1. Not Subject to the EAR and Defense Article

§734.3 (a) (NO REVISION) (b) The following are not subject to the EAR: (1) (NO REVISION) (2) (NO REVISION) (3) Information and "software" that: (i) Are "published," as described in § 734.7; (ii) Arise during, or result from, "fundamental research," as described in § 734.8; (iii) Concern general scientific, mathematical, or engineering principles commonly taught in schools, and released by instruction in a catalog course or associated teaching laboratory of an academic institution; (iv) Appear in patents or open (published) patent applications available from or at any patent office, unless covered by an invention secrecy order, or are otherwise patent information as described in § 734.10.	**§120.6** (a) Defense article means any item, software or technical data designated in §121.1 of this subchapter. [Only the first sentence is being revised] (b) The following are not defense articles and thus not subject to the ITAR: (1) Reserved (2) Reserved (3) Information and software that: (i) Are in the public domain, as described in §120.11; (ii) Arise during, or result from, fundamental research, as described in §120.46; (iii) Concern general scientific, mathematical, or engineering principles commonly taught in schools, and released by instruction in a catalog course or associated teaching laboratory of an academic institution; or (iv) Appear in patents or open (published) patent applications available from or at any patent office, unless covered by an invention secrecy order.

Note to paragraphs (b)(2) and (b)(3) of this section: A printed book or other printed material setting forth encryption source code is not itself subject to the EAR (see §734.3(b)(2)). However, notwithstanding §734.3(b)(2), encryption source code in electronic form or media (e.g., computer diskette or CD ROM) remains subject to the EAR (see §734.17). Publicly available encryption object code software classified under ECCN 5D002 is not subject to the EAR when the corresponding source code meets the criteria specified in §740.13(e) of the EAR.	
Note to paragraph (b)(3) of this section: Except as set forth in part 760 of this title, information that is not within the scope of the definition of "technology" (see § 772.1 of the EAR) is not subject to the EAR.	*Note:* Information that is not within the scope of the definition of technical data (see § 120.10 of this subchapter) and not directly related to a defense article, or otherwise described on the USML, is not subject to the ITAR.

2. Technology/Technical Data

§772.1 "*Technology*" means: (a) Except as set forth in paragraph (b): (1) Information necessary for the "development," "production," "use," operation, installation, maintenance, repair, overhaul, or refurbishing (or other terms specified in ECCNs on the CCL that control "technology") of an item. "Technology" may be in any tangible or intangible form, such as written or oral communications, blueprints, drawings, photographs, plans, diagrams, models, formulae, tables, engineering designs and specifications, computer-aided design files, manuals or documentation, electronic media or information gleaned through visual inspection; *Note to Paragraph (a)(1) of this section: The modification of an existing item creates a new item and technology for the modification is technical data for the development of the new item.* (2) [Reserved]; (3) [Reserved]; (4) [Reserved]; or	**§120.10 Technical Data** (a) Technical data means, except as set forth in (b): (1) Information required for the development (*see* §120.47) (including design, modification, and integration design), production (*see* §120.48) (including manufacture, assembly, and integration), operation, installation, maintenance, repair, overhaul, or refurbishing of a defense article. Technical data may be in any tangible or intangible form, such as written or oral communications, blueprints, drawings, photographs, plans, diagrams, models, formulae, tables, engineering designs and specifications, computer-aided design files, manuals or documentation, electronic media or information gleaned through visual inspection; *Note 1 to Paragraph (a)(1):* The modification of an existing item creates a new item and technical data for the modification is technical data for the development of the new item. (2) Information enumerated on the USML (*i.e.*, not controlled pursuant to a catch-all USML paragraph); (3) Classified information for the development, production, operation, installation, maintenance, repair, overhaul, or refurbishing of a defense article or a 600 series item subject to the EAR; (4) Information covered by an invention secrecy order; or

(5) Information, such as decryption keys, network access codes, or passwords that would allow access to other "technology" in clear text or "software" (b) "Technology" does not include: (1) Non-proprietary general system descriptions; (2) Information on basic function or purpose of an item; or (3) Telemetry data as defined in note 2 to Category 9, Product Group E (see Supplement No. 1 to Part 774 of the EAR).	(5) Information, such as decryption keys, network access codes, or passwords that would allow access to other technical data in clear text or software (See §127.1(b)(4) of this subchapter). (b) Technical data does not include: (1) Non-proprietary general system descriptions; (2) Information on basic function or purpose of an item; or (3) Telemetry data as defined in note 3 to USML Category XV(f) (*see* §121.1 of this subchapter).

