

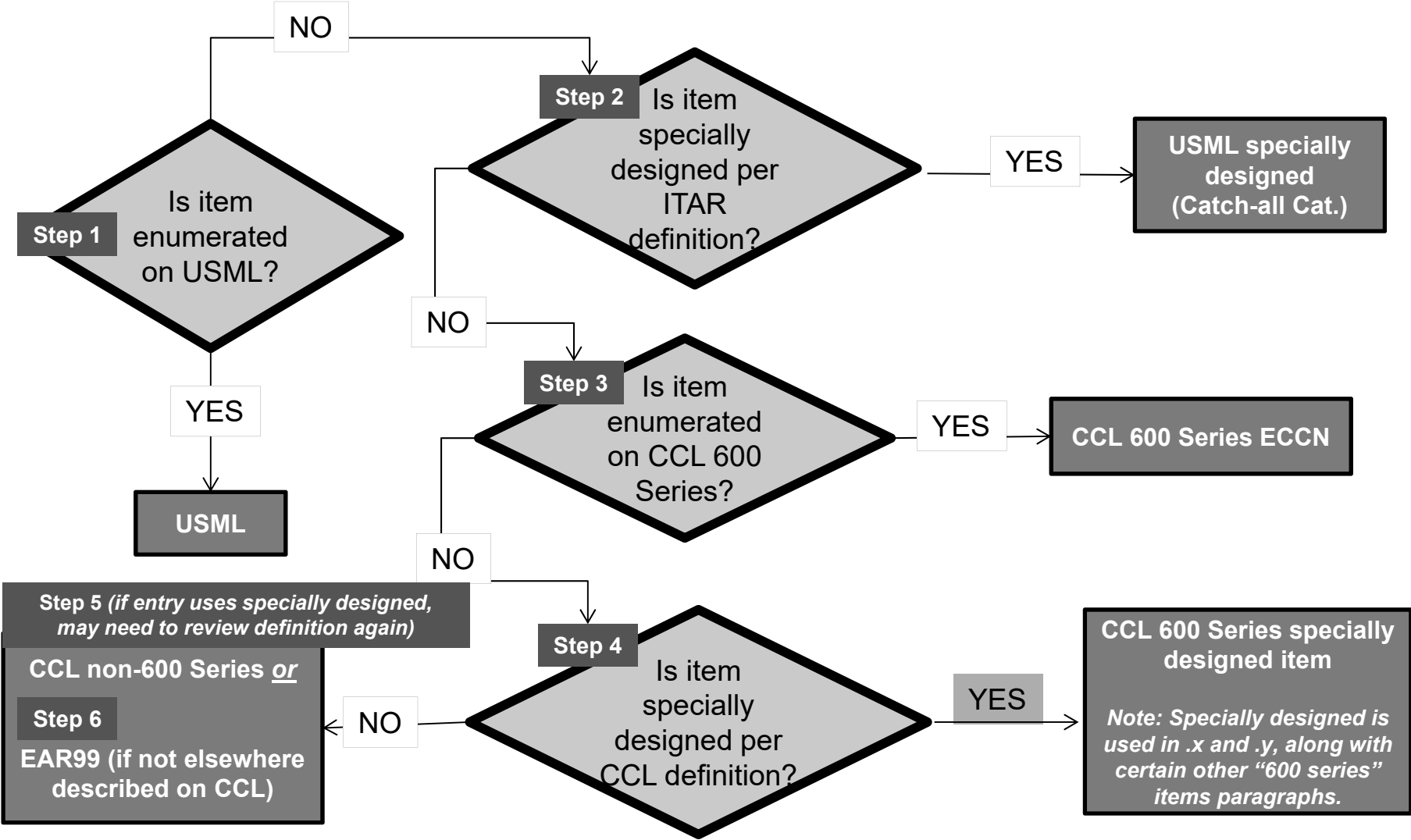
ECR Jurisdiction and Classification

Order of Review

ITAR 120.41 Specially Designed

EAR 772.1 Specially Designed

ECR Jurisdiction Flow Chart – for Items subject to the ITAR or EAR



Note: Flow chart is for items subject to the ITAR or EAR, but note that other agencies also have jurisdiction for certain items.

