

CLASSIFICATION

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1.0 PURPOSE

A crucial first step in determining whether there are any restrictions on exports of hardware, software and technology is determining the export classification of the item or technology¹. Depending on the applicable law and regulations of the country from which the export will take place, or through which the item will be transshipped, the export classification is typically an alpha-numeric code or roman numeral category that describes a particular item or type of item.² Once the export classification is determined, the controls that apply to the export of the item can be determined by reviewing the laws and regulations which set forth the applicable export control licensing regime.

In cases where multiple countries may assert jurisdiction over the export or reexport of an item, the export classification of the exporting country and any other country that may have jurisdiction over the pending transaction should also be determined and complied with.

Processes and controls should be established to determine the appropriate export classifications and ensure the correct export authorization is obtained, prior to any export, reexport, in-country transfer or providing access to export controlled information.

2.0 REQUIREMENTS

2.1 Mandatory Classification

Export³ classifications should be determined for all items and technology that can be exported, even if typically sold only in domestic transactions. In countries, such as the United States, that control access by foreign nationals to technology and/or source code, the classifications of technology/source code are required if they will be accessed by those foreign nationals. It is desirable, and it may also simplify the overall export classification process, if all items (including materials, parts and components) are classified for export control purposes.

For items that have not yet been classified a system should be in place to ensure that such items are not exported until the proper licensing determination has been made.

2.2 Export Classification Procedures

2.2.1 Determining Export Classifications -

¹ For purposes of this standard, "item" is defined as "products, software and technology, whether tangible or intangible."

² In the United States, the proper export controls regulatory jurisdiction (EAR or ITAR), must be first determined before an item is classified.

³ For purposes of this standard, "export" includes exports, reexports or in-country transfers that are subject to control.

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Export classification determinations are based on specific technical parameters and other quantitative and qualitative specifications. It is therefore necessary to obtain information on the nature and specifications of items and technology to be classified. This information can be obtained from sources, such as product brochures, technical references, Material Safety Data Sheets (MSDS), engineers/experts and from other reliable sources.

2.2.2. Export classifications can be determined as follows:

A. Obtaining Classifications From Manufacturer or Developer of Item – For items procured or otherwise obtained from other companies or suppliers, organizations should try to obtain the export classifications of those items from the suppliers and/or manufacturers of those items. Some companies post their classifications on their websites. Even when a classification is provided by the manufacturer, it is still the exporter's responsibility to review and verify that such classification appears reasonable.

B. Self-Classification – To the extent permitted by applicable export laws or regulations, manufacturers and exporters can determine the classification of items by reviewing the control lists for the applicable jurisdiction from which the item is exported.

C. Obtaining Formal Classification From Government Agency – Some countries allow manufacturers and exporters to submit an export classification request to a government agency. Based on the information submitted by the applicant, the agency will usually issue a written decision containing the classification of the item or technology.⁴

Note: in all cases determination has to be made regarding which countries have jurisdiction. Example: for an export from Germany of an item that is also subject to the U.S. Export Administration Regulations (EAR), both German export classification rules and the classification under the EAR must be accounted for in determining the applicable export or reexport restrictions or licensing requirements.

2.2.3. When required by law or regulation, the export classification must be marked on drawings or other technical data.

2.3 Classification Responsibilities

Businesses should have a documented procedure for classifying their items, software and technology for export control purposes. This process should incorporate the following elements:

- Proper training for those that will be classifying items
- Documented responsibilities for classification.
- It is preferable for engineers or other persons familiar with the items and technology to be involved in the classification process.
- If possible, items that could appear to fall within more than one category should be reviewed by more than one person to confirm the classification.
- Internal controls on who can classify and change classification database/matrix/documentation (i.e., integrity of classification system). This could be integrated into other business systems.
- Internal controls so that no export shipment can occur until the item has been classified.
- Internal or procedural controls so that the export classification cannot be programmed to default to a particular classification.
- When possible, it is useful to determine the export classifications of multiple countries.

2.4 Export Classification Database/Matrix

⁴ In the United States, commodity classifications of dual-use items are issued by the U.S. Department of Commerce's Bureau of Industry and Security. Classifications of defense articles are issued by the U.S. Department of State's Directorate of Defense Trade Controls.

2.4.1 Manufacturers and exporters should maintain an export classification database/matrix that lists items and their associated technologies that have been classified and the classifications that have been assigned to the item or technology. An export classification database/matrix can also include other information related to the export of the item from or to a particular country. An example of the format of an export classification database or matrix is as follows:

Item Code/SKU	Hardware, Software, Technology	Country-Specific Export Classification
X1234546	Fluoropolymer-lined valves	US = 2B350g.3 EU = 2B350g.2 Hong Kong = 2B350(g)

Some companies include other information on the export classification database/matrix, such as Harmonized Tariff Schedule number, Schedule B Codes (U.S. only), etc. However, these classifications are outside the scope of this document.

2.5 Notification and Dissemination of Export Classifications

In order to notify the customer and/or end-user regarding their export control responsibilities, to the extent practicable, information on the export classification should be included on commercial and shipping documents (e.g., commercial invoices, packing lists, bills of lading, air waybills, etc.).

3.0 Recordkeeping

3.0.1 Classification Audit Trail and Recordkeeping

Export classification determinations must be clearly documented and records should be maintained that document how such classification determinations were made. For example, this documentation may include:

- Name of classifier(s)
- Name of subject matter expert (if applicable)
- Date of classification
- Description of documents and other information relied upon in determining classification
- Government determination (written classification)
- Supplier information or documentation
- Rationale on how the classification was determined