3. Published/Public Domain

§734.7 Published. (a) Except as set forth in paragraph (b) of this section, unclassified "technology" or "software" is "published," and is thus not "technology" or "software" subject to the EAR, when it has been made available to the public without restrictions upon its further dissemination such as through any of the following: (1) Subscriptions available without restriction to any individual who desires to obtain or purchase the published information; (2) Libraries or other public collections that are open and available to the public, and from which the public can obtain tangible or intangible documents; (3) Unlimited distribution at a conference, meeting, seminar, trade show, or exhibition, generally accessible to the interested public; (4) Public dissemination (i.e., unlimited distribution) in any form (*e.g.*, not necessarily in published form), including posting on the Internet on sites available to the public; or (5) Submission of a written composition, manuscript or presentation to domestic or foreign co-authors, editors, or reviewers of journals, magazines, newspapers or trade publications, or to organizers of open conferences or other open gatherings, with the intention that the compositions, manuscripts, or publications will be made publicly available if accepted for	**§120.11 Public Domain** (a) Except as set forth in paragraph (b), unclassified information and software are in the public domain, and are thus not technical data or software subject to the ITAR, when they have been made available to the public without restrictions upon their further dissemination such as through any of the following: (1) Subscriptions available without restriction to any individual who desires to obtain or purchase the published information; (2) Libraries or other public collections that are open and available to the public, and from which the public can obtain tangible or intangible documents; (3) Unlimited distribution at a conference, meeting, seminar, trade show, or exhibition, generally accessible to the interested public; (4) Public dissemination (i.e., unlimited distribution) in any form (e.g., not necessarily in published form), including posting to the Internet on sites available to the public; or (5) Submission of a written composition, manuscript or presentation to domestic or foreign co-authors, editors, or reviewers of journals, magazines, newspapers or trade publications, or to organizers of open conferences or other open gatherings, with the intention that the compositions, manuscripts, or publications will be made publicly available if accepted for

publication or presentation. (b) Published encryption software classified under ECCN 5D002 remains subject to the EAR unless it is publicly available encryption object code software classified under ECCN 5D002 and the corresponding source code meets the criteria specified in §740.13(e) of the EAR.	publication or presentation. (b) Technical data or software, whether or not developed with government funding, is not in the public domain if it has been made available to the public without an authorization from (1) the Directorate of Defense Trade Controls; (2) the Department of Defense's Office of Security Review; (3) the relevant U.S. government contracting entity with authority to allow the technical data or software to be made available to the public; or (4) Another U.S. government official with authority to allow the technical data or software to be made available to the public. *Note 1:* Section 127.1(a)(6) prohibits, without written authorization from the Directorate of Defense Trade Controls, U.S. and foreign persons from exporting, reexporting, retransferring, or otherwise making available to the public technical data or software if such person has knowledge that the technical data or software was made publicly available without an authorization described in paragraph (b) of this section. *Note 2:* An export, reexport, or retransfer of technical data or software that was made publically available by another person without authorization is not a violation of this subchapter, except as described in §127.1(a)(6).

