

Department of State

§ 120.9

Commerce regulates the export, reexport, and in-country transfer of items on the Commerce Control List and other items subject to its jurisdiction, as well as the provision of certain proliferation activities, under the Export Administration Regulations (EAR) (15 CFR parts 730 through 774). For the relationship of this subchapter to regulations of the Department of Energy and the Nuclear Regulatory Commission, see § 123.20 of this subchapter.

(b) A license or other approval (see § 120.20) from the Department of State granted in accordance with this subchapter may also authorize the export of items subject to the EAR (see § 120.42). An exemption (see parts 123, 124, 125, and 126 of this subchapter) may only be used to export an item subject to the EAR that is for use in or with a defense article and is included in the same shipment as any defense article. No exemption under this subchapter may be utilized to export an item subject to the EAR if not accompanied by a defense article. Separate approval from the Department of Commerce is not required for these items. Those items subject to the EAR exported pursuant to a Department of State license or other approval would remain under the jurisdiction of the Department of Commerce for any subsequent transactions. The inclusion of items subject to the EAR on a Department of State license or other approval does not change the licensing jurisdiction of the items. (See § 123.1(b) of this subchapter for guidance on identifying items subject to the EAR in a license application to the Department of State.)

[78 FR 22753, Apr. 16, 2013; 78 FR 61754, Oct. 3, 2013, as amended at 81 FR 54735, Aug. 17, 2016]

§ 120.6 Defense article.

Defense article means any item or technical data designated in § 121.1 of this subchapter. The policy described in § 120.3 is applicable to designations of additional items. This term includes technical data recorded or stored in any physical form, models, mockups or other items that reveal technical data directly relating to items designated in § 121.1 of this subchapter. It also includes forgings, castings, and other unfinished products, such as extrusions and machined bodies, that have

reached a stage in manufacturing where they are clearly identifiable by mechanical properties, material composition, geometry, or function as defense articles. It does not include basic marketing information on function or purpose or general system descriptions.

[79 FR 61227, Oct. 10, 2014]

§ 120.7 Significant military equipment.

(a) *Significant military equipment* means articles for which special export controls are warranted because of their capacity for substantial military utility or capability.

(b) Significant military equipment includes:

- (1) Items in § 121.1 of this subchapter which are preceded by an asterisk; and
- (2) All classified articles enumerated in § 121.1 of this subchapter.

[58 FR 39283, July 22, 1993, as amended at 62 FR 67275, Dec. 24, 1997]

§ 120.8 Major defense equipment.

Pursuant to section 47(6) of the Arms Export Control Act (22 U.S.C. 2794(6) note), *major defense equipment* means any item of significant military equipment (as defined in § 120.7) on the U.S. Munitions List having a nonrecurring research and development cost of more than \$50,000,000 or a total production cost of more than \$200,000,000.

§ 120.9 Defense service.

(a) *Defense service* means:

(1) The furnishing of assistance (including training) to foreign persons, whether in the United States or abroad in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of defense articles;

(2) The furnishing to foreign persons of any technical data controlled under this subchapter (see § 120.10), whether in the United States or abroad; or

(3) Military training of foreign units and forces, regular and irregular, including formal or informal instruction of foreign persons in the United States or abroad or by correspondence courses, technical, educational, or information publications and media of all kinds, training aid, orientation,

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training exercise, and military advice. (See also §124.1.)

(b) [Reserved]

[62 FR 67275, Dec. 24, 1997]

§ 120.10 Technical data.

(a) *Technical data* means, for purposes of this subchapter:

(1) Information, other than software as defined in §120.10(a)(4), which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles. This includes information in the form of blueprints, drawings, photographs, plans, instructions or documentation.

(2) Classified information relating to defense articles and defense services on the U.S. Munitions List and 600-series items controlled by the Commerce Control List;

(3) Information covered by an invention secrecy order; or

(4) Software (*see* §120.45(f)) directly related to defense articles.

(b) The definition in paragraph (a) of this section does not include information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges, and universities, or information in the public domain as defined in §120.11 of this subchapter or telemetry data as defined in note 3 to Category XV(f) of part 121 of this subchapter. It also does not include basic marketing information on function or purpose or general system descriptions of defense articles.

[58 FR 39283, July 22, 1993, as amended at 61 FR 48831, Sept. 17, 1996; 71 FR 20537, Apr. 21, 2006; 78 FR 22754, Apr. 16, 2013; 78 FR 61754, Oct. 3, 2013; 79 FR 61227, Oct. 10, 2014; 79 FR 27185, May 13, 2014]

§ 120.11 Public domain.

(a) *Public domain* means information which is published and which is generally accessible or available to the public:

(1) Through sales at newsstands and bookstores;

(2) Through subscriptions which are available without restriction to any individual who desires to obtain or purchase the published information;

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(3) Through second class mailing privileges granted by the U.S. Government;

(4) At libraries open to the public or from which the public can obtain documents;

(5) Through patents available at any patent office;

(6) Through unlimited distribution at a conference, meeting, seminar, trade show or exhibition, generally accessible to the public, in the United States;

(7) Through public release (*i.e.*, unlimited distribution) in any form (e.g., not necessarily in published form) after approval by the cognizant U.S. government department or agency (see also §125.4(b)(13) of this subchapter);

(8) Through fundamental research in science and engineering at accredited institutions of higher learning in the U.S. where the resulting information is ordinarily published and shared broadly in the scientific community. Fundamental research is defined to mean basic and applied research in science and engineering where the resulting information is ordinarily published and shared broadly within the scientific community, as distinguished from research the results of which are restricted for proprietary reasons or specific U.S. Government access and dissemination controls. University research will not be considered fundamental research if:

(i) The University or its researchers accept other restrictions on publication of scientific and technical information resulting from the project or activity, or

(ii) The research is funded by the U.S. Government and specific access and dissemination controls protecting information resulting from the research are applicable.

(b) [Reserved]

§ 120.12 Directorate of Defense Trade Controls.

Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State, Washington, DC 20522–0112.

[71 FR 20537, Apr. 21, 2006]