



**Billing Code: 3510-33-P**

**DEPARTMENT OF COMMERCE**

**Bureau of Industry and Security**

**15 CFR Part 774**

**[Docket No. 191217-0116]**

**RIN 0694-AH89**

**Addition of Software Specially Designed to Automate the Analysis of Geospatial Imagery to the Export Control Classification Number 0Y521 Series**

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** In this interim final rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to make certain items subject to the EAR and to impose a license requirement for the export and reexport of those items to all destinations, except Canada. Specifically, this rule classifies software specially designed to automate the analysis of geospatial imagery, as specified, under the Export Control Classification Number (ECCN) 0Y521 series, specifically under ECCN 0D521. BIS adds this item to the 0Y521 series of ECCNs 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, pursuant to the ECCN 0Y521 series procedures.

**DATES:** This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments must be received by [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments by any of the following methods:

- *Federal rulemaking portal:* [http:// www.regulations.gov](http://www.regulations.gov). The *regulations.gov* ID number for this rule is BIS–2019–0031. All comments (including any personally identifying information) will be made available for public inspection and copying.
- *Address:* By mail or delivery to Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2099B, 14<sup>th</sup> Street and Pennsylvania Avenue NW, Washington, DC 20230. Refer to RIN 0694-AH89.

**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](mailto:Aaron.Amundson@bis.doc.gov) or by phone at (202) 482-5299.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

#### *The 0Y521 Series*

The 0Y521 series of ECCNs was established in April 2012 (77 FR 22191, April 13, 2012). Items in the 0Y521 series, which includes ECCNs 0A521, 0B521, 0C521, 0D521, and 0E521, are described in Supplement No. 5 to part 774 of the Export Administration Regulations (EAR).

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. Pursuant to § 742.6(a)(7) of the EAR, the 0Y521 series is a temporary holding classification that only lasts for one year from the date a final rule is published in the **Federal Register** listing the item in Supplement No. 5 to part 774, unless the 0Y521 classification is extended in accordance with described procedures, and provided that the U.S. Government submit a proposal to the relevant multilateral regime(s) to obtain multilateral controls over the item. Before the 0Y521 classification expires, an 0Y521 item may be reclassified and moved under a different ECCN on the Commerce Control List (CCL), if appropriate. If the item has not been moved to a more permanent ECCN and the 0Y521 classification expires, the item is designated EAR99. “EAR99” means that an item is subject to the EAR but not specified on the CCL.

Items classified under the 0Y521 series are controlled for regional stability (RS) Column 1 reasons, with a case-by-case license application review policy. The only license exception available for these items at this time is for exports, reexports, and transfers (in-country) made by or consigned to a department or agency of the U.S. Government (License Exception GOV), specifically within the scope of § 740.11(b)(2)(ii) of the EAR. This limitation is further described in § 740.2(a)(14) of the EAR.

*Addition of Software Specially Designed To Automate the Analysis of Geospatial Imagery under the 0Y521 Series in this Rule*

In this interim final rule, the Bureau of Industry and Security (BIS) amends the EAR to classify certain items subject to the EAR under the 0Y521 series and to impose a license requirement for the export and reexport of those items to all destinations, except Canada, for RS Column 1 reasons. Specifically, the items that will be subject to these new controls are described under ECCN 0D521 in the 0Y521 series table found in Supplement No. 5 to part 774 of the EAR, as follows:

**ECCN 0D521 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 (e.g., 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.

Technical Note: 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.

Consistent with other 0Y521 series items, *license requirements* for the items described under the first entry for ECCN 0D521 of the 0Y521 series, appear in § 742.6(a)(7) of the EAR. The U.S. Government currently plans to *propose to an appropriate multilateral regime*, in this case the Wassenaar Arrangement, that multilateral controls be placed on these items.

*License Applications for the New ECCN 0D521 No. 1*

License applications for these items may be submitted through SNAP-R in accordance with § 748.6 (General instructions for license applications) of the EAR. Exporters are directed to include detailed descriptions and technical specifications with the license application, and to identify the item's ECCN.

