



Complying With US Encryption Controls Compared to UK Controls

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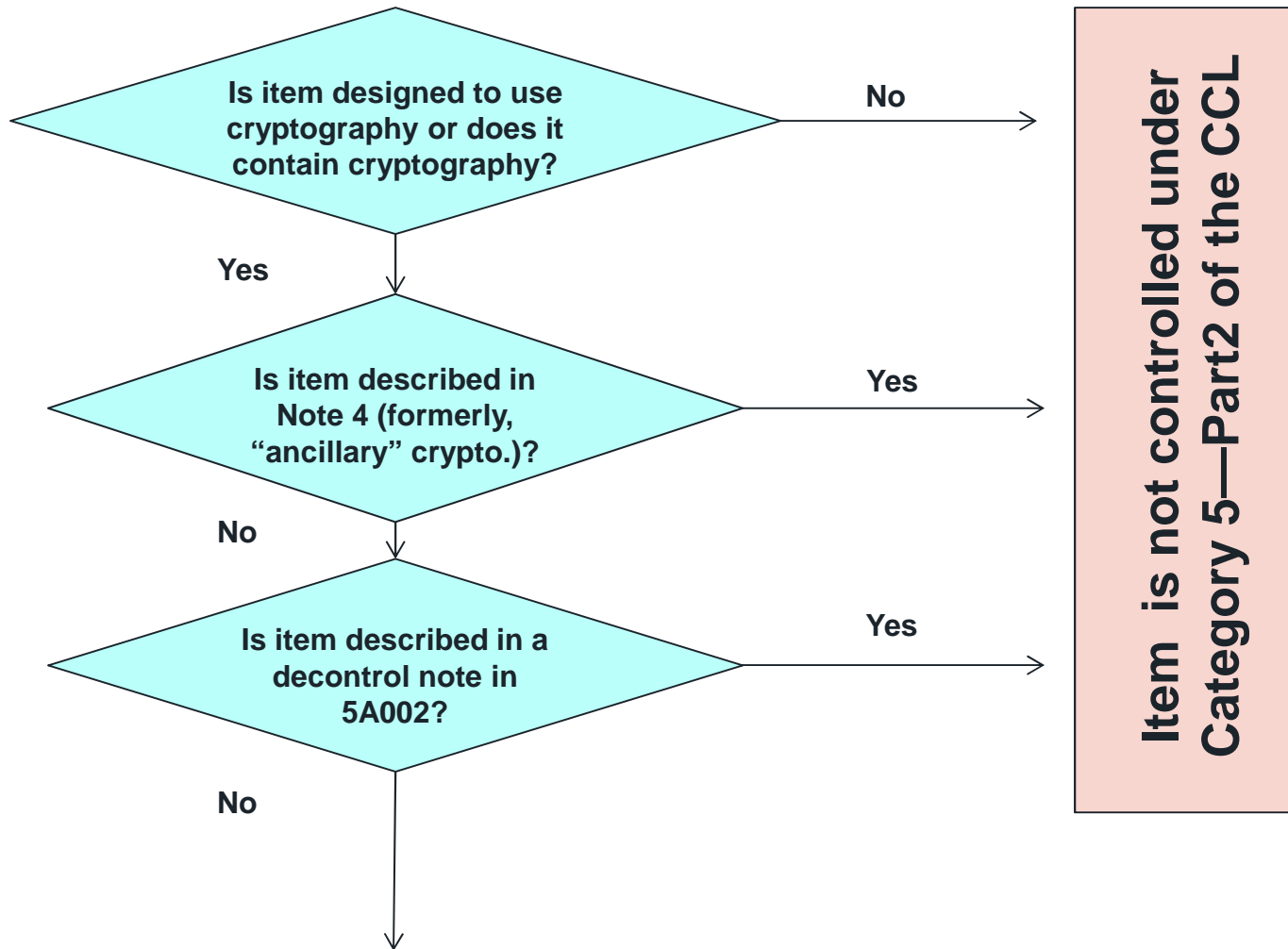


AGENDA

- Encryption Control List Interpretations (US)
- Compliance Documentation Based on Classification
- ENC Compliance Documentation



