§ 120.3 Policy on designating and determining defense articles and services.

An article or service may be designated or determined in the future to be a defense article (see §120.6) or defense service (see §120.9) if:

(a) Is specifically designed, developed, configured, adapted, or modified for a military application, and

(i) Does not have predominant civil applications, and

(ii) Does not have performance equivalent (defined by form, fit and function) to those of an article or service used for civil applications; or

(b) Is not generally eligible as set forth above in paragraph (c) of this section, unless an exception has been granted pursuant to §120.7(c) of this subchapter.

§ 120.2 Designation of defense articles and defense services.

The Arms Export Control Act (22 U.S.C. 2778(a) and 2794(7)) provides that the President shall designate the articles and services deemed to be defense articles and defense services for purposes of this subchapter. The items so designated constitute the United States Munitions List and are specified in part 121 of this subchapter. Such designations are made by the Department of State with the concurrence of the Department of Defense. For a determination on whether a particular item is included on the U.S. Munitions List see §120.4(a).

§ 120.4(a) Eligibility. Only U.S. persons (as defined in §120.15) and foreign governmental entities in the United States, foreign persons (as defined in §120.16) other than governments, and the commodities jurisdiction procedure under this subchapter, including under this part 120.

(c) Exception. The exemptions provided in this subchapter do not apply to transactions in which the exporter or any party to the export (as defined in §120.7(e) of this subchapter) is generally ineligible as set forth above in paragraph (c) of this section, unless an exception has been granted pursuant to §120.7(c) of this subchapter.