

BIS UPDATE 2017 CONFERENCE ON EXPORT CONTROLS AND POLICY



Conquer the 600 Series Classification and Licensing

Munitions Control Division

Office of Strategic Industries and Economic Security

Bureau of Industry and Security



U.S. DEPARTMENT OF COMMERCE • BUREAU OF INDUSTRY AND SECURITY

BIS UPDATE 2017 CONFERENCE ON EXPORT CONTROLS AND POLICY

Overview

- Classification
 - Self Classify/Order of Review
 - Request a Classification from BIS (CCAT)
 - Submission Requirements
 - Releases
 - Review process
 - Sample Submission
- Licensing



U.S. DEPARTMENT OF COMMERCE • BUREAU OF INDUSTRY AND SECURITY

Order of Review

- Determine that your item is not described on the USML
 - ITAR Order of Review; 22 CFR 121.1 (b)
 - Specifically enumerated items
 - “Catch-all” controls and ITAR definition of “specially designed”
- Commerce Order of Review; 15 CFR Part 774 Supplement 4

Note that it is helpful to review the “Specially Designed” definition in § 772.1 before starting the Order of Review steps.



Order of Review (contd.)

- Step 1
 - Review general characteristics of the item for guidance to the appropriate category.
 - For example, if your item is an aircraft part, check category 9
- Step 2
 - Determine the product group
 - A – End items and systems
 - B – Test, inspection, and production
 - C – Materials
 - D – Software
 - E – Technology



Order of Review (contd.)

- Step 3
 - Determine if the item is described in 9x515, or if the item is described in a “600 series” paragraph other than a “catch-all” paragraph, such as .x
 - Check paragraphs a – w and y, skip .x until the next step.
 - Make sure to read notes and pointers. Some ECCN paragraphs direct you to other ECCN(s) during review. For example, ECCN 6A611 directs you to 3A611 and 7A611
 - Updates to the 9A610 and 9A619 entry include references to the .y lists of 9A610, 9A619, and 3A611



Order of Review (contd.)

- Step 4
 - If the item is not described in a 9x515 or “600 series” subparagraph .a – .w or .y, then check a catch-all paragraph such as .x
 - During the review of some ECCN “catch-all” paragraphs, be mindful of pointers to other ECCN(s). For example, ECCN 7A611.x directs you to first review ECCN(s) such as 6A007, 6A107, 7A001, etc. before it is classified under 7A611.x



Order of Review (contd.)

- Step 4.a.
 - Determine if the item is caught by either paragraphs (a)(1) or (a)(2) of the specially designed definition in §772.1

- Step 4.b.
 - If the item is caught by either paragraphs (a)(1) or (a)(2), then determine if provisions of paragraphs (b)(1) – (6) apply to the item being classified
 - If the item is released from “specially designed,” then it would not be described in an ECCN that contains “specially designed” as a control parameter



Order of Review (contd.)

- Step 5
 - If it is determined that the item is not described in 9x515 or a “600 series” ECCN, then review each ECCN of the product group to determine if the item is described in an ECCN that does not have “specially designed” as a control parameter
 - Refer to step 1 to narrow your item down to a category
 - Refer to step 2 to determine product group.



Order of Review (contd.)

- Step 6
 - If the item is not described under any ECCN on the CCL, then the item is designated as EAR99
 - EAR99 items may still require a license if destined for a prohibited or restricted end user, end use, or destination. (see General Prohibitions § 732.3 and General Prohibitions part 736)

For help on Specially Designed and Order of Review, decision tree tools are available on the BIS website:

<https://www.bis.doc.gov/index.php/2012-03-30-17-54-11/2013-02-15-13-50-21>



CCATS Submission

- Questions to ask before submitting a CCATS
 - Are you the original manufacturer? If not, have you contacted the original manufacturer for the ECCN?
 - Have you conducted an order of review analysis?
 - Are you clarifying an ECCN or requesting a release from specially designed?
 - If requesting a release from specially designed, what is the rationale for the release?
 - Do you have all the documents to support your CCATS submission?



CCATS Submission (contd.)

