

Department of State

§ 120.3

Doc. 110-7). For the convenience of the user, the revised text is set forth as follows:

§ 120.1 General authorities and eligibility.

(a) Section 38 of the Arms Export Control Act (22 U.S.C. 2778), as amended, authorizes the President to control the export and import of defense articles and defense services. The statutory authority of the President to promulgate regulations with respect to exports of defense articles and defense services was delegated to the Secretary of State by Executive Order 11958, as amended. This subchapter implements that authority. Portions of this subchapter also implement the Defense Trade Cooperation Treaty between the United States and the United Kingdom. (Note, however, that the Treaty is not the source of authority for the prohibitions in part 127, but instead is the source of one limitation on the scope of such prohibitions.) By virtue of delegations of authority by the Secretary of State, these regulations are primarily administered by the Deputy Assistant Secretary of State for Defense Trade and Regional Security and the Managing Director of Defense Trade Controls, Bureau of Political-Military Affairs.

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(c) Receipt of Licenses and Eligibility. (1) A U.S. person may receive a license or other approval pursuant to this subchapter. A foreign person may not receive such a license or other approval, except as follows:

- (i) A foreign governmental entity in the United States may receive an export license or other export approval;
(ii) A foreign person may receive a re-export or retransfer approval; and
(iii) A foreign person may receive a prior approval for brokering activities.

Requests for a license or other approval, other than by a person referred to in paragraphs (c)(1)(i) and (c)(1)(ii) of this section, will be considered only if the applicant has registered with the Directorate of Defense Trade Controls pursuant to part 122 or 129 of this subchapter, as appropriate.

(2) Persons who have been convicted of violating the criminal statutes enumerated in §120.27 of this subchapter, who have been debarred pursuant to part 127 or 128 of this subchapter, who are subject to indictment or are otherwise charged (e.g., by information) for violating the criminal statutes enumerated in §120.27 of this subchapter, who are ineligible to contract with, or to receive a license or other form of authorization to import defense articles or defense services from any agency of the U.S. Government, who are ineligible to receive an export license or other approval from any other agency of the U.S. Government, or who are subject to a Department of State policy of denial, suspension or revocation under §126.7(a) of this sub-

chapter, or to interim suspension under §127.8 of this subchapter, are generally ineligible to be involved in activities regulated under this subchapter.

(d) The exemptions provided in this subchapter do not apply to transactions in which the exporter, any party to the export (as defined in §126.7(e) of this subchapter), any source or manufacturer, broker or other participant in the brokering activities, is generally ineligible in paragraph (c) of this section, unless prior written authorization has been granted by the Directorate of Defense Trade Controls.

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§ 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).

§ 120.3 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