



Billing Code: 3510-33-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 732, 734, 738, 740, 742 and 774

[Docket No. 110310188-2058-03]

RIN: 0694-AF17

Revisions to the Export Administration Regulations (EAR): Export Control Classification Number 0Y521 Series, Items Not Elsewhere Listed on the Commerce Control List (CCL)

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) publishes this final rule, which amends the Export Administration Regulations (EAR) by establishing a new Export Control Classification Number (ECCN) series, 0Y521, on the Commerce Control List (CCL) and makes corresponding changes to the EAR. The ECCN 0Y521 series will be used for items that warrant control on the CCL but are not yet identified in an existing ECCN. As BIS explained in the proposed rule issued on July 15, 2011 (76 FR 41958), this new temporary holding classification is equivalent to United States Munitions List (USML) Category XXI (Miscellaneous Articles), but with a limitation that while an item is temporarily classified under ECCN 0Y521, the U.S. Government works to adopt a control through the relevant multilateral regime(s); to determine an appropriate longer-term control over the item; or determines that the item does not warrant

control on the CCL. Items will be added to the 0Y521 ECCNs by the Department of Commerce, with the concurrence of the Departments of Defense and State, when it identifies an item that should be controlled because it provides a significant military or intelligence advantage to the United States or because foreign policy reasons justify such control.

The 0Y521 series was described in the July 15, 2011 proposed rule that identified a framework for how articles, which the President determines, as part of the Administration's Export Control Reform Initiative, no longer warrant control on the USML would be controlled under the CCL. In this rule, however, the 0Y521 provisions are being published in final form, with necessary corresponding changes, separate from the other July 15 rule proposals. Public comments on the other July 15 proposals remain under BIS review.

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

FOR FURTHER INFORMATION CONTACT: Eileen Albanese, Director, Office of National Security and Technology Transfer Controls, by phone at (202) 482-0092 or by email at Eileen.Albanese@bis.doc.gov.

SUPPLEMENTARY INFORMATION

Background

On July 15, 2011, as part of the Administration's ongoing Export Control Reform Initiative, the Bureau of Industry and Security (BIS) published a proposed rule (76 FR 41958) (herein "the July 15 proposed rule") that set forth a framework for how articles the President determines, in accordance with section 38(f) of the Arms Export Control Act (AECA) (22 U.S.C. 2778(f)), no longer warrant control on the United States Munitions List (USML) instead would be controlled under the Commerce Control List (CCL) in Supplement No. 1 to part 774 of the Export Administration Regulations (EAR). With that proposed rule, BIS also proposed establishing a new Export Control Classification Number (ECCN) series, 0Y521, on the CCL, which would be equivalent to United States Munitions List (USML) Category XXI (Miscellaneous Articles), but with some limitations, and requested public comments thereon. The 0Y521 ECCN series will provide a mechanism for identifying and controlling items that warrant export controls, but that are not yet categorized on the CCL or USML, such as emerging technologies. It will provide a temporary control category for such items, while the U.S. Government works to adopt a control through the relevant multilateral regime(s); to determine an appropriate longer-term control over the item; or determines that the item does not warrant control on the CCL. With this final rule, BIS adopts this proposal, with some modifications described below, and makes corresponding necessary changes to the EAR.

Consistent with the July 15 proposed rule, BIS is amending the EAR to establish new ECCNs 0A521, 0B521, 0C521, 0D521 and 0E521 and to make corresponding changes. As proposed in the July 15 proposed rule, ECCN 0Y521 items will be subject to a nearly worldwide license requirement (i.e., for every country except Canada) with a case-by-case license review policy, through regional stability (RS Column 1) controls. The U.S. Government will review the

sensitivity of each potential ECCN 0Y521 item on a case-by-case basis and make a positive determination regarding the sensitivity of each item.

Items classified under ECCN 0Y521 will stay so-classified from the date a final rule identifying the item is published in the *Federal Register* amending the EAR for one year following the date of *Federal Register* publication, unless the item is re-classified under a different ECCN or the 0Y521 classification is extended. During this time, the U.S. Government will determine whether it is appropriate to submit a proposed control to the applicable export control regime (e.g., the Wassenaar Arrangement) for potential multilateral control, with the understanding that multilateral controls are preferable when practical. An item's ECCN 0Y521 classification may be extended for two one-year periods to provide time for the U.S. Government and multilateral regime(s) to reach agreement on controls for the item. As discussed in the July 15 preamble, the July 15 proposed rule allowed for no more than two one-year extensions provided that the Departments of Commerce, State and Defense made a consensus determination to seek multilateral controls for the ECCN 0Y521 item and the U.S. Government submitted a proposal to obtain multilateral controls over the item. As described below under "Changes from Proposed Rule," this final rule clarifies that agencies will determine whether a multilateral control is appropriate at the time that the items are classified under ECCN 0Y521. In addition, this final rule allows for further extension beyond three years if the Under Secretary for Industry and Security makes a determination that such extension is in the national security or foreign policy interests of the United States. An extension or re-extension, including a determination by the Under Secretary for Industry and Security, will be published in the *Federal Register*.

The U.S. Government's decision to identify an item as included in ECCN 0Y521 is a classification based on a determination of whether the item has significant military or

intelligence advantage to the United States or for foreign policy reasons, not a classification of the item's technical characteristics. ECCN 0Y521 classifications are excluded from the part 756 appeals process. Parties would nonetheless be encouraged to provide to BIS information and comments about the item and the ECCN 0Y521 controls on it.

As proposed in the July 15 proposed rule, BIS is also adding a new paragraph (a)(7) to § 742.6 to describe the regional stability reason for control that applies to items in the 0Y521 series, and is adding a reference to ECCN 0Y521 items in the licensing policy paragraph (b)(1) of the same section. The license review policy will be used to evaluate on a case-by-case basis whether the export or reexport could contribute directly or indirectly to any country's military capabilities in a manner that would destabilize a region's military balance contrary to the foreign policy interests of the United States.

