

subchapter) is generally ineligible as set forth above in paragraph (c) of this section, unless an exception has been granted pursuant to Sec. 126.7(c) of this subchapter.

[58 FR 39283, July 22, 1993, as amended at 68 FR 7417, Feb. 14, 2003; 68 FR 51171, Aug. 26, 2003; 68 FR 57352, Oct. 3, 2003]

Sec. 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 Sec. 120.4(a).

Sec. 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 Sec. 120.6) or defense service (see Sec. 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 subject to the controls of this subchapter. Any item covered by the U.S. Munitions List must be within the categories of the U.S. Munitions List. The scope of the U.S. Munitions List shall be changed only by amendments made pursuant to section 38 of the Arms Export Control Act (22 U.S.C. 2778).

Sec. 120.4 Commodity jurisdiction.