysis of geospatial imagery, as described in the January 6, 2020 interim final rule and in ECCN 0D521, 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 Wassenaar Arrangement did not formally convene in 2020 and therefore was unable to consider acceptance of the proposal. Therefore, BIS published the first extension of this 0Y521 control on January 6, 2021. However, the Wassenaar Arrangement’s limited deliberations in 2021 due to the pandemic did not allow for sufficient discussion of this proposal. An additional extension of time is appropriate in order for the U.S. Government to continue its effort at the Wassenaar Arrangement in 2022, and is consistent with the requirements of Section 1758(c) of ECRA.

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.

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 section “0D521. Software” by revising entry No 1. to read as follows:

Supplement No. 5 to Part 774—Items Classified Under ECCNS 0A521, 0B521, 0C521, 0D521 and 0E521

* * * * *

Item descriptor	Date of initial or subsequent BIS classification. (ID = initial date; SD = subsequent date).	Date when the item will be designated EAR99, unless reclassified in another ECCN or the 0Y521 classification is reissued.	Item-specific license exception eligibility.
Note: The description must match by model number or a broader descriptor that does not necessarily need to be company specific.			

* * * * *

0D521. Software.

No.	Item descriptor	Date of initial or subsequent BIS classification. (ID = initial date; SD = subsequent date).	Date when the item will be designated EAR99, unless reclassified in another ECCN or the 0Y521 classification is reissued.	Item-specific license exception eligibility.
No. 1	Geospatial imagery “software” “specially designed” for training a Deep Convolutional Neural Network to automate the analysis of geospatial imagery and point clouds, and having all of the following: 1. Provides a graphical user interface that enables the user to identify objects (<i>e.g.</i> , vehicles, houses, etc.) from within geospatial imagery and point clouds in order to extract positive and negative samples of an object of interest; 2. Reduces pixel variation by performing scale, color, and rotational normalization on the positive samples; 3. Trains a Deep Convolutional Neural Network to detect the object of interest from the positive and negative samples; and 4. Identifies objects in geospatial imagery using the trained Deep Convolutional Neural Network by matching the rotational pattern from the positive samples with the rotational pattern of objects in the geospatial imagery.	January 6, 2020 (ID)	January 6, 2023	License Exception GOV under § 740.11(b)(2)(ii) only.
	<i>Technical Note:</i> A point cloud is a collection of data points defined by a given coordinate system. A point cloud is also known as a digital surface model.			

* * * * *

Thea D. Rozman Kendler,
*Assistant Secretary for Export
 Administration.*

[FR Doc. 2021-28444 Filed 1-5-22; 8:45 am]

BILLING CODE 3510-33-P

DEPARTMENT OF THE TREASURY

Office of Investment Security

31 CFR Part 800

Determination Regarding Excepted Foreign States

AGENCY: Office of Investment Security,
 Department of the Treasury.

ACTION: Determination.

SUMMARY: The Department of the Treasury, as Chair of the Committee on Foreign Investment in the United States, is publishing the Committee's determination that two foreign states have established and are effectively utilizing a robust process to analyze foreign investments for national security risks and to facilitate coordination with the United States on matters relating to investment security.

DATES: Effective January 5, 2022.

FOR FURTHER INFORMATION CONTACT: Laura Black, Director of Investment Security Policy and International Relations, at U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220; telephone: (202) 622-3425; email: CFIUS.FIRRMA@treasury.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The list of excepted foreign states and additional information with respect to the Committee on Foreign Investment in the United States (CFIUS or the Committee) are available on the Committee's section of the Department of the Treasury website.

Notice of CFIUS Action

The Committee, taking into consideration the factors identified on the Committee's section of the Department of the Treasury website, has determined, under the authority of section 721 of the Defense Production Act of 1950, as amended, and 31 CFR 800.1001(a), that: (1) Australia has established and is effectively utilizing a robust process to analyze foreign investments for national security risks and to facilitate coordination with the United States on matters relating to investment security; and (2) Canada has established and is effectively utilizing a robust process to analyze foreign investments for national security risks

and to facilitate coordination with the United States on matters relating to investment security.

This determination satisfies the second criterion in the definition of excepted foreign state under 31 CFR 800.218 with respect to Australia and Canada. Therefore, Australia and Canada are and will remain excepted foreign states absent further Committee action and notice in the **Federal Register**.

Larry McDonald,
*Acting Assistant Secretary for International
 Markets.*

[FR Doc. 2021-28598 Filed 1-5-22; 8:45 am]

BILLING CODE 4810-AK-P

DEPARTMENT OF THE TREASURY

Office of Investment Security

31 CFR Parts 800 and 802

Certain Investments in the United States by Foreign Persons and Certain Transactions by Foreign Persons Involving Real Estate in the United States

AGENCY: Office of Investment Security,
 Department of the Treasury.

ACTION: Final rule.

SUMMARY: This final rule adopts without change the proposed rule modifying the definitions of “excepted foreign state” and “excepted real estate foreign state” by extending by one year the effective date of one of two criteria set forth in the definitions in the regulations implementing certain provisions of Section 721 of the Defense Production Act of 1950, as amended.

DATES: This final rule is effective on February 4, 2022.

FOR FURTHER INFORMATION CONTACT: For questions about this rule, contact: Laura Black, Director of Investment Security Policy and International Relations, Meena R. Sharma, Deputy Director of Investment Security Policy and International Relations, or Richard Rowe, Senior Policy Advisor, at U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220; telephone: (202) 622-3425; email: CFIUS.FIRRMA@treasury.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. Definitions of Excepted Foreign State and Excepted Real Estate Foreign State—Sections 800.218 and 802.214

On November 15, 2021, the Department of the Treasury (Treasury Department) published a proposed rule

amending the definitions of “excepted foreign state” and “excepted real estate foreign state” in 31 CFR part 800 and 31 CFR part 802, respectively. 86 FR 62978. These terms operate together with other relevant terms to provide an exception from the jurisdiction of the Committee on Foreign Investment in the United States (CFIUS or the Committee) over covered investments by certain foreign persons who meet specific criteria establishing sufficiently close ties to certain foreign states, as well as certain other provisions of the Foreign Investment Risk Review Modernization Act of 2018.

The preamble to the proposed rule provides background on CFIUS's statutory authority and the rationale for these definitional changes. The public was provided an opportunity to comment on the proposed rule and comments were due by December 10, 2021. The Treasury Department received two comments prior to the deadline, which are described in the next section.

B. Excepted Foreign States and Excepted Real Estate Foreign States

As described in the preamble to the proposed rule, “excepted foreign state” and “excepted real estate foreign state” are each defined by a two-criteria conjunctive test, with delayed effectiveness for the second criterion. This second criterion is a Committee determination under § 800.1001(a) for each eligible foreign state that it has established and “is effectively utilizing” a robust process to analyze foreign investments for national security risks and to facilitate coordination with the United States on matters relating to investment security, and a Committee determination under § 802.1001(a) for each eligible foreign state that it has “made significant progress” toward establishing and effectively utilizing the robust process that is described in § 800.1001. The final rule extends the effectiveness of the second criterion with respect to each definition. Instead of becoming effective on February 13, 2022, each such second criterion will become effective on February 13, 2023.

II. Summary of Comments

During the public comment period, the Treasury Department received two comments to the proposed rule. The Treasury Department considered each submitted comment. All comments received by the end of the comment period are available on the public rulemaking docket at <https://www.regulations.gov> and addressed herein.