4. Arises During, or Result from, Fundamental Research

§734.8 "Technology" that Arises During, or Results from, Fundamental Research.	**§120.49 Technical data that Arises During, or Results from, Fundamental Research**
(a) "Technology" that arises during, or results from, fundamental research and is 'intended to be published' is thus not "subject to the EAR."	(a) *Technical Data arising during, or resulting from, fundamental research.* Unclassified information that arises during, or results from, fundamental research and is intended to be published is not technical data when the research is: (1) Conducted in the United States at an accredited institution of higher learning; or (2) Funded, in whole or in part, by the U.S. government.
Note 1 to paragraph (a): The inputs used to conduct fundamental research, such as information, equipment, or software, are not "technology that arises during or results from fundamental research" except to the extent that such inputs are "technology" that arose during or resulted from earlier fundamental research.	*Note 1 to paragraph (a):* The inputs used to conduct fundamental research, such as information, equipment, or software, are not "technical data that arises during or results from fundamental research" except to the extent that such inputs are technical data that arose during or resulted from earlier fundamental research.
Note 2 to paragraph (a): There are instances in the conduct of research, whether fundamental, basic, or applied, where a researcher, institution or company may decide to restrict or protect the release or publication of "technology" contained in research results. Once a decision is made to maintain such "technology" as restricted or proprietary, the "technology," if within the scope of § 734.3(a), becomes "subject to the EAR."	*Note 2 to paragraph (a):* There are instances in the conduct of research, whether fundamental, basic, or applied, where a researcher, institution or company may decide to restrict or protect the release or publication of technical data contained in research results. Once a decision is made to maintain such technical data as restricted or proprietary, the technical data becomes subject to the ITAR.
(b) *Prepublication review.* "Technology" that arises during, or results, from fundamental research is "intended to be published" to the extent that the researchers are free to publish the	(b) *Prepublication review.* Technical data that arises during, or results from, fundamental research is intended to be published to the extent that the researchers are free to publish the technical data

technology contained in the research without restriction or delay. "Technology" that arises during or results from fundamental research subject to prepublication review is still "intended to be published" when: (1) Prepublication review is conducted solely to ensure that publication would not compromise patent rights, so long as the review causes no more than a temporary delay in publication of the research results; (2) Prepublication review is conducted by a sponsor of research solely to insure that the publication would not inadvertently divulge proprietary information that the sponsor has furnished to the researchers; or (3) With respect to research conducted by scientists or engineers working for a Federal agency or a Federally Funded Research and Development Center (FFRDC), within any appropriate system devised by the agency or the FFRDC to control the release of information by such scientists and engineers.	contained in the research without any restriction or delay, including U.S. government-imposed access and dissemination controls or research sponsor proprietary information review.
Note 1 to paragraph (b): Although "technology" arising during or resulting from fundamental research is not considered "intended to be published" if researchers accept restrictions on its publication, such "technology" will nonetheless qualify as "technology" arising during or resulting from fundamental research once all such restrictions have expired or have been removed.	*Note 1 to paragraph (b):* Although technical data arising during or resulting from fundamental research is not considered "intended to be published" if researchers accept restrictions on its publication , such technical data will nonetheless qualify as technical data arising during or resulting from fundamental research once all such restrictions have expired or have been removed.
Note 2 to paragraph (b): Except as provided in § 734.11,	*Note 2 to paragraph (b):* Research that is voluntarily subjected to

"technology" that is subject to other publication restrictions, such as U.S. government-imposed access and dissemination controls, is not "intended to be published."	U.S. government prepublication review is considered intended to be published for all releases consistent with any resulting controls. *Note 3 to paragraph (b):* Technical data resulting from U.S. government funded research that is subject to government-imposed access and dissemination or other specific national security controls qualifies as technical data resulting from fundamental research, provided that all government-imposed national security controls have been satisfied.
(c) *Fundamental research definition.* "Fundamental research" means basic or applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community. This is distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security reasons. (1) "Basic Research" means experimental or theoretical work undertaken principally to acquire new knowledge of the fundamental principles of phenomena or observable facts, not primarily directed towards a specific practical aim or objective. (2) "Applied research" means the effort that: (i) Normally follows basic research, but may not be severable from the related basic research; (ii) Attempts to determine and exploit the potential of scientific discoveries or improvements in technology, materials, processes, methods, devices, or techniques; and (iii) Attempts to advance the state of the art.	(c) *Fundamental research definition.* Fundamental research means basic or applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community. This is distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security reasons. (1) Basic Research means experimental or theoretical work undertaken principally to acquire new knowledge of the fundamental principles of phenomena or observable facts, not primarily directed towards a specific practical aim or objective. (2) Applied research means the effort that: (i) Normally follows basic research, but may not be severable from the related basic research; (ii) Attempts to determine and exploit the potential of scientific discoveries or improvements in technology, materials, processes, methods, devices, or techniques; and (iii) Attempts to advance the state of the art.