- 15 CFR 748.3(b)
 - Submit through SNAP-R
 - Limit to 6 items per submission
 - Include description of item
 - Provide recommended classification
 - Attach supporting documentation



CCATS Submission (contd.)

- The item must be sufficiently described
 - Provide drawings, brochures, technical descriptions, and/or pictures of the item
- If requesting EAR99 or release from specially designed, provide the following:
 - Letter of explanation describing the reason for EAR99/release
 - Documentation supporting release request
 - Examples of commercial equivalents
 - Modifications made for form or fit
 - Was it designed for military end use



CCATS Letter of Explanation

- Item Descriptions
 - End use/platform
 - Function
 - Key Performance Characteristics
- Release analysis
 - Equivalence Analysis (b)(3) Release
 - Compare/Contrast with Dual Use Item
 - End use analysis for (b)(4) –(b)(6) Release
 - How is the item not intended for military use
- Classification Recommendation



Specially Designed Releases

- An item is specially designed if as result of development has properties peculiarly responsible for achieving or exceeding the performance levels, characteristics, or function in the relevant ECCN or US Munitions List paragraph or is a part, component, accessory, attachment, or software for use in or with a commodity or defense article enumerated or described on the CCL or USML
- There are 6 releases within the definition of “specially designed”
 - b(1) release is provided through government decision
 - b(2) is for fasteners
 - b(3) is the form and fit release used for existing production products
 - b(4) – b(6) are developmental releases and can be used if you have developmental documentation



B(1) Release

- Releases an item that 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)
- How to get a b(1) release
 - Letter of explanation showing:
 - the item does not meet the b(3) release but would if the changes in form and fit were determine to be insignificant by US Government
 - Details of all form and fit changes and why they should be considered minor changes and their effect on performance capabilities



B(2) Release

- Releases the following:
 - Fasteners (nuts, bolts, screws, clips, pins)
 - Washers, spacers, insulators, grommets, bushing
 - Springs
 - Wire, Solder
- How to get a b(2) release
 - Is the item a fastener or an item listed in the definition, then it is released
 - No need to request CCATS



B(3) Release

- Release parts, component, accessory, attachment, or software that have the same function, performance capabilities, and same or 'equivalent' form and fit, as a commodity or software used in or with an item that:
 - is or was in production; and is either not 'enumerated' on the CCL or USML, or is described in an ECCN controlled only for Anti-Terrorism (AT) reasons
- To Get a b(3) release
 - Provide examples of commercial item you are comparing to
 - Provide drawings, brochures, technical specification of commercial items being compared to
 - Letter of explanation that highlights
 - How items are the same
 - Any significant difference



B(4) Release

- Release parts, components, accessories, attachments, or software developed with knowledge it would be for use in or with commodities or software:
 - described in an ECCN and also commodities or software either not 'enumerated' on CCL or USML (e.g., EAR99 items) or commodity or software described in ECCN controlled only for AT
- To Get a b(4) release
 - Provide examples of how your item is used in both commercial and military applications if applicable
 - Provide drawings, brochures, specification for the item
 - Documentation showing the development methodology
 - Letter of explanation justifying the release



