

Specially Designed FAQs

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Q.1: Where can I find the definition of “specially designed” in the EAR?

A.1: The term is defined in 15 CFR Part 772 of the EAR in § 772.1.

Q.2: When was the new definition of “specially designed” added to the EAR and when did it become effective?

A.2: The new definition of "specially designed" was added to the EAR through the April 16, 2013 Initial Implementation of Export Control Reform (ECR) final rule (78 FR 22660). The new definition became effective October 15, 2013.

Q.3: When do I need to review “specially designed” under the EAR?

A.3: You only need to review the definition of "specially designed" when the paragraph you are reviewing uses the term "specially designed." See Specially Designed Q.4. below in regards to the CCL Order of Review. There is a decision tree tool for "specially designed" at <http://www.bis.doc.gov/index.php/specially-designed-tool>.

Q.4: How does “specially designed” fit into the larger review of the CCL, given “specially designed” is used in the “600 series,” as well as other ECCNs on the CCL?

A.4: The Commerce Control List Order of Review in Supplement No. 4 to Part 774 was added to the EAR through the April 16, 2013 Initial Implementation of ECR final rule. The CCL Order of Review consists of six steps that guide you through how to analyze the CCL, starting with the "600 series" and then reviewing the other ECCNs on the CCL. The CCL Order of Review specifies when you need to analyze "specially designed" as part of the larger review of the CCL, both when reviewing the "600 series" and then, if needed, when reviewing other ECCNs on the CCL.

Q.5: Does the same definition of “specially designed” apply to the “600 series” and other ECCN’s?

A.5: The same definition of "specially designed" applies to all ECCN provisions that use the term "specially designed" as a control parameter.

Q.6: Is it possible that I may need to review the “specially designed” definition more than one time?

A.6: Yes, it is possible you may need to review "specially designed" more than one time (potentially one time under the ITAR, and two times under the EAR) as you progress through the analysis of the USML and CCL. You always start your review with the USML following the new USML Order of Review (see 22 CFR 121.1(b)(1)). Under the USML Order of Review, you may need to conduct an analysis of whether an item is "specially designed" under the ITAR. This review is done using the ITAR definition of "specially designed" (see 22 CFR 120.41) If the item is subject to the EAR, you will follow the CCL Order of Review. In following the CCL Order of Review, you may need to review the EAR "specially designed" definition for the "600 series." If you determine the item is not classified in the "600 series," you will need to review the rest of the CCL. As part of the review of the rest of the CCL, you may need to conduct a third analysis of "specially designed." This is why the review of "specially designed" is sometimes referred to as a cascading review.

Q.7: Is the definition of “specially designed” under the EAR and the ITAR the same definition?

A.7: The Departments of State and Commerce have adopted essentially the same definition of "specially designed." There are slight differences in the definitions to make them EAR specific and ITAR specific, but both definitions are based on the catch-and-release construct. In addition, once you become familiar with one definition (either the EAR definition or ITAR definition), it will be easier for you to understand the other definition because they are constructed in the same way. However, it is important to understand that you only use the ITAR "specially designed" definition when reviewing the ITAR and the EAR "specially designed" definition when reviewing the EAR.

Q.8: If I review the revised USML Category and determine the item is not “specially designed” under the ITAR, does that also mean it is not “specially designed” under the EAR?

A.8: No, you would need to review the EAR "specially designed" definition to make such a determination. If the item is subject to the EAR and you are following the CCL Order of Review to make a determination whether an item is "specially designed," you must review the EAR "specially designed" definition and NOT the ITAR definition of "specially designed." This is very important to understand because in many cases an item that is not "specially designed" under the ITAR would be "specially designed" under the EAR, such as under a "600 series" .x paragraph. This same concept also applies for the review of "specially designed" under the "600 series" ECCNs and the rest of the CCL. The EAR "specially designed" definition is used for both "600 series" and other ECCNs on the CCL, but even if the item is not a "600 series" "specially designed" item, it still could be a "specially designed" item elsewhere on the CCL, if you are reviewing a paragraph that uses "specially designed."

Q.9: Why does paragraph (a)(1) use the term “items,” but paragraph (a)(2) use the terms “parts,” “components,” “accessories,” “attachments” and software”?

A.9: Paragraph (a)(1) uses the broader term items (meaning commodities, technology and software) because it applies more broadly than paragraph (a)(2). Paragraph (a)(1) is primarily used for determining whether end items or materials are "specially designed." In certain ECCN paragraphs, "parts," "components," "accessories," "attachments" or "software" have a control parameter for "parts," "components," "accessories," "attachments" or "software" "specially designed" for a particular function or performance characteristics and in these ECCNs an analysis of (a)(1) would be done.