FINAL RULE Catch and Release – Step 2

(“USML Specially Designed” Determination)

- (a) Except for commodities or software described in paragraph (b) of this section, a commodity or software (*see §121.8(f) of this subchapter*) is “specially designed” if it:
 - (1) As a result of development, has properties peculiarly responsible for achieving or exceeding the controlled performance levels, characteristics, or functions described in the relevant U.S. Munitions List paragraph; or
 - (2) Is a part (*see §121.8(d) of this subchapter*), component (*see §121.8(b) of this subchapter*), accessory (*see §121.8(c) of this subchapter*), attachment (*see §121.8(c) of this subchapter*), or software for use in or with a defense article.
- (b) A part, component, accessory, attachment, or software is not controlled by a U.S. Munitions List “catch-all” or technical data control paragraph if it:
 - (1) Is subject to the EAR pursuant to a commodity jurisdiction determination;
 - (2) Is, regardless of form or fit, a fastener (e.g., screws, bolts, nuts, nut plates, studs, inserts, clips, rivets, pins), washer, spacer, insulator, grommet, bushing, spring, wire, or solder;
 - (3) Has the same function, performance capabilities, and the same or “equivalent” form and fit as a commodity or software used in or with a commodity that:
 - (i) Is or was in production (i.e., not in development); and
 - (ii) Is not enumerated on the U.S. Munitions List;
 - (4) Was or is being developed with knowledge that it is or would be for use in or with both defense articles enumerated on the U.S. Munitions List and also commodities not on the U.S. Munitions List; or
 - (5) Was or is being developed as a general purpose commodity or software, i.e., with no knowledge for use in or with a particular commodity (e.g., a F/A-18 or HMMWV) or type of commodity (e.g., an aircraft or machine tool).

Catch and Release – Step 2

(“USML Specially Designed” Determination)

Note: “Specially designed” definition includes notes to assist you in understanding and applying the definition.

a. (‘catch’ analysis)

Except for commodities or software described in paragraph (b) of this section, a commodity or software (see §121.8(f) of this subchapter) is “specially designed” if it:

(1) As a result of development, has properties peculiarly responsible for achieving or exceeding the controlled performance levels, characteristics, or functions described in the relevant U.S. Munitions List paragraph; or

(2) Is a part (see §121.8(d) of this subchapter), component (see §121.8(b) of this subchapter), accessory (see §121.8(c) of this subchapter), attachment (see §121.8(c) of this subchapter), or software for use in or with a defense article.



Go to Step 3 - CCL 600 Series enumerated item

If needed, go to Step 4 - CCL 600 series specially designed item and then if needed review non-600 Series (Steps 5-6)

b. (‘release’ analysis)

A part, component, accessory, attachment, or software is not controlled by a U.S. Munitions List “catch-all” or technical data control paragraph if it:

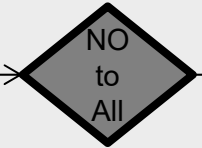
(1) Is subject to the EAR pursuant to a commodity jurisdiction determination

(2) Is, regardless of form or fit, a fastener (e.g., screws, bolts, nuts, nut plates, studs, inserts, clips, rivets, pins), washer, spacer, insulator, grommet, bushing, spring, wire, or solder;

(3) Has the same function, performance capabilities, and the same or “equivalent” form and fit as a commodity or software used in or with a commodity that:
 (i) Is or was in production (i.e., not in development); and
 (ii) Is not enumerated on the U.S. Munitions List;

(4) Was or is being developed with knowledge that it is or would be for use in or with both defense articles enumerated on the U.S. Munitions List and also commodities not on the U.S. Munitions List; or

(5) Was or is being developed as a general purpose commodity or software, i.e., with no knowledge for use in or with a particular commodity (e.g., a F/A-18 or HMMWV) or type of commodity (e.g., an aircraft or machine tool).



USML specially designed (Catch-all Cat.)

Go to Step 3 - CCL 600 Series enumerated item

Released



If needed, go to Step 4 - CCL 600 series specially designed item and then if needed review non-600 Series (Steps 5-6)

Note: “Specially designed” definition includes notes to assist you in understanding and applying the definition.