B(5) Release

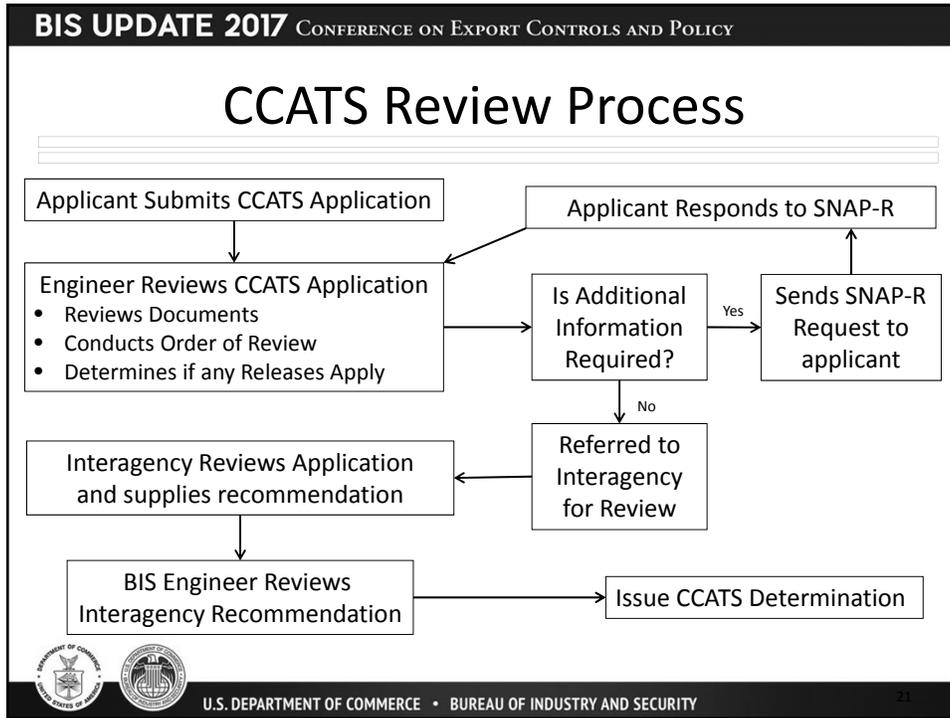
- Releases parts, components, accessories, attachments, or software developed as a general purpose commodity or software, with no “knowledge” for use in or with a particular commodity or type of commodity
- To Get a b(5) release
 - Provide examples of how you intended the item to be used to support general purpose use
 - Provide drawings, brochures, specification of item
 - Documentation showing the development methodology
 - Letter of explanation justifying the release



B(6) Release

- Releases parts, components, accessories, attachments, or software developed as a general purpose commodity or software, being developed with “knowledge” that it would be for use in or with commodities or software:
 - described in ECCN controlled for AT-only reasons and also for EAR99 commodities or software, *or*
 - exclusively for use in or with EAR99 commodities or software
- To Get a b(6) release
 - Provide drawings, brochures, specification of item
 - Provide information on the intended use of the item
 - Documentation showing the development methodology
 - Letter of explanation justifying the release





BIS UPDATE 2017 CONFERENCE ON EXPORT CONTROLS AND POLICY

Examples: Applying 'Equivalent' for a b(3) Release

- Scenario 1 (meets 'equivalent' standard): A steering wheel used in "production" of EAR99 designated trucks was modified for use in a military vehicle.
 - Steering wheel has same function, performance capabilities, but needed to be modified solely for fit purposes (shaft extended 4 inches so it reaches through the armor) for use in a military vehicle.

U.S. DEPARTMENT OF COMMERCE • BUREAU OF INDUSTRY AND SECURITY

Sample Submission LOE (Scenario 1 – b(3) Release)

- Item Description

“This request is for a steering wheel for the **CV-32 Tactical Wheeled Vehicle (TWV)**. The steering wheel is connected to the front end of the vehicle chassis and **used to change the direction of travel of the vehicle.**”

- Order of Review Analysis/Jurisdiction

“Prior to revision of the export regulations, this item was controlled in USML Category VII(g) as a component specifically designed or modified for a military vehicle. With revisions to the USML effective on January 6, 2014, **this item is no longer enumerated in USML Category VII or elsewhere on the USML.** This item transitioned to the Commerce Control List.”



Sample Submission LOE (Scenario 1 – b(3) Release) (contd.)

- Order of Review Analysis/Specially Designed

“This item is **caught** under paragraph (a)(2) of “specially designed” as it is used in a vehicle ‘enumerated’ or otherwise described on the CCL or USML. For the reasons set forth below, this CCATS submission requests that this steering wheel should be classified as **EAR99** and not be considered “specially designed” pursuant to paragraph **(b)(3)** of the definition of “specially designed” and EAR § 748.3(e)(3)(i-iv).”



BIS UPDATE 2017 CONFERENCE ON EXPORT CONTROLS AND POLICY

Sample Submission LOE (Scenario 1 – b(3) Release)

- **Equivalence Analysis:** Compare/Contrast with Dual Use Item

“The steering wheel of the TWV Tactical Vehicle is **‘equivalent’** to the steering wheel of the civil T200 Tough Truck. The T200 is heavy duty utility truck designed for civil end use and has a classification of EAR99.