In the July 15 proposed rule, BIS proposed that no license exceptions would be available for any item classified under the 0Y521 ECCN series other than License Exception GOV, if the item is within the scope of § 740.11(b)(2)(ii) (Items for official use by personnel and agencies of the U.S. Government). A new § 740.2(a)(14) is being added to reflect this. As described below under "Changes from Proposed Rule," BIS will have the authority to apply additional license exceptions on an item-specific basis at any time if the Departments of Defense and State concur with such application.

Comments and Responses

BIS received 43 public comments on the July 15 proposed rule, 19 of which pertained to the ECCN 0Y521 series proposal. Summaries of those comments and BIS responses appear below. Similar comments are consolidated. As noted above, the ECCN 0Y521 series proposal

was separated from the rest of the July 15 proposed rule for purposes of this final rule; public comments received on issues other than the 0Y521 provisions remain under review separate from this final rule.

Purpose of Creating the 0Y521 ECCN Series

Comment 1: Commenters generally were receptive to, or positive toward, the proposed creation of the ECCN 0Y521 series. One commenter expressed that the addition of the ECCN 0Y521 series is a feature of the EAR long overdue and is consistent with the statutory requirements of the Export Administration Act (EAA) to update the control list as warranted.

Response: BIS agrees the addition of the ECCN 0Y521 series will play an important role on the CCL, along with helping to move forward the Export Control Reform Initiative's goal of structurally aligning the CCL and USML. The CCL is reviewed and updated on a continuous basis, and the new ECCN 0Y521 series will aid in this process by identifying those items where a temporary control is appropriate while the U.S. Government identifies a permanent classification.

Comment 2: Some commenters expressed concern that the proposed three-year maximum that an item could be classified under ECCN 0Y521 was too long.

Response: The July 15 proposed rule stated that items may be classified under ECCN 0Y521 for a one-year period, which may be extended for two one-year periods. This three-year period was intended to provide sufficient time for the U.S. Government and its multilateral regime partners to assess a particular item and determine its appropriate classification. Shortening the maximum period would not provide an adequate opportunity to consider, develop and implement multilateral regime control for such items.

In reviewing the timing associated with proposing multilateral regime controls, BIS determined that, in fact, three years may, on rare occasions, be insufficient to accomplish necessary multilateral negotiations. To expedite that process, this final rule clarifies that the United States will attempt to submit any proposals for 0Y521 items to the relevant multilateral regime for consideration of multilateral controls during the initial one-year 0Y521 classification period or will determine whether a different ECCN or EAR99 designation might be more appropriate. In addition, consistent with the July 15 proposed rule, this final rule generally limits extension to two additional one-year periods, and such extensions may only be made provided that the U.S. Government submitted a proposal to obtain multilateral controls over the item. However, recognizing, *inter alia*, that there may be a need for additional time for the U.S. Government and its multilateral regime partners to review and discuss appropriate controls, this final rule allows for additional extensions. The Under Secretary for Industry and Security may further extend an ECCN 0Y521 control upon a determination that such extension is in the national security or foreign policy interests of the United States. This change is in keeping with the July 15 proposed rule's anticipation that time extensions may be necessary to achieve multilateral controls. All extension and re-extensions, including the determination by the Under Secretary for Industry and Security, will be published in the *Federal Register*.

In addition, the case-by-case license review policy for ECCN 0Y521 items will provide discretion to the U.S. Government to approve many exports and reexports potentially affected by ECCN 0Y521 classification.

Comment 3: Commenters cautioned that: classification should not be overused; when used, the classification process should not be hindered or protracted; and the classification

process should only be used in exceptional circumstances. Commenters further expressed concern that because they believed that USML Category XXI, which the ECCN 0Y521 entries are designed to parallel, is “vague and worrisome,” the ECCN 0Y521 process will suffer from the same problems.

Response: Although BIS cannot predict how often items will be classified in ECCN 0Y521 entries, BIS will use this classification only when the item has significant military or intelligence advantage to the United States or foreign policy considerations warrant its use. Given the breadth and scope of the USML and the CCL, BIS does not anticipate that a large number of now EAR99 items will be listed on the CCL under ECCN 0Y521. The ECCN 0Y521 series is a mechanism to impose license requirements when needed within a transparent process and with stated parameters of when an item would transition out of temporary ECCN 0Y521 classification. Each item’s ECCN 0Y521 classification will expire one year from the date of its initial ECCN 0Y521 classification, unless specifically extended. As noted in response to the previous comment, for items whose ECCN 0Y521 status is extended, such extension is limited to two one-year periods, unless the Under Secretary for Industry and Security makes a determination that it is in the national security or foreign policy interests of the United States to further extend the temporary ECCN 0Y521 controls. For additional discussion on how ECCN 0Y521 items will be identified and the classification process initiated, see BIS’s response to Comment 4.

With respect to concerns that the USML Category XXI process is, and the ECCN 0Y521 process will be, “vague and worrisome,” the ECCN 0Y521-related provisions have been drafted to create as much transparency for the public as possible. This final rule clarifies that the U.S. Government will attempt to submit any proposals for items classified under ECCN 0Y521

during the one-year classification period or will determine whether a different ECCN or EAR99 designation might be more appropriate. In addition, with this final rule, BIS has made efforts to clarify that an extension of 0Y521 classification may only occur for a second or third year, provided that the U.S. Government has already submitted a proposal to obtain multilateral controls over the item. Moreover, just as the State Department continues to improve the substance and processes of export controls under the ITAR, BIS intends to continue making the EAR increasingly effective, and welcomes public comments on an ongoing basis.

Comment 4: A commenter noted that BIS did not clearly explain whether exporters have an affirmative requirement to seek a formal determination regarding whether an item not listed on the CCL should be subject to ECCN 0Y521 control. Related to that point, some commenters seemed unsure about how the ECCN 0Y521 items would be identified and the classification process initiated. One commenter recommended that BIS add a new ECCN entry for the item if enough information about the item is known, instead of classifying the item under an ECCN 0Y521 entry.

Response: Neither the July 15 proposed rule nor this final rule require exporters or reexporters to seek a determination from the U.S. Government as to whether an item that is not identified on the CCL should be classified as an ECCN 0Y521 item. If an item that is subject to the EAR is not described in an ECCN on the CCL, including in an existing ECCN 0Y521 entry, the item is an EAR99 item. As noted in the July 15 rule, ECCN 0Y521 controls only become applicable once a final rule is published in the *Federal Register* adding a description of such an item to Supplement No. 5 to part 774.

