

ELEMENT 2: PRODUCT/COUNTRY LICENSE DETERMINATION SCREEN

A system for classifying products by Export Control Classification Number (ECCN) to determine what export authorization may potentially be used for the intended destination. (General Prohibition One)

OBJECTIVE: To ensure that the export license to be used authorizes the transfer of the items to the intended country.

PROCEDURES: The EMS Administrator may wish to design and use a system that incorporates a product/country license determination matrix to ensure items are exported only in accordance with the EAR.

The system should identify items that are usually eligible for various license exceptions and highlight items that require licenses. General Prohibition One, prohibits the export/reexport of item(s) subject to the EAR without the proper license authorization (license, License Exception, or NLR). The scope of this prohibition is determined by the correct classification of your item and the ultimate destination as that combination is reflected on the Country Chart found in Supplement No. 1 to Part 738 of the EAR. Therefore, this element should contain procedures to:

- ◆ determine appropriate ECCNs using the Commerce Control List (CCL) in Supplement No. 1 to Part 774,
- ◆ determine whether a license is required based on the CCL and the country chart provided in Supplement No. 1 to Part 738 of the EAR,
- ◆ determine your obligations under the ten general prohibitions described in Section 736.2 of the EAR,
- ◆ determine whether a license exception may be available, and
- ◆ provide instructions for the development and use of a Product/Country License Determination Matrix.

Classification of Product

Every product controlled by the Department of Commerce has an ECCN. Each firm should classify products by either having a technical person at the company review the product against

the Commerce Control List (CCL), verifying the classification with the original manufacturer, or sending an export control classification request to the Department of Commerce.

When determining product classifications at the firm, the person making the classification should be an individual with a technical background and familiar with each item's parameters. It may also be advisable to determine which items (including upgrades) are eligible for a License Exception to certain destinations and which require a license to other destinations.

Throughout this process, it is important to document the reason the items fall in a particular category. For example, note relevant criteria such as country or end-use/user restrictions, Composite Theoretical Performance (CTP), or Megahertz levels limitations. Also, document the names of Department of Commerce personnel who have provided assistance in making the decision. The firm's product classification sheets should reflect these limitations and restrictions noting where they are referenced in the EAR. (See Attachment 2-A for a sample Product Classification Sheet).

For firms adopting an EMS, it is recommended that the process used to classify items be described in the EMS manual. Both products and the EAR change over time. Therefore, items should be reevaluated against the CCL as they are modified and the regulations change. This and all subsequent evaluations should be documented.

If the firm is not sure of a specific item's classification, the EMS Administrator may wish to submit a request for classification to the Operations/Support Division in the Office of Exporter Services, at Commerce. Official classifications will be determined by the appropriate Technical Area for your item. The procedure for filing an export control classification request is identified in Section 748.3 of the EAR. Requests for classifications (maximum of five items per request) should be sent to:

Bureau of Export Administration
P.O. Box 273
Washington, DC 20044
Attn: Classification Request

or

For overnight courier:

Bureau of Export Administration
U.S. Department of Commerce
14th and Pennsylvania Ave., N.W.
Room 2705
Washington, DC 20230
Attn: Classification Request

Note: While license approvals may also provide an indication of an item's ECCN, they are not official export control classifications.

Product/Country License Determination Matrix

Once an item has been classified, it can be added to a firm's Product/Country License Determination Matrix. There are many ways to design a Product/Country License Determination Matrix. It is important that this matrix cross-reference items to be exported with the licenses normally available based on the item description and the end destination. See Attachment 2-B for a sample matrix format.

The EMS Administrator should assume responsibility for ensuring that the matrix is current and accurate. The format should be structured so that personnel may easily understand and use the matrix properly. Accordingly, the Matrix should be accompanied by instructions indicating who, when, where, and how to check each shipment against the Matrix. This will ensure licensing decisions are made correctly and consistently.

Exporters should clearly define on the Matrix what license exceptions may be available for each item. In addition, procedures for using the Matrix should clearly state that if a license exception cannot be used, because of a general prohibition, then the exporter must apply for a license.

COMMENTS: Several factors can influence the format of the Product/Country License Determination Matrix. These factors include: the size of a firm, variety and types of items, countries/destinations, international marketing areas, end-users, end-uses, number of customers, etc. A small firm with only a few employees exporting to three western European customers would probably use a fairly simple Matrix. However, a multinational corporation with several product lines, some requiring a license, and some eligible for license exceptions, with customers located worldwide, would most likely require a more elaborate and complex Matrix.

It should be emphasized in the EMS procedures that completion of this screen constitutes only a preliminary license determination. This check establishes the availability of a license exception based on the item being exported and the country of destination. It does not take into account the activity based general prohibitions found in Section 736.2 of the EAR.

It is recommended that this screen be one of the first export control checks performed on a transaction. It will tell you immediately whether you need to apply for a license or if your item may normally be exported under a license exception.

It is extremely important that the exporter define the destination restrictions of the license exception on the Product/Country License Determination Matrix. (See Attachment 2-C for examples).

Some companies may opt to use a computerized Product/Country License Determination Matrix.