For any item that is not a "part," "component," "accessory," "attachment" or "software," such as an "end item" or "material" ("end item" and "material" are defined in § 772.1 of the EAR) described in a paragraph that uses "specially designed," paragraph (a)(1) functions as the entire "specially designed" definition – meaning (a)(1) acts as the ‘catch’ and ‘release.’ For example, if the end item meets the criteria of (a)(1), it is "specially designed." If it does not meet the criteria of paragraph (a)(1), it is not "specially designed."

Q.10: Why was paragraph (a)(2) needed for “parts,” “components,” “accessories,” “attachments,” and “software”?

A.10: Paragraph (a)(2) was needed because for "parts," "components," "accessories," "attachments," or "software" a broader ‘catch’ was needed.

Q.11: If I am reviewing “specially designed” for a “part,” “component,” “accessory,” “attachment” or “software” in a catch-all paragraph, such as 9A610.x, can I review paragraph (a)(2) first instead of reviewing paragraph (a)(1)?

A.11: Yes. This is a good time saving shortcut. For catch-all paragraphs, such as ECCN 9A610.x or any other paragraph that uses "specially designed" that controls unspecified "parts," "components," "accessories," "attachments" or "software," skipping paragraph (a)(1) and proceeding directly to (a)(2) is the best approach to save time. Remember, for "parts," "components," "accessories," "attachments," "software," if ‘caught’ under (a)(1) or (a)(2) it is "specially designed," unless ‘released’ from "specially designed" under paragraph (b).

Q.12: If my item does not meet the criteria of paragraph (a) (i.e., it is not ‘caught’ under paragraph (a)(1) or (a)(2)), does that mean the item is not “specially designed?”

A.12: Yes. In this case, the item is not "specially designed."

Q.13: Why does the introductory text to paragraph (b) of “specially designed” use the word controlled, and how does that change my analysis of “specially designed?”

A.13: Because the CCL uses the term "specially designed" as a control parameter (to let you know what is controlled under a particular ECCN) and also in a small number of ECCNs as a decontrol parameter (to let you know what is *not* controlled under a particular ECCN), the introductory text to paragraph (b) includes the word *controlled*. What this means is that if you are reviewing a paragraph on the CCL that uses "specially designed" as part of a decontrol, such as a decontrol note, in those cases you review paragraph (a) of "specially designed," but you do NOT review paragraph (b). Provided the "part," "component," "accessory," "attachment" or "software" met the criteria of paragraph (a), as well as any other criteria specified in the respective decontrol on the CCL, the "part," "component," "accessory," "attachment," or "software" would be "specially designed" for purposes of the decontrol. In simple terms, the decontrols on the CCL that use "specially designed" and the paragraph (b) ‘releases’ are trying to ‘release’ the same types of "parts," "components," "accessories," "attachments," or "software" from control, so the use of the term *controlled* in the introductory text of paragraph (b) clarifies the applicability of (b) for such decontrols that use "specially designed."

Q.14: If I believe the “part,” “component,” “accessory,” “attachment,” or “software” I am classifying is likely ‘released’ under paragraph (b) because it likely meets the criteria of one of the paragraph (b) ‘releases,’ is it acceptable to skip paragraph (a) and proceed immediately to reviewing paragraph (b) first?

A.14: Yes, this is referred to informally as the review-paragraph-(b)-first track for analyzing "specially designed." As was noted in response to Specially Designed Q.12 above, if an item is NOT ‘caught,’ under (a), then there is no need to review paragraph (b) for "parts," "components," "accessories," "attachments," or "software." However, the converse also applies. If an item is ‘released’ under paragraph (b) (assuming you are not reviewing a decontrol that uses "specially designed"), then there is no need to review paragraph (a), because you have already determined the "part," "component," "accessory," "attachment," or "software" is ‘released’ from "specially designed." For example, assume you have a fastener you are trying to classify. A fastener is a "part" that is specified under paragraph (b)(2) of "specially designed" as not being "specially designed." Therefore, if you have a fastener, you simply can review paragraph (b)(2) and once you confirm a fastener is specified as one of the "parts" or minor "components" ‘released’ from "specially designed," your analysis of "specially designed" is done.

Q.15: If my “part,” “component,” “accessory,” “attachment,” or “software” meets the criteria of more than one paragraph (b) ‘release’ is that a problem?

A.15: No. The "part," "component," "accessory," "attachment," or "software" only needs to meet one of the paragraph (b) ‘releases’ in order to be ‘released’ from "specially designed," but in certain cases a "part," "component," "accessory," "attachment," or "software" may meet more than one of the paragraph (b) ‘releases.’ The result is the same. The "part," "component," "accessory," "attachment," or "software" is not "specially designed."