Final Rule Catch and Release – Step 4

(“CCL Specially Designed” Determination)

- (a) Except for items described in (b), an “item” is “specially designed” if it:
 - (1) As a result of “development” has properties peculiarly responsible for achieving or exceeding the performance levels, characteristics, or functions in the relevant ECCN or U.S. Munitions List (USML) paragraph; or
 - (2) Is a “part,” “component,” “accessory,” “attachment,” or “software” for use in or with a commodity or defense article ‘enumerated’ or otherwise described on the CCL or the USML.
- (b) A “part,” “component,” “accessory,” “attachment,” or “software” that would be *controlled by paragraph (a)* is not “specially designed” if it:
 - (1) Has been identified to be in an ECCN paragraph that does not contain “specially designed” as a control parameter or as an EAR99 item in a commodity jurisdiction (CJ) determination or interagency-cleared commodity classification (CCATS) pursuant to § 748.3(e);
 - (2) Is, regardless of ‘form’ or ‘fit,’ a fastener (e.g., screw, bolt, nut, nut plate, stud, insert, clip, rivet, pin), washer, spacer, insulator, grommet, bushing, spring, wire, solder;
 - (3) Has the same function, performance capabilities, and the same or ‘equivalent’ form and fit, as a commodity or software used in or with an item that:
 - (i) Is or was in “production” (i.e., not in “development”); and
 - (ii) Is either not ‘enumerated’ on the CCL or USML, or is described in an ECCN controlled only for Anti-Terrorism (AT) reasons;
 - (4) Was or is being developed with “knowledge” that it would be for use in or with commodities or software (i) described in an ECCN and (ii) also commodities or software either not ‘enumerated’ on the CCL or the USML (e.g., EAR99 commodities or software) or commodities or software described in an ECCN controlled only for Anti-Terrorism (AT) reasons;
 - (5) Was or is being developed as a general purpose commodity or software, i.e., with no “knowledge” for use in or with a particular commodity (e.g., an F/A-18 or HMMWV) or type of commodity (e.g., an aircraft or machine tool); or
 - (6) Was or is being developed with “knowledge” that it would be for use in or with commodities or software described (i) in an ECCN controlled for AT-only reasons and also EAR99 commodities or software; or (ii) exclusively for use in or with EAR99 commodities or software.

Catch and Release – Step 4 (“CCL Specially Designed” Determination)

Note: “Specially designed” definition includes notes to assist you in understanding and applying the definition.

a. (‘catch’ analysis)

Except for items described in (b), an “item” is “specially designed” if it:

(1) As a result of “development” has properties peculiarly responsible for achieving or exceeding the performance levels, characteristics, or functions in the relevant ECCN or U.S. Munitions List (USML) paragraph; or

(2) Is a “part,” “component,” “accessory,” “attachment,” or “software” for use in or with a commodity or defense article ‘enumerated’ or otherwise described on the CCL or the USML.

YES to Any

b. (‘release’ analysis)

A “part,” “component,” “accessory,” “attachment,” or “software” that would be controlled by paragraph (a) is not “specially designed” if it:

(1) Has been identified to be in an ECCN paragraph that does not contain “specially designed” as a control parameter or as an EAR99 item in a commodity jurisdiction (CJ) determination or interagency-cleared commodity classification (CCATS) pursuant to § 748.3(e);

(2) Is, regardless of ‘form’ or ‘fit,’ a fastener (e.g., screw, bolt, nut, nut plate, stud, insert, clip, rivet, pin), washer, spacer, insulator, grommet, bushing, spring, wire, solder;

(3) Has the same function, performance capabilities, and the same or ‘equivalent’ form and fit, as a commodity or software used in or with an item that:
 (i) Is or was in “production” (i.e., not in “development”); and
 (ii) Is either not ‘enumerated’ on the CCL or USML, or is described in an ECCN controlled only for Anti-Terrorism (AT) reasons;

(4) Was or is being developed with “knowledge” that it would be for use in or with commodities or software (i) described in an ECCN and (ii) also commodities or software either not ‘enumerated’ on the CCL or the USML (e.g., EAR99 commodities or software) or commodities or software described in an ECCN controlled only for Anti-Terrorism (AT) reasons;

(5) Was or is being developed as a general purpose commodity or software, i.e., with no “knowledge” for use in or with a particular commodity (e.g., an F/A-18 or HMMWV) or type of commodity (e.g., an aircraft or machine tool); or

(6) Was or is being developed with “knowledge” that it would be for use in or with commodities or software described (i) in an ECCN controlled for AT-only reasons and also EAR99 commodities or software; or (ii) exclusively for use in or with EAR99 commodities or software.

Note: “Specially designed” definition includes notes to assist you in understanding and applying the definition.