5. Educational Information

§734.9 [Reserved]	**n/a**

6. Patents

§734.10 Patents. "Technology" is not "subject to the EAR" if it is contained in: (a) A patent or an open (published) patent application available from or at any patent office; (b) A published patent or patent application prepared wholly from foreign-origin technology where the application is being sent to the foreign inventor to be executed and returned to the United States for subsequent filing in the U.S. Patent and Trademark Office; (c) A patent application, or an amendment, modification, supplement or division of an application, and authorized for filing in a foreign country in accordance with the regulations of the Patent and Trademark Office, 37 CFR part 5; or (d) A patent application when sent to a foreign country before or within six months after the filing of a United States patent application for the purpose of obtaining the signature of an inventor who was in the United States when the invention was made or who is a co-inventor with a person residing in the United States.	N/A

7. Development

N/A	**§120.47 Development** Development is related to all stages prior to serial production, such as: design, design research, design analyses, design concepts, assembly and testing of prototypes, pilot production schemes, design data, process of transforming design data into a product, configuration design, integration design, and layouts. Development includes modification of the design of an existing item.

8. Production

N/A	**§120.48 Production** Production means all production stages, such as product engineering, manufacture, integration, assembly (mounting), inspection, testing, and quality assurance. This includes "serial production" where commodities have passed production readiness testing (i.e., an approved, standardized design ready for large scale production) and have been or are being produced on an assembly line for multiple commodities using the approved, standardized design.

9. Required & Peculiarly responsible (in the EAR)

§772.1 *"Required".* (General Technology Note)— As applied to "technology" or "software", refers to only that portion of "technology" or "software" which is peculiarly responsible for achieving or exceeding the controlled performance levels, characteristics or functions. Such "required" "technology" or "software" may be shared by different products. For example, assume product "X" is controlled if it operates at or above 400 MHz and is not controlled if it operates below 400 MHz. If production technologies "A", "B", and "C" allow production at no more than 399 MHz, then technologies "A", "B", and "C" are not "required" to produce the controlled product "X". If technologies "A", "B", "C", "D", and "E" are used together, a manufacturer can produce product "X" that operates at or above 400 MHz. In this example, technologies "D" and "E" are "required" to make the controlled product and are themselves controlled under the General Technology Note. (See the General Technology Note.)	**§120.46 Required** (a) As applied to technical data, the term required refers to only that portion of technical data that is peculiarly responsible for achieving or exceeding the controlled performance levels, characteristics or functions. Such required technical data may be shared by different products.
Note 1: The references to "characteristics" and "functions" are not limited to entries on the CCL that use specific technical parameters to describe the scope of what is controlled. The "characteristics" and "functions" of an item listed are, absent a specific regulatory definition, a standard dictionary's definition of the item. For example, ECCN 9A610.a controls "military aircraft specially designed for a military use that are not enumerated in USML paragraph VIII(a)." No performance level is identified in the entry, but the control characteristic of the aircraft is that it is specially designed "for military use." Thus, any technology, regardless of significance, peculiar to making an aircraft "for military use" as opposed to, for example, an aircraft controlled	*Note 1:* The references to "characteristics" and functions" are not limited to entries on the USML that use specific technical parameters to describe the scope of what is controlled. The "characteristics" and "functions" of an item listed are, absent a specific regulatory definition, a standard dictionary's definition of the item. For example, USML Category VIII(a)(1) controls aircraft that are "bombers." No performance level is identified in the entry, but the characteristic of the aircraft that is controlled is that it is a bomber. Thus, any technical data, regardless of significance, peculiar to making an aircraft a bomber as opposed to, for example, an aircraft controlled under ECCN 9A610.a or ECCN 9A991.a, would be technical data required for a bomber