This rule is being issued in interim final form because while the government believes that it is in the national security interests of the United States to immediately implement these controls, it also wants to provide the interested public with an opportunity to comment on the control of new items. Comments may be submitted in accordance with the **DATES** and **ADDRESSSES** sections of this rule. BIS will review and, if appropriate, address such comments through rulemaking consistent with the process described in the final rule that created the ECCN 0Y521 series.

## **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) (Title XVII, Subtitle B of Pub. L. 115–232) that provides the legal basis for BIS’s principal authorities and serves as the authority under which BIS issues this rule. As set forth in Section 1768 of ECRA, all delegations, rules, regulations, orders, determinations, licenses, or other forms of administrative action that were made, issued, conducted, or allowed to become effective under the Export Administration Act of 1979 (50 U.S.C. 4601 *et seq.*) (as in effect prior to August 13, 2018, and as continued in effect pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), or the Export Administration Regulations, and were in effect as of August 13, 2018, shall continue in effect according to their terms until modified, superseded, set aside, or revoked under the authority of ECRA.

### **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, distributive 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 not been designated a “significant regulatory action”. This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

2. Pursuant to Section 1762 of the Export Control Reform Act of 2018 (Title XVII, Subtitle B of Pub. L. 115– 232), which was included in the John S. McCain National Defense Authorization Act for Fiscal Year 2019, this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation and delay in effective date. The analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable because no general notice of proposed rulemaking was required for this action. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

3. 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 Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under the following control numbers: 0694–0088 and 0694–0137. This action is not expected to materially increase the number of submissions under these collections. Any comments regarding these collections of information, including suggestions for reducing the burden, may be sent to OMB Desk Officer, New Executive Office Building, Washington, DC 20503; and to Jasmeet K. Seehra, Office of Management and Budget (OMB), by email to *Jasmeet\_K.\_Seehra@omb.eop.gov*, or by fax to (202) 395–7285.

4. This rule does not contain policies with federalism implications as that term is defined in Executive Order 13132.

## List of Subjects in 15 CFR Part 774

Exports, Rexporting and recordkeeping requirements.

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

### **PART 774 – [AMENDED]**

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

**Authority:** 50 U.S.C. 4801-4582; 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; and as extended by the Notice of August 14, 2019, 84 FR 41881 (August 15, 2019).

2. Amend Supplement No. 5 to part 774 by removing the reserved entry under “0D521. Software” and adding in its place entry “No. 1” to read as follows:



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

\* \* \* \* \*

<p><b>Item descriptor.</b></p> <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><b>Date of initial or subsequent BIS classification.</b></p> <p>(ID = initial date; SD = subsequent date)</p>	<p><b>Date when the item will be designated EAR99, unless reclassified in another ECCN or the 0Y521 classification is reissued.</b></p>	<p><b>Item-specific license exception eligibility.</b></p>
* * * * *			
<b>0D521. Software.</b>			
<p><i>No.1</i> <b>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:</b></p> <ol style="list-style-type: none"> <li><b>1. Provides a graphical user interface that enables the user to identify objects (e.g., vehicles, houses, etc.) from within geospatial imagery and point clouds in order to extract positive and negative samples of an object of interest;</b></li> <li><b>2. Reduces pixel variation by performing scale, color, and rotational normalization on the positive samples;</b></li> <li><b>3. Trains a Deep Convolutional Neural Network to detect the object of interest from the positive and negative samples; and</b></li> </ol>	<p>[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER](ID)</p>	<p>January 6, 2021</p>	<p>License Exception GOV under § 740.11(b)(2)(ii) only.</p>

<p><b>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.</b></p> <p><b><u>Technical Note:</u> 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.</b></p>			
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Dated: December 17, 2019.

Richard E. Ashooh,

Assistant Secretary for Export Administration.

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