Q.16: If I have a past commodity jurisdiction determination (CJ) from the Department of State that indicated my item is not subject to the ITAR, and at that time, it was classified on the CCL in a paragraph that does not use “specially designed” or was EAR99, will that past CJ be preserved?

A.16: Yes, see paragraph (b)(1) of "specially designed." Paragraph (b)(1) specifies that "parts," "components," "accessories," "attachments," or "software" identified in such a CJ would not be "specially designed" on the CCL. In addition, in conducting your analysis of the CCL Order of Review for the "600 series," having a past CJ that identified the item as subject to the EAR, and that item was classified in an ECCN that did not end in -018 or was designated as EAR99 would mean under the CCL Order of Review, you would skip to Step 5 in your analysis of the CCL.

This is because the new General Order No. 5 to Part 736 under paragraph (c) (Prior commodity jurisdiction determinations) specifies such items in past CJs are not classified in the "600 series."

Q.17: If I complete the analysis of “specially designed” for my “component” that is subject to the EAR and determine the “component” is “specially designed,” is there any process under the EAR whereby I can request a U.S. Government review to determine whether the “component” does not warrant being “specially designed?”

A.17: Yes, see paragraph (b)(1) of "specially designed" and § 748.3(e) (Classification requests to confirm that a "part," "component," "accessory," "attachment" or "software" is not "specially designed"). Under the § 748.3(e) process, if the Departments of Commerce, Defense and State all concur that a "part," "component," "accessory," "attachment," or "software" does not warrant being "specially designed," BIS can issue a classification specifying that the "part," "component," "accessory," "attachment," or "software" is not "specially designed" and provide a classification in an ECCN paragraph that does not use "specially designed" or an EAR99 designation. However, before submitting such a classification request, you should review the entire "specially designed" definition. Your submission should include information on why the item does not meet any of the paragraph (b) tests.

Q.18: Are there any ‘releases’ under paragraph (b) for insignificant “parts” or minor “components”?

A.18: In developing the objective criteria for "specially designed," the U.S. Government avoided using subjective criteria, such as the term insignificant as part of the ‘release’ criteria under paragraph (b). However, paragraph (b)(2) does specify certain "parts," and minor "components," such as fasteners, screws, and bolts that, because of their insignificance are specified as not being "specially designed." This applies regardless of what they were developed for, which materials they are made of, or what item they are used in.

Q.19: If I have a “part” or “component” that I believe is not significant, but it is not specified in paragraph (b)(2), can I rely on paragraph (b)(2) to ‘release’ the “part” or “component?”

A.19: No, only those "parts" or minor "components" (e.g., nut plate) identified in paragraph (b)(2) can be ‘released’ under (b)(2). The "part" or "component," in question, however, may still be ‘released’ from "specially designed" if it meets the criteria of another ‘release’ under paragraph (b) (i.e., (b)(1), (b)(3), (b)(4), (b)(5) or (b)(6)).

Q.20: The “component” I am classifying was “developed” twenty years ago. I am not the original equipment manufacturer (OEM), so I don’t have “knowledge” of what it was “developed” for, but I do “know” it is currently used in basic consumer items in “production” that are designated EAR99 or in ECCNs that are only controlled for AT reasons on the CCL. Are there any ‘releases’ under “specially designed” that address this scenario?

A.20: The "production" ‘release’ under paragraph (b)(3) may be applicable. This question is not an uncommon fact pattern where a "part," "component," "accessory," or "attachment" was developed decades ago. Criteria under paragraph (b)(3)(i) and (ii) identify when a "part," "component," "accessory," "attachment" or "software" has moved into the lowest controlled items in "production" and therefore warrants ‘release’ from "specially designed."

Q.21: I am classifying a “component” and I know the “component” was originally “developed” for use in an item controlled for more than AT-reasons. Does that matter in applying the paragraph (b)(3) ‘release?’

A.21: No, the original "development" history is not relevant when applying the paragraph (b)(3) "production" ‘release.’ For paragraph (b)(3), once the "part," "component," "accessory," "attachment," or "software" meets the criteria of paragraph (b)(3)(i) and is used in or with an item that meets the criteria under (b)(3)(ii), it is no longer "specially designed," regardless of the original design intent.

Q.22: To rely on the paragraph (b)(3) ‘release,’ does the same “part,” “component,” “accessory,” “attachment,” or “software” need to be used in an item that meets the criteria under paragraph (b)(3)(ii)?