under ECCN 9A991.a, would be technical data "required" for an aircraft specially designed for military use thus controlled under ECCN 9E610.	and thus controlled under USML Category VIII(i).
Note 2: The ITAR and the EAR often divide within each set of regulations or between each set of regulations (a) controls on parts, components, accessories, attachments, and software and (b) controls on the end items, systems, equipment, or other items into which those parts, components, accessories, attachments, and software are to be installed or incorporated. Moreover, with the exception of technical data specifically enumerated on the USML, the jurisdictional status of unclassified technical data or "technology" is the same as the jurisdictional status of the defense article or "item subject to the EAR" to which it is directly related. Thus, if technology is directly related to the production of a 9A610.x aircraft component that is to be integrated or installed in a USML VIII(a) aircraft, then the technology is controlled under ECCN 9E610, not USML VIII(i).	*Note 2:* The ITAR and the EAR often divide within each set of regulations or between each set of regulations (a) controls on parts, components, accessories, attachments, and software and (b) controls on the end items, systems, equipment, or other items into which those parts, components, accessories, attachments, and software are to be installed or incorporated. With the exception of technical data specifically enumerated on the USML, the jurisdictional status of unclassified technical data is the same as the jurisdictional status of the defense article or item "subject to the EAR' to which it is directly related. Thus, if technology is directly related to the production of an ECCN 9A610.x aircraft component that is to be integrated or installed in a USML Category VIII(a) aircraft, the technology is controlled under ECCN 9E610, not USML Category VIII(i).
772.1 *Peculiarly responsible.* An item is "peculiarly responsible for achieving or exceeding the controlled performance levels, characteristics or functions" if it is used in or for use in the "development," "production," "use," operation, installation, maintenance, repair, overhaul, or refurbishing of an item subject to the EAR unless:	*Note 3:* Technical data is "peculiarly responsible for achieving or exceeding the controlled performance levels, characteristics or functions" if it is used in or for use in development (including design, modification, and integration design), production (including manufacture, assembly, and integration), operation, installation, maintenance, repair, overhaul, or refurbishing of a defense article unless:
(1) The Department of Commerce has determined otherwise in a commodity classification determination;	1. The Department of State has determined otherwise in a commodity jurisdiction determination;
(2) Reserved;	2. Reserved;

(3) It is identical to information used in or with a commodity or software that: (i) Is or was in production (*i.e.*, not in development); and (ii) Is EAR99 or described in an ECCN controlled only for Anti-Terrorism (AT) reasons; (4) It was or is being developed with "knowledge" that it would be for use in or with commodities or software (i) described in an ECCN *and* (ii) also commodities or software either not 'enumerated' on the CCL or the USML (e.g., EAR99 commodities or software) or commodities or software described in an ECCN controlled only for Anti-Terrorism (AT) reasons; (5) It was or is being developed for use in or with general purpose commodities or software, i.e., with no "knowledge" that it would be for use in or with a particular commodity or type of commodity; *or* (6) It was or is being developed with "knowledge" that it would be for use in or with commodities or software described (i) in an ECCN controlled for AT-only reasons and also EAR99 commodities or software; or (ii) exclusively for use in or with EAR99 commodities or software.	3. It is identical to information used in or with a commodity or software that: (i) Is or was in production (*i.e.*, not in development); and (ii) Is not a defense article; 4. It was or is being developed with knowledge that it is or would be for use in or with both defense articles and commodities not on the U.S. Munitions List; or 5. It was or is being developed for use in or with general purpose commodities or software (*i.e.*, with no knowledge that it would be for use in or with a particular commodity).

10. Export

§734.13 Export. (a) Except as set forth in § 734.17, "export" means:	**§120.17 Export** (a) Except as set forth in §§ 120.52, 126.16, or 126.17 of this subchapter, export means:
(1) An actual shipment or transmission out of the United States, including the sending or taking of an item out of the United States, in any manner;	(1) An actual shipment or transmission out of the United States, including the sending or taking of a defense article outside of the United States in any manner;
(2) Releasing or otherwise transferring "technology" or "source code" (but not "object code") to a foreign national in the United States (a "deemed export");	(2) Releasing or otherwise transferring technical data or software (source code or object code) to a foreign person in the United States (a "deemed export");
(3) Transferring by a person in the United States of registration, control, or ownership of: (i) A spacecraft subject to the EAR that is not eligible for export under License Exception STA (i.e., spacecraft that provide space-based logistics, assembly or servicing of any spacecraft) to a person in or a national of any other country, or (ii) Any other spacecraft subject to the EAR to a person in or a national of a Country Group D:5 country; or	(3) Transferring by a person in the United States of registration, control, or ownership to a foreign person of any aircraft, vessel, or satellite subject to the ITAR;
(4) [Reserved]	(4) Releasing or otherwise transferring a defense article to an embassy or to any agency or subdivision of a foreign government, such as a diplomatic mission, in the United States;
(5) [Reserved]	(5) Performing a defense service on behalf of, or for the benefit of, a foreign person, whether in the United States or