Items Designed to Use Encryption **NOT** Controlled Under Category 5—Part 2



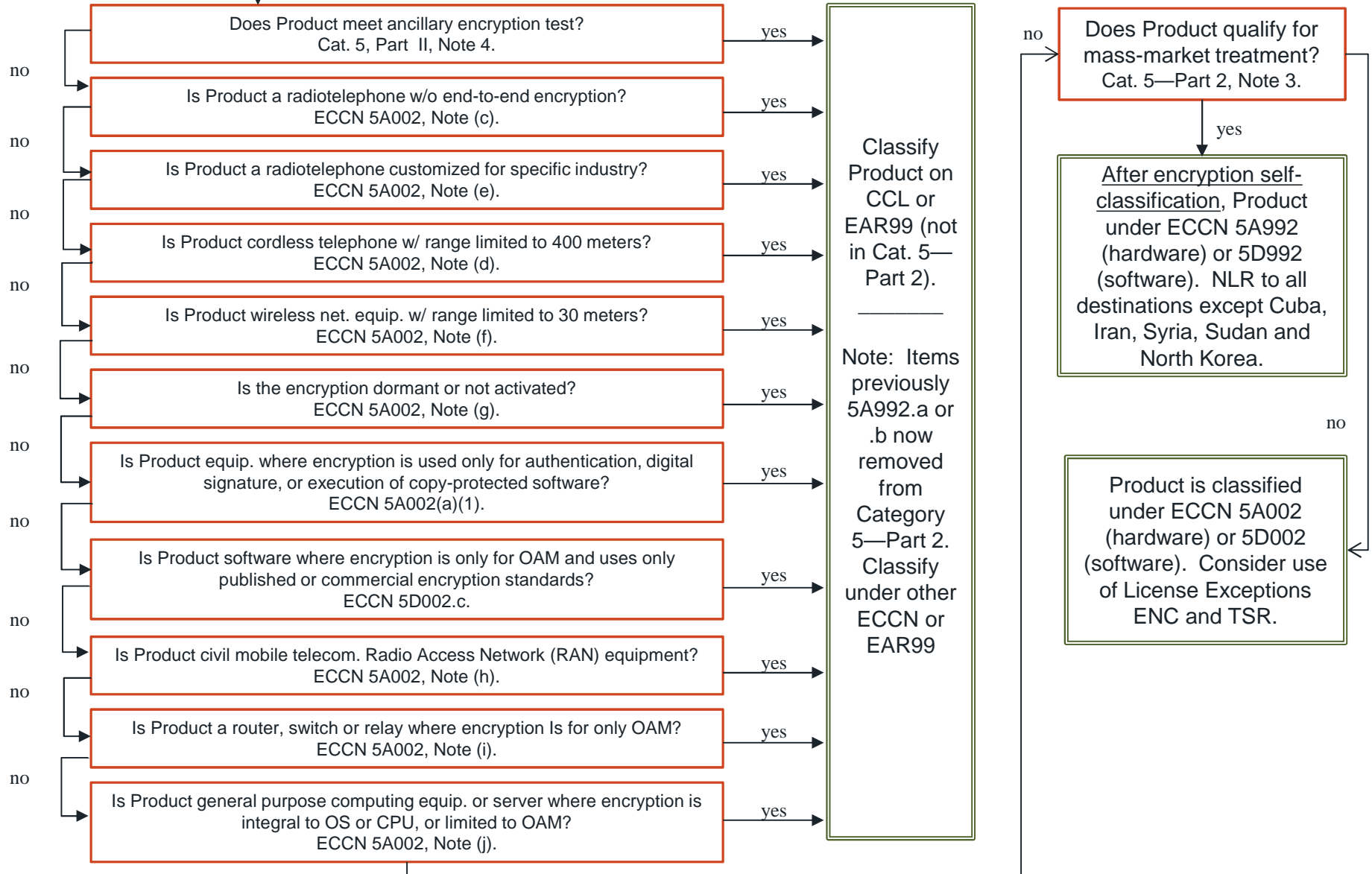
Note 4 to Category 5—Part 2

- **a.** *The primary function or set of functions is not any of the following:*
 - 1. “Information security”;
 - 2. A computer, including operating systems, parts and components therefor;
 - 3. Sending, receiving or storing information (except in support of entertainment, mass commercial broadcasts, digital rights management or medical records management); or
 - 4. Networking (includes operation, administration, management and provisioning);
- **b.** *The cryptographic functionality is limited to supporting their primary function or set of functions; and*
- **c.** *When necessary, details of the items are accessible and will be provided, upon request, to the appropriate authority in the exporter's country in order to ascertain compliance with conditions described in paragraphs a. and b. above.*