With regard to identifying new items to classify under ECCN 0Y521 entries, the U.S. Government is responsible for identifying such items. Specifically, BIS, with the concurrence of the Departments of Defense and State, will identify and classify items that warrant control under 0Y521 ECCNs. BIS also relies on input received from its Technical Advisory Committees (TACs). As BIS drafts final rules to add additional items to an ECCN 0Y521 classification, such rules will be reviewed by the TACs, which will provide BIS an opportunity to receive industry input on whether the items in question, including emerging technologies, warrant control as an ECCN 0Y521 item.

Finally, in response to the comment that a new ECCN entry specific to an item at issue be added to the CCL if sufficient information is known about the item, rather than temporarily classifying it as ECCN 0Y521, BIS believes for several reasons that use of ECCN 0Y521 will better serve the purpose of identifying and ultimately classifying emerging technologies and other items that may warrant control. ECCN 0Y521 advances the effort to streamline the CCL and simplify export and reexport provisions, which are primary goals of the Administration's ongoing Export Control Reform Initiative. Adding new ECCNs for each new item would mean expanding the number of distinct ECCN entries on the CCL, contrary to the goals of Export Control Reform Initiative. The standard heading on the CCL for each ECCN 0Y521 entry, listed by product group, immediately provides temporary classifications for items that warrant control. Supplement No. 5 to part 774 describes the actual items under the ECCN 0Y521 series and allows the public to more easily access information about the 0Y521 items, i.e., the date of initial classification or subsequent BIS classification of the item. Finally, because the information is concentrated in Supplement No. 5, there are no unnecessary amendments to the CCL.

Comment 5: A commenter suggested that the phrase “or for foreign policy reasons” be removed from the 0Y521 entry headings.

Response: BIS believes the commenter’s point was that items should not be added to the 0Y521 ECCN series for solely “foreign policy” reasons. BIS disagrees. An ECCN 0Y521 item that has significant military or intelligence advantage may warrant worldwide or widespread controls. By including controls for foreign policy reasons from the outset, BIS facilitates a broader basis for control of ECCN 0Y521 items because such controls include both multilateral and unilateral designations. Although the U.S. Government would most likely work to obtain multilateral status for items classified under the ECCN 0Y521 series, while the items are classified under ECCN 0Y521, they will be subject to unilateral foreign policy-based control (RS1) to secure control of the items in a timely manner and thereby avoid an EAR99 designation. At this point and with this final rule, items placed under 0Y521 ECCNs are controlled for RS1 reasons.

ECCN 0Y521 control entry text

Comment 6: Commenters recommended that BIS revise the heading for the entry of a 0Y521 ECCN to name the particular group instead of using the term “item.”

Response: BIS agrees. After reviewing comments indicating that it would help public understanding of the ECCN 0Y521 provisions if product group-specific terminology were used for each of the respective 0Y521 ECCNs (i.e., using “commodity” in 0A521 and 0B521, material in 0C521, “software” in 0D521 and “technology” in 0E521) rather than “item,” as was proposed in the July 15 rule, BIS accepted this suggested change, which is included in the headings for

ECCNs 0A521, 0B521, 0C521, 0D521 and 0E521 included in this final rule.

Comment 7: A commenter suggested that ECCN 0Y521 items be listed in ECCN 0A521, 0B521, 0C521, 0D521 and 0E521 entries instead of in the proposed Supplement No. 5 to part 774 (Items Classified Under ECCNs 0A521, 0B521, 0C521, 0D521 and 0E521).

Response: As discussed in the Response to Comment 4, in evaluating how to structure the ECCN 0Y521 entries, BIS and the other agencies participating in the Export Control Reform Initiative determined that the Supplement No. 5 approach was a better alternative to adding individual ECCNs to the CCL. Listing the items under the respective entries would require adding 0Y521 ECCNs to each of the ten CCL categories. This would mean instead of adding five ECCN 0Y521 entries in the CCL, fifty ECCNs would be added to the CCL to account for all of the potential future 0Y521 items. The CCL currently contains approximately 500 ECCNs, so this alternative approach would have increased by 10 percent the overall number of ECCNs on the CCL. While BIS cannot affirmatively state how often items will be classified under ECCN 0Y521, the number of items that will likely warrant control under ECCN 0Y521 would not justify such a large expansion of ECCN entries. Additionally, the table format contained in the new Supplement No. 5 to part 774 has a structure that BIS believes makes it easy for the public to identify when an item was originally classified as an ECCN 0Y521 item and when that classification will no longer apply.

Comment 8: A commenter asserted that listing particular ECCN 0Y521 items in the respective ECCNs would permit deletion of proposed Supplement No. 5 to part 774.

Response: As noted above, BIS evaluated this option in developing the proposed Supplement No. 5 to part 774 included in the July 15 rule, along with the other related ECCN 0Y521 provisions. BIS agrees with the commenter that if that change were accepted that the supplement could be eliminated. However, for the reasons noted above in response to Comment 7, BIS decided against adopting such an approach.

Comment 9: With respect to the proposed ECCN 0Y521 heading stating that an item may be classified in a ECCN 0Y521 entry because it provides “at least a significant military or intelligence advantage to the United States,” a commenter described the use of the term “advantage” as too subjective and added that the term sets a higher bar than the term “advance” to determine whether items would be classified under 0Y521 ECCNs.

Response: BIS agrees there is some degree of interpretation required in applying the standard “significant military or intelligence advantage to the United States,” but does not agree that a more expansive term such as “advance” would be appropriate. BIS’s intent is to create a fairly high threshold for an item to warrant control in the ECCN 0Y521 series, and for that reason the term advantage is appropriate. Ultimately, it is the U.S. Government that will determine whether the criteria for classifying an item under a 0Y521 ECCN have been met, but BIS’s intent is to limit ECCN 0Y521 classification to those items that truly warrant the temporary classification.

License requirements and related policies for ECCNs 0Y521.