	abroad;
(6) Releasing or otherwise transferring decryption keys, network access codes, passwords, “software,” or other information with “knowledge” that such provision will cause or permit the transfer of other “technology” in clear text or “software” to a foreign national.	(6) Releasing or otherwise transferring information such as decryption keys, network access codes, passwords, or software, providing or physical access that would allow access to other technical data in clear text or software to a foreign person regardless of whether such data has been or will be transferred; or (7) Making technical data available via a publicly available network (e.g., the Internet).
(b) Any release in the United States of “technology” or “source code” to a foreign national is a deemed export to the foreign national’s most recent country of citizenship or permanent residency.	(b) Any release in the United States of technical data or software to a foreign person is a deemed export to all countries in which the foreign person has held citizenship or permanent residency.
(c) The export of an item that will transit through a country or countries or will be transshipped in a country or countries to a new country, or are intended for reexport to the new country, is deemed to be an export to the new country.	

11. Reexport

§734.14 Reexport. (a) Except as set forth in §§ 734.18 and 734.20, "reexport" means: (1) An actual shipment or transmission of an item from one foreign country to another foreign country, including the sending or taking of an item to or from such countries in any manner; (2) Releasing or otherwise transferring "technology" or "source code" to a foreign national of a country other than the foreign country where the release or transfer takes place (a "deemed reexport"); (3) Transferring by a person outside the United States of registration, control, or ownership of: (i) A spacecraft subject to the EAR that is not eligible for reexport under License Exception STA (i.e., spacecraft that provide space-based logistics, assembly or servicing of any spacecraft) to a person in or a national of any other country, or (ii) Any other spacecraft subject to the EAR to a person in or a national of a Country Group D:5 country; or (4) Releasing or otherwise transferring outside of the United States decryption keys, network access codes, passwords,	**§120.19 Reexport** (a) Except as set forth in section 120.52 of this subchapter, reexport 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 or software to a foreign person of a country other than the foreign country where the release or transfer takes place (a "deemed reexport"); (3) Transferring by a person outside of the United States of registration, control, or ownership of any aircraft, vessel, or satellite subject to the ITAR to a foreign person outside the United States; or (4) Releasing or otherwise transferring outside of the United States information, such as decryption keys, network access

"software," or other information with "knowledge" that such provision will cause or permit the transfer of other "technology" in clear text or "software" to a foreign national. (b) Any release outside of the United States of "technology" or "source code" subject to the EAR to a foreign national of another country is a deemed reexport to the foreign national's most recent country of citizenship or permanent residency, except as described in § 734.20. (c) The reexport of an item subject to the EAR that will transit through a country or countries or will be transshipped in a country or countries to a new country, or are intended for reexport to the new country, is deemed to be a reexport to the new country.	codes, passwords, or software, or providing physical access, that would allow access to other technical data in clear text or software to a foreign person regardless of whether such data has been or will be transferred. (b)[Reserved]

12. Release

§734.15 Release. (a) Except as set forth in § 734.18, "technology" and "software" are "released" through: (1) Visual or other inspection by a foreign national of items that reveals "technology" or "source code" subject to the EAR to a foreign national; (2) Oral or written exchanges with a foreign national of "technology" in the United States or abroad; or (3) The application by U.S. persons of "technology" or "software" to situations abroad using personal knowledge or technical experience acquired in the United States, to the extent that the application reveals to a foreign national "technology" or "source code" subject to the EAR. (b) Reserved	**§120.50 Release** (a) Except as set forth in section §120.52 of this subchapter, technical data and software are released through: (1) Visual or other inspection by foreign persons of a defense article that reveals technical data or software to a foreign person; or (2) Oral or written exchanges with foreign persons of technical data in the United States or abroad. (b) Reserved

13. Retransfer and Transfer (In-Country)

§734.16 Transfer (in-country). Except as set forth in § 734.18, a transfer (in-country) is a change in end use or end user of an item within the same foreign country. "Transfer (in-country)" is synonymous with "in-country transfer."	**§120.51 Retransfer** Except as set forth in section 120.52 of this subchapter, a retransfer is a change in end use or end user of a defense article within the same foreign country.