“The steering wheel of both the TWV and T200 both perform the **same function** of steering the vehicle with **identical performance capabilities**. Both steering wheels are manufactured by ABC Manufacturing company, have the **same materials** of construction and only differ in the shaft length.”

See “specially designed” in Section 772.1 Notes 2 and 3 to (b)(3).



U.S. DEPARTMENT OF COMMERCE • BUREAU OF INDUSTRY AND SECURITY

25

BIS UPDATE 2017 CONFERENCE ON EXPORT CONTROLS AND POLICY

Sample Submission LOE (Scenario 1 – b(3) Release)

- **Equivalence Analysis**
 - Compare/Contrast with Dual Use Item

“The steering wheel of the TWV Tactical Vehicle and the T200 have the same ‘form’ to include configuration and material of construction. The TWV steering wheel is modified from the T200 steering wheel **solely for ‘fit’ purposes**. The shaft length of the TWV Tactical Vehicle has been extended by 4 inches so that it reaches through the vehicle armor. This change in shaft length has **no impact on the performance capabilities** (speed, accuracy, efficiency, etc.) of the steering wheel.”

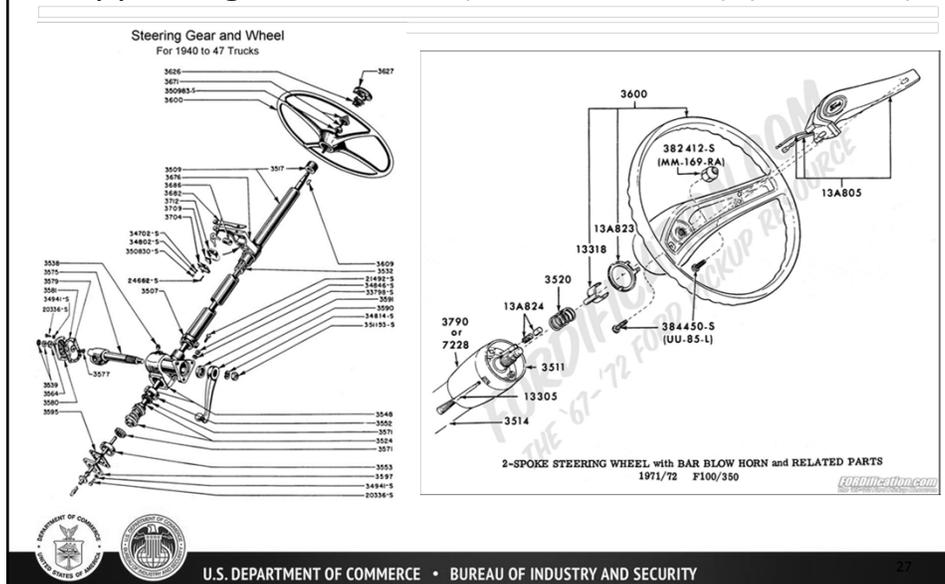
See “specially designed” in Section 772.1 Notes 2 and 3 to (b)(3).



U.S. DEPARTMENT OF COMMERCE • BUREAU OF INDUSTRY AND SECURITY

26

Sample Submission – Supporting Documents (Scenario 1 – b(3) Release)



Sample Submission LOE (Scenario 1 – b(3) Release)

- Equivalence Analysis
 - Compare/Contrast with Dual Use Item

“Per paragraph (b)(3) of “specially designed”, the steering wheel of the TWV Tactical Vehicle has the **same function, performance capabilities and ‘equivalent’ form and fit** of the T200 steering wheel, which is in production and classified as EAR99. As such, the steering wheel for the TWV is appropriately classified as EAR99.”

See “specially designed” in Section 772.1 Notes 2 and 3 to (b)(3).

Examples of Applying 'Equivalent' for a b(3) Release

Scenario 2 (does **NOT** meet 'equivalent' standard):

- A steering wheel used in **"production"** of EAR99 designated trucks was modified for use in a military vehicle. However, **in addition to** modifying steering wheel for fit purposes (shaft extended 4 inches so it reaches through the armor) for use in a military vehicle, steering wheel has been **reinforced** to absorb the shock from firing a cannon.