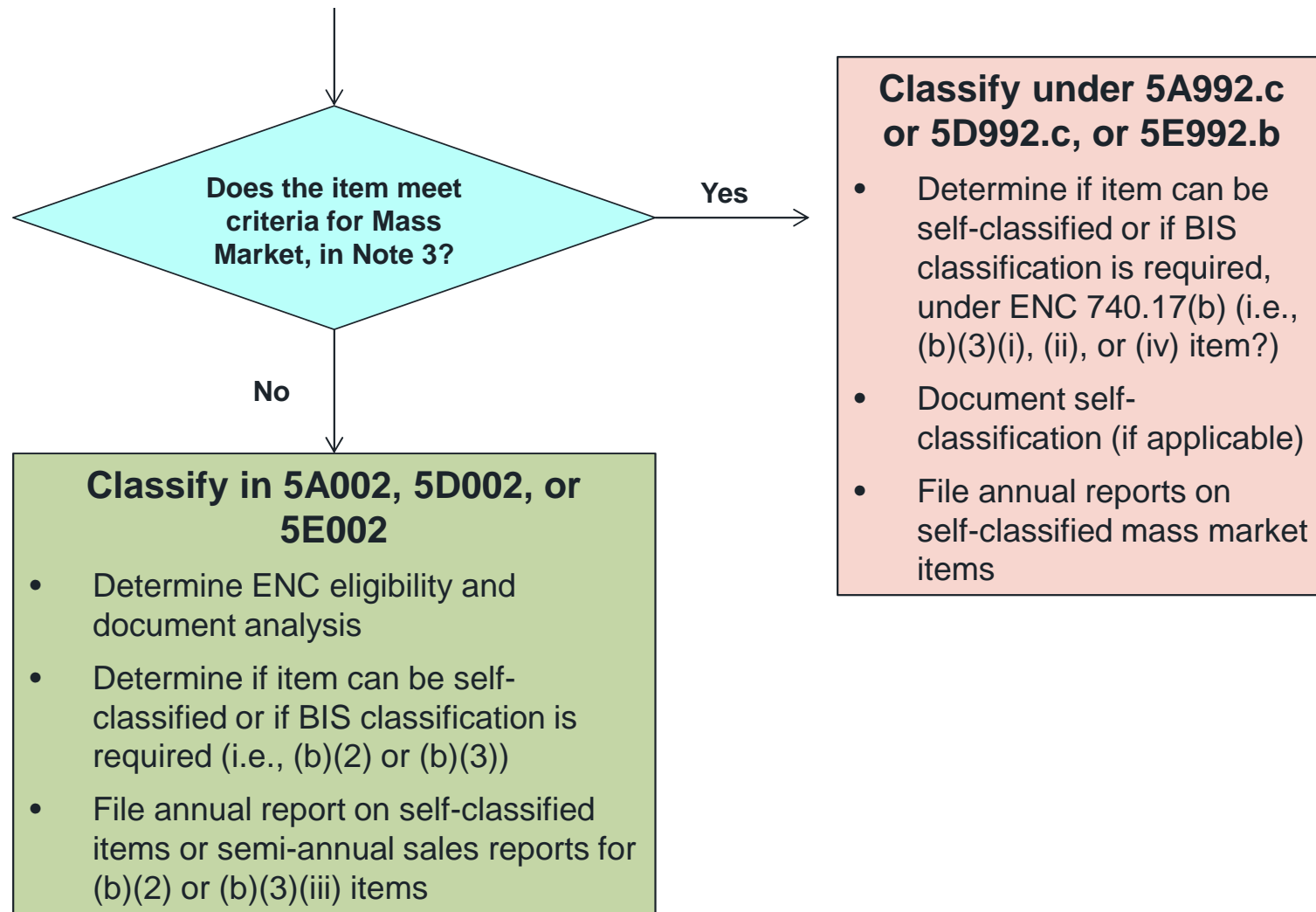
Note 4 to Category 5—Part 2, in Application