14. Activities that are Not Exports, Reexports, Releases, Retransfers, or Transfers

§734.18 Activities that are not exports, reexports, or transfers	**§120.52 Activities that are Not Exports, Reexports, or Retransfers**
(a) The following activities are not exports, reexports, or transfers:	(a) The following activities are not exports, reexports, or retransfers:
(1) Launching a spacecraft, launch vehicle, payload, or other item into space.	(1) Launching a spacecraft, launch vehicle, payload, or other item into space;
(2) While in the United States, releasing "technology" or "software" to United States citizens, persons lawfully admitted for permanent residence in the United States, or persons who are protected individuals under the Immigration and Naturalization Act (8 U.S.C. 1324b(a)(3)).	(2) While in the United States, releasing technical data or software to a U.S. person;
(3) Shipping, moving, or transferring items between or among the United States, the District of Columbia, the Commonwealth of Puerto Rico, or the Commonwealth of the Northern Mariana Islands or any territory, dependency, or possession of the United States as listed in Schedule C, Classification Codes and Descriptions for U.S. Export Statistics, issued by the Bureau of the Census.	(3) Shipping, moving, or transferring defense articles between or among the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands or any territory, dependency, or possession of the United States as listed in Schedule C, Classification Codes and Descriptions for U.S. Export Statistics, issued by the Bureau of the Census; and
(4) Sending, taking, or storing "technology" or "software" that is:	(4) Sending, taking, or storing technical data or software that is:
(i) Unclassified;	(i) Unclassified;
(ii) Secured using 'end-to-end encryption;'	(ii) Secured using end-to-end encryption;

(iii) Secured using cryptographic modules (hardware or "software") compliant with 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 publications, or other similarly effective cryptographic means; and	(iii) Secured using cryptographic modules (hardware or software) as 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 publications; and
(iv) Not stored in a country listed in Country Group D:5 (*see* Supplement No. 1 to part 740 of the EAR) or in the Russian Federation.	(iv) Not stored in a country proscribed in §126.1 of this subchapter or the Russian Federation.
(b) *Definitions.* For purposes of this section, 'end-to-end encryption' means the provision of uninterrupted cryptographic protection of data between an originator and an intended recipient, including between an individual and himself or herself. It involves encrypting data by the originating party and keeping that data encrypted except by the intended recipient, where the means to access the data in unencrypted form is not given to any third party, including to any Internet service provider, application service provider or cloud service provider.	(b) For purposes of this section, end-to-end encryption means the provision of uninterrupted cryptographic protection of data between an originator and an intended recipient, including between an individual and himself or herself. It involves encrypting data by the originating party and keeping that data encrypted except by the intended recipient, where the means to access the data in unencrypted form is not given to any third party, including to any Internet service provider, application service provider or cloud service provider.
(c) The ability to access "technology" or "software" in encrypted form that satisfies the criteria set forth in paragraph (a)(4) of this section does not constitute the release or export of such "technology" or "software."	(c) The ability to access technical data or software in encrypted form does not constitute the release or export of such technical data or software.
Note to § 734.18: Releasing "technology" or "software" to any person with knowledge that a violation will occur is prohibited by §736.2(b)(10) of the EAR.	*Note:* See §127.1 of this subchapter for prohibitions on the release or transfer of technical data or software, in any form, to any person with knowledge that a violation will occur.

15. Scope of a License

§750.7 Issuance of Licenses	§123.28 Scope of License
(a) **Scope.** Unless limited by a condition set out in a license, the export, reexport, or transfer (in-country) authorized by a license is for the item(s), end-use(s), and parties described in the license application and any letters of explanation. The applicant must inform the other parties identified on the license, such as the ultimate consignees and end users, of the license's scope and of the specific conditions applicable to them. BIS grants licenses in reliance on representations the applicant made in or submitted in connection with the license application, letters of explanation, and other documents submitted. A BIS license authorizing the release of technology to an entity also authorizes the release of the same technology to the entity's foreign nationals who are permanent and regular employees (and who are not proscribed persons under U.S. law) of the entity's facility or facilities authorized on the license, except to the extent a license condition limits or prohibits the release of the technology to nationals of specific countries or country groups.	Unless limited by a condition set out in a license, the export, reexport, retransfer, or temporary import authorized by a license is for the item(s), end-use(s), and parties described in the license application and any letters of explanation. DDTC grants licenses in reliance on representations the applicant made in or submitted in connection with the license application, letters of explanation, and other documents submitted. **§124.1(e)** Unless limited by a condition set out in an agreement, the export, reexport, retransfer, or temporary import authorized by a license is for the item(s), end-use(s), and parties described in the agreement, license and any letters of explanation. DDTC approves agreements and grants licenses in reliance on representations the applicant made in or submitted in connection with the agreement, letters of explanation, and other documents submitted.

