

On January 6, 2020, the US Department of Commerce, Bureau of Industry and Security (BIS) published an interim final rule amending the Export Administration Regulations (EAR) to make software specially designed to automate the analysis of geospatial imagery subject to the EAR and to impose a requirement of a license for the export and reexport of such software. The license requirement applies to export and reexport to all countries, except Canada. The software is, as of the notice on January 6, 2020, classified under the Export Control Classification Number (ECCN) 0D521.

## Background

BIS established the 0Y521 series of ECCNs in 2012 to identify items, such as software, that warrant control through the Commerce Control List (CCL) but have yet to be classified under an existing ECCN. The 0Y521 series is a temporary holding classification that remains in place for one year from the date a final rule identifying the item is published in the *Federal Register*, unless the item is re-classified under a different ECCN, is designated EAR99 or the 0Y521 classification is extended. During this 12-month period, the US government can determine an appropriate longer-term export control for the item or that the item does not warrant control through the CCL. BIS made the addition of the software to the 0Y521 series of ECCNs based on the determination by the US Departments of Commerce, Defense, and State and other agencies that the software warrants export control because it could provide a significant military or intelligence advantage to the US or due to other foreign policy justifications. It appears the geospatial imaging software described by the control parameters was previously classified as EAR99, but upon review through a commodity jurisdiction or classification request, the US government determined the software should be subject to export control. It was, accordingly, classified under ECCN 0D521.

The Department of Commerce's decision to add geospatial imaging software to the CCL because of a commodity jurisdiction or classification request was instructive as to the reason to deviate from the prescribed procedure for emerging technology in the Export Control Reform Act of 2018 (ECR). Per the statute, export controls through the EAR on emerging technology, which would include this software because of the involvement of artificial intelligence, must be first issued by a proposed rule. However, because the software, although technically emerging technology, was flagged through a commodity jurisdiction or classification request, a proposed rule was not necessary and the interim final rule could be directly issued. It should also be noted that emerging technology, as contemplated under the ECR, is a notional list indicating areas of focus for the Department of Commerce, which will periodically issue notices to implement controls on emerging technology as it defines control parameters.

Based on the overall context of controls on emerging technology, it is likely the action was undertaken in consideration of the US government's national security concerns raised by China's developments and advancement in emerging technologies and their potential military application. As of now, the new controls only apply to software, not to technology. Accordingly, to the extent a company releases technology to develop the 0D521 software, the technology is not controlled by the January 6 rule and the changes to the CCL have no impact on its development or release of such technology.

## Impact

We continually monitor the developments with respect to the export controls reform, particularly pertaining to emerging technology controls. These changes should be of particular interest to companies with non-US ownership, and export controls professionals within these companies need to quickly gain an understanding of the impact that Foreign Investment Risk Review Modernization Act (FIRRMA) has on how the US government regulates critical technology, which includes emerging technology, as well as how certain changes in ownership may now trigger a mandatory filing with the Committee on Foreign Investment in the United States (CFIUS).

Our export controls and CFIUS practitioners can help you address any technical and procedural question. Please contact a member of our team, or you can reach the team collectively at [InternationalTradeCompliance@squirepb.com](mailto:InternationalTradeCompliance@squirepb.com).

[Subscribe](#) to *The Trade Practitioner* blog to receive our updates and alerts on topics including export controls, sanctions, investment security and tariffs, among others. Our blog also includes our database of publicly known CFIUS filings.

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## About Us

Our export controls and sanctions lawyers have the ability to provide advice on the shifting regulatory framework on both sides of the Atlantic. We have extensive experience in advising and representing a wide range of companies and financial institutions in Europe, the US and other jurisdictions on export control and sanctions from a multijurisdictional perspective. Our team is part of our overall International Trade Practice, providing a "one-stop shop" solution to global trade compliance through rapid, professional and tailored advice and compliance tools to fit your business needs and processes.

### Resources to Strengthen Compliance

We encourage you to visit our blog, [The Trade Practitioner](#), where you will find additional updates and information on export controls, sanctions and other international trade topics. In addition, organizations engaged in the trade of items specially designed for military or space applications are encouraged to download our complimentary [ITAR Practitioner's Handbook](#), which covers the International Traffic in Arms Regulations (ITAR) and the US Department of Commerce "600 Series."