A.22: The "part," "component," "accessory," "attachment," or "software" would need to meet the criteria in the introductory text of paragraph (b)(3) – meaning it has to have the same function, performance capabilities, and the same or ‘equivalent’ form and fit as a "part," "component," "accessory," "attachment," or "software" used in an item that meets the criteria of (b)(3)(ii), such as an EAR99 pick-up truck or an (Anti-Terrorism) AT-only controlled aircraft that is in "production." If it is the same "part," "component," "accessory," "attachment," or "software" used in the AT-only ECCN item or in an EAR99 item that is in "production," applying paragraph (b)(3) is simpler. The criteria under paragraph (b)(3) also allow for "parts," "components," "accessories," "attachments," or "software" that have the same function, performance capabilities, and the same or ‘equivalent’ form and fit.

Q.23: What does ‘equivalent’ mean under paragraph (b)(3)?

A.23: Equivalent means the form has been modified *solely* for fit purposes. The function and performance capabilities must be the same. Any change in form besides a change solely for fit purposes would mean the "part," "component," "accessory," "attachment" or "software" is not ‘equivalent.’

Q.24: Can you provide an example for applying the ‘equivalent’ concept?

A.24: Here is an example of a fuel pump for an aircraft. In the first example, the fuel pump is considered ‘equivalent.’ In the second example, it is not considered ‘equivalent.’

Example 1 (Meets the ‘equivalent’ standard): A fuel pump used in AT-only controlled aircraft in "production" is modified for use in a military aircraft. The fuel pump has the 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 the fuel pump were made, such as for fuel flow.

Example 2 (Does NOT meet the ‘equivalent’ standard): A fuel pump used in AT-only aircraft in "production" is modified for use in a military aircraft. However, in addition to modifying the fuel pump for fit purposes (to fit in an area of a military aircraft), the fuel pump has been made of higher strength materials to allow it to pump at a higher pressure.

Q.25: Are there paragraph (b) ‘releases’ that address scenarios where the “part,” “component,” “accessory,” “attachment,” or “software” was or is being “developed” for use in or with commodities or software described in ECCNs and also for use in or with EAR99 items or items described in AT-only ECCNs?

A.25: Paragraph (b)(4) addresses these types of scenarios. Provided you have documentation contemporaneous with its "development" establishing "knowledge" that the "part," "component," "accessory," "attachment," or "software" was "developed" for use also in or with AT-only or EAR99 items, paragraph (b)(4) would serve as a ‘release’ from "specially designed."

Q.26: Paragraph (b)(6) looks similar to paragraph (b)(4) in its construction, so what is the purpose of paragraph (b)(6)?

A.26: Paragraph (b)(6) is similar to paragraph (b)(4), but the paragraph (b)(6) 'release' is specific to AT-only ECCNs that use "specially designed." Under the paragraph (b)(6) 'release,' if the "part," "component," "accessory," "attachment," or "software" was "developed" for use in or with AT-only ECCNs and also EAR99 commodities or software, it would not be "specially designed." Or if the "part," "component," "accessory" was "developed" exclusively for EAR99 commodities or software, it would not be "specially designed." Under both of these scenarios to be 'released' from "specially designed" you must have documentation from the "development" phase meeting the paragraph (b)(6) criteria."

Q.27: Under paragraph (b)(4), (b)(5) and (b)(6), does it matter what the first use of the "part," "component," "accessory," "attachment," or "software" is, or what the predominant market share is for the "part," "component," "accessory," "attachment," or "software"?

A.27: No. Because the criteria of paragraphs (b)(4), (b)(5) and (b)(6) are met during the "development" phase, the first use of the "part," "component," "accessory," "attachment," or "software" or the predominant market share is not relevant.

Q.28: Is there guidance on the type of documentation that is needed for relying on the "development" 'releases' under paragraphs (b)(4), (b)(5) and (b)(6)?

A.28: Yes. The Note to paragraphs (b)(4), (b)(5) and (b)(6) identifies the type of documentation required in order to rely on the "development" 'releases.' The Note to paragraphs (b)(4), (b)(5) and (b)(6) includes an illustrative list of such documents.

Q.29: If I do not have "knowledge" of the "development" history, does that mean I cannot rely on paragraphs (b)(4), (b)(5) and (b)(6)?

A.29: If you do not have "knowledge" of the "development" history, you cannot rely on paragraphs (b)(4), (b)(5) or (b)(6). However, the other paragraph (b) 'releases,' such as paragraph (b)(3), could be reviewed because they are not tied to the "development" history. If at a later time, you do gain "knowledge" of the "development" history and obtain documentation contemporaneous with its development, you may reevaluate paragraph (b)(4), (b)(5) or (b)(6).

Q30: If I develop a “part,” or “component” for use in different types of commodities, such as machine tools, medical equipment and aircraft, is there a paragraph (b) ‘release’ for such general purpose commodities or software?

A.30: Yes, paragraph (b)(5) ‘releases’ a general purpose commodity or software where the "part," "component," "accessory," "attachment" or "software," was "developed" with no "knowledge" that it was for a particular item or type of item.