Comment 10: A commenter expressed confusion about the purpose and scope of the proposed ECCN 0Y521 series in relation to the items that would be listed in Supplement No. 5 to part 774. That commenter recommended that BIS edit or expand proposed § 742.6(a)(7) (RS Column 1 license requirements and related policies for ‘0Y521’) to clarify that the list of items determined to be classified under ECCN 0Y521 is limited to those proposed to be enumerated in Supplement No. 5 to part 774.

Response: As noted above, only those items listed in Supplement No. 5 to part 774 are classified under ECCN 0Y521 on the CCL. To make this explicit, BIS is revising paragraph (a)(7) as suggested in the comment.

Comment 11: A commenter stated that § 742.6(a)(7) (RS Column 1 license requirements and related policies for ‘0Y521’) should be revised to clarify that it is consistent with the foreign availability provisions in Section 4(c) of the Export Administration Act (EAA), 50 U.S.C. app. § 2403(c) (2000), regarding the imposition of unilateral controls.

Response: BIS intends that classifications of the ECCN 0Y521 items will be consistent with the foreign availability provisions of the EAA. Accordingly, no changes are necessary to the rule at this time.

Comment 12: A commenter stated that license exception eligibility should be added to conform with ITAR exemptions available for items in parallel ITAR Category XXI.

Response: In the July 15 proposed rule, BIS proposed that items classified under the ECCN 0Y521 series would be eligible only for License Exception GOV (§ 740.11(b)(2)(ii)).

After reviewing the public comments, BIS has determined that additional license exception eligibility may be warranted for certain items that may be classified under ECCN 0Y521, but this additional license exception eligibility should be determined at the time an item is added to Supplement No. 5 to part 774 of the EAR. As such, BIS is revising the language of Section 740.2(a)(14) (Restrictions on all License Exceptions) and adding a clarifying note to that paragraph, as described above.

In terms of a parallel to the ITAR, as items falling under the ECCN 0Y521 series will not be defense articles being moved from the USML to the CCL, an ITAR parallel is unnecessary. The ECCN 0Y521 series is not part of the proposed “600 series,” informally known as the Commerce Munitions List inside the larger CCL.

Finally, in terms of adding license exception authorizations, BIS is conducting a comprehensive evaluation of the ITAR exemptions to determine if the EAR should be revised to add any exceptions available in the ITAR for defense articles. This review is ongoing, and any changes would be published in separate rulemaking notices.

Comment 13: One commenter encouraged BIS to contact exporters before adding any new ECCN 0Y521 item to the CCL. According to the commenter, consulting with companies or the industry that created the technology in question or that have the greatest expertise about the technology would ensure that accurate information is considered before an item is classified under an 0Y521 ECCN. Similarly, one commenter stated that 0Y521 ECCN classifications should be appealable.

Response: BIS understands the rationale behind these comments. However, BIS is unable to implement the suggestion for a number of reasons. First, in terms of fairness and

regulatory rulemaking requirements, if BIS were to contact and notify select companies or individuals in drafting a new control without providing the same opportunity to the entire public, one group of interested persons may be disadvantaged over another. This result would be unfair and inconsistent with the legal requirements of the Administrative Procedure Act (APA), 5 U.S.C. 551-559. However, as explained in response to a previous comment, BIS, as a matter of practice, consults with the TACs as final rules are drafted to classify items under 0Y521 ECCNs. The rule also does not prohibit any party from sending information to BIS about the item or comments about a control that was imposed on it. Also as noted above, such rules classifying items under ECCN 0Y521 would not be published as proposed rules because of the harm that would likely be done to U.S. national security interests if exporters and reexporters were given advance notice of future licensing requirements for items such as emerging technologies that warranted controls.

Regarding the appealability of ECCN 0Y521 classifications, as noted in the preamble of the July 15 proposed rule, the United States Government's decision to identify an item as classified under an 0Y521 ECCN is based on whether the item has significant military or intelligence advantage to the United States or a foreign policy reasons, not a technical classification. Under § 756.1(a)(1), listing items in Supplement No. 5 to part 774 would be excluded from the part 756 appeals process. However, as stated in § 756.1(a)(1), the EAR provides that the public may submit a request to amend, revoke, or appeal a regulation at any time. As such, the public has an opportunity to provide input to BIS as soon as an ECCN 0Y521 classification is made. Given the limited duration that an item is likely to be classified under an 0Y521 ECCN, and the fact that BIS cannot classify items under an 0Y521 ECCN without the consensus of the Departments of State and Defense, the public may find it more useful to focus

any comments after a regulation identifies a new item in Supplement No. 5 to part 774 on how an ECCN 0Y521 item should be permanently classified on the CCL.

Comment 14: A commenter stated that it would be appropriate to impose RS1 controls on ECCN 0Y521 items, provided that RS1 controls apply only to “600 series” items not yet controlled by multilateral agreement. However, the commenter added, subsequent relocation on the CCL for such items, if and when multilateral agreement is reached on how the ECCN 0Y521 items should be controlled permanently, should be made effective in a timely fashion to reduce unwarranted licensing burdens.

Response: As noted above, the ECCN 0Y521 series is not part of the “600 series,” which was initially proposed in the July 15 proposed rule. As such, reasons to control items classified under ECCN 0Y521 entries are not related to reasons to control proposed “600 series” items. ECCN 0Y521 classifications are temporary; if a permanent classification for an ECCN 0Y521 item is identified, the ECCN 0Y521 item would be re-classified under an existing, but revised, ECCN or a new ECCN and would thus no longer be subject to ECCN 0Y521 controls. Any ECCN 0Y521 items that are later added to multilateral control lists would be re-classified at the time a final rule is published implementing that change to the multilateral regime’s control list by adding the items to the CCL. Alternatively, ECCN 0Y521 controls may expire if an extension or re-classification does not occur before the date identified for the items in Supplement No. 5 to part 774 entry, at which point the item would return to being an EAR99 item. An item’s ECCN 0Y521 classification may be extended for two one-year periods, the requirements for which are described in BIS’s response to Comment 2. Further extension may occur only if the Under Secretary for Industry and Security makes a determination that an extension is in the national

security or foreign policy interests of the United States. Any extension or re-extension of an ECCN 0Y521 item will be published in the *Federal Register*.