Licensing Submission Tips

- Parties to Application
 - Clearly identify the parties involved in the transaction; include their full addresses – no P.O. boxes
 - Know the role of each party to the transaction
 - No US parties should be included (other than Applicant/Submitter).
 - Be aware of the proscribed countries for 600 series items

Note: Due to limitations in SNAP-R additional parties need to be placed in end user fields if you want them to be explicitly on the license.

- End Use/User
 - Explicitly describe the end use of the item, including information on the platform, subassembly and whether it is returning to the U.S. Identify all end users including governments.



Licensing Submission Tips (contd.)

- Documentation
 - Attach and/or cite precedent license
 - Attach and/or cite any CJ done for item
 - If requesting technology, deemed exports, or a complex transaction include a Letter of Explanation (LOE) (part 748 Supplement 2 paragraph (o))
 - If requesting a Bulk license, submit a succinct representative parts-list by platform and ECCN with sample part numbers. DO NOT include screws, nuts, bolts, and other fasteners in the list.
- Licenses based on marketing projection; no purchase order needed.



Amending Licenses

- BIS does not have an “amendment” process.
- Material changes typically require a new “replacement” license
- Some changes (those identified in § 750.7) do not require a replacement license, e.g.:
 - Certain changes in unit price or total value
 - Limited types of changes in intermediate consignees
 - Purchaser / Ult. Consignee address change in same country
 - Name changes not related to ownership changes, subject to an approved BIS advisory opinion



Best Practices

- Apply early (way ahead of when license is needed)
- Track your application in SNAP-R
- Check SNAP-R regularly for information requests
- Be responsive to all information requests
- Obtain and retain supporting documentation as applicable
- Maintain export control documents for 5 years (see part 762 of the EAR)
- For 600-series .y items use AES /EEI code C60 (DY6)
- Ensure correctness of all AES/EEI filings made on your behalf
- Perform self audits
- Ask questions when needed



“600 Series” Licensing Resources

Regulatory Guidance:

- Supplements No. 1 and 2 to Part 748 of the Export Administration Regulations
- Specially Designed decision tool: <https://www.bis.doc.gov/index.php/specially-designed-tool>

SNAP-R Resources:

- SNAP-R Help Desk(technical queries): snapr@bis.doc.gov, (202) 482-2227
- Online SNAP-R FAQ: <https://snapr.bis.doc.gov/snapr/docs/snaprFAQ.htm>
- Track your application: <https://snapr.bis.doc.gov/stela>
- SNAPR Help Desk (CIN & Login ID queries): (202) 482-2148

600 Series Licensing : Munitions Control Division

- Acting Director: Thomas DeFee, Thomas.DeFee@bis.doc.gov

Outreach Assistance:

- Washington, D.C.: ECDOEXS@bis.doc.gov, 202-482-4811
- Western Regional Office: 940-660-0144 or 408-998-8806



BACK UPS



Additional Examples for Applying 'Equivalent'

- Scenario 3 (meets the 'equivalent' standard): A fuel pump used in "production" of AT-only aircraft is modified for use in a military aircraft. Fuel pump has same function, performance capabilities, but needed to be modified solely for fit purposes (to fit in an area of a military aircraft). No other changes to fuel pump were made, such as for fuel flow.
- Scenario 4 (does NOT meet the 'equivalent' standard): A fuel pump used in "production" of AT-only aircraft is modified for use in a military aircraft. However, in addition to modifying fuel pump solely for fit purposes (to fit in an area of a military aircraft), fuel pump has been made of higher strength materials to allow it to pump at a higher pressure.



