Department of State

§ 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 it:

(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 specifically designed, developed, configured, adapted, or modified for a military application, and has significant military or intelligence applicability such that control under this subchapter is necessary.

The intended use of the article or service after its export (i.e., for a military or civilian purpose) is not relevant in determining whether the article or service is a defense article or service.