Comment 15: Another commenter recognized the usefulness of a 0Y521 ECCN series and appreciates the careful consideration of how items should move out of the 0Y521 ECCN classification and into positive existing ECCNs or EAR99 designation in a consistent and timely fashion. However, the commenter also expressed concern with the proposal to include emerging technologies in the 0Y521 series of ECCNs, given the potential to capture technologies that are the product of university fundamental research activity. The commenter suggests that BIS clarify and open to the public prior to publication in a final rule the criteria for including items and technologies in the new 0Y521 ECCNs.

Response: Items classified in 0Y521 ECCNs by definition would only be items subject to the EAR. If an item were not subject to the EAR - such as technology that arises during, or results from, fundamental research, as described in § 734.8 of the EAR - then it would not be subject to the EAR. BIS will have the authority to control items under 0Y521 ECCNs if (i) they are not already controlled on the CCL or the USML and (ii) BIS determines that they provide at least a significant military or intelligence advantage to the United States or there is a foreign policy reason for controlling the item. Emerging technologies of concern that are subject to the EAR are likely to be items whose technological innovation outpaces existing CCL or USML controls. The CCL is constructed as a positive control list, so if an item is subject to the EAR, but not identified in an ECCN, the USML, or the controls of another government agency such as the Department of Energy, it is an EAR99 item. The 0Y521 ECCNs are intended to provide BIS the authority to impose quickly a license requirement on otherwise uncontrolled items in a

transparent way for a limited period. During that period, BIS and its interagency partners will work with the relevant multilateral export control regime(s) to determine what, if any, more lasting controls are appropriate for the item. Items that the U.S. Government determines are more appropriately captured under the United States Munitions List (USML) Category XXI (Miscellaneous Articles) or other USML control, which are identified as part of the 0Y521 review will be controlled as such.

Publication of ECCN 0Y521 classifications

Comment 16: One commenter recommended that BIS consult with the appropriate TACs on the process to determine descriptions for Supplement No. 5 to part 774.

Response: As noted above, BIS plans to consult with the TACs to identify the appropriate descriptions to be added to Supplement No. 5 to part 774 for ECCN 0Y521 items.

Comment 17: A commenter observed that identification of software and technology based on its model or a broader descriptor may present situations in which descriptions will need to be performance-based.

Response: The CCL has many software and technology ECCNs classified under product groups D and E. Although the item descriptor column in Supplement No. 5 to part 774 will be in a table format, the expertise BIS has in describing software and technology in other parts of the CCL will be relied on to ensure objective identification of software and technology in this Supplement. Other ECCNs on the CCL have identified items by model number, such as the QRS11-00100-100/101 and QRS11-00050-443569 Micromachined Angular Rate Sensors classified under ECCN 7A994.

Comment 18: A commenter asked what BIS anticipates will be the potential risk to industry of positively and publicly identifying items via Supplement No. 5 to part 774.

Response: Supplement No. 5 to part 774 will not disclose any proprietary information regarding the items classified therein. In addition, in most cases BIS will seek, with the assistance of the TACs, to identify items by a broader descriptor that need not be company specific.

Comment 19: One commenter disagrees with using a model number or a broader descriptor that is not necessarily company-specific for the ECCN 0Y521 items. The commenter adds that common nomenclatures and standards are used across industries, which might result in an overly generic and therefore confusing descriptor. Yet, in trying to avoid confusion, the commenter believes BIS still would need to avoid publishing company proprietary information.

Response: As noted in the BIS Response to Comment 18, the identification of an item in Supplement No. 5 to part 774 will not disclose any proprietary information regarding the item. BIS will seek, with the input of the TACs, to specifically enumerate the ECCN 0Y521 items as “positively” as possible. Also as noted above, where possible, BIS will seek to identify items by general descriptors, but these descriptors will need to be objective and avoid the potential pitfalls identified in this comment. This concern is not specific to Supplement No. 5, and is an issue that BIS and the multilateral export control regimes confront whenever a control parameter is written. BIS is confident that general descriptors can be developed and where a model number needs to be used, such as is the case in ECCN 7A994, that such descriptors will adequately define ECCN 0Y521 items.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 12, 2011, 76 FR 50661 (August 16, 2011), 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, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

This action is taken after consultation with the Secretary of State. BIS submitted a foreign policy report to the Congress indicating the imposition of new foreign policy controls on March 26, 2012.

Changes from Proposed Rule

The ECCN 0Y521 proposal set forth in the July 15 proposed rule is mainly unchanged in this final rule. However, in response to public comments, BIS has changed its approach to the circumstances and length of time an item may be controlled under ECCN 0Y521 and the availability of license exceptions for items classified under 0Y521 ECCNs. BIS has also made conforming changes to the EAR to clarify the ECCN 0Y521 series.

In the July 15 proposed rule, BIS proposed a mechanism for situations in which an item that warrants control is not controlled yet. The July 15 proposed rule proposed a three-year maximum control period for ECCN 0Y521 items, during which the initial one-year period would only be extended if the Departments of Commerce, State and Defense made a consensus determination to seek multilateral controls for the ECCN 0Y521 item and the U.S. Government

submitted a proposal to obtain multilateral controls over the item. This final rule clarifies that the Departments of Commerce, State and Defense will decide whether to seek multilateral controls at the same time that the agencies consider classifying the item as an ECCN 0Y521 item. Consistent with the July 15 preamble, a second or third-year extension would still require that the United States has submitted a proposal for multilateral control for the ECCN 0Y521 item to the relevant multilateral regime. While the requirement to submit a proposal for extension for one or more one-year periods was identified in the preamble to the July 15 proposed rule, with this final rule, BIS has incorporated into revised Section 742.6(a)(7)(iii) the circumstances in which an item's ECCN 0Y521 classification may be extended for a second or third year.

In contrast to the proposed rule, this final rule also establishes the potential for further extension of ECCN 0Y521 controls beyond three years for a specific item if the Under Secretary for Industry and Security makes a determination that such extension is in the national security or foreign policy interests of the United States. Any extension or re-extension, including a determination by the Under Secretary for Industry and Security will be published in the *Federal Register*. As discussed in the "Comments and Response" section above, allowing for potential additional extensions is necessary to provide sufficient time for BIS and its interagency partners to work with the relevant multilateral export control regime(s) to determine what, if any, controls are appropriate for the item. Regulatory provisions related to this extension are set forth in revised § 742.6(a)(7)(iii).