BIS UPDATE 2017 CONFERENCE ON EXPORT CONTROLS AND POLICY

600-Series CCATS Review

- 700+ Cases Closed to Date

600-Series CCATS Processed (April 2016 – April 2017)		
# Cases Closed	Average Processing Time	(b)(1) or (b)(3) Releases
236	24 days	~ 3%




U.S. DEPARTMENT OF COMMERCE • BUREAU OF INDUSTRY AND SECURITY

BIS UPDATE 2017 CONFERENCE ON EXPORT CONTROLS AND POLICY

Releases

Paragraph (b)(2) criteria	Meets (b)(2) criteria	Does not meet (b)(2) criteria
Is the “part” or minor component, 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, or solder?	Yes. <u>NOT</u> “specially designed.”	No. NOT ‘released’ under (b)(2). Review other (b) ‘releases.’




U.S. DEPARTMENT OF COMMERCE • BUREAU OF INDUSTRY AND SECURITY

BIS UPDATE 2017 CONFERENCE ON EXPORT CONTROLS AND POLICY

Paragraph (b)(3) criteria	Meets (b)(3) criteria	Does not meet (b)(3) criteria
<p>Does the “part,” “component,” “accessory,” “attachment,” or “software” have same function, performance capabilities, and same or ‘equivalent’ form and fit, as a commodity or software used in or with an item that:</p> <p>(i) is or was in “production” (i.e., not in “development”); <u>and</u></p> <p>(ii) is either not ‘enumerated’ on the CCL or USML, or is described in an ECCN controlled only for Anti-Terrorism (AT) reasons?</p>	<p>Yes.</p> <p><u>NOT</u> “specially designed.”</p>	<p>No.</p> <p><u>NOT</u> ‘released’ under (b)(3). Review other (b) ‘releases.’</p>



 U.S. DEPARTMENT OF COMMERCE • BUREAU OF INDUSTRY AND SECURITY

BIS UPDATE 2017 CONFERENCE ON EXPORT CONTROLS AND POLICY

Paragraph (b)(4) criteria	Meets (b)(4) criteria	Does not meet (b)(4) criteria
<p>Was or is “part,” “component,” “accessory,” “attachment,” or “software” developed with “knowledge” it would be for use in or with commodities or software:</p> <p>(i) described in ECCN <u>and</u></p> <p>(ii) also commodities or software either not- ‘enumerated’ on CCL or USML (e.g., EAR99 commodity or software) or commodity or software described in ECCN controlled only for AT?</p>	<p>Yes.</p> <p><u>NOT</u> “specially designed.”</p>	<p>No.</p> <p><u>NOT</u> ‘released’ under (b)(4). Review other (b) ‘releases.’</p>



 U.S. DEPARTMENT OF COMMERCE • BUREAU OF INDUSTRY AND SECURITY

BIS UPDATE 2017 CONFERENCE ON EXPORT CONTROLS AND POLICY

Paragraph (b)(5) criteria	Meets (b)(5) criteria	Does not meet (b)(5) criteria
<p>Was or is the “part,” “component,” “accessory,” “attachment” or “software” developed as a general purpose commodity or software, i.e., with <u>no</u> “knowledge” for use in or with:</p> <p>particular commodity (e.g., an F/A-18 or HMMWV) <u>or</u></p> <p>type of commodity (e.g., an aircraft or machine tool)?</p>	<p>Yes.</p> <p><u>NOT</u> “specially designed.”</p>	<p>No.</p> <p><u>NOT</u> ‘released’ under (b)(5). Review other (b) ‘releases.’</p>



 U.S. DEPARTMENT OF COMMERCE • BUREAU OF INDUSTRY AND SECURITY

BIS UPDATE 2017 CONFERENCE ON EXPORT CONTROLS AND POLICY

Paragraph (b)(6) criteria	Meets (b)(6) criteria	Does not meet (b)(6) criteria
<p>Was or is the “part,” “component,” “accessory,” “attachment,” or “software” being developed with “knowledge” that it would be for use in or with commodities or software:</p> <p>(i) described in ECCN controlled for AT-only reasons and also for EAR99 commodities or software, <u>or</u></p> <p>(ii) exclusively for use in or with EAR99 commodities or software?</p>	<p>Yes.</p> <p><u>NOT</u> “specially designed.”</p>	<p>No.</p> <p><u>NOT</u> ‘released’ under (b)(6). Review other (b) ‘releases.’</p>



 U.S. DEPARTMENT OF COMMERCE • BUREAU OF INDUSTRY AND SECURITY