16. Export of Controlled Information to US Persons Abroad

§740.9(a)(3)	**§125.4(b)(9)**
"Technology," regardless of media or format, may be exported by or to a U.S. person or a foreign national employee of a U.S. person, traveling or on temporary assignment abroad subject to the following restrictions subject to the following restrictions:	Technical data, including classified information, regardless of media or format, exported by or to a U.S. person or a foreign person employee of a U.S. person, travelling or on temporary assignment abroad subject to the following restrictions:
(i) Foreign nationals may only export or receive such "technology" as they are authorized to receive through a license, license exception other than TMP or because no license is required.	(i) Foreign persons may only export or receive such technical data as they are authorized to receive through a separate license or other approval.
(ii) "Technology" exported under this authorization may only be possessed or used by a U.S. person or authorized foreign national and sufficient security precautions must be taken to prevent the unauthorized release of the "technology." Such security precautions include encryption of the "technology," the use of secure network connections, such as Virtual Private Networks, the use of passwords or other access restrictions on the electronic device or media on which the "technology" is stored, and the use of firewalls and other network security measures to prevent unauthorized access.	(ii) The technical data exported under this authorization is to be possessed or used solely by a U.S. person or authorized foreign person and sufficient security precautions must be taken to prevent the unauthorized release of the technology. Such security precautions may include encryption of the technical data, the use of secure network connections, such as virtual private networks, the use of passwords or other access restrictions on the electronic device or media on which the technical data is stored, and the use of firewalls and other network security measures to prevent unauthorized access.
(iii) The U.S. person is an employee of the U.S. government or is directly employed by a U.S. person and not, e.g., by a foreign subsidiary.	(iii) The U.S. person is an employee of the U.S. government or is directly employed by a U.S. person and not by a foreign subsidiary.
(iv) "Technology" authorized under this exception may not be used for foreign production purposes or for technical assistance unless authorized through a license or license exception other than	(iv) Technical data authorized under this exception may not be used for foreign production purposes or for defense services unless authorized through a license or other approval.

TMP. (v) The U.S. person employer of foreign nationals must document the use of this exception by foreign national employees, including the reason that the "technology" is needed by the foreign nationals for their temporary business activities abroad on behalf of the U.S. person.	(v) The U.S. employer of foreign persons must document the use of this exemption by foreign person employees, including the reason that the technical data is needed by the foreign person for their temporary business activities abroad on behalf of the U.S. person. (vi) Classified information is sent or taken outside the United States in accordance with the requirements of the Department of Defense National Industrial Security Program Operating Manual (unless such requirements are in direct conflict with guidance provided by the Directorate of Defense Trade Controls, in which case such guidance must be followed).

17. Release of Protected Information

§764.2(l)	**§127.1(b)(4)**
No person may "release" or otherwise transfer information, such as decryption keys, network access codes, or passwords, that would allow access to other "technology" in clear text or "software" with "knowledge" that the release will result, directly or indirectly, in an unauthorized export, reexport, or transfer of the "technology" in clear text or "software." Violation of this provision will constitute a violation to the same extent as a violation in connection with the export of the controlled "technology" or "software."	To release or transfer information, such as decryption keys, network access codes, or passwords that would allow access to other technical data in clear text or to software that will result, directly or indirectly, in an unauthorized export, reexport, or retransfer of the technical data in clear text or software. Violation of this provision will constitute a violation to the same extent as a violation in connection with the export of the controlled technical data or software.

18. New Section 127.1(a)(6) prohibition

N/A	§127.1(a)(6) (6) To export, reexport, retransfer, or otherwise make available to the public technical data or software if such person has knowledge that the technical data or software was made publicly available without an authorization described in section 120.11(b) of this subchapter.