Although License Exception GOV, set forth in § 740.11(b)(2)(ii), remains the only license exception identified at this time for all items classified in ECCN 0Y521, in contrast to the July 15 proposed rule, this final rule establishes the potential availability of additional license exceptions on an item-specific basis. To implement this change, in this final rule BIS adds a

fourth column identified as “Item-specific License Exceptions” to Supplement No. 5 to part 774. To conform with that change, BIS also includes in this final rule a revision to § 740.2(a)(14) that differs from the proposed rule. In the July 15 proposed rule, that paragraph stated a restriction on all license exceptions for items designated as 0Y521, except for License Exception GOV (§ 740.11(b)(ii)). In this final rule, paragraph (a)(14) specifies that the only license exceptions that may be used to authorize items designated as 0Y521 are GOV (§ 740.11(b)(2)(ii)) or an item-specific license exception identified in Supplement No. 5 to part 774 for a particular ECCN 0Y521 item. This final rule also adds a new Note to paragraph (a)(14) of § 740.2 to indicate that license exception availability is specific to each ECCN 0Y521 entry in Supplement No. 5 to part 774 and may not be used for any other ECCN 0Y521 entries in the supplement. At the time the U.S. Government makes a determination that items are classified under ECCNs 0A521, 0B521, 0C521, 0D521 or 0E521, the U.S. Government will specify whether any license exceptions in addition to License Exception GOV will be available. BIS also amends ECCN 0Y521 control entry text appearing in Supp. No. 1 to part 774 of the EAR to reflect that other license exceptions may be eligible for particular items. If there are additional license exceptions, they will be listed in Supplement No. 5 to part 774 under each designated item. In a corresponding change, to provide guidance about the applicability of licensing exceptions, BIS also adds paragraph (a)(14) and a note to paragraph (a)(14) to § 740.2.

BIS incorporated a recommendation to use product group-specific terminology for each of the respective 0Y521 ECCNs (i.e., using the term “commodity” in 0A521 and 0B521, material in 0C521 (as defined in the July 15 proposed rule), “software” in 0D521 and “technology” in 0E521), rather than “item,” as was proposed in the July 15 rule. The change has been made to the headings for ECCNs 0A521, 0B521, 0C521, 0D521 and 0E521 in this final rule.

Finally, to correspond with establishing the ECCN 0Y521 provisions, BIS is making other changes that are necessary to provide guidance to the public about these provisions, the applicability of licensing exceptions, and to make locating those provisions easier. To identify the 0Y521 ECCN series as within the scope of the EAR and primary provisions for the series, BIS amends: § 732.3 (Steps regarding the ten general prohibitions) by adding paragraph (b)(4); § 734.3 (Items Subject to the EAR) by revising paragraph (c); § 738.1(a) (Introduction – Commerce Control List Scope) by adding paragraph (a)(3); and § 774.1 by adding a new paragraph to the Introduction.

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 designated a “significant regulatory action,” although not economically significant, under section 3(f) of Executive Order 12866.

Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

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 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, including the time necessary to submit license applications, among other things, as well as miscellaneous and other recordkeeping activities that account for 12 minutes per submission. BIS does not believe that this rule will materially increase the number of submissions under this collection. (2) License Exceptions and Exclusions (0694-0137). BIS cannot at this point describe or estimate the items that may be classified under the new 0Y521 ECCN series.

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

4. The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if adopted in final form, would not have a significant economic impact on a substantial number of small entities. The basis for that certification was published in the preamble to the proposed rule and is not repeated here. BIS received no comments regarding the certification. As a result, a final regulatory flexibility analysis is not required and none has been prepared.

5. BIS finds good cause to waive the requirement of 5 U.S.C.(d)(3) that this rule's effectiveness be delayed 30 days from its publication in the *Federal Register*. Delaying the rule's effectiveness for 30 days is unnecessary and contrary to the public interest. The delay is

unnecessary because the rule is non-substantive and has no external impact. The agency is essentially inserting an empty box to be filled as items warranting export control under the CCL are identified. The rule adds no new requirements or burdens on the public, which need not take any action as a result of this rule to comply with its terms. In addition, a delay in effectiveness is contrary to the public interest, because additional delay would prevent the identification and addition of items to the CCL, which in turn could inhibit the public's ability to obtain export licenses for these items and potentially require the public to seek licenses under the USML licensing process during the period of delay. This rule, therefore, is effective upon publication in the *Federal Register*.

List of Subjects

15 CFR Parts 732 and 740

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 734

Administrative practice and procedure, Exports, Inventions and patents, Research Science and technology.

15 CFR Part 738

Exports.

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

Accordingly, parts 732, 734, 738, 740, 742 and 774 of the Export Administration Regulations (15 CFR parts 730-774) are amended as follows:

PART 732 – [AMENDED]

1. The authority citation for 15 CFR part 732 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.* ; 50 U.S.C. 1701 *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 12, 2011, 76 FR 50661 (August 16, 2011).

2. Amend § 732.3 by adding paragraph (b)(4) to read as follows:

§ 732.3 Steps regarding the ten general prohibitions.

* * * * *

(b) * * *

(4) Items subject to temporary CCL controls are classified under the ECCN 0Y521 series (i.e., 0A521, 0B521, 0C521, 0D521 and 0E521) pursuant to § 742.6(a)(7) of the EAR while a determination is being made as to whether classification under a revised or new ECCN or EAR99 designation is appropriate .

* * * * *

PART 734 –[AMENDED]

3. The authority citation for 15 CFR part 734 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; 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 12, 2011, 76 FR 50661 (August 16, 2011); Notice of November 9, 2011, 76 FR 70319 (November 10, 2011).

4. Revise paragraph (c) of § 734.3 to read as follows:

§ 734.3 Items subject to the EAR.

