

REFERENCES FOR § 120.41 SPECIALLY DESIGNED.

(a) Except for commodities or software described in paragraph (b) of this section, a commodity or software (see §120.45(f)) is specially designed if it:

- (1) As a result of development, has properties peculiarly responsible for achieving or exceeding the controlled performance levels, characteristics, or functions described in the relevant U.S. Munitions List paragraph; or
- (2) Is a part (see §120.45(d)), component (see §120.45(b)), accessory (see §120.45(c)), attachment (see §120.45(c)), or software for use in or with a defense article.

(b) A part, component, accessory, attachment, or software is not specially designed if it:

- (1) Is subject to the EAR pursuant to a commodity jurisdiction determination;
- (2) Is, regardless of form or fit, a fastener (e.g., screws, bolts, nuts, nut plates, studs, inserts, clips, rivets, pins), washer, spacer, insulator, grommet, bushing, spring, wire, or solder;
- (3) Has the same function, performance capabilities, and the same or "equivalent" form and fit as a commodity or software used in or with a commodity that:
 - (i) Is or was in production (i.e., not in development); and
 - (ii) Is not enumerated on the U.S. Munitions List;
- (4) Was or is being developed with knowledge that it is or would be for use in or with both defense articles enumerated on the U.S. Munitions List and also commodities not on the U.S. Munitions List; or
- (5) Was or is being developed as a general purpose commodity or software, i.e., with no knowledge for use in or with a particular commodity (e.g., a F/A-18 or HMMWV) or type of commodity (e.g., an aircraft or machine tool).