- For some items, test can be subjective
 - When in doubt, CCATS
- Self-classification analysis must be documented, particularly for EAR99 determinations
 - Note 4, paragraph c.: “details of the items are accessible and will be provided, upon request”
- Recent CCATS responses suggest that IoT devices and software using encryption for communications of status reports, configuration commands, etc. are excluded from Cat.5—Part 2 under Note 4.
 - These items do engage in “*sending, receiving or storing information*”

- Assumptions:
1. The product contains or uses encryption (key length > 56 bits symmetric, 512 bits asymmetric, or 112 bits elliptic curve)
 2. The product is not specifically designed for medical use
 3. The product is not a smart card or smart card reader
 4. The product is not specifically designed for banking use or money transactions



Items Designed to Use Encryption Controlled under Category 5—Part 2



Mass Market Documentation: Cryptography Note, Note 3 to Category 5—Part 2

- Encryption Registration Numbers no longer used
- Compliance documentation for mass-market self-classification
 - Exporter must have documented self-classification, including all information set forth in Technical Questionnaire at Supplement No. 6 to EAR Part 742
 - Exporter “may be required to provide BIS this supplement no. 6 to part 742 information on an as-needed bases, upon request by BIS” (EAR § 740.17(d)(1)(ii))
 - Document that the item is not under ENC (b)(2) or (b)(3)
 - “When necessary, details of the items are accessible and will be provided, upon request...” (Note 3, paragraph a.5)
 - Document compliance with Note 3
- New self-classification or classification request may be required if encryption changes or if used in a different item to be exported
- Annual self-classification reports for encryption items that were exported during the previous year

ENC Compliance: Para (a)

- Section 740.17(a) of the EAR – no (b)(2)/(b)(3) review and no reporting:
 - (a)(1)(i): internal development
 - ECCN of 5A002 or 5D002
 - Private sector end users, wherever located, that are headquartered in a country listed in Supplement 3
 - Product must be used for internal development or production of new products by that user
 - (a)(1)(ii): internal uses other than development for non US-origin items
 - Private sector end users, wherever located, if parties are subs of same parent in a country listed in Supplement 3
 - Items became subject to EAR after produced; capabilities not enhanced (unless authorized)
 - (a)(2): exports to U.S. subsidiaries
 - ECCN of 5A002 or 5D002
 - Export must be made to a U.S. subsidiary, or foreign nationals who are employees, contractors, or interns of a U.S. company or its subsidiaries
 - Must be for internal company use, including development or production of new products
 - (a)(3): foreign-made products developed with or incorporating U.S. encryption source code, components or toolkits
 - Item must have prior classification or reporting and authorization by BIS

- Two levels of control: “restricted” and “unrestricted”
 - **“Restricted”** – Section 740.17(b)(2)
 - License required for government end-users located in any country other than the “Supplement No. 3” countries; license NOT required for non-government end-users
 - Authorizes exports, reexports, and transfers (in-country) of “network infrastructure” items to “less sensitive government end users” in all countries except Country Group E:1 and E:2
 - Requires BIS/NSA classification determination (with 30-day waiting period)
 - Semi-annual export reporting
 - Items described in Section 740.17(b)(2), including network infrastructure items; source code; cryptanalytic items; open cryptographic interface items; and public safety items
 - **“Unrestricted”** – Sections 740.17(b)(1) and (b)(3)
 - License NOT required for government or non-government end-users
 - Items described in Section 740.17(b)(3)
 - Requires BIS/NSA classification determination (with 30-day waiting period)
 - Some items subject to semi-annual export reporting requirement
 - Examples: chips and chipsets; “non-standard” cryptography; cryptographic libraries, modules and development kits; application-specific development kits; and network and computer forensics items
 - Items described in Section 740.17(b)(1)
 - Requires annual self-classification reporting
 - Items not covered by 740.17(b)(2) or (b)(3)

ENC Compliance for 5x002 Items: Summary

- Analyze and document ENC eligibility for items
 - Self-classification or CCATS
- On a case-by-case basis, determine ENC applicability to country of destination, end-use, and end-user
- Annual self-classification reports
 - Items eligible for self-classification but submitted for CCATS not required in annual reports
- Semi-annual reporting for exports of (b)(2) and (b)(3)(iii) items



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