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person, whether in the United States or abroad; or

(6) The release of previously encrypted technical data as described in § 120.56(a)(3) and (4).

(b) Any release in the United States of technical data to a foreign person is deemed to be an export to all countries in which the foreign person has held or holds citizenship or holds permanent residency.

§ 120.51 Reexport.

(a) *Reexport*, except as set forth in § 120.54 or § 126.16 or § 126.17 of this subchapter, means:

(1) An actual shipment or transmission of a defense article from one foreign country to another foreign country, including the sending or taking of a defense article to or from such countries in any manner;

(2) Releasing or otherwise transferring technical data to a foreign person who is a citizen or permanent resident of a country other than the foreign country where the release or transfer takes place (a deemed reexport); or

(3) Transferring registration, control, or ownership of any aircraft, vessel, or satellite subject to this subchapter between foreign persons.

(b) Any release outside the United States of technical data to a foreign person is deemed to be a reexport to all countries in which the foreign person has held or holds citizenship or holds permanent residency.

§ 120.52 Retransfer.

(a) *Retransfer*, except as set forth in § 120.54 or § 126.16 or § 126.17 of this subchapter, means:

(1) A change in end-use or end-user, or a temporary transfer to a third party, of a defense article within the same foreign country; or

(2) A release of technical data to a foreign person who is a citizen or permanent resident of the country where the release or transfer takes place.

(b) [Reserved]

§ 120.53 Temporary import.

(a) *Temporary import*, except as set forth in § 120.54, means bringing into the United States from a foreign country any defense article that is:

(1) To be returned to the country from which it was shipped or taken; or

(2) Any defense article that is in transit to another foreign destination.

(b) Temporary import includes withdrawal of a defense article from a customs bonded warehouse or foreign trade zone for the purpose of returning it to the country of origin or country from which it was shipped or for shipment to another foreign destination.

(c) Permanent imports are regulated by the Attorney General under the direction of the Department of Justice's Bureau of Alcohol, Tobacco, Firearms, and Explosives (see 27 CFR parts 447, 478, 479, and 555).

§ 120.54 Activities that are not exports, reexports, retransfers, or temporary imports.

(a) The following activities are not exports, reexports, retransfers, or temporary imports:

(1) Launching a spacecraft, launch vehicle, payload, or other item into space;

(2) Transmitting or otherwise transferring technical data to a U.S. person in the United States from a person in the United States;

(3) Transmitting or otherwise transferring within the same foreign country technical data between or among only U.S. persons, so long as the transmission or transfer does not result in a release to a foreign person or transfer to a person prohibited from receiving the technical data;

(4) Shipping, moving, or transferring defense articles between or among the United States as defined in § 120.60;

(5) Sending, taking, or storing technical data that is:

(i) Unclassified;

(ii) Secured using end-to-end encryption;

(iii) Secured using cryptographic modules (hardware or software) compliant with the Federal Information Processing Standards Publication 140-2 (FIPS 140-2) or its successors, supplemented by software implementation, cryptographic key management and other procedures and controls that are in accordance with guidance provided in current U.S. National Institute for Standards and Technology (NIST) publications, or by other cryptographic

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means that provide security strength that is at least comparable to the minimum 128 bits of security strength achieved by the Advanced Encryption Standard (AES-128); and

(iv) Not intentionally sent to a person in or stored in a country proscribed in § 126.1 of this subchapter or the Russian Federation; and

NOTE 1 TO PARAGRAPH (A)(5)(IV): Data in-transit via the internet is not deemed to be stored.

(v) Not sent from a country proscribed in § 126.1 of this subchapter or the Russian Federation.

(b)(1) For purposes of this section, end-to-end encryption is defined as:

(i) The provision of cryptographic protection of data, such that the data is not in an unencrypted form, between an originator (or the originator's in-country security boundary) and an intended recipient (or the recipient's in-country security boundary); and

(ii) The means of decryption are not provided to any third party.

(2) The originator and the intended recipient may be the same person. The intended recipient must be the originator, a U.S. person in the United States, or a person otherwise authorized to receive the technical data, such as by a license or other approval pursuant to this subchapter.

(c) The ability to access technical data in encrypted form that satisfies the criteria set forth in paragraph (a)(5) of this section does not constitute the release or export of such technical data.

§ 120.55 Access information.

Access information is information that allows access to encrypted technical data subject to this subchapter in an unencrypted form. Examples include decryption keys, network access codes, and passwords.

§ 120.56 Release.

(a) *Release*. Technical data is released through:

(1) Visual or other inspection by foreign persons of a defense article that reveals technical data to a foreign person;

(2) Oral or written exchanges with foreign persons of technical data in the United States or abroad;

(3) The use of access information to cause or enable a foreign person, including yourself, to access, view, or possess unencrypted technical data; or

(4) The use of access information to cause technical data outside of the United States to be in unencrypted form.

(b) *Provision of access information*. Authorization for a release of technical data to a foreign person is required to provide access information to that foreign person, if that access information can cause or enable access, viewing, or possession of the unencrypted technical data.

§ 120.57 Authorization types.

(a) *License* means a document bearing the word "license" issued by the Deputy Assistant Secretary of State for Defense Trade Controls, or authorized designee, that permits the export, reexport, retransfer, temporary import, or brokering of a specific defense article or defense service controlled by this subchapter.

(b) *Other approval* means a document, other than a license, issued by the Deputy Assistant Secretary of State for Defense Trade Controls, or authorized designee, that approves an activity regulated by this subchapter (e.g., approvals for brokering activities or retransfer authorizations), or the use of an exemption to the license requirements as described in this subchapter.

(c) *Exemption* means a provision of this subchapter that authorizes the export, reexport, retransfer, temporary import, or brokering of a specific defense article or defense service without a license or other written authorization.

(d) *Manufacturing license agreement* means an agreement (e.g., contract), approved by the Directorate of Defense Trade Controls (DDTC), whereby a U.S. person grants a foreign person an authorization to manufacture defense articles abroad and which involves or contemplates:

(1) The export of technical data or defense articles or the performance of a defense service; or