* * * * *

(c) “Items subject to the EAR” consist of the items listed on the Commerce Control List (CCL) in part 774 of the EAR and all other items which meet the definition of that term. For ease of reference and classification purposes, items subject to the EAR which are *not*

listed on the CCL are designated as “EAR99.” Items subject to temporary CCL controls are classified under the ECCN 0Y521 series (i.e., 0A521, 0B521, 0C521, 0D521, and 0E521) pursuant to § 742.6(a)(7) of the EAR, while a determination is made as to whether classification under a revised or new ECCN, or an EAR99 designation, is appropriate.

* * * * *

PART 738 –[AMENDED]

5. The authority citation for 15 CFR part 738 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *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; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 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 12, 2011, 76 FR 50661 (August 16, 2011).

6. Amend §738.1 by adding paragraph (a)(3) to read as follows:

§ 738.1 Introduction.

(a) ***

(3) *Items that warrant control for export or reexport but currently are not permanently classified on the CCL.* Items subject to temporary CCL controls are classified under the ECCN 0Y521 series (i.e., 0A521, 0B521, 0C521, 0D521, and

0E521) pursuant to § 742.6(a)(7) of the EAR while a determination is made as to whether classification under a revised or new ECCN, or an EAR99 designation, is appropriate.

PART 740 - [AMENDED]

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

Authority: 50 U.S.C. app. 2401 *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 12, 2011, 76 FR 50661 (August 16, 2011).

§ 740.2 [Amended]

8. Amend § 740.2 by

- a. Adding and reserving paragraphs (a)(12) and (a)(13);
- b. Adding paragraph (a)(14); and
- c. Adding a note to paragraph (a)(14), to read as follows:

§ 740.2 Restrictions on all License Exceptions.

(a) ***

(12) [Reserved]

(13) [Reserved]

(14) Items classified under ECCNs 0A521, 0B521, 0C521, 0D521 and 0E521 may only be authorized by License Exception GOV (§ 740.11(b)(2)(ii)) or an item-specific license exception identified in Supplement No. 5 to part 774 for a particular ECCN 0Y521 item.

NOTE TO PARAGRAPH (a)(14): Item-specific license exception availability is specific to each ECCN 0Y521 entry in Supplement No. 5 to part 774 and may not be used for any other ECCN 0Y521 entries in the Supplement. The U.S. Government makes a determination at the time items are classified under ECCNs 0A521, 0B521, 0C521, 0D521 and 0E521 regarding whether any license exceptions will be available, in addition to License Exception GOV (§ 740.11(b)(2)(ii)).

Part 742 - [AMENDED]

9. The authority citation for 15 CFR part 742 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; 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 12, 2011, 76 FR 50661 (August 16, 2011); Notice of November 9, 2011, 76 FR 70319 (November 10, 2011).

10. Amend § 742.6 by

a. Adding paragraph (a)(7), and

b. Revising the first sentence of paragraph (b)(1), to read as follows:

§ 742.6 Regional stability.

(a) ***

(7) *RS Column 1 license requirements and related policies for ECCN 0Y521 items.*

(i) *Scope.* This paragraph (a)(7) supplements the information in the 0Y521 ECCNs and in Supplement No. 5 to part 774 (Items Classified Under ECCNs 0A521, 0B521, 0C521, 0D521 and 0E521). This paragraph alerts exporters, reexporters and transferors to the procedures that apply to items classified under the 0Y521 ECCNs.

(ii) *0Y521 Items.* Items subject to the EAR that are not listed elsewhere in the CCL, but which the Department of Commerce, with the concurrence of the Departments of Defense and State, has determined 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 are classified under ECCNs 0A521, 0B521, 0C521, 0D521 and 0E521. These items are typically emerging technologies (including emerging commodities, software and technology) that are not yet included in the CCL, so such items are listed on the CCL in 0Y521 ECCNs while the U.S. Government determines whether classification under a revised or new ECCN, or an EAR 99 designation, is appropriate. The list of items classified under a 0Y521 ECCN is limited to those listed in Supplement No. 5 to part 774.

(iii) *Requirement to be classified under another ECCN within one calendar year of classification under ECCN 0Y521.* Items classified under an ECCN 0Y521 entry must be reclassified under another ECCN within one calendar year from the date they are listed in

Supplement No. 5 to part 774 of the EAR. If such re-classification does not occur within that period, classification under an ECCN 0Y521 entry expires, and such items are designated as EAR99 items unless either the CCL is amended to impose a control on such items under another ECCN or the ECCN 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) to obtain multilateral controls over the item. 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 interests 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*.

(b) *Licensing policy.* (1) Applications for exports and reexports described in paragraph (a)(1), (a)(2), (a)(6) or (a)(7) of this section will be reviewed on a case-by-case basis to determine whether the export or reexport could contribute directly or indirectly to any country's military capabilities in a manner that would alter or destabilize a region's military balance contrary to the foreign policy interests of the United States. * * *

Part 774 - [AMENDED]

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

Authority: 50 U.S.C. app. 2401 *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; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 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 12, 2011, 76 FR 50661 (August 16, 2011).

12. Revise § 774.1 to read as follows:

§ 774.1 Introduction.

(a) In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C. The Bureau of Industry and Security (BIS) maintains the Commerce Control List (CCL) that describes items (i.e., commodities, software, and technology) subject to the jurisdiction of the EAR. The CCL does not include those items exclusively controlled for export by another department or agency of the U.S. Government. In instances where other agencies administer controls over related items, entries in the CCL will contain a reference to these controls. Those items subject to the EAR but not specified on the CCL are identified by the designator “EAR99.” See §734.2(a) of the EAR for items that are “subject to the EAR.” You should consult part 738 of the EAR for an explanation of the organization of the CCL and its relationship to the Country Chart.

(b) Items that warrant control on the CCL, but for which a classification has yet to be determined, are temporarily classified under one of the 0Y521 ECCNs (i.e., 0A521, 0B521, 0C521, 0D521 or 0E521), according to their respective product group, pursuant to § 742.6(a)(7)

of the EAR, while a determination is made as to whether classification under a revised or new ECCN, or an EAR99 designation, is appropriate. The technical description and list of such items appear in Supplement No. 5 to part 774 – Items Classified Under ECCNs 0A521, 0B521, 0C521, 0D521 and 0E521. Items that the U.S. Government determines are more appropriately captured under the United States Munitions List (USML) Category XXI (Miscellaneous Articles) or other USML control, as part of the 0Y521 review process will be controlled as such.

(c) The CCL is contained in Supplement No. 1 to this part, and Supplement No. 2 to this part contains the General Technology and Software Notes relevant to entries contained in the CCL.

13. In Supplement No. 1 to part 774 (the Commerce Control List), Category 0 – Nuclear Materials, Facilities, and Equipment (and Miscellaneous Items), is amended by:

a. Adding Export Control Classification Number (ECCN) 0A521 after ECCN 0A018 and before ECCN 0A918,

b. Adding ECCN 0B521 after ECCN 0B006 and before ECCN 0B986;

c. Adding ECCN 0C521 after ECCN 0C201 and before the header that reads “D. Software”;

d. Adding ECCN 0D521 after ECCN 0D001 and before ECCN 0D999; and

e. Adding ECCN 0E521 after ECCN 0E018 and before ECCN 0E918, to read as follows:

SUPPLEMENT NO. 1 TO PART 774 – THE COMMERCE CONTROL LIST

CATEGORY 0 – NUCLEAR MATERIALS, FACILITIES, AND EQUIPMENT [AND MISCELLANEOUS ITEMS]

A. SYSTEMS, EQUIPMENT AND COMPONENTS

0A521 Any commodity subject to the EAR that is not listed elsewhere in the CCL, but which is controlled for export because it provides at least a significant military or intelligence advantage to the United States or for foreign policy reasons.

0A521 commodities are subject to RS1 controls with no license exception eligibility other than License Exception GOV for U.S. Government personnel and agencies under §740.11(b)(2)(ii) of the EAR, or an item-specific license exception identified in Supplement No. 5 to part 774 particular to an item covered under ECCN 0A521. The list of commodities determined to be classified under ECCN 0A521 controls is published in Supplement No. 5 to part 774. The license requirements and licensing policy relating to ECCN 0A521 are set forth in § 742.6(a)(7) of the EAR.

B. TEST, INSPECTION AND PRODUCTION EQUIPMENT

0B521 Any commodity subject to the EAR that is not listed elsewhere in the CCL, but which is controlled for export because it provides at least a significant military or intelligence advantage to the United States or for foreign policy reasons.

0B521 commodities are subject to RS1 controls with no license exception eligibility other than License Exception GOV for U.S. Government personnel and agencies under §740.11(b)(2)(ii) of the EAR, or an item-specific license exception identified in Supplement No. 5 to part 774 particular to an item covered under ECCN 0B521. The list of commodities determined to be classified under ECCN 0B521 controls is published in Supplement No. 5 to part 774. The license requirements and licensing policy relating to ECCN 0B521 are set forth in §742.6(a)(7) of the EAR.

C. MATERIALS

0C521 Any material subject to the EAR that is not listed elsewhere in the CCL, but which is controlled for export because it provides at least a significant military or intelligence advantage to the United States or for foreign policy reasons.

0C521 materials are subject to RS1 controls with no license exception eligibility other than License Exception GOV for U.S. Government personnel and agencies under § 740.11(b)(2)(ii) of the EAR, or an item-specific license exception identified in Supplement No. 5 to part 774 particular to an item covered under ECCN 0C521. The list of materials determined to be classified under ECCN 0C521 controls is published in Supplement No. 5 to part 774. The license requirements and licensing policy relating to ECCN 0C521 are set forth in § 742.6(a)(7) of the EAR.

D. SOFTWARE

0D521 Any software subject to the EAR that is not listed elsewhere in the CCL, but which is controlled for export because it provides at least a significant military or intelligence advantage to the United States or for foreign policy reasons.

0D521 software is subject to RS1 controls with no license exception eligibility other than License Exception GOV for U.S. Government personnel and agencies under § 740.11(b)(2)(ii) of the EAR, or an item-specific license exception identified in Supplement No. 5 to part 774 particular to an item covered under ECCN 0D521. The list of software determined to be classified under ECCN 0D521 controls is published in Supplement No. 5 to part 774. The license requirements and licensing policy relating to ECCN 0D521 are set forth in § 742.6(a)(7) of the EAR.

E. TECHNOLOGY

0E521 Any technology subject to the EAR that is not listed elsewhere in the CCL, but which is controlled for export because it provides at least a significant military or intelligence advantage to the United States or for foreign policy reasons.

0E521 technology is subject to RS1 controls with no license exception eligibility other than License Exception GOV for U.S. Government personnel and agencies under § 740.11(b)(2)(ii) of the EAR, or an item-specific license exception identified in Supplement No. 5 to part 774 particular to an item covered under ECCN 0E521. The list of technologies

determined to be classified under ECCN 0E521 controls is published in Supplement No. 5 to part 774. The license requirements and licensing policy relating to ECCN 0E521 are set forth in § 742.6(a)(7) of the EAR.

14. Add and reserve Supplement No. 4 to part 774 to read as follows:

SUPPLEMENT NO. 4 TO PART 774 [RESERVED]

15. Add Supplement No. 5 to part 774 to read as follows:

SUPPLEMENT NO. 5 TO PART 774 - ITEMS CLASSIFIED UNDER ECCNS 0A521, 0B521, 0C521, 0D521 AND 0E521

The following table lists items subject to the EAR that are not listed elsewhere in the CCL, but which the Department of Commerce, with the concurrence of the Departments of Defense and State, has identified warrant control for export or reexport because the items provide at least a significant military or intelligence advantage to the United States or for foreign policy reasons.

Item descriptor.	Date of initial or subsequent BIS classification.	Date when the item will be designated EAR99, unless reclassified in another ECCN or the 0Y521 classification is reissued.	Item-specific license exception eligibility.
<p><i>Note:</i> The description must match by model number or a broader descriptor that does not necessarily need to be company specific.</p> <p>1. [Reserved]</p> <p>2. [Reserved]</p>			

DATE: April 9, 2012

Kevin J. Wolf

Assistant Secretary

For Export Administration

[FR Doc. 2012-8944 Filed 04/12/2012 at 8:45 am; Publication Date: 04/13/2012]