The EMS Administrator may wish to implement procedures that ensure the computerized matrix is carefully maintained and updated. There should be a narrative in the EMS manual that explains the computerized matrix system. The EMS Administrator will wish to ensure there is a hold function to prevent shipments under a license exception when a license is required.

The results of this license determination check should be documented on the order and filed appropriately. This documentation should include the type of license required, or exception available, the date the check was performed, and the signature/initials of the individual who performed it. The documented check should be in sufficient detail to allow the firm to review the records and verify that the check was completed and documented.

ATTACHMENT 2 - A
PRODUCT CLASSIFICATION SHEET

Item:

ECCN:

Technical Specs:

End-Use:

- ◆ Regulatory Factors:
- ◆ ECCN Notes:
- ◆ Other, e.g., civilian or military, proliferation-related activities.

Name of engineer:

Date:

Opinion:

Contacts made to determine product classification:

NLR available to following countries:

License Exceptions available to the following countries:

License Exception Restrictions (with EAR references):

General Prohibitions (with EAR references):

ATTACHMENT 2-C

SAMPLE PRODUCT/COUNTRY LICENSE DETERMINATION MATRIX

Eligible Destinations Notes:

NLR

NLR (No License Required) - Applicable when no license is required for items on the CCL to certain destinations. This is determined by consulting the country chart and finding no "X" in the box(es) at the intersection(s) of your country of destination and the column headings assigned to your item by the CCL. NLR also applies when items being exported fall under EAR99 classification and are not subject to any of the ten general prohibitions.

License Exceptions:

GBS

GBS - Shipments of items controlled for National Security reasons to Country Group B. This license exception authorizes exports and reexports to Country Group B (see Supplement No. 1 to Part 740) of those commodities controlled to the ultimate destination for national security reasons only and identified by "GBS - Yes" on the CCL. See Section 740.4, Supplement No. 1 to Part 740, and Part 774.

LVS

LVS - Limited Value Shipments to Country Group B, provided the net value of the commodities included in the same order and controlled under the same ECCN entry on the CCL does not exceed the amount specified in the "LVS" paragraph entry. Under this license exception, the total value of exports (per calendar year), to the same ultimate or intermediate consignee of commodities classified under a single ECCN, may not exceed 12 times the LVS value limit for that ECCN. See Section 740.3 and Part 774.

CIV

CIV - Civil end-users to Country Group D:1 (see Supp. No. 1 to Part 740). This License Exception authorizes exports and reexports controlled to the ultimate destination for national security reasons only and identified by "CIV - Yes" on the CCL, provided the items are destined to civil end-users for civil end-uses in Country Group D:1. See Section 740.5 and Part 774.

TSR

TSR - Technology and software under restrictions to Country Group B (see Supp. 1 to Part 740) provided the consignee has furnished a signed written assurance. Eligible items are noted in specific entries in the CCL. See Section 740.6 and Part 774.

CTP

CTP - CTP authorizes exports and reexports of computers and specially designed components, exported or reexported separately or as part of a system. These commodities are for consumption in Computer Tier countries. This license exception may not be used to enhance the CTP (composite theoretical performance) beyond the eligibility limit allowed to the country of destination. See Section 740.7 and Part 774.

TSU

TSU - Technology and Software Unrestricted:

1. Operating technology and software may be exported or reexported to any destination to which the equipment for which it is required has been or is being legally exported or reexported and the operation software is the minimum necessary to operate equipment authorized for export or reexport. See Section 740.13(a).
2. Sales technology may be exported or reexported to any destination as long as it meets all requirements in Section 740.13(b).
3. "Bug fixes" may be exported or reexported only to the same consignee to whom the original software was exported or reexported. See Section 740.13(c).
4. Mass market software may be exported to all destinations except Cuba, Iran, Libya, North Korea, Sudan, and Syria. See Section 740.13(d).

* Note: Additional requirements other than destinations apply to these license exceptions. Before using a license exception, please review Part 740 of the EAR to ensure that all requirements are met.

Other License Exceptions

TMP

TMP - Temporary imports, exports, and reexports. TMP authorizes various temporary exports and reexports of items temporarily in the United States; and exports and reexports of beta test software. See Section 740.9.

GOV

GOV - The GOV license exceptions authorize exports and reexports for international nuclear safeguards; U.S. government agencies or personnel, and agencies of cooperating governments. See Section 740.11 of the EAR.

GFT

GFT - GFT authorizes exports and reexports of gift parcels by an individual (donor) addressed to an individual, or a religious, charitable or educational organization (donee), located in any destination, for the use of the donee or the donee's immediate family (and not for resale). See Section 740.12 of the EAR.

BAG

BAG - This license exception authorizes individuals leaving the U.S. to take to any destination, as personal baggage accompanied or unaccompanied, personal effects (clothing, souvenirs games), household effects (furniture, etc...), vehicles, and tools of trade (for use in the trade, occupation, employment, vocation or hobby). See Section 740.14 of the EAR.

*** Please refer to Parts 740, 744, 746 and 754 of the EAR for a more descriptive definition of the particular License Exception. Additionally, other license exceptions are found in Part 740 of the EAR.**

License

Required for all destinations when no License Exception is available or